

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 819/2025

Tirath Ram

.... Petitioner/Appellant(s)

Through:- Mr. K. Nirmal Kotwal, Advocate.

V/s

**J&K Special Learned Tribunal
and others**

.....Respondent(s)

Through:- Mrs. Monika Kohli, Sr. AAG.

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

ORDER

04.04.2025

01. The petitioner seeks quashing of order dated 04.03.2025, passed by respondent No. 1, in case titled '*Tirath Ram vs. Jammu Development Authority*', whereby the application for grant of interim relief has been rejected.

02. The petitioner contends that while undertaking the construction of the Delhi-Katra Expressway, the respondents demolished his *Dhaba*, which was constructed and operated by him on his proprietary land as a means of livelihood.

03. The petitioner filed an appeal under Section 13 of the Control of Building Operations Act, 1988 (hereinafter referred to as the "COBO Act") against order No. JDA/Teh-D/1923-24 dated 31.03.2023 and demolition order No. JDA/BOCA/KWONT/17 dated 28.03.2023.

04. The petitioner was served with a show-cause notice under Sections 7(1) and 12(2) of the COBO Act. In response to the notice, the petitioner submitted that after the receipt of notice, he had stopped the construction and that he, along with his brothers and other family members, had

constructed shops which were used as a dhaba, a dairy, and for storage of fodder for animals. It was further stated that no compensation has been paid to the petitioner for the portion of land acquired for the construction of the Delhi-Katra Expressway.

05. The respondents issued the demolition order dated 28.03.2023 due to non-compliance on the part of the petitioner in halting illegal construction during the pendency of proceedings initiated under Sections 12(1) and 12(2) of the COBO Act, the respondent authority sealed the premises by invoking Section 8(1) of the said Act. The learned Tribunal, while considering the appeal, held that the same has been filed after a lapse of two years from the issuance of demolition order dated 28.03.2023 under Section 7(3) of the COBO Act, pertaining to the illegal structure raised at Dera Gandotrian, Tehsil Bari Brahmana, District Samba.

06. The learned Tribunal, after considering the record and the status of the structure, recorded as under:

“Ld. Counsel for respondent authority opposes the application for grant of interim relief on the ground that no cogent reasons have been carved out for seeking the relief prayed for. Said application is therefore rejected being devoid of any merit. Grant of interim is therefore denied.”

07. The learned Tribunal dismissed the application of the petitioner for grant of interim relief on the ground that no cogent reasons had been made out for grant of the relief prayed for.

08. The grievance of the petitioner is that the learned Tribunal has dismissed the interim application without considering his right to rehabilitation. It is submitted that the rejection of the application for interim relief, coupled with the direction for submission of an action report by JDA, is arbitrary and

violative of the principles of natural justice, as the main appeal is still pending adjudication before the learned Tribunal. Therefore, the impugned order is stated to be unsustainable in law and deserves to be quashed.

09. It is further submitted that the impugned order is untenable in law, as the respondents have not yet demolished the structure raised by the petitioner. It is submitted that the shops were constructed by the petitioner on his proprietary land, which, by itself, should not form the basis for action against him. Moreover, the respondents have till date neither filed their reply nor placed the relevant record before the Tribunal.

10. The petitioner apprehends that in terms of paragraph 4 of the impugned order dated 04.03.2025, the learned Tribunal has directed the JDA to file its response and proceed in terms of Sections 9, 10, and 12(3) of the COBO Act. Thus, according to the petitioner, the rejection of the application for interim relief while simultaneously calling for an action-taken report from the JDA is wholly arbitrary and violative of the principles of natural justice.

11. Be that as it may, the learned Tribunal has already taken note of the delay in filing the appeal. The only direction issued by the Tribunal was the rejection of the interim relief application on the ground that no sufficient reason had been made out. The Tribunal directed the respondents to place on record the relevant documents and details of action, if any, taken under Sections 9, 10, and 12(3) of the COBO Act. Therefore, no interference by this Court is warranted at this stage.

12. In view of the aforesaid facts and circumstances, this petition is disposed of with a direction to the learned Tribunal to decide the appeal of the petitioner

expeditiously, preferably within a period of eight weeks from the date a copy of this order is made available to it.

(Sindhu Sharma)
Judge

Jammu:

04.04.2025

Michal Sharma/PS

