

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

Reserved on: 01.03.2025
Pronounced on: 12.03.2025

OWP No. 1521/2015

Som Nath, aged 70 years
S/O Sh. Amar Nath
R/O Ward No. 10,
Municipal Committee Sunderbani
Tehsil Sunderbani District Rajouri.

.....Petitioner(s)

Through: Mr. Vilakshana Singh, Advocate.

Vs

1. State of Jammu and Kashmir
Through Commissioner/Secretary
Housing and Urban Development Department,
Civil Secretariat, Srinagar.
2. Executive Officer,
Municipal Committee, Sunderbani
Tehsil Sunderbani District Rajouri.
3. Thoru Ram
S/O Sh. Durga Dass
R/O Ward No. 10
Falwari Bhajwal Sunderbani
Tehsil Sunderbani District Rajouri.

..... Respondent(s)

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

CORAM: HON'BLE MR. JUSTICE M A CHOWDHARY, JUDGE

JUDGMENT

- 01.** The petitioner has filed this petition under Article 226 of the Constitution of India, seeking writ of certiorari, quashing the order/office note passed by the respondent

No. 2, whereby, the building violations committed by the respondent No. 3 in utter violation of the provisions of Control of Building Operations Act, 1988 and the Control of Building Operation Regulations, 1998 have been compounded and also seeking a writ of mandamus, commanding the official respondents to demolish the illegal construction raised by the respondent No. 3 in violation of the approved building plan.

- 02.** The petitioner in his petition asserts that the petitioner is the owner of a piece of land measuring 3½ marlas comprising of khasra No. 2789, khata No. 2552/1998 and khewat No. 192/189 situated at ward No. 10 Bhajwal (erstwhile Ward No. 2), within Municipal Committee, Sunderbani, tehsil Sunderbani district Rajouri; that the respondent No. 3 has also a piece of land measuring 4 marlas (1088 sq. ft.) comprised in khasra No. 2789 situated just adjacent to the above mentioned land of the petitioner; that the respondent No. 3 had already existing building over his above mentioned land and the area of the said already existing construction was 384 square feet and he got building plan approved for another 560 sq. feet; that the respondent No. 3 instead of adhering to the approved building plan, raised construction in utter violation of the

said approved building plan; that the respondent No. 3, as per the approved building plan, could construct over 560 sq. ft. of his land but he raised construction over 1064 square feet of land and in doing so, he has also encroached upon a portion of the above mentioned land of the petitioner by keeping a gallery towards the land of the petitioner.

- 03.** It is further asserted in the petition that as per the approved building plan, the respondent No. 3 was required to keep front set back of 56 feet and rear set back of 3 feet towards the land of the petitioner but the respondent No. 3 did not keep any set back on any of the side, thereby committing major violation of the approved building plan; that he also installed shutters of the newly constructed shops towards the above mentioned plot of the petitioner; that when the respondent No. 3 violated the approved building plan, the petitioner approached the respondent No. 2 requesting him to take legal action against the respondent No. 3, who told the petitioner that he had issued notice and further assured that he shall take strict action against the respondent No. 3, but when in spite of the repeated requests of the petitioner, the respondent No. 2 did not take any action against the respondent No. 3, the petitioner's son filed an application

under section 6 of the J&K RTI Act, 2009 seeking information about the above mentioned construction raised by the respondent No. 3.

- 04.** It is also pleaded in the petition that from the information supplied by the respondent No. 2, the petitioner came to know that total plot area of the respondent No. 3 was 1088 sq. ft. and the total construction existed on the said land of the respondent No. 3 was 384 sq. ft; that site plan in the year 2013-14 was sanctioned for the construction of 560 sq. ft. but the construction raised on the spot by the respondent No. 3 was shown to be 1064 sq. ft; that the said letter further stated that excess area constructed by respondent No. 3 without sanction was 504 sq. ft. and that the violation of site plan committed by respondent No. 3 was compounded by imposing a fine of Rs. 2000/- on the respondent No. 3, without mentioning of any provision under which the above mentioned violations had been compounded; that the respondent No. 2 had failed to supply copy of order whereby building violation committed by the respondent No. 3 was compounded which constrained the petitioner's son to file an appeal under section 16 (1) of the J&K RTI Act, 2009 whereby petitioner received further information vide letter No. MC/SB/015/535 dated 15.06.2015 informing him that

