

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP(C) No. 2183/2023
CM No. 5062/2023

Varun Mahajan and anr.

....Petitioner (s)

Through :- Mr. Gagan Basotra, Sr. Advocate with
Mr. Hamzah Hussaini, Advocate

V/s

UT of J&K and ors.

....Respondent(s)

Through :- Mr. Rajnish Raina, Advocate

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

ORDER
23.08.2023

1. The instant petition has been filed on behalf of the petitioners challenging the order passed by respondent No. 2 bearing No. JMC/ESTT/6211-15 dated 12.08.2023 under Section 8(1) of the Jammu and Kashmir Control of Building Operations Act, 1988 (hereinafter referred to as "the Act of 1988") whereby the respondent No. 2 has sealed the premises/property of the petitioners situated at Plot No. 13, Sec. B, Block C, Gandhi Nagar, Jammu with further direction against the respondents to de-seal the property of the petitioners mentioned supra.
2. The short submission which has been advanced by learned senior counsel for the petitioners Mr. Gagan Basotra is that the petitioners are owners in possession of the commercial property mentioned supra and the said plot was purchased by the petitioners in the year, 2022 and 2023 from the legal heirs of erstwhile owners namely N.K Haq and Sneha Gupta by virtue of duly registered sale deeds which were registered before the learned Sub

- Registrar, Jammu. Pursuant to the aforesaid sale deed, the petitioners are running business under the name and style of “Fashion K Sons” on the said premises.
3. Further case of the petitioners is that the building permission was approved in favour of N.K Hak, the erstwhile owner for raising construction over the said plot. Since, there was an allegation against the said person that he has started unauthorized construction in the said plot in violation of the sanctioned plan, a notice under Section 225 of the Municipal Act, 2008 Svt. was served upon the erstwhile owner to stop construction over the said plot followed by Notice dated 20.09.1999 under Section 229 of the Municipal Act, 2008. The allegation which was leveled against the erstwhile owner was that he was continuing with the construction in violation of the approved plan. Finally, pursuant to the issuance of many notices, a final notice under Section 229 (3) of the Municipal Act was issued on 27.01.2000 upon the erstwhile owner of the property for demolition of the structure constructed on the aforesaid plot and feeling aggrieved of the same, an appeal was preferred before the Tribunal challenging the order of demolition and after feeling prima-facie satisfied, the status quo was granted in his favour vide order dated 30.01.2000.
 4. It is further case of the petitioners that the learned Tribunal after considering all the aspects of the matter vide order dated 10.10.2000 compounded the violations and regularized the construction raised by the erstwhile owners.
 5. Further case which has been advanced by learned senior counsel for the petitioners is that since the alleged violation has been compounded by the Tribunal in accordance with Municipal Laws and predecessor-in-interest of the petitioners subsequently, opened a Maruti Showroom in the name and

- style of “Shaurya Motors” which was never objected to, by the official respondents at that relevant point of time, besides, the showroom along with a liquor warehouse of the State Excise Department operated in the said premises till the property was purchased by the petitioners.
6. Learned counsel further submits that the factum of the commercial activity being carried prior to the filing of the writ petition bearing OWP No. 122/2001 has been admitted by the respondents which, inter-alia means that the Administrator Municipality, Jammu was aggrieved only to the extent of the violation with regard to raising of the construction by the erstwhile owner as he did not raise any grouse with regard to the opening of commercial establishment in the said premises. As per the petitioner, no grievance was raised with regard to the opening of commercial establishment, the respondents in a way has acquiesced their right in operation of the building as Commercial as the respondents only objected to the raising of construction against Municipal Laws.
 7. Further fact of the matter is that during the pendency of said writ petition bearing OWP No. 122/2021, the private respondents in the writ petition i.e. erstwhile owners namely N.K Hak and Sneh Gupta have passed away and accordingly, the legal heirs of the same were placed on record and were impleaded as party respondents in the petition.
 8. Mr. Gagan Basotra, learned senior counsel for the petitioners submits that at the time of registration of the sale deed, his clients were not aware of any such dispute or litigation pending before the Court.
 9. The further fact of the matter is that the petitioners preferred an application in OWP No. 122/2021 and this Court vide order dated 12.04.2023 allowed the said application and impleaded the petitioners as party respondents.

10. Learned senior counsel has pointed out that in the light of the pendency of the aforesaid writ petition, where the premises were being used for commercial use, on the strength of interim order of “*status quo*” passed by this Court for the last more than 22 years. The respondent No. 2 without any justifiable reason and in violation of principles of natural justice, has issued the order impugned which is subject matter of the instant petition, whereby the building of the petitioners has been sealed.
11. The specific case which has been advanced by learned senior counsel for the petitioners is that no show cause notice was ever issued before passing the order impugned and the sealing of the premises by the respondents is self contradictory as the respondents have allowed the commercial activities to carry on for more than 22 years and raised no objection since 1986 and now at this fag end, the respondents are estopped under law to question the same by issuing the order impugned, when the grievance of the respondents was only to the extent of the violation against the Municipal Laws and not against the commercial activities being carried on in the said premises.
12. In the instant petition, it is alleged by the petitioners that they have been singled out while passing the order impugned, whereby, the building in question has been sealed when such commercial activities is going on unabated in violation of Master plan and building permission for land use in Green Belt Park and Gandhi Nagar area and yet, no action has been taken against them. According to the petitioners, commercial activities is not only confined to the Green Belt Park area but also to entire Gandhi Nagar area and other areas, which can only be ascertained if the respondents are directed to provide requisite information viz-a-viz various establishments

whether, any such permission has been granted for carrying on the commercial activities in the residential area.

