



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

Case:- **OWP No. 798/2005**
IA No. 1087/2005

**Building Operation Controlling Authority Municipal Area, Jammu through
Commissioner Jammu Municipal Corporation, Town Hall, Jammu.**

....Petitioner(s)

Through: Mr. S. S. Nanda, Sr. AAG

Vs

- 1. S. Gurmeet Singh, S/o S. Teja Singh, R/o Main Road Talab Tillo,
Jammu.**
- 2. J&K Special Tribunal, Jammu.**

..... Respondent(s)

Through: Mr. M. K. Bhardwal, Sr. Advocate with
Mr. Manik Bhardwaj, Advocate for R-1

Case:- **OWP No. 475/2010**
IA No. 642/2010

**Building Operation Controlling Authority Municipal Area Jammu, through
Joint Commissioner(A), Municipal Corporation, Town Hall Jammu.**

....Petitioner(s)

Through: Mr. S. S. Nanda, Sr. AAG

Vs

- 1. Gurmeet Singh, S/o Sh. Teja Singh R/o Main Road Talab Tillo, Jammu.**
- 2. J&K Special Tribunal, Jammu.**
- 3. Sweety Bhardwaj, W/o Narayan Dass.**
- 4. Narayan Dass, S/o Late. Sh. Thakur Dass,
Both R/o 210-Pacci Dhaki, Jammu.**

..... Respondent(s)

Through: Mr. M. K. Bhardwaj, Sr. Advocate with
Mr. Manik Bhardwaj, Advocate for R-1.
Mr. G. S. Thakur, Advocate for R- 3 & 4.



Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

ORDER
28.03.2024

OWP No. 798/2005

01. In the instant petition, filed under Article 226 of the Constitution, the Building Operation Controlling Authority (for short "**BOCA**") being the petitioner herein in has challenged the order dated 29.08.2005 (for short "**the impugned order**") passed by the J&K special Tribunal, Jammu (for short "**the Tribunal**") in an appeal titled as "**Gurmeet Singh Vs Building Operation Controlling Authority and another.**"

02. The facts giving rise to the filing of the instant appeal reveal that the respondent 1 herein came to be granted a building permission by the BOCA for raising construction of 05 number of shops in the ground floor and a residential house at first floor vide permission No. 202/BS/04 dated 30.09.2004 and that the Khilafwarzi Officer of the area on 19.03.2005 reported that the respondent 1 herein has raised construction against the approved plan resulting into issuance of show cause notice under Section 7(1) of the Control of Building Operations Act, 1988 (for short "**the Act of 1988**") dated 22.03.2005, followed by notice issued under Section 12(1) of the Act of 1988 to the respondent 1 herein



dated 22.03.2005 calling upon him to discontinue the construction, whereafter upon an inspection conducted on site by the Khilafwarzi Inspector it came to be found that the respondent 1 has raised the construction of a Shopping Complex with a big hall on the basement unauthorizedly without any permission on a built up area of 4933 sqft, instead of sanctioned area of 1766 sqft., as a consequence whereof demolition notice under Section 7(3) of the Act of 1988 vide No. MJ/Estt/102/3/CKO/2005 dated 31.05.2005 came to be issued calling upon the respondent to demolish the said unauthorized construction, whereafter aggrieved of the demolition notice dated 31.05.2005, the respondent 1 preferred an appeal before the Tribunal, wherein an interim order came to be passed on 03.06.2005 staying the said demolition notice with a direction to the BOCA not to interfere in the construction work of the petitioner/respondent herein, whereupon an application for vacation of the said interim order came to be filed by the petitioner herein, which application was not considered and instead matter came to be adjourned by the Tribunal compelling the petitioner herein to file a writ petition being OWP No.400/2005 before this Court, which petition came to be disposed of on 07.07.2005 with a direction to the Tribunal to decide the appeal of the respondent 1 herein within a period of



fifteen days while directing the parties to maintain *status-quo* regarding the construction in question, whereafter the Tribunal after the passing of the aforesaid order by this Court dated 07.07.2005 decided the appeal of the respondent 1 herein in terms of the impugned order dated 29.08.2005 and compounded the violations committed by the respondent 1 herein *qua* the construction in question.

03. The petitioner herein has challenged the impugned order in the instant petition, *inter-alia*, on the ground that the same has been passed against the facts and law, inasmuch as, having been passed without jurisdiction, and having resulted into failure of justice.

