

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

OWP No. 277/2017

Pronounced on: 11.09.2025

**Saleema Begum, Age 45 years,
W/O Late Mohd. Maqbool Dar,
R/o H. No. 129, Gujjar Nagar,
Tehsil & District Jammu**

.... Petitioner(s)

Through:- Mr. Bilal Chowdhary, Advocate vice
Mr. S.M. Chowdhary, Advocate.

V/s

- 1. J&K Special Tribunal, Jammu**
- 2. Commissioner, Jammu Municipal Corporation, Jammu**
- 3. (BOCA), Chief Khilafwarzi Officer, Jammu Municipal Corporation, Town Hall Building, Jammu**

.... Respondent(s)

Through:- Mr. S.S. Nanda, Sr. AAG

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

01. The petitioner has invoked Article 226 of the Constitution of India, seeking a writ of certiorari for quashing the judgment dated 03.01.2017 passed by the J&K Special Tribunal, Jammu, in case titled '*Saleema Begum vs. Commissioner, J.M.C. Jammu & Anr.*', to the extent that the projection of three feet width made by the petitioner on the first floor has been directed to be removed by the respondents.

02. Briefly stated the facts giving rise to this petition are that, the petitioner is the owner in possession of House No. 129 situated at Gujjar Nagar, Jammu. The petitioner had applied for and was permitted to raise a residential construction as per the approved plan issued by the JMC vide Plan No. 345/BS/2015, dated 26.06.2015 at Plot No. 249, Gujjar Nagar, Jammu.

03. The construction raised by the petitioner was found in violation of the approved plan and contrary to the Master Plan, accordingly, a show-cause notice under Section 7(1) and 12(1) of the Control of Building Operations Act (for short 'the Act') was issued by the respondents on 31.07.2015. The petitioner neither discontinued the unauthorized construction nor filed any reply to the said notice. Therefore, a final notice under Section 7(3) of the Act was issued to the petitioner on 07.08.2015 and served on 08.08.2015, directing her to demolish the unauthorized construction within a period of seven days, failing which the same would be demolished by the authorities.

04. The petitioner challenged the aforesaid notice dated 07.08.2015 before the J&K Special Tribunal, Jammu (for short 'the Tribunal') by filing an appeal. The Tribunal, after considering the submissions of both parties, decided the appeal vide order dated 03.01.2017 by holding as under:

“In the circumstances, the deviation made by the appellant from the sanctioned Building Permission at ground floor to the extent of 495 sft (as reported by the respondents/BOCA), which has not been disputed by the appellant, are hereby regularized by way of compounding @ Rs. 20/- (rupees twenty only) per sft. The projection of three feet wide made by the appellant at 1st floor which is a major offence, needs to be removed by the appellant, on her own. The respondents/BOCA are advised to ensure that before compounding fee is accepted from the appellant, the projections made by her at 1st floor are removed within a period of two months from today. In case of failure by the appellant to comply with the aforesaid directions, the respondents/BOCA will be at liberty to remove whole of the violations as per their demolition notice dated 07.08.2015. The stay order/status quo orders, if any, issued in this case from this Tribunal from time to time during the pendency of appeal shall stand vacated. The record of the respondents be returned.”

05. The Tribunal, thus, compounded the excess coverage of 495 sq. ft. at the ground floor at the rate of Rs. 20/- per sq. ft., but directed that the three feet

wide projections made at the first floor be removed by the petitioner herself within two months, failing which the respondents would be at liberty to demolish the entire violation in terms of demolition notice dated 07.08.2015.

06. Heard learned counsel for the parties and perused the record.

07. The grievance of the petitioner is that the impugned order has been passed arbitrarily and without proper application of mind. It is submitted that the petitioner has raised construction within her premises and no projection has been raised over the municipal land, as assumed in the impugned order. It is further submitted that respondent No. 1 failed to return any finding with regard to the enquiry, namely, whether the projection raised by the petitioner extended over the lane or not. It is also contended that the respondents failed to issue notice for demolition in accordance with law.

