

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6357 OF 2014
(arising out of S.L.P. (Civil) No. 21466 of 2010)

VICE CHAIRMAN, LAKES & WATERWAYS
DEVELOPMENT AUTHORITY & ANR Appellant(s)

VERSUS

MOHD.ABBASS WANTH Respondent(s)

WITH

CIVIL APPEAL NO. 6358 OF 2014
(arising out of S.L.P. (Civil) No. 16271 of 2010)

O R D E R

S.L.P. (Civil) No. 21466 of 2010

Leave granted.

2. Civil Appeal, by special leave, arises from the judgment of the Division Bench of the Jammu & Kashmir

Signature Not Verified

Digitally signed by
Rajesh Dham
Date: 2014.07.15
14:27:30 IST

Reason: High Court whereby the respondent (petitioner therein) has

been granted damages of Rs. 6 lacs together with interest at
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the rate of 8% from January 1, 1999 for the damage caused to his house due to dredging operations.

3. Initially, the respondent filed a suit for perpetual injunction and damages against the appellants. In the suit, the respondent made an application for appointment of Commissioner for assessment of the damages caused to his house. The Court directed the Superintendent Engineer, U.E.E.D. Department, Division (I) to depute any Junior

Engineer for spot inspection and report to the Court about the actual and factual position of the matter of the suit.

4. Pursuant to that order, the Superintendent Engineer appointed Executive Engineer to assess the damages caused to the respondent's house. It is alleged by the appellants that instead of assessing the damages caused to the respondent's house, the Commissioner assessed the valuation of the whole structure. Because of that, the appellants desired to raise the objection to the report but before the appellants could do so, the suit was withdrawn by the High Court to be heard along with OWP (PIL) No. 159/02.

5. Later on, the respondent withdrew the suit with liberty to pursue the appropriate remedy before the High Court for redressal of his grievance. The respondent filed C.M.P. before the High Court first but that was withdrawn and

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a substantive Writ Petition was filed. In response to the Writ Petition, the appellants filed counter affidavit and raised the following objection with regard to the report that was submitted by the Executive Engineer before the Civil Court :

"The Civil Court also passed an order directing the Executive Engineer construction R&B Division II to assess the loss. It is submitted with great respects that the order passed by the Civil Court was without jurisdiction in as much as in a suit for damages/compensation, the Civil Court could not have appointed the commission for assessment of loss/damages. In any case the concerned Engineer appears to have assessed the valuation of the whole building. The respondents herein were preparing to file the objections to the report, when the case was summoned by this Hon'ble Court for being made a part of the Public Interest Litigation Syed Tahir Iqbal Geelani (OWP (PIL) No. 159/02). It is also submitted that the answering respondents have strong objection to the purported reported of the said Executive Engineer. The report is not binding on the answering respondents. The report is not binding on the answering respondents. The report does not go to show that damage if any caused to the house of the petitioner was a direct result of the dredging operation undertaken by the answering respondents." (emphasis supplied by us)

6. The High Court in the impugned order has noticed

the above objection raised by the appellants yet it finally observed at page 11 of the impugned order that no attempt has been made by the appellants (respondents therein) to show that the report should not be taken into consideration.

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This is clearly wrong. The High Court ought to have considered the objection raised by the appellants in the counter affidavit which it noted in the impugned order at page 3.

7. In view of the above, we are satisfied that the impugned order cannot be sustained and has to be set aside. The matter needs to be re-heard by the High Court.

8. We, accordingly, set aside the impugned order and restore O.W.P. No. 98 of 2008 to the file of the High Court for fresh hearing and disposal.

9. The parties shall be at liberty to supplement the pleadings in the matter. The High Court shall then hear the parties and decide the matter.

10. Civil Appeal is allowed as above with no order as to costs.

S.L.P. (Civil) No. 16271 of 2010

Leave granted.

2. In view of the order passed today in Civil Appeal arising out of Special Leave Petition (Civil) No. 21466 of 2010, the impugned order is set aside and Contempt No. 51 of 2010 filed before the High Court is dismissed.

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3. Civil Appeal is allowed as above with no order as to costs.

.....CJI.
(R.M. LODHA)

.....J.
(PINAKI CHANDRA GHOSE)

NEW DELHI;J.
JULY 11, 2014 (ROHINTON FALI NARIMAN)

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ITEM NO.202 COURT NO.1 SECTION XVIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 21466/2010

(Arising out of impugned final judgment and order dated 29/10/2009
in OWP No. 98/2008 in IA No. 170/2008 passed by the High Court Of
Jammu & kashmir At Srinagar)

VICE CHAIRMAN, LAKES & WATERW. DEV. AUT. ANR Petitioner(s)

VERSUS

MOHD. ABBASS WANTH Respondent(s)

(with prayer for interim relief and office report)
(FOR FINAL DISPOSAL)

WITH
SLP(C) No. 16271/2010
(With prayer for Prayer for Interim Relief and Office Report)

Date : 11/07/2014 These petitions were called on for hearing
today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Petitioner(s) Mr. Gaurav Pachnanda, Sr. Adv.
Ms. Manjula Gupta, Adv.
Ms. Shruti Gupta, Adv.

For Respondent(s) Mr. Rana Mukherjee, Adv.
Ms. Kasturika Kaumudi, Adv.
Mr. Shekhar Kumar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

S.L.P. (Civil) No. 21466 of 2010

Leave granted.

Civil Appeal is allowed in terms of the signed order.

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S.L.P. (Civil) No. 16271 of 2010

Leave granted.

Civil Appeal is allowed in terms of the signed order.

(RAJESH DHAM)
COURT MASTER

(RENU DIWAN)
COURT MASTER

(signed order is placed on the file)