

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

WP (C) 788/2024

Reserved on: 18-12-2024
Pronounced on: 31 -12-2024

Sheikh Shahzad Rasool
S/O. Late Ghulam Mohd Sheikh
R/O. Acha Bagh, Malabagh, Hazratbal,
Srinagar.

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

Through: Mr. Z.A. Qureshi, Sr. Advocate with
Ms. Monisa, Advocate

Vs.

1. Srinagar Municipal Corporation
Through its Commissioner, Srinagar.
2. Joint Commissioner (Planning)
Srinagar Municipal Corporation, Srinagar.
3. Chief Enforcement Officer,
Srinagar Municipal Corporation, Srinagar.
4. Enforcement Officer,
Srinagar Municipal Corporation, Srinagar.
5. Ward Officer,
Ward No. 15,
Srinagar Municipal Corporation, Srinagar.
6. Farooq Ahmad Sofi
S/O. Habibullah Sofi
R/O. Acha Bagh, Malabagh, Hazratbal, Srinagar.

...Respondent(s)

Through: Mr. Illyas Laway, GA
Mr. Asif Nabi, Advocate

CORAM:HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGEMENT

1. The petitioner, who happens to be a neighbour of respondent no. 6, having his land adjacent to that of respondent no. 6, has filed this petition for quashing the revised building permission granted to the respondent no. 6 in terms of order No. SMC/2024/2277 dated 16th February, 2024 and for directing the official respondents to demolish unauthorized and illegal structure raised by the respondent no. 6 over his proprietary land comprising survey no. 551, situated at Baghati-i-Shooru, Acha Bagh, Malabagh, Hazratbal, Srinagar.

2. It is stated that respondent no. 6 had initially obtained a building permission for construction of a two storied residential house with attic and erection of compound walling over his proprietary land comprising survey no. 551 situated at Baghati Shooru, Acha Bagh, Malabagh, Hazratbal, Srinagar. In terms of the said permission, the permissible area for construction of ground and first floor was sanctioned to be 876 sq.ft. each whereas the area of attic was sanctioned for 438 sq.ft. Instead, the respondent no.6 started raising construction far beyond the permissible limit of 876 sq.ft. and that too without maintaining proper setbacks and fire-gap. Rather, the structure raised by respondent no. 6 was in fact a commercial structure. As the construction was not being raised in accordance with the building permission, the petitioner filed a complaint with the official respondents and acting on the said complaint, the official respondents stopped the construction work being carried out in violation of the building permission. In the meantime, the respondent no. 6, approached the official respondents for revision/modification of the building permission bearing No. SMC/2023/1517 dated 30thMay, 2023, and while the respondent no.6 was in the process of getting his permission revised, the petitioner again approached the official respondents with a representation. The respondent no. 6 succeeded in obtaining the building permission vide order No. SMC/2024/2277 dated 16thFebruary, 2024 and the same was done without affording any opportunity of hearing to the petitioner. The petitioner has sought the quashing of the above-mentioned permission *inter alia* on the following grounds:

- I. That as per the Unified Building Bye Laws, revised building Permission is to be obtained before construction is undertaken on the portion of the building that deviates the Sanction Design and the changes shall not be more than 10 % of built-up area for construction as Revised Building Permit.
- II. That the respondent no.6 while seeking the revised permission in the year 2024 had already constructed the ground floor of 1678 sq.ft. under the previous sanction order of 2023, when in fact the building permission of 2023 had permitted for construction of 876 sq.ft. only for ground floor.
- III. That no setbacks and fire-gap stand maintained but the official respondents despite being apprised of the same, have not taken any action.

3. The official respondents have filed the response stating therein, that initially a building permission was granted to the respondent no. 6 vide sanction order dated 30th May, 2023. Later, the said permission was modified in terms of order No. SMC/2024/2277 dated 16th February, 2024, by virtue of which, the private respondent was granted a building permission in modification of previous building permission dated 30th May, 2023 for increase in plinth area (802 sq.ft) for construction of three storied residential house with erection of compound walling on a plot of land measuring 4352 sq.ft. comprising survey no. 551 Min in Estate Baghat-i-Shooru situated at Achabagh, Malla Bagh, Srinagar subject to the set-backs and other terms and conditions as detailed in the building permission. It is further stated that the building permission, so issued, has been issued in accordance

with the law governing the field and in case, the petitioner is aggrieved of the same, he has efficacious remedy available under the Municipal Corporation Act, 2000 and as such, the present writ petition is not maintainable.

4. The respondent no. 6 has also filed the response stating therein, that the petitioner had earlier filed a suit before the Court of Municipal Magistrate, Srinagar on 2nd April, 2024 but the same was subsequently withdrawn and no liberty was granted to the petitioner to file fresh suit and on the same date i.e., 16th April, 2024, the petitioner filed the present petition and, as such, has suppressed the material facts from this Court. It is further stated that the answering respondent started raising construction strictly in accordance with the building permission No: SMC/2024/2277, dated 22nd February, 2024 issued by the Joint Commissioner Planning, SMC, Srinagar, J & K. The Revised Building Permission was issued when the previous Building Permission, bearing No. SMC/2023/1517 dated 30th May, 2023 was objected to by the petitioner through a complaint. After filing of the complaint, the official respondent Nos. 1 to 5 asked the respondent no. 6 to approach their office. The above said revised building permission has been issued in favour of the respondent no. 6 only after considering the objection of the petitioner and on-spot investigations conducted by the official respondent Nos. 1 to 5 and their sub-ordinate officials. It is further asserted that the sanction has been accorded by the competent authority for the construction of 1678 sq.ft area for the ground floor, first floor and second floor and erection of a Compound Walling. In nutshell, the stand of the

respondent No. 6 is that valid sanction has been issued in his favour for construction of three storied building and the respondent no. 6 has maintained a decent gap of more than 10 feet from the side of the petitioner. It is also the stand of the respondent No.6 that he has maintained set-backs in accordance with the permission and has not violated any condition contained in the sanction order.