the building violations committed by the respondent No. 3 were compounded vide impugned office note/order; that the respondent No. 3 is in the process of raising construction over his first floor wherein he has already raised walls over the first floor without any approval, so much so no notice has been issued by respondent No. 2 to respondent No. 3 in respect of the above said construction; that being aggrieved of the aforesaid encroachment, the petitioner filed a civil suit against the respondent No. 3, which is pending before the court of learned Additional District Judge, Rajouri. Lastly, it is asserted that the petition be allowed and the illegal construction raised by the respondent No. 3 be demolished.

- 05.** The petitioner has challenged the impugned order on the grounds that the respondent No. 2 did not have any authority to compound the building violations committed by the respondent No. 3 under the provisions of Control of Building Operations Act, 1988; that even after issuing notice under section 7(3) of Control of Building Operations Act, 1988, the respondent No. 2 could not compound building violations committed by the respondent No. 2; that by compounding the major building violations committed by the respondent No. 3,

the respondent No. 2 has not only usurped power of Appellate Authority but also has passed an order which even the Appellate Authority was not competent to pass; that the building violations whereby the violator has raised construction over the land not owned by him cannot be compounded; that the building violations committed by the respondent No. 3 have been compounded by the respondent No. 2 under the provisions of Control of Building Operations Act, 1988 and not under section 211 of Municipal Act, 2000; that the building violations have not been dealt with under section 211 of the Municipal Act, 2000, which renders the impugned composition illegal.

- 06.** Pursuant to notice, the respondent No. 3 has filed his objections stating therein that no major violation has been committed by the respondent No. 3 and the deviation in construction raised is only a minor deviation which is a violation only under the Municipal Act, 2000 not under any other Act; that even otherwise the said minor deviation can be even compounded under the Control of Building Operations Act, 1988 and the Control of Building Operations Regulations, 1998; that neither any notice under the said Act or regulations or for that matter under any other Act has ever been served upon

the respondent No. 3 nor he has committed any violation of any Master Plan or Town Planning Scheme or any Bye laws; that the petitioner, having nothing to do with the land in question or the construction of the answering respondent, has no locus standi in filing the present petition; that the petitioner has suppressed the material fact of the pendency of a civil suit of the respondent No. 3 which is pending before the court of learned Additional District Judge, Rajouri, wherein the sale deed in favour of the petitioner has been challenged by the respondent No. 3.

- 07.** It is further stated in the objections that the petitioner is neither the owner nor in possession of even an inch of land from survey No. 2789 situated at ward No. 10, Bhajwal Sunderbani; that the petitioner has illegally and fraudulently got the sale deed; that the respondent has neither raised the new construction by covering 1064 sq ft nor any gallery has been kept towards the land of the petitioner; that no notice whatsoever under any Act was ever served upon the answering respondent who himself applied for compounding the minor violations under the provisions of the Municipal Act, 2000, which were as such compounded under Section 211 of the said Act.

Lastly, it is prayed that the petition filed by the petitioner be dismissed.

08. Heard learned counsel for the parties and perused the record.
09. A Coordinate Bench of this Court vide order dated 10.11.2017, holding that the petitioner lacks locus to call in question the impugned note dismissed the instant petition with the observation that the violations committed by the respondent No. 3 while raising construction contrary to the sanctioned building plan shall not affect the rights of the petitioners, to be adjudicated upon by the Civil Court.
10. Aggrieved of the dismissal of the petition, the petitioner assailed the order dated 10.11.2017 in an intra-court appeal before the Division Bench of this Court which vide order dated 16.09.2021 holding that the petitioner, being an aggrieved person, would have the locus to maintain the petition, relegated the matter back to the writ court for consideration on all the issues before the writ court. The Division Bench had relied upon the law laid down in this behalf by the Apex Court in cases titled as **“K. Ramadas Shenoy Vs. The Chief Officers, Town Municipal Council, UDIPI & Ors”** reported as **1974 (2)**

SCC 506 and “**Jasbhai Motibhai Desai Vs. Roshan Kumar**” reported as **AIR 1976 SC 578** on the subject.