04. **Counter affidavit** to the petition has been filed by the respondent 1 herein, wherein the instant petition is being opposed and resisted on the premise that the petitioner herein is estopped from challenging the order of the Tribunal, in that, the answering respondent 1 herein deposited the compounding fee as directed by the Tribunal before the petitioner herein, which amount stands received by the petitioner herein and that the impugned order has been challenged after more than a period of three months' and that the Tribunal passed a speaking and



reasoned order well within its jurisdiction and powers admitting the fact that answering respondent 1 herein came to be granted initially a permission on 30.09.2004 whereafter, however, the answering respondent 1 herein submitted a revised plan on 17.12.2004 before the petitioner herein for approval on the advice of his structural engineer and that the petitioner herein did not take any decision on the said revised plan submitted by the answering respondent 1 herein, although the same was considered and by the Town Planner who submitted a report favouring the answering respondent 1 herein while stating in the said report that the area where the permission has been granted and sought is a commercial land use pocket and that on account of failure of the petitioner herein to convey any decision to the answering respondent 1 herein *qua* the revised plan, the answering respondent 1 herein raised construction in accordance with the revised plan in terms of the provisions of the Act of 1988 on the ground of **deemed sanction/permission** and thus, did not commit any violation.

Heard learned counsel for the parties and perused the record.



05. Perusal of the record reveals that the answering respondent 1 herein admittedly came to be granted a building permission by the petitioners herein on 30.09.2004 for raising construction of 05 number of shops on the ground floor and construction of a residential house over the shops as per the plan submitted by him, subject to various terms and conditions set out in the said permission including that the proposed construction should be got supervised through qualified and competent structural engineer.

06. Record also tends to show that the respondent 1 herein had submitted a revised plan during the course of undertaking constructional activity pursuant to the permission dated 30.09.2004, before the petitioner herein, whereupon a process seemingly had been initiated by the petitioner herein and a report sought from the Chief Town Planner vide letter No. **33/6/BS/02** dated 07.12.2004 whereafter a report came to be furnished by the Chief Town Planner to the Commissioner, Jammu Municipal Corporation vide No. CTPJ/BPC/2004-2005/404 dated 22.12.2004 which report being significant and relevant herein is *in-extenso* extracted and reproduced hereunder:-

“(1) The Municipality had already approved B.P. case for construction of 5 number of shops on ground floor and a



residential house on top of it vide No. 202/BS/04 dated 30.09.2004. This means that Municipality has already agreed to allow commercial land use in this pocket.

- (2) The applicant has now submitted plans for construction of 05 number more shops at the back of the existing shops alongwith 05 number shops and office/shopping space on the first floor. In addition, he has also produced an underground hall for parking purposes.**
- (3) As per the new Master Plan of Jammu land use for special area in which the site falls is yet to be prepared by the JDA. Meanwhile in the Master Plan at page 81 it is proposed that commercial use shall be allowed to the extent of half the depth of the plot for roads between 12 Mtrs to 18 Mtrs R/W. It is as such presumed that commercial use along Talab Tillo Bohri road (which is already thriving with road side commercial activity) is to be allowed. Keeping this in mind it is felt that commercial use for 50% of the depth of the plot on ground and first floor may be allowed but it must be ensure that the applicant must built basement for parking purposes.**

Hence the case needs to be discussed threadbare in the forthcoming meeting of the Building Permission Authority.”

A bare perusal of the aforesaid report manifestly reveals that the petitioner herein had been alive and aware of the fact that the respondent 1 herein had submitted revised plan, as the Chief Town Planner in the report supra had recommended the discussing of the matter threadbare in the forthcoming meeting of the Building Permission Authority. The said report is also found



to be attached with the revised plan submitted by the respondent 1 herein before the petitioner-BOCA.

07. The petitioner herein, however, seemingly has not considered the revised plan of the respondent 1 herein and instead chose to issue notice under Section 7(1) of the Act of 1988 against the respondent 1 herein on 22.03.2005 i.e. much after the submission of the revised plan by the respondent 1 herein before the petitioner herein, which notice came to be followed by issuance of a demolition notice under Section 7(3) of the Act of 1988 dated 31.05.2005, calling upon the respondent 1 to demolish the unauthorized construction within five days on the premise that the construction has been raised by the respondent 1 against the approved plan provided therein notice under Section 7(1) dated 22.03.2005.

08. Perusal of the record also tends to show that the petitioner herein has issued the demolition notice even overlooking the reply submitted by the respondent 1 herein to notice under Section 7(1) of the Act of 1988, wherein the respondent 1 herein have had specifically stated that he had submitted revised plan and that may be passed as soon as possible.



