

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

*Reserved on: 22.09.2023*

*Pronounced on: 19.12.2023*

Case: **OWP No. 633/2008**  
**IA No. 942/2008**

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

.....Petitioner(s)

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

**Vs**

1. Rajinder Singh S/o Sh. Sat Pal R/o 132  
A/D, Gandhi Nagar, Jammu.
2. J&K Special Tribunal, Jammu.

..... Respondent(s)

Through: Mr. Inderjeet Gupta, Advocate.

**Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE**

**JUDGMENT**

1. Judgment dated 25.03.2008 of the Jammu and Kashmir Special Tribunal, Jammu, returned on file No. STJ/371 in exercise of appellate jurisdiction under the J&K Control of Building Operations Act, 1988, is hereby being challenged through the medium of the present writ petition by the Building Operation Controlling Authority(BOCA), Municipal Area Jammu acting through Commissioner Jammu Municipal Corporation(JMC) joined by the Joint Commissioner (A), Jammu Municipal Corporation(JMC) as the petitioner No. 2.
2. The respondent No. 1-Rajinder Singh is the person with respect to whose premises the matter relates to. The respondent No. 2 came to be served by an Order No. MJ/Estt/22/3/CEO/2007 dated 24.10.2007 purportedly issued under section 7(3) of the Control of Building Operations Act, 1988 thereby calling

upon the respondent No. 1 to demolish the unauthorized construction within a period of five days, failing which the same was to be demolished at his risk and costs by the order issuing authority i.e. Building Operations Controlling Authority(BOCA), Municipal Authority Area, Jammu.

3. Prior to issuance of this order dated 24.07.2007, the respondent is said to have been served with a show cause notice No. MJ/Esstt./22/1/CEO/2007 dated 17.09.2007 under section 7(1) of the Control of Building Operations Act, 1988 requiring the respondent No. 1 to show cause and explain the alleged violation of covering of front set back area of 10 sft. and side set back area of 10 sft. and rear set back area of 5 sft.

4. Against the aforesaid demolition order dated 24.10.2007, the respondent No. 1 filed a statutory appeal under section 13 of the Control of Building Operations Act, 1988 before the Jammu and Kashmir Special Tribunal, Jammu on file No. 371 which came to be allowed and the demolition order dated 24.10.2007 came to be set aside.

5. The adjudication of the appeal filed by the respondent No. 1 came to take place in the back-drop of the fact that the respondent No. 1 had availed a building permission granted vide permission dated 13.04.2007 for residential purposes and the construction actually made by the respondent No. 1 stayed to be residential one but the respondent No. 1 is alleged to have acted in excess of the building permission by allegedly appropriating the set back areas.

6. The Jammu and Kashmir Special Tribunal, Jammu, after going through the Master Plan, 2021 published through SRO 263 dated 09.08.2004 by

reference to the plot size and the extent of construction to be carried out thereupon, came forward with a finding that as per the Master Plan and given the size of the residential plot of the respondent No. 1, no side set backs are required to be kept and only violation left was that of rear set back.

7. The Jammu and Kashmir Special Tribunal, Jammu came to reckon the actual violation at the end of the respondent No. 1 to be of minor nature by reckoning the violation to be that of rear set back and, therefore, ordered its compounding @ Rs. 100/- per sft. for violating the set back requirements.

8. In the writ petition, the petitioner No. 1-Building Operations Controlling Authority (BOCA), Jammu Municipal Area comes forward with a tall claim that the Jammu and Kashmir Special Tribunal, Jammu, without considering the facts of the case and also not considering the aspect of seriousness of violation done at the end of the respondent No. 1, compounded the violation which was against the sanctioned construction area of the 452 sq. ft. and the actual construction covered by the respondent No. 1 was of 1213 sft. upon the plot area of 2033.73 sft.

9. It is submitted in the writ petition that the respondent No. 1 has to keep 40 ft. front set back, 10 ft. side setback and 5 ft. rear set back as against which the respondent No. 1 has left 21.9 ft. front set back and 4.3 ft. partially blind rear set back and cover the side set back totally with construction.

10. This Court could have appreciated the concern of the petitioner No. 1-Building Operation Controlling Authority (BOCA) Jammu Municipal Area had its show cause notice come forward with a narration as is now being made in the

writ petition identifying the true nature of the violation at the end of the respondent No. 1 and what was desired to be removed/undone/demolished by the final order issued under section 7(3) of the Control of Building Operation Act, 1988 by the respondent No. 1.

11. This Court finds it very strange that the show cause notice and the final order issued under section 7(1) and 7(3) of the Control of Building Operations Act are so framed as if it is the noticee who is supposed to come to the office of the petitioner No. 1 and take further details as to what is the actual state of affairs in the context of which the respondent No. 1 opted to come forward with exercise under section 7(1) and 7(3) of the Control of Building Operations Act.

12. The Jammu and Kashmir Special Tribunal in its judgment dated 25.03.2008 has considered all the attending aspects of the case to return a judgment in favour of the respondents and against the petitioners and, therefore, the judgment dated 25.03.2008 cannot be said to be suffering from any error of law or facts so as to suffer reversal from this Court in exercise of jurisdiction under article 227 of the Constitution of India.

13. The writ petition filed by the petitioners is, thus, misconceived and, accordingly, **dismissed**.

**(RAHUL BHARTI)**  
**JUDGE**

**J A M M U**

**19.12.2023**

*Shivalee*

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| Whether the order is speaking:   | Yes |
| Whether the order is reportable: | No  |