

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

Case No.:- OWP No. 1001/2007
IA No. 1448/2007

Building Operation Controlling Authority,
Municipal Corporation through Commissioner,
Jammu Municipal Corporation, Town Hall, Jammu.

.....Petitioner(s)

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

Vs

1. Sh. Harjeet Singh
S/o Sh. Bhajan Singh,
R/o Gali No. 6 (near Bhajan Scooter Workshop)
Sector-6, Nanak Nagar, Jammu.
2. J&K Special Tribunal, Jammu.

..... Respondent(s)

Through: Mr. Abhimanyu Sharma, Advocate for R-1.

Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE

ORDER
04.06.2025

1. Building Operation Controlling Authority (BOCA), Municipal Area, Jammu, by virtue of an Order No. 43/3/CKO/2001 dated 10.07.2001, purportedly issued under section 7(3) of the Jammu and Kashmir Control of Building Operations Act, 1988 called upon the respondent No. 1-Sh. Harjeet Singh to undo the unauthorized construction as identified in the said order.

2. The issuance of the aforesaid order dated 10.07.2001 was preceded by a show cause notice No. MJ/Estt/43/1/CKO/2001 dated 27.06.2001 wherein it came to be observed that Khilafwarzi Inspector I/C area on 27.06.2001 had reported that the respondent No. 1- Sh. Harjeet Singh has commenced/is carrying on/has raised the height of the walls and laid slab over it in order to construct a shop already on the ground floor at Nanak Nagar.
3. The aforesaid notice was addressed to the respondent No. 1- Sh. Harjeet Singh by reference to his address near Bhajan Singh Sona Seth Workshop, Sector No. 6, Nanak Nagar, Jammu.
4. The respondent No. 1 came to resort to his statutory remedy of appeal under section 12 of the Control of Building Operations Act, 1988 before the Jammu and Kashmir Special Tribunal, Jammu.
5. The said appeal remained on the docket of Jammu and Kashmir Special Tribunal on its file No. STJ/182/2001 from 16.07.2001 to 01.08.2007. It came to be allowed by holding the reported unauthorized construction to be amounting to re-erection but of minor nature involving no violation of

Master Plan or Zonal Bye laws and, therefore, direction of compounding the violation came to be passed.

6. During the pendency of the appeal, the Executive Officer, Jammu Municipality, Jammu has submitted a report dated 29.10.2001 wherein it came to be pointed out that the alleged unauthorized construction comprised of 562 sq. ft along with a balcony space violation of 56 sq. ft, total coming to be 618 sq. ft.
7. At the relevant point of time, minimum compounding fee for commercial violation was 25 per sq. ft and maximum 50 per sq. ft.
8. The institution of the present writ petition came to take place by the Building Operation Controlling Authority (BOCA), Municipal Corporation, Jammu, assailing the adjudication so carried out by the Jammu and Kashmir Special Tribunal, Jammu in terms of its order dated 01.08.2007 saying that it failed to consider the seriousness of the violation committed by the respondent No. 1-Sh. Harjeet Singh and that the relevant Guidelines and the Regulations of 1998 were ignored by the Jammu and Kashmir Special Tribunal by further making a misreading of the report dated 29.10.2001 submitted by Executive Officer, Jammu Municipality which, as per the petitioner-Building

Operation Controlling Authority, Municipal Corporation, Jammu, the respondent No. 1 was reported to have constructed one double shutter shop and a porch unauthorizedly at the ground floor besides the already existing one on the front set back without obtaining the building permission.

9. The submissions made by the petitioner in the writ petition cannot be brushed aside to be casual or baseless but it is the Chief Khilafwarzi Officer of the time of Jammu Municipality who has actually let down the petitioner-Building Operation Controlling Authority (BOCA) in terms of the issuance of show cause notice No. MJ/Estt/43/1/CKO/2001 dated 27.06.2001 under section 7(1) of the Control of Building Operations Act, 1988 by not coming up with the clear situation confronted to the respondent No. 1-Sh. Harjeet Singh as to what was the actual state of unauthorized construction found by the Chief Khilafwarzi Officer or for that matter the field staff of Building Operation Controlling Authority (BOCA), Municipal Corporation, Jammu.
10. Thus, what came to be stated by the Executive Officer, Jammu Municipality in his report dated 29.10.2001 is far from being imagined or stated in the show cause notice

dated 27.01.2001, when the time intervening between the two i.e. show cause notice and the report of the Executive Officer, Jammu Municipality is just four months and during which time, the Jammu and Kashmir Special Tribunal, by virtue of an order dated 16.07.2001, had directed status quo on spot to be maintained, meaning thereby the respondent No. 1-Sh. Harjeet Singh could not have carried out any construction activity further than what actually came to be referred to in the show cause notice dated 27.06.2001 issued under section 7(1) of the Jammu and Kashmir Control of Building Operation Act, 1988.

11. Thus, for the failure on the part of the Chief Khilafwarzi Officer of Jammu Municipality, the consequences have to fall on none else than the petitioner and that is where the Jammu and Kashmir Special Tribunal was led to reckon the alleged violation on the part of the respondent No. 1-Sh. Harjeet Singh to be a minor one in carrying out the placement of shutters with respect to already constructed shops and ordering its compounding.
12. This Court, therefore, finds no illegality vitiating the adjudication of the Jammu and Kashmir Special Tribunal except the fact that the appellant/respondent No. 1-Sh. Harjeet Singh herein came to be directed to deposit

Rs. 1,000/- with the respondents as compounding fee which could not have been so given the rate at which compounding of commercial violation was prescribed to take place at the rate as mentioned above.

13. Therefore, this Court modifies the order dated 01.08.2007 of the Jammu and Kashmir Special Tribunal by levying respondent No. 1 with compounding fee of Rs. 50 per sq. ft for 618 sq. ft violation which calculates upto Rs. 30,900/- to be deposited by the respondent No. 1-Sh. Harjeet Singh with the Jammu Municipal Corporation, Jammu within a period of two months from the date of passing of this judgment failing which Jammu Municipal Corporation, Jammu shall be entitled to seek recovery of the said amount by laying motion to this Court for the said effect.
14. Disposed of as above.

(RAHUL BHARTI)
JUDGE

JAMMU
04.06.2025
Naresh/Secy.