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| S.No.92      |
| Regular List |

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH**  
**AT SRINAGAR**  
**WP (C)2406/2021**

UT OF J AND K ...Petitioner(s)/Appellant(s)

**Through:** Mr. Jehangir Ahmad Dar, GA with  
Ms. Shaila Shameem, Advocate  
Vs.

NEELOFAR AND ANR. ...Respondent(s)

**Through:** Mr. Jehanigr Iqbal Ganai, Sr. Advocate with  
Ms. Mehnaz Rather, Advocate

**CORAM:HON’BLE MR. JUSTICE RAJNESH OSWAL, JUDGE**

**JUDGEMENT**  
**21-12-2024**

1. The order of demolition bearing No. CEO/PDA/BOCA/1811-12, dated 21<sup>st</sup>October, 2019 was issued by the petitioner under section 7 (3) of J & K Control of Building Operations Act 1988 (for short as ‘the Act’) with regard to the following deviations/violations, committed by the respondent No.1 while raising construction:

| S.No. | Name of the structure | Dimension of construction permitted                                                                        | Dimension of structure constructed                                                                     | Quantum of deviations        |
|-------|-----------------------|------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------|------------------------------|
| 1     | Hut No. 1             | Plinth area 941.30 sq. ft.<br>Height upto roof ridge = 24 feet<br>No. of stories: single storey with attic | Plinth area 1110 sq. ft<br>Height upto roof ridge = 24 feet<br>No of stories: Single storey with attic | 168.70 sq.ft in plinth area  |
|       | Nut No. 6             | Plinth area 941.30 sq. ft.<br>Height upto roof ridge = 24 feet<br>No of stories: single storey with attic  | Plinth area 1110 sq. ft<br>Height upto roof ridge = 24 feet<br>No of stories: Single storey with attic | 168.70 sq. ft in plinth area |
|       | Hut No. 7             | Plinth area 941.30 sq. ft<br>Height upto roof                                                              | Plinth area 1110 sq.ft.<br>Height upto                                                                 | 168.70sq. ft. in plinth area |

|  |           |                                                                                                                       |                                                                                                                             |     |
|--|-----------|-----------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|-----|
|  |           | ridge = 24 feet<br>No. of stories:<br>Single storey with<br>attic                                                     | roof ridge<br>top 24 feet<br>No of<br>stories:<br>Single<br>storey with<br>attic                                            |     |
|  | Hut No. 8 | Plinth area 941.30<br>sq. ft<br>Height upto roof<br>ridge = 24 feet<br>No. of stories:<br>Single storey with<br>attic | Plinth area<br>900 sq. ft<br>Height upto<br>roof ridge =<br>24 feet<br>No. of<br>stories:<br>Single<br>storey with<br>attic | Nil |

2. The respondent no.1 being aggrieved of the same filed an appeal before J & K Special Tribunal, Srinagar (for short ‘the Tribunal’) and the Tribunal vide its order dated 30<sup>th</sup>September, 2020, allowed the appeal and compounded the deviations by imposing compounding fee of Rs.50 per square feet in respect of the unauthorized construction of 504 sq. ft. The petitioner being aggrieved of the same has filed this petition for quashing of the impugned order dated 30<sup>th</sup>September, 2020 primarily on the ground that the deviations were major in nature and could not have been compounded by the learned Tribunal.

3. The respondent no.1 has filed the response, stating therein that the impugned notice of demolition was issued in the year 2009 i.e., after 10 years of the issuance of the building permission and once the learned Tribunal has returned its finding on the factual aspects of the case, this Court cannot act as an appellate court while exercising the jurisdiction under Article 226 of the Constitution of India. It is also contended by the respondent No.1 that the deviations while raising the structure cannot be termed as major deviations and further that after

the Tribunal compounded the deviations, the petitioner received the compounding fee as well. It is also stated that the learned Tribunal has rightly arrived at the conclusion that there is no violation of the Master Plan. In nutshell, the stand of the respondent No.1 is that there is no major violation committed by the respondent No.1.

4. Mr. Jehangir Ahmad Dar, learned Government Advocate, appearing for the petitioner has vehemently argued that the deviations could not have been compounded in any manner whatsoever taking into consideration the critical ecological balance of Pahalgam area.

