

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) no. 193/2021
CM(S) nos. 735/2021, 4820/2023, 5060/2023

M/S Sameer Guest House

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

Through: Mr. S. F. Qadri, Sr. Advocate with Mr. Faizan Rashid, Adv.

Vs.

UT of J&K and others

...Respondent(s)

Through: Mr. Bikramdeep Singh, Dy. AG with Ms. Nowbahar Khan, AC

CORAM:

HON'BLE MR. JUSTICE VINOD CHATTERJI KOUL-JUDGE

ORDER
06.12.2024

1. This petition filed by the petitioner "Sameer Guest House" challenges the communication No. Est/Reg/272/730-34/DDA dated 21.01.2021, addressed by Chief Executive Officer, Doodhpathri to Deputy Director (Registration), Directorate of Tourism Kashmir, Srinagar Development Authority informing him that the NOC dated 22.08.2018 be treated as null & void, and cancel the Registration of the Guest House and no further process for issuance of same be initiated. The communication reads as under:

"Govt. of Jammu & Kashmir
Office of the Chief Executive Officer
Doodhpathri Development Authority.

No. Est/Reg/272/730.34/DDA

Dated: 21.01.2021

The Deputy Director (Registration)

Directorate of Tourism Kashmir

Srinagar

Subject: Grant of NOC/Clearance for registration of Guest House

Reference: 01. Your letter No. Reg/GP-08/505/DTK Dated 27-12-217

02. This office letter No. CEO/REG/272/DDA/451 dated 22.08.2018

Sir,

The Sameer Guest House at Raiyar Doodhpathri has been constructed illegally without seeking permission from DDA and letters vide No's CEP/DDA/45-49 Dated 22.02.2016, CEO/DDA/244-49 Dated 20-05-2016, CEO/DDA/143/756-66 Dated 22.11.2016, for dismantling etc have already been served to its Owner Mr. Abdul Majid Dinda S/O Gh. Mohmad Dinda r/O Raiyar Ich.

Moreover, as per Draft Master Plan, which is to be implemented till its approval, the land under this Guest House namely Sameer Guest House at Raiya comes under the category farm land, Agriculture & Agrostology, thereby any type of structure is banned in this zone.

It is as such informed that the NOC issued by this office vide reference No. 2 i.e. REG/272/DDA/451 Dated 22.08.2018 may be treated as null & void. The registration if earlier granted to this Guest House be cancelled immediately and no further process for issuance of same be initiated.

S/D

Yours faithfully

Chief Executive Officer

Doodhpathri Development Authority"

2. Regarding the petitioners' Guest House, NOC was granted by the Chief Executive Officer vide communication No. CEO/Reg/272/DDA/45 dated 22.02.2018. The said communication reads as under:

“ Government of Jammu and Kashmir
OFFICE OF THE CHIEF EXECUTIVE OFFICER
DOODHPATHRI DEVELOPMENT AUTHORITY

The Deputy Director Tourism,
Registration,
Srinagar.

No. CEO/REG/272/DDA/45

Dated 22.02.2018

Subject: Issue of NOC for clearance of Registration of Guest House

Ref: Your letter No. Reg/GP-08/505/DTK Dated 27.12.2017

Sir,

Regarding the subject cited above this office has no objection if Registration to Sameer Guest House at Raiyar Doodhpathri is issued subject to the condition that Guest House is not located on Forest/Kachrai/State land and he shall abide by the terms and conditions as prescribed under rules by the DDA and there is no violation of Ribbon Development Act.

Chief Executive Officer,

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3. On the basis of NOC issued by respondent no. 5 on 22.02.2018, Guest House of the petitioner was registered by respondent no. 4 on 07.12.2018 vide No. 1903075. It is on the basis of NOC dated 22.02.2018 that Guest House has come up. Now, after three years, when NOC dated 22.02.2018 has been acted upon, mere making of a letter, impugned herein, is nothing but violation of rights of petitioner, inasmuch as petitioner is entitled to be afforded opportunity of being heard.
4. Another important averment has been made by counsel for the petitioner, that is, that Chief Executive Officer, Doodhpathri Development Authority has no jurisdiction because it is now the BOCA headed by Deputy Commissioner, Budgam, who has the jurisdiction on subject in question.
5. NOC granted on 22.02.2018 by Chief Executive Officer, Doodhpathri Development Authority, could not be cancelled, and treated as null & void when the said NOC has been acted upon and when the petitioner has not been given opportunity of being heard, prior to issuance of impugned letter.
6. Mr. Bikramdeep Singh, Dy. AG could not justify the impugned action more particularly when impugned action is against the principles of natural justice.
7. Therefore, action contained in impugned letter, being violative of audi alteram partem, is bad in law and is, as such, set-aside.
8. Needless to say that respondents are at liberty to proceed in the matter a fresh after giving the petitioner an opportunity of being heard and proceed in the matter strictly in accordance with the provisions of law, governing the field.
9. **Disposed of** along with connected CM(s).

(VINOD CHATTERJI KOUL)
JUDGE

SRINAGAR
06.12.2024
"Imtiyaz"