

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Reserved on: 04.10.2023
Pronounced on: 23.11.2023

WP (C) 1474/2020
CM Nos. 4904/2020, 4905/2020 & 2628/2023

**1. Building Operation Controlling Authority,
Municipal Area Jammu.
Through its Commissioner,
Jammu Municipal Corporation,
Town Hall, Jammu.**

**2. Joint Commissioner [A],
Jammu Municipal Corporation,
Town Hall, Jammu.**

.....Petitioner(s)/Appellant(s)

Through: Mr. Rajnish Raina, Advocate

Versus

**1. Vikas Gupta
S/o Prof Chaman Lal Gupta,
R/o 38 -D/B IInd Extension Gandhi Nagar,
Jammu.**

**2. J&K Special Tribunal Jammu,
Through its Registrar.**

Through: Mr. Jagpal Singh, Advocate

.....Respondent(s)

CORAM:

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

J U D G M E N T
23.11.2023

1. The Building Operations Controlling Authority, Municipal Area, Jammu, through its Commissioner along with Joint Commissioner (A), Jammu Municipal Corporation, Jammu, has invoked the

extraordinary writ jurisdiction of this court enshrined in Article 226 of the Constitution seeking a writ of Certiorari for quashing order dated 10.7.2020 (for short the impugned order) passed by J&K Special Tribunal/respondent 2 herein (for short the Tribunal) in appeal titled as “**Shri Vikas Gupta versus Joint Commissioner (A)**”.

2. The background facts under the shade and cover of which the instant petition has been filed would reveal that the respondent 1 herein while possessing a plot of land measuring 3637 sft situated at Ambedkar Chowk (Panama Chowk), Jammu, came to be granted permission for raising commercial construction by the petitioner 1 herein in terms of order no. 1102/BS/2010 dated 24.11.2010.
3. The respondent 1 herein in the process of raising the commercial construction under and in terms of order dated 24.11.2010 committed violations of the same as also of the rules and byelaws, resulting into issuance of a show-cause-notice dated 01.2.2012 under and in terms of section 7(1) of J&K Control of Building Operations Act, 1988 (hereinafter referred to as the Act of 1988) calling upon the respondent 1 herein to show cause as to why the violations detailed out in the notice be not demolished.
4. The respondent 1 filed reply to the aforesaid show-cause-notice, and dissatisfied with the said reply the petitioners herein issued order of demolition dated 28.2.2012 under and in terms of section 7(3) of the Act of 1988.

5. Aggrieved of the demolition order dated 28.2.2012 the respondent 1 herein preferred statutory appeal before the Tribunal/respondent 2 herein contending therein that the said order is without jurisdiction, arbitrary and illegal having been issued without application of mind after the completion of the construction in question though the petitioners herein did not object to the raising of the said construction and in fact allowed the respondent 1 herein to complete the same and only after the completion of the construction they initiated demolition process overlooking the fact that a certificate regarding the completion of the construction of the building strictly in accordance with site plan had been issued by the petitioners herein.
6. The Tribunal after inviting objections to the said appeal from the petitioners herein considered and decided the same in terms of the impugned order dated 10.7.2020 holding that there has been no violation committed by the appellant/respondent 1 herein of the zoning regulations and the Master Plan of the city or a violation falling under major category and that since the construction had been raised and completed within the full knowledge of the petitioners herein, as such, the Tribunal consequently ordered compounding of the violations for 1897 sft at the rate of Rs.100/- per sft giving liberty to the petitioners herein to demolish the deviated portion of the structure in the event the respondent 1 herein fails to deposit the compounding fee.

7. The impugned order is challenged in the instant petition on the grounds urged by the petitioners herein.
8. **Objections** to the petition have been filed by the respondent 1 resisting and controverting the contentions raised and grounds urged by the petitioners in the petition *inter alia* on the premise that though the petitioners herein were in know of the fact of completion of the construction raised by the answering respondent yet issued notice under section 7(1) of the Act of 1988 on 01.2.2012 followed by order of demolition dated 28.2.2012 issued under section 7(3) of the Act of 1988 and though the respondents on the one hand have challenged the impugned order before this court but on the other hand accepted and acknowledged the compounding fee of Rs.1,89,700/- as directed by the Tribunal from the respondent 1 on 30.7.2020 despite the fact that the petitioners herein furnished and submitted factually incorrect measurement of the violations alleged to have been committed by the respondent 1 herein while raising the construction in question.

Heard learned counsel for the parties and perused the record.