09. Further perusal of the record of the Tribunal reveals that the petitioner herein being respondent before the Tribunal in its objections filed to the appeal preferred by the respondent 1 herein against the demolition notice dated 31.05.2005 have remained again silent about the fact as to the submitting of the revised plan by the respondent 1 herein and instead the petitioner herein before the Tribunal have had laid emphasis on the fact that the respondent 1 herein has raised the construction in violation of the sanctioned plan.

A closer and deeper examination of the record of the Tribunal in general and the impugned order in particular tends to show that the Tribunal have had been alive to the aforesaid facts in particular that the respondent 1 herein have had submitted his revised plan during the course of raising construction, regarding which plan no decision have had been taken by the petitioner herein within the statutory period prescribed under the Control of Building Operation Regulations of 1998, which entitled the respondent 1 herein to a deemed sanction/permission and while taking into consideration the said revised plan found the alleged violations of minor nature, thus, directed compounding of the same @ Rs. 25 per sqft, to be deposited by the respondent 1 herein before the petitioner herein within five days, which



compounding fee appearing from the record stands deposited and received by the petitioner herein amounting to Rs.2,69,825/- vide receipt dated 01.09.2005, annexed as Annexure-1 to the counter affidavit filed by the respondent 1 herein.

10. It is significant and pertaining to note here that under Section 7(1) of the Act of 1988 a notice of show cause of 48 hours has to be issued and served upon a violator, requiring the violator to show cause as to why the offending construction be not demolished, whereafter a demolition notice under Section 7(3) of the Act of 1988 can be issued in the event the authority is satisfied that the erection or re-erection of the building is in contravention of the provisions of the Act of 1988 and has to call upon the violator to demolish the offending structure/ construction within a period not exceeding five days.

In the instant case admittedly a notice under Section 7(1) of the Act of 1988 has been issued on 22.03.2005 and ironically after a period of more than two months demolition notice under Section 7(3) has been issued on 31.05.2005, *prima-facie* suggesting that the petitioner herein have had no serious objection to the raising of construction by the respondent 1 herein under the revised plan submitted by the respondent 1



herein. The said position also gets endorsed and authenticated by the fact that the BOCA-petitioner herein after the passing of the impugned order by the Tribunal on 03.06.2005 received and acknowledged the amount of compounding fee of Rs.2,69,825/- vide receipt dated 01.09.2005 coupled with the fact of the report submitted by the Town Planner to the petitioner herein regarding the revised plan submitted by the respondent 1 herein reflecting therein that the Town Planning Organization have had no serious objection to the raising of the construction by the respondent 1 herein under the revised plan.

11. Having regard to the aforesaid facts and circumstances, it cannot but be said that the Tribunal did not commit any illegality or perversity in passing the impugned order.

Furthermore, the indulgence sought by the petitioner herein the instant petition of the extraordinary writ jurisdiction of this Court under these circumstances may not be warranted, firstly in view of the provisions of Section 15 of the Act of 1988 which provides for finality of orders passed by the Authority or the Appellate Officer with a rider not be called in question in any suit, application or execution proceedings and secondly in view of the nature of issues raised by the petitioner herein in the instant



petition being based on complicated and disputed questions of facts *qua* the quantum and magnitude of alleged violations to have been committed by the respondent 1 while raising the construction in question. A reference in this regard to a Division Bench judgment of this Court passed in case titled as **“Administrator Municipality Jammu Vs 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.”

Besides a reference to the judgment of the Apex Court passed in case titled as **“Kewal Kishan Gupta Vs J&K Special Tribunal and others,”** reported in **AIR 2005 SC 2578** would also be appropriate herein, wherein it has been *inter-alia* held that ***the phase of rapid growth of industrial development also makes it unnecessary for permitting demolition of structure even if it be in contravention of the provisions of the Act or the zoning provisions.***

12. Viewed thus, what has been observed, considered and analyzed herein above, the petition is liable to be dismissed. Accordingly, the petition is ***dismissed*** without any costs alongwith all connected applications.

13. Connected application shall also stand ***dismissed***.

**OWP No. 475/2010**

01. In light of the aforesaid decision in OWP No. 798/2005, the controversy raised in the instant petition pales into insignificance and the judgment supra shall govern this petition as well. However, nothing hereinabove shall be construed to be an expression of any opinion *qua* the rights and interests claimed by the respondents 3 & 4 herein in the instant petition for which the said respondents are stated to have filed a civil suit and same is stated to be pending before the Court of Sub-Judge, Jammu.

02. ***Disposed of*** along with all connected applications.

03. A copy of this judgment be placed on the record file of both the petitions.

04. Record of the Tribunal be send back.

(JAVED IQBAL WANI)
JUDGE

JAMMU
28.03.2024
Muneesh

Whether the order is reportable : **Yes**

Whether the order is speaking : **Yes**