

ITEM NO.51

COURT NO.1

SECTION PIL-W

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Writ Petition (Civil) No.37/2023

JAGATGURU SHANKARACHARYA JYOTIRMATH
JYOTISHPEETHADHEESHWAR SHRI SWAMI
AVIMUKTESHWARANAND SARASWATI JI MAHARAJ

Petitioner(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(With IA No.7409/2023-EXEMPTION FROM FILING O.T. and IA No.7406/2023-APPROPRIATE ORDERS/DIRECTIONS and IA No.8933/2023-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

Date : 16-01-2023 This petition was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA
HON'BLE MR. JUSTICE J.B. PARDIWALA

For Petitioner(s) Mr. Sushil Kumar Jain, Sr. Adv.
Mr. P.N. Mishra, Adv.
Mr. Anjani Kumar Mishra, AOR
Ms. Shruti Singh, Adv.
Ms. Hardeep Kaur, Adv.
Mr. Karunesh K.S., Adv.

For Respondent(s) Mr. Jatinder Kumar Sethi, Dy. Adv.Gen.
Mr. Ashutosh Kumar Sharma, Adv.
Mr. Abhishek Atrey, Adv.

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

- 1 Invoking the jurisdiction under Article 32 of the Constitution, the petitioner seeks a slew of directions, including the following directions, namely:
 - (i) A mandamus to the Union of India and to the National Disaster Management Authority¹ to assist in the reparation work in Joshimath, Uttarakhand;
 - (ii) A declaration that the present situation in Joshimath is in the nature of a national disaster and that the NDMA should support the residents;
 - (iii) A direction to the State of Uttarakhand to provide immediate financial support and compensation to the residents; a direction to the National Thermal Power Corporation to provide insurance coverage and for rehabilitative measures;
 - (iv) A direction to the respondents to take active steps to safeguard spiritual and religious places and stop the construction relating to the Tapovan Vishnugad Hydro Electric Project;
 - (v) The appointment of a 'high level expert committee' to frame guidelines for the development of inhabited and densely populated settlements in the State of Uttarakhand considering its geological, ecological and physiological features; and

1 "NDMA"

- (vi) The constitution of a monitoring committee to enquire into the efforts of the Union and the State governments in relation to safety, security and rehabilitation of the residents in Joshimath.
- 2 On 12 January 2023, a Division Bench of the High Court of Uttarakhand passed an order in IA No 9 of 2023 in a Public Interest Litigation (WPPIL No 67 of 2021) dealing with the situation in Joshimath. The original cause for the filing of the writ petition relates to an incident which took place on 7 February 2021 when, as a result of a glacial burst, several areas in the State suffered flooding, leading to death and destruction.
- 3 The IA before the High Court specifically highlighted the situation which has emerged in Joshimath. Among other reliefs, the petitioner before the High Court has sought directions to restrain the respondents from undertaking operations in under-construction hydro power project sites across the State of Uttarakhand until early warning systems are established. The petitioner has also sought a direction for the constitution of an expert committee to review all the hydro power projects located on the upper reaches of the rivers across the State of Uttarakhand.
- 4 The Division Bench of the High Court, while entertaining the IA, underscored the importance of associating experts drawn from the fields of hydrology, geology, glaciology, disaster management, geomorphology and landslide experts with any study which may be undertaken by the State.

- 5 Responding to the submission that NTPC is carrying on construction activity in a tunnel made by it, the High Court has recorded the statement of NTPC in the following terms in paragraph 15 of its order, which is extracted below:

“Mr Vashishtha, who appears for the N.T.P.C., states that no construction activity, or blasting activity, is being undertaken by it ever since the disaster of 2021 took place. He further submits that the N.T.P.C. is following the order dated 05.01.2023 issued under the name of the Additional District Magistrate, Joshimath, banning all construction activity by the N.T.P.C.”

- 6 The State of Uttarakhand has been directed to “strictly enforce the ban on construction in Joshimath area imposed on 5 January 2023”.
- 7 The reliefs which have been sought in these proceedings under Article 32 have been extracted in the prefatory part of this order. A substantial overlap emerges between these proceedings and the proceedings of which the High Court is in *seisin*.
- 8 Mr Sushil Kumar Jain, senior counsel appearing on behalf of the petitioner submits that the petitioner seeks to emphasize relief and rehabilitation, in these proceedings.
- 9 Since there has been an assumption of jurisdiction by the High Court under Article 226 of the Constitution, the specific aspects which have been sought to be highlighted in these proceedings can be addressed before the High Court for redressal.

- 10 We accordingly permit the petitioner either to institute a substantive petition under Article 226 of the Constitution before the High Court of Uttarakhand or, in the alternative to intervene in the pending proceedings, as they may be advised. Since the petitioner has raised issues pertaining to relief and rehabilitation, we request the High Court that in the event of a petition being moved in that behalf, it may consider the grievance with all reasonable dispatch. Leaving it open to the petitioner to do so, the Petition is disposed of.
- 11 Pending applications, if any, stand disposed of.

(CHETAN KUMAR)
A.R. - cum - P.S.

(SAROJ KUMARI GAUR)
Assistant Registrar