11. Learned counsel for the petitioner has restricted his arguments to the sole question of the jurisdiction of the respondent No. 2 to compound the building violation committed by the respondent No. 3 as against the building plan in contravention of the provisions of the Jammu and Kashmir Control of Building Operations Act, 1988 and Jammu and Kashmir Control of Building Operations Regulations, 1998 and it was prayed that since the respondent No. 2, as an Executive Officer of the Municipal Committee, Sunderbani, had no jurisdiction to compound the deviation/violation committed by the respondent No. 3, therefore, the impugned note is liable to be quashed on the jurisdiction part only.
12. Learned counsel for the respondents No. 1 and 2, however, argued that the Act and the Regulations (supra) referred by the learned counsel for the petitioner were not applicable to the area of Municipal Committee, Sunderbani as there was neither any Master Plan nor any bye-laws constituted or adopted for that area. He has vehemently argued that the action in compounding the deviation/violation of the building plan had been rightly taken by the respondent No. 2-Executive Officer,

Municipal Committee, Sunderbani, in terms of Section 211 of the Municipal Act and prayed the petition be dismissed.

- 13.** Section 211 of the Jammu and Kashmir Municipal Act, 2000 provides for penalty for disobedience with regard to erection or re-erection of a building without sanction and in contravention of the terms of any sanction granted or in terms of any contravention of any bye-law made under Section 204 or in the case of a building of which the erection has been deemed to be sanctioned under sub section(5) of Section 208, if it contravenes any scheme sanctioned under Section 205.
- 14.** The third proviso to Section 211 of the Jammu and Kashmir Municipal Act, 2000 provides that if any notice is issued by the Executive Officer or Secretary, as the case may be, under this Section on the ground that a building has been begun or has been erected in contravention of the terms of any sanction granted or in contravention of any bye-law made under Section 204, the person to whom the notice is issued may, within fifteen days from the date of service of such notice, appeal to the municipality and subject to the provisions of sections, 212, 264 and 269, the decision of the municipality shall be final.

- 15.** Sub-Section (2) of Section 211 of the Jammu and Kashmir Municipal Act, 2000 further provides that where the owner of the building submits the revised plan, after the work has been stopped by him or the work is completed by him and deviation from the sanctioned plan are minor in nature, the municipality may, subject to the special or general directions of the Government under sub-section (3), compound the cases of deviation and the expression 'minor' with regard to deviation has also been explained. Therefore, the actions required to be taken by the municipality are to be taken either by the elected Municipal Committee or in its absence by a duly appointed Administrator and certainly not by the Executive Officer of the Committee who holds a ministerial post.
- 16.** Since the impugned note prepared by the Khilafwarzi Officer whereby the deviation/violation for an area of 320 sq. ft. had been compounded by the Executive Officer for a composition fee of Rs. 2,000/- under the Jammu and Kashmir Control of Building Operations Act, 1988 is an order/note passed without jurisdiction by the respondent No. 2. The impugned note/order has, thus, been passed by the respondent No. 2 without having any authority of law and is not sustainable.

- 17.** Viewed thus, the impugned note/order is quashed. The Municipal Committee, Sunderbani is directed to consider the matter afresh after affording an opportunity of being heard to the petitioner, who is an aggrieved person and also to the respondent No. 3 as well, who is stated to be the violator in the case, expeditiously, preferably within a period of six weeks from the date a copy of this order is served upon the Municipal Committee, Sunderbani.
- 18.** Needless to mention that the civil litigation pending between the petitioner and the respondent No. 3 in civil court(s) shall be taken to its logical end without being influenced by any decision taken by the Municipal Committee, Sunderbani with regard to deviation/violation and the civil court(s) shall determine the rights between the parties.
- 19.** The writ petition along with connected interim application(s) is, thus, disposed of as allowed, however, without any order as to costs.

(M A CHOWDHARY)
JUDGE

JAMMU
12.03.2025
Naresh/Secy

Whether the order is speaking: **Yes**
Whether the order is reportable: **Yes**