13. Learned counsel for the petitioners further submits that respondents adopt pick and choose policy in targeting owners of small establishments by sealing their properties in violation of law and insofar as the big houses and establishments are concerned, no such action is being taken and the commercial activities are being allowed to run their establishments with their active connivance.
14. The argument of learned senior counsel for the petitioners is that the authority under the Act is although empowered to pass an order of sealing in appropriate cases, yet the said power rest upon the nature of the allegations justifying such exercise.
15. Learned senior counsel further submits that the respondents without specifying any allegations of erection or re-erection of the building have issued the impugned notice as defined under Section 2(9) of the Act of 1988. He further submits that the change of the nature of the business in absence of any erection or re-erection would fall within the ambit of unauthorized erection or re-erection as contemplated under Section 7 of the Act of 1988 read with Section 87 of the Act of 1988. Thus, according to him, from a conjoint reading of Sections 7 & 8 of the Act of 1988, it is manifestly clear that Section 7(1) of the Act of 1988 mandates for issuance of show cause notice in case of erection or re-erection of any building which has commenced or is being carried out and Section 7 (3) of the Act of 1988 provides for passing of the demolition order, if the show cause notice is not replied or the reply is not satisfactory. Thus, it is apparently clear that providing of a hearing to the effected persons is mandatory which has not

- happened in the instant case and thus, the order of sealing by no stretch of imagination can sustain the test of law and is liable to be set aside.
16. He further submits that the allegations of the respondents that the building conversion which allegedly is in violation of the Municipal Laws has already been compounded by the Tribunal which is subject matter of the writ petition pending before this Court in which the status quo has been granted and the petitioners have also been impleaded as necessary party and the said building has been put to commercial use for the last more than 23 years and the activities which were undertaken prior to the passing of status quo order in the aforesaid petition bearing OWP No. 122/2021, continues as on date and thus, there was no change of circumstances afresh, which could have given any justification to the respondents to seal the building.
 17. Heard learned counsel for the parties at length and perused the record.
 18. Prima-facie, a case for indulgence is made out.
 19. Notice. On asking of the Court, Mr. Rajnish Raina, Advocate waives notice on behalf of the respondents. He seeks and is granted four weeks time to file objections.
 20. In the meanwhile, subject to objections from the other side and till next date before the Bench, the Order No. JMC/ESTT/6211-15 dated 12.08.2023 issued under Section 8(1) of the Act of 1988 by virtue of which the respondent No. 2 has sealed the premises/property of the petitioners situated at Plot No. 13, Sec. B, Block C, Gandhi Nagar, Jammu shall remain stayed and the respondents are directed to de-seal the premises of the petitioners. Needless to mention that the de-sealing of the premises of the petitioners will not give any right to them to act in violation of the status quo order which has already been passed by this Court in OWP No. 122/2021 and it

continues to be operative as on today and the petitioners undertake to act strictly in conformity with the status quo order mentioned supra, till it is modified or vacated.

21. Thus, keeping in view the aforesaid submissions and the grounds urged in the instant petition with a view to clinch the controversy in question, this Court deems it appropriate to direct Commissioner, Municipal Corporation Jammu-Respondent No. 2 herein to file an affidavit by providing information as under:

- i. that from the date of enforcement of J&K Control of Building Operations Act, 1988 (for short, the Act of 1988), how many major/minor violations in furtherance of which notices under Section 7(1) and 7(3) of the Act have been issued in Green Belt Park and Gandhi Nagar areas;
- ii. that out of total major violations liable for penal action under Section 7 of the Act of 1988, how many residential properties subject to aforesaid minor/major violations have been sealed in Green Belt Park and Gandhi Nagar areas;
- iii. that out of total minor/major violations, how many residential properties where commercial activities were under taken, have been sealed in Green Belt Park and Gandhi Nagar areas under Section 8 of J&K Control of Building Operations Act, 1988;
- iv. that in how many cases, the Commissioner, JMC has initiated preliminary enquiry to ascertain as to whether the field staff (Khilafwarzi Officers/enforcement inspector) were involved by way of act of omission and commission in pursuance of which minor/major violation were committed in Green Belt Park and Gandhi Nagar areas;
- v. that out of the total minor/major violation, in how many cases the Commissioner, JMC after finding the role of the sub-ordinate officers, Departmental/Penal action against the erring/delinquent subordinate officer (khilafwarzi Officer) with whose tactical consent the minor/major violations were committed has been taken in Green Belt Park and Gandhi Nagar areas;
- vi. whether the Jammu Master plan 2032 permits change of land use in the residential colony of Gandhi Nagar and Green Belt Park if so to what extent the area of the plot can be converted from residential to commercial; and

- vii. whether commercial buildings being run in residential areas of Gandhi Nagar and Green Belt park have any such valid permission accorded by the competent authority in their favour for running such commercial activities, if so, to specify the dates of their establishments and permission granted;
- viii. Whether the establishments in which the residential permissions have been accorded and yet the commercial activity is being going on in violation of the permission granted for land use, what action has been taken by the respondents in this regard by providing details.

22. Let the affidavit in the manner indicated above be filed by respondent No.2-Commissioner, Municipal Corporation, Jammu by or before the next date of hearing positively with a copy in advance to counsel opposite.

23. Heard in part.

24. List for continuation on 04.10.2023.

25. A copy of this order be supplied to learned counsel for the respondents under the seal and signatures of Bench Secretary of this Court.

(WASIM SADIQ NARGAL)
JUDGE

Jammu:
23.08.2023
Tarun

