

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CJ Court

Case: LPA No. 09/2024

Mushtaq Hussain
S/o Lt. Sh. Mohd. Shafi
R/o Mohalla Baba Jeevan Shah, Jammu

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

Through: Mr. Imtiyaz Hussain, Advocate.

V/s

1. Member J&K Special Tribunal,
Jammu.
2. Commissioner, Jammu Municipal
Corporation, Town Hall, Jammu.
3. Joint Commissioner, Jammu
Municipal Corporation, Town Hall,
Jammu.
4. Khilafwarzi Officer, Jammu
Municipal Corporation, Town Hall,
Jammu.
5. Dr Javed Chowdhary,
S/o Late Sh. Fateh Ali Chowdhary
R/o Residency Road, Jammu.

.... Respondent(s)

Through: Mr. S S Nanda, Sr. AAG for respondent nos. 2
to 4.
Mr. N A Chowdhary, Advocate for respondent
no.5.

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

ORDER
05.08.2025

(ORAL)

1. This is an *intra court appeal* under Clause 15 of Letters Patent against an order and judgment dated November 24, 2023, vide which the petition preferred by respondent No. 5 (Dr. Javed Chowdhary) was disposed of with a direction to the J&K Special Tribunal (for short the '**Tribunal**') to decide the pending appeal preferred by the appellant (Mushtaq Hussain) within a period of three months.

2. Learned counsel for the appellant submits that notice under Section 7(1) of the *Jammu and Kashmir Control of Building Operations Act, 1988*, (the 'Act'), the appellant was allegedly served with as also the order under Section 7(3) of the Act, passed by the Commissioner, Jammu Municipal Corporation, Jammu, was with respect to;

- (a) the alleged construction of a room on first floor without permission of Jammu Municipal Corporation;
- (b) for not having observed the required set back;
- (c) the said illegal construction raised seriously affects the planned development of Jammu City and contravenes the zoning regulation.

However, he submits, that the learned Single Judge, in addition to the above, observed in Paragraph No.4 of the impugned order that the Tribunal shall also determine if while carrying out the alleged unauthorized construction, any portion of public lane was also encroached upon:

'in addition the Jammu & Kashmir Special Tribunal shall also deal with the aspect about the fact that whether in the course of alleged unauthorized construction any portion of public lane has been encroached upon both land wise or aerial wise and accordingly to dispose of the matter on merits.'

3. Accordingly, it is urged, for, the appellant was neither put to any notice as regards any alleged encroachment upon any portion of a public lane nor that was the subject matter of the order passed by the competent authority under Section 7(3) of the Act, the observations recorded by the learned Single Judge are apparently erroneous/unsustainable.

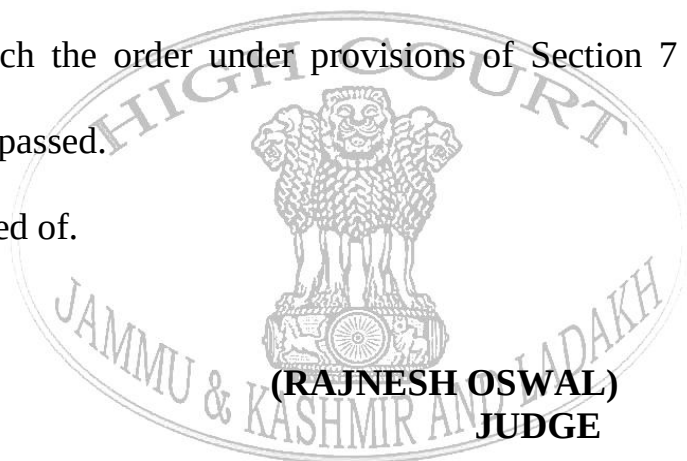
4. Upon being pointedly asked as to whether the issue as regards unauthorized construction upon a portion of a public lane was a subject matter of

the notice under Section 7 (1) of the Act, learned counsel for the respondents expresses his inability to respond thereto.

5. However, learned counsel for the Jammu Municipal Corporation fairly submits that the notice, the appellant was allegedly served with under Section 7(1) of the Act as also the order passed under Section 7(3) of the Act, did not refer to any such unauthorized construction on any public lane/street. However, if so advised, the Corporation would take necessary measures even in this regard in accordance with the law.

6. In the wake of above and in terms of the statement made by the learned counsel for the parties, the impugned order and judgment is modified to the extent that the Tribunal shall proceed to decide the appeal preferred by the appellant only as regards the alleged unauthorized construction /deviation /violation that were the subject matter of the notice under Section 7(1) of the Act and *qua* which the order under provisions of Section 7 (3) of the Act was subsequently passed.

7. Disposed of.



(RAJNESH OSWAL)
JUDGE

(ARUN PALLI)
CHIEF JUSTICE

Jammu
05.08.2025
Sunita/PS