5. Mr. Jehangir Iqbal Ganai, learned Senior Counsel for the respondent no. 1 has argued that there are certain deviations but they cannot be termed as major violations within the meaning of the Regulations framed under the Act and the learned Tribunal has rightly compounded the deviations. He has further submitted that the petitioner is estopped from assailing the order passed by the learned Tribunal, once the petitioner has accepted the compounding fee.

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

7. It is admitted by the petitioner that Mr. Ashok Haq erstwhile owner of the land measuring 10 kanals and 19 marlas comprising plot no. 7 and 8 situated at Pahalgam had given a power of attorney to one Mr. Javid Ahmad Mir, who sold 6 kanals of land to some other party and retained the rest of the land for construction of four huts. It is further stated that building permission for construction of the abovementioned huts was accorded in favour of Dr. Javid Ahmad Mir

by the Pahalgam Development Authority vide order dated 6<sup>th</sup> April, 2009 and the respondent No.1 pursuant to the sanction mentioned above, constructed four huts but made major deviations while doing the same. On receipt of the deviations, a notice was served upon the respondent No.1 under section 7(1) of the Act to show a cause why the structures be not altered or demolished. In the meantime, a complete ban was imposed upon all sorts of constructions by this Court in OWP (PIL) No. 484/2010. The respondent No.1 filed an application in OWP (PIL) No. 484/2010 and the respondent No.1 was permitted to complete construction in accordance with the permission already granted by the competent authority and the Master Plan. In the event of violation of the building permission granted to her, the petitioner was left free to take action against the respondent No.1. Thereafter, the respondent No.1 served a notice upon the petitioner on 14<sup>th</sup> October, 2019 for allowing her to complete the left over portion of the construction. As there were major deviations, the order under section 7 (3) of the Act was issued.

**8.** The deviations have already been noted above by this Court. The record depicts that the respondent No.1 was permitted to raise the plinth area for 941. 30 Sq. ft. each for Hut nos. 1, 6 and 7 but instead the respondent No.1 enhanced the plinth area by 168 sq. ft, for all the three Huts. It is apt to note here that the plinth area raised by the respondent No.1 for the fourth hut is less than the permitted plinth area of 941.30 sq. ft.

**9.** The sole contention raised by the petitioner in the present petition is that the respondent No.1 has committed the major

violations and as such the same could not have been compounded by the learned Tribunal. The power of compounding is vested in the Appellate Authority by virtue of Regulation no. 11 of the J and K Control of Building Operations Regulations 1998 in respect of minor offences. As per the Regulation 11 of the Regulations (*supra*) the following violations have been termed as minor violations, where the erection or re-erection:-

- i. does not violate the approved land use of area as notified in the Master Plan or Town Planning scheme;**
- ii. does not violate the permissible front, rear or side setbacks prescribed in the bye-laws ;**
- iii. does not violate by more than 10% the permissible ground coverage as prescribed in the bye-laws ; and**
- iv. does not violate the permissible height of the building as prescribed in the bye-laws.**

**10.** It is, now, to be seen whether the respondent No.1 has committed any of the violations as mentioned above. It needs to be mentioned that in the demolition order dated 21<sup>st</sup> October, 2019 there is no whisper by the petitioner that the respondent No.1 has committed any violation which is major in nature. Though the learned Tribunal has not dealt the major violations in detail but nonetheless it has arrived at the right conclusion that the deviations are not in conflict with the Master Plan, Planned Development of Srinagar City and the Zoning Regulations.

**11.** As per the own admission of the petitioner, the respondent No.1 is an owner of the land measuring 4 kanals and 19 marlas. There is no allegation that there is any violation of setbacks, land use, permissible height in respect of the structure raised by the respondent No.1. Even

otherwise, deviation by 10% of the permissible ground coverage as per the bye-laws does not fall within the category of the major violation and it is only when the violation is more than the 10 % of the permissible ground coverage under the bye-laws that the violation would fall within the category of major violation. The details of major violation have not been mentioned in the order of demolition and also there is no such pleading in the writ petition. Merely raising construction in excess than the sanctioned plan, without violating the permissible ground coverage under the byelaws cannot be termed as major violation. The petitioner has not brought any material on record to establish that the respondent No.1 has raised construction in excess than permissible under bye-laws. There is no jurisdictional error on the part of the learned tribunal, which may warrant any interference at the end of this court.

**12.** In view of the above discussion, this court does not find any merit in this writ petition and as such, the same is *dismissed*.

(RAJNESH OSWAL)  
JUDGE

**SRINAGAR:**  
**21-12-2024**  
Mubashir

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