9. It is not in dispute that in the present case the respondent 1 herein came to be accorded permission for construction of a commercial building in terms of order dated 24.11.2010 issued by the petitioners herein and that the said construction came to be raised by the respondent 1 herein with certain deviations and violations which though in knowledge of the petitioners herein were neither

objected to nor the construction in question was ever stopped from being raised.

Record in general and the show-cause-notice dated 1.2.2012 followed by demolition order dated 28.2.2012 in particular manifestly demonstrate that the petitioners herein initiated the process against the respondent 1 herein *qua* the alleged violation and the deviations of the construction in question after respondent 1 had nearly completed the same having constructed a basement, ground floor, first floor and second floor.

It also emerges from the record that the petitioners herein in the show-cause-notice as also the demolition order dated 01.2.2012 and 28.2.2000 supra did not anywhere indicate or spell out that which of the zoning regulations came to be contravened by the respondent 1 herein as also how did the construction in question seriously affected the planned development of the Jammu city. Instead vague and bald assertion in this regard had been incorporated in the said notice and demolition order and so much so the petitioners herein failed to substantiate the said allegations against the respondent 1 herein before the Tribunal as well while opposing the appeal filed by respondent 1 herein before the Tribunal.

10. A closer examination and perusal of the impugned order of the Tribunal demonstrates that the Tribunal had not been oblivious to the said position and facts, and seemingly has rightly on just and

equitable grounds by taking into notice the quantum and magnitude of the alleged violations held the same to be minor in nature and character and consequently ordered compounding of the same in terms of compounding fee fixed therein which compounding fee indisputably stands accepted and acknowledged by the petitioners herein from the respondent 1 herein without any objection or protest whatsoever signifying that the impugned order of the Tribunal is acceptable to the petitioners herein.

11. Here a reference to section 15 of the Act of 1988 also becomes imperative which reads as under:

“15. Finality of orders:

Save as otherwise provided in this Act every order made by an Authority or the appellate officer shall be final and shall not be called in question in any suit, application or execution proceeding.”

What emanates from plain reading of the aforesaid provision is that in order to prevent protraction of proceedings under and in terms of the Act of 1988, finality has been attached to an order made by an Authority or an appellate officer appointed by the Government for hearing appeal(s) under section 13 of the Act of 1988. Thus the filing of the instant petition while invoking extraordinary writ jurisdiction by the petitioners runs in direct conflict with section 15 of the Act of 1988 *supra* that too in a matter involving disputed questions of fact inasmuch as to re-appreciation of the material and evidence available before the

appellate authority which exercised powers under the Act of 1988 more so in absence of any perversity alleged by the petitioners herein against the impugned order.

A reference in regard to above herein to the Division Bench judgment of this court passed in case titled as **Administrator Municipality Jammu versus M/s K. C. Hotels Private Limited and others** reported in **AIR 1995 JK 85** would be relevant and germane wherein at para 20 following has been laid down:

“20. In this appeal, we are not expected to go into a question of fact as to what sort of violation has been committed in raising of construction, and if any, whether it was as pre-sanctioned plan or revised plan, and whether it was minor or major in nature. All these things have been well considered by the Tribunal, which was required to go into such questions. The Tribunal has after a thorough inquiry come to the conclusions on a question of fact and recorded a finding about the nature of the violation, and regularized it under law by compounding the same. The Tribunal, in our opinion, is fully competent to compound the violation, keeping in view its nature, and if it is so, the learned single judge has not erred in upholding the findings of the Tribunal. The learned single Judge also appears to have considered the matter in its entirety in coming to the conclusion that the violations were of minor nature. As a matter of fact, strictly speaking, the writ jurisdiction of the High Court could not be invoked in such matters, as the dispute was in substance relating to a question of fact. The Tribunal is the final arbiter in such matters. It appears to us a unique case where the Municipality itself has filed a writ petition against the order of Tribunal, perhaps to cover up its lapses and omissions/commissions. The writ jurisdiction is invoked mainly where fundamental rights are infringed. However, for violating of legal rights too, such jurisdiction may be invoked provided alternate remedy is not available. In the present case, the alternate remedy has

already been availed of and even then on a disputed question of fact writ jurisdiction is sought to be invoked. Not only that, now Letters Patent appeal too has been filed and at the expenses of badly needed funds of the Municipality. It appears to us to be a litigation of attrition only for the purpose known to the Municipality only.”

12. Viewed thus, what has been observed, considered and analysed hereinabove, the impugned order dated 10.7.2020 passed by the Tribunal does not call for any interference. Resultantly, the petition fails and is accordingly dismissed along with connected CM(s).

(Javed Iqbal Wani)
Judge

Jammu
23.11.2023
N Ahmad

Whether the order is speaking?	Yes
Whether approved for reporting?	Yes

