

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

CJ Court

Case: LPA No. 30/2022

Jammu Development Authority.

.....Appellant/Petitioner(s)

Through :- Mr. Sachin Dogra, Advocate.

v/s

Vishal Gupta.

.....Respondent(s)

Through :- Mr. Sachin Gupta, Advocate.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

ORDER(ORAL)

19.12.2023

N. KOTISWAR SINGH-CJ

01. The present appeal has been filed against order dated 04.03.2021 passed by the learned Single Judge in writ petition, being OWP No. 1039/2017 by which the petition filed by the Jammu Development Authority, the present appellant herein, challenging the order dated 16.05.2017 passed by the Jammu and Kashmir Special Tribunal, Jammu was rejected.

02. The brief facts, as may be necessary for the disposal of the present appeal, may be stated as under:

Respondent No.1- the Managing Trustee of Dhanwanti Memorial Trust, had approached the Jammu Development Authority for grant of permission for construction of School building and the said permission was granted for construction in three phases. While the respondent no.1 had constructed the School building, it appears that they also constructed a Swimming Pool and a Shed for placing the Generator for use of the School. It

appears that the said constructions were not part of the initial plan submitted by the School while seeking permission. Accordingly, the Jammu Development Authority for the alleged violation also issued a Show Cause Notice dated 20.03.2017 under Section 7(3) of the *J&K Control of Building Operation Act, 1988*, for removal of the illegal construction. The said order of demolition was challenged before the J& K Special Tribunal, Jammu in File No. STJ/70/2017, which was disposed of by the Tribunal on 16.05.2017 by observing that the alleged deviation does not exceed 10% of the construction for which permission was granted by the competent authority. However, the said excess construction of swimming pool and shed for Generator Set was regularized by way of compounding directing the respondent to pay compounding fee of ₹ 1,66,665/- (One Lac sixty six thousand six hundred and sixty five) @ ₹ 15/- per sqft.

03. Being aggrieved by the aforesaid compounding of the alleged violation of the permission and the excess construction, the Jammu Development Authority, preferred a petition under Section 226 of the Constitution of India registered as OWP No. 1039/2017.

04. Learned Single Judge after considering the matter on record and after observing the facts declined to entertain the said petition, however, enhanced the compounding fee @ ₹ 25/- per sqft. and the respondent was directed to deposit ₹ 2,77,775/- in the official account of Jammu Development Authority within a period of one month.

05. Being aggrieved by the aforesaid decision of the learned Single Judge, in not entertaining the writ petition, the present appeal has been filed challenging the order passed by the learned Single Judge that in view of the deviation from

the norms and the construction of the Swimming Pool and also the construction housing Generator Set, the Tribunal ought not to have compounded the same.

06. Having heard the learned counsel for the parties, what we have noted is that first of all the J&K Special Tribunal had gone into the aspect and gave the finding that the construction of shed for housing the Generator and the swimming pool was in excess of 10% of the permitted construction. Secondly, we have also noted that the learned Single Judge has raised the compounding fee from ₹ 15/- per sqft. to ₹25/- per sqft. Thirdly, the alleged deviation is about the construction of a swimming pool and a Genset shed. If we examine the nature of this deviation in the context of a running School, we feel that these would be necessary for running of a school. Construction of a swimming pool, though may amount to deviation as same was raised without seeking permission of the authorities concerned, is not of such a nature that it would fundamentally change the character of the land use as by construction of the swimming pool as no additional structures are added. It is basically digging the earth for proper use as swimming pool and, as such we are of the view that even if the said swimming pool was constructed without permission or in violation of the terms, it is not of such fundamental nature that it would change the landscape or the land use unless the same is prohibited as per rules or the master plan. We have not been apprised that such is the case. Furthermore, the construction of the shed for keeping the Generator, also in our opinion, would be necessary for smooth running of the school.

07. Accordingly, we are of the view that allegation that these are violations, may be technically correct, as these have been constructed without permission but the said constructions are not of such nature that it can be said to be serious

violation of the Rules can be condoned by imposing necessary compounding fees as has been done in the instant case. Further, the learned Single Judge has enhanced the compounding fees as above. Under these circumstances, we do not feel any reason to interfere with the said finding of the Ld. Single Judge. Since the respondent was directed to pay the compounding fee within a period of one month, which has not been paid till date, the respondent is directed to deposit the compounding fee of ₹ 2,77,775/-, without any delay, within a period of two weeks from today failing which he shall be liable to pay interest @ 6% per annum. We, however, caution that if the respondent engages any construction without obtaining permission from the competent authority, the same shall be liable to be demolished and the respondent proceeded in accordance with law.

08. With the above observations and directions, the present appeal stands closed as dismissed.

(MOKSHA KHAJURIA KAZMI)
JUDGE

(N. KOTISWAR SINGH)
CHIEF JUSTICE

JAMMU
19.12.2023
SUNITA/PS