08. During the pendency of these proceedings, this Court vide order dated 04.12.2024 appointed Commissioners for spot inspection to ascertain whether a three feet projection had been made by the petitioner on the first floor and to submit a report before the next date of hearing.

09. As per the report dated 27.12.2024 submitted by the Commissioners, it is clearly stated that the projections in question are within the boundary wall of the house. Photographs evidencing the observations were also placed on record. The relevant portion of the report reads as under:

“B. That it is submitted that during on spot measurement it was noted that the length of projections from concrete raised pillars on the first floor were found to be 3 feet. The photographs of the site evidencing the aforementioned observations are enclosed herewith and marked as ANNEXURE-IV for the kind perusal of this Hon’ble Court.

C. That it is submitted that during the measurement made on spot and inspection it was noted that the projection in question has been made by

the petitioner in the First Floor but it does not hang over the adjoining lane. The projection in question is well within the ambit of boundary wall of the house. The photographs of the site evidencing the aforementioned observations are enclosed herewith and marked as ANNEXURE-V for the kind perusal of this Hon'ble Court."

10. The respondents have accepted the judgment of the Tribunal and, therefore, the only issue which remains for consideration is regarding the projections made on the first floor. The report of the Commissioners in this regard is clear.

11. Though Mr. S.S. Nanda, learned counsel for the Municipality, has vehemently opposed the same but the fact remains that there are no objections raised by either side to the report of the Commissioners.

12. The petitioner has raised the construction of the residential house at lower ground floor in view of the valid sanction dated 26.06.2015. The construction has been completed long ago. The Tribunal, while considering the appeal, regularized the deviations by way of compounding. This order has been accepted by the respondents, however, the petitioner has assailed the order of the Tribunal only to the extent of removal of the 3 ft. wide projections, which, as per the report of the Commissioners, is on the petitioner's own boundary land and does not hang over the lane.

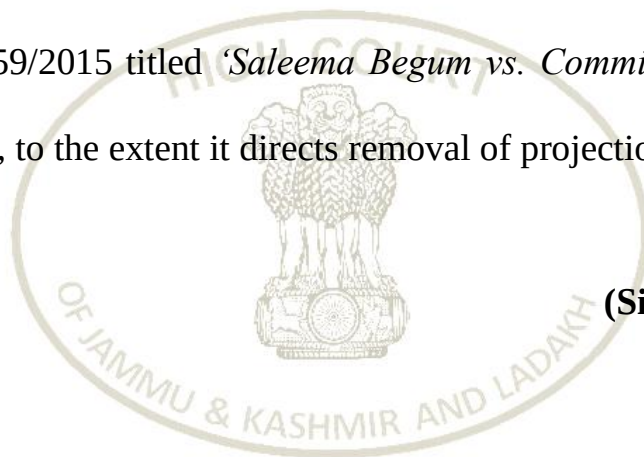
13. In '**Kewal Kishan Gupta vs. J&K Special Tribunal**', 2005 (7) SCC 110, the Hon'ble Apex Court held as under:

"Moreover, phase of rapid growth of industrial development also makes it unnecessary for permitting demolition of the structure even if it be in contravention of the provisions of the Act or the zoning provisions in the previous Master Plan-High Court need not have taken an activist role in directing demolition of the offending

structure which had been permitted to be compounded by the competent authority, namely, the Tribunal.”

14. In view of the aforesaid facts and circumstances, it is clear that the respondents are not aggrieved of the order of the Tribunal. It is only the petitioner who has assailed the order of the Tribunal to the extent it directed demolition of the balcony projections on the ground that they were overhanging in the municipal lane. Since the projections are not overhanging in the municipal lane and are within the premises of the petitioner, there is merit in the submissions made by the petitioner.

15. In view of the aforesaid facts and circumstances, this petition is allowed. The impugned order dated 03.01.2017 passed by the Tribunal in File No. STJ/259/2015 titled '*Saleema Begum vs. Commissioner, J.M.C. Jammu & Anr.* ', to the extent it directs removal of projection is set aside.



(Sindhu Sharma)
Judge

Srinagar:

11.09.2025

Michal Sharma/PS