5. Mr. Z.A. Qureshi, learned Senior Counsel for the petitioner has argued that in terms of regulation no. 2.7 of the J & K Unified Building Bye Laws, 2021, the Sanction Design and Specification could have been revised provided the changes were not more than 10% of the built-up area and for changes above 10%, a new application was required to be filed which was not done in the instant case. He further laid stress that revised building permission is to be obtained before construction is undertaken on the portion of the building that deviates Sanction Design and Specification, whereas in the present case, the construction was raised prior to revised sanction. He has further argued that nature of structure clearly reflects that the construction which is being raised by the petitioner is a commercial building.

6. *Per contra* Mr. Ilyas Laway, learned GA has submitted that the building permission was sanctioned in the year 2024 pursuant to the application submitted by the respondent no. 6 in accordance with the rules/Bye-laws. He has produced a report dated 20th June, 2024, wherein it is stated that there is no violation/deviation to the sanctioned plan. The said report is taken on record.

7. On the other hand, Mr. Asif Nabi, learned counsel for the respondent no. 6 has submitted that respondent no. 6 had applied online for permission to raise construction and the previous permission granted to the respondent no. 6 was modified vide permission dated 16th February, 2024 for raising construction of three storied residential house and erection of compound walling with permissible coverage of 1678 sq.ft. area each on ground, first and second floor. He has further submitted that the land of the petitioner is on the north side of the plot of respondent no.6 and the petitioner has left sufficient vacant space towards the land of the petitioner.

8. Heard learned counsel for the parties and perused the material on record.

9. The contention raised by the petitioner is that the building permission could not have been revised as the private respondent no. 6 had already raised the construction and further as per regulation no. 2.7 of Jammu & Kashmir Unified Building Bye-Laws 2021, the revision of the sanction was required to be applied before raising of construction provided the changes were less than 10% of the built-up area for consideration as Revised Building Permit. For the sake of reference Regulation 2.7 *supra* of is reproduced as under:

Changes or revisions in the sanctioned design and specification of a building may be made provided that a Revised Building Permit is obtained before construction is undertaken on the portion of the building that deviates from the Sanctioned Design and Specification. The changes shall be not more than 10% of built-up area for consideration as Revised Building

Permit, for changes above 10%, a new application shall be made.

10. The bare perusal of Regulation 2.7 would reveal that changes of less than 10 % of the built-up area can be considered for revision of the building permit, but for the changes of above 10%, a new application is required to be made. Further, the revision in the Sanction Design and Specification of a building can be made before construction is undertaken on the portion of the building that deviates from Sanction Design and Specification. The respondent no. 6 had earlier sought permission for construction of two storied residential house with attic, for a covered area of 876 sq.ft. each on ground and first floor and subsequently, the respondent sought the permission to raise three storied residential house with covered area of 1678 sq.ft. each on ground, first, and second floor respectively. The respondent no. 6 was further enjoined upon to keep front, rear and side-set back as mentioned in order No. SMC/2024/2277 dated 16th February, 2024. For all practical purposes the respondent no.6 had sought a permission for raising a construction of an altogether new building, as initially vide order dated 30th May, 2023, the two storied structure was permitted to be raised with ground coverage of 876 sq.ft. area, whereas vide sanction dated 16th February, 2024, the respondent no.6 has been permitted to raise triple storied house of 1678 sq.ft. area with the ground, first and second floor. In the report dated 20th June, 2024 it is stated by the Ward Officer, ward No.15 that there is no violation/deviation to the sanctioned plan on spot. As the respondent no. 6 has been granted altogether new sanction, therefore, this Court does not find any merit in the contention raised by the petitioner that

there has been a violation of the regulation 2.7 of the Regulations (supra), therefore, the same is rejected.

11. Similarly, the contention of the petitioner that the respondent no. 6 has not maintained the set-backs in accordance with the sanction is belied by the response filed by the official respondents and report of the Ward Officer, therefore, this contention is also rejected.

12. The apprehension of the petitioner that the building appears to be a commercial building can be taken care of by directing the official respondents to ensure that the construction sought to be raised by the respondent No.6 is used only for the purpose for which the sanction has been granted by the official respondents vide order No. SMC/2024/2277 dated 16th February, 2024.

13. In view of the above, the present petition is disposed of by directing the official respondents to ensure that the construction sought to be raised by the respondent no. 6, is used only for the purpose for which the sanction has been granted by the official respondents vide No. SMC/2024/2277 dated 16th February, 2024.

14. Disposed of.

(RAJNESH OSWAL)
JUDGE

SRINAGAR:

31-12-2024

Mubashir

1. Whether the judgment is speaking: Yes/No
2. Whether the judgment is reportable: Yes/No