

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

WP(C) No. 2678/2022
CM No. 7420/2022

Krishan Chand

.....Petitioner(s)

Through: Mr. Abhishek Wazir, Advocate.

Vs

UT of J&K & Ors.

..... Respondent(s)

Through: Mrs. Monika Kohli, Sr. AAG with
Ms. Chetna Manhas, Advocate
Mr. Sachin Dogra, Advocate.

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

ORDER
30.09.2025

1. The petitioner, through the medium of present writ petition, has challenged order No. JDA/Misc./140-148 dated 14.11.2022 issued by respondent No. 3 whereby the premises existing on the land measuring 1 kanal 2 marlas falling in khasra No. 844 situated at village Ismailpur, Samba has been sealed.

2. It has been submitted that the petitioner had started the repair work of his existing damaged structure which had got damaged due to widening of the road but respondent No. 3 without giving any opportunity of being heard and without issuing any notice under Section 7(1) and 7(3) of the J&K Control of Building Operations Act, 1988 (hereinafter 'the Act of 1988') issued the impugned order under section 8(1) of the Act of 1988 thereby directing the sealing of the premises. It is the contention of the

petitioner that notice under section 8 (1) of the Act of 1988 was also not served upon him.

3. The respondent-Jammu Development Authority in its reply to the writ petition has submitted that the petitioner has raised illegal construction on spot. Despite having been conveyed not to do so, the petitioner continued to raise illegal construction and indulged in commercial activities in the premises. It has been submitted that notices under sections 7(1) and 7(3) as also under Sections 12(2) and 12(3) of the Act of 1988 were duly served upon the petitioner but despite having knowledge about the same, the petitioner did not restrain himself from raising illegal construction which prompted the respondents to pass the sealing order under Section 8(1) of the Act of 1988, pursuant where to the premises was sealed.

4. I have heard learned counsel for the parties and perused the record.

5. So far as, the power to seal unauthorized construction is concerned, the same is vested with the authority in terms of Section 8 of the Act of 1988. It reads as under:

“8. Power to seal unauthorised construction.—

(1) It shall be lawful for the Authority concerned, at any time, before or after making an order of demolition under section 7 to make an order directing the sealing of such erection, re-erection or work or of premises in which such erection, re-erection or work is being carried on or has been completed for the purpose of carrying out the provisions of this Act, or for preventing any dispute as to the nature and extent of such erection or work.

(2) Where any erection, re-erection or work or any premises in which any erection, re-erection or work is being carried out, has or, have been sealed, the Authority concerned may for the purpose of demolishing such erection or work in

accordance with the provisions of this Act, order such seal to be removed.

(3) No person shall remove such seal except,—

(a) under an order made by the Authority concerned under subsection (2) ; or

(b) under an order made in an appeal under this Act.”

6. A plain reading of Sub Section (1) quoted above shows that the authority is vested with power to pass a sealing order either before or after making an order of demolition under Section 7 of the Act, in case, unauthorized construction is being raised by a person.

7. Section 7 of the Act of 1988 vests power with the authority to pass an order of demolition of building in certain situations. It reads as under:

“7. Order of demolition of building in certain areas.—

(1) Where the erection or re-erection of any building has been commenced or is being carried on or has been completed without the permission referred to in section 4 or in contravention of any condition subject to which any permission has been granted, the Authority shall issue a notice in writing calling upon the person to show cause within a period of 48 hours, why the building should not be altered or demolished as may be deemed necessary to remove the contravention.

(2) The Authority shall cause the notice to be affixed on the outer door of some conspicuous part of the building whereupon the notice shall be deemed to have been duly served upon the owner or the occupier of the building.

(3) If the person to whom the notice has been given refuses or fails to show cause within a period specified under subsection (1) or if after hearing that person, the Authority is satisfied that the erection or re-erection of the building is in contravention of the provisions of this section, the Authority shall by order direct the person to demolish, alter or pull down the building or part thereof so far as is necessary to remove the contravention within a period not exceeding five days as may be specified in the order and if the person fails to comply with the direction, the Authority may itself cause the erection or reerection to be demolished after the expiry of the said period and may for that purpose use such Police Force as may be necessary which shall be made available to him by the Police Department on requisition.

(4) All expenses incurred for such demolition shall be recoverable from the owner and/or the occupier in the same manner as arrears of land revenue.”

8. A plain reading of Sub Section (1) quoted above reveals that whenever unauthorized construction of any building is being carried out, the authority has to issue a notice in writing calling upon the person concerned to show cause within 48 hours as to why the building should not be altered or demolished. As per Sub Section (2) quoted above, the authority has to affix the notice on the outer door of the conspicuous part of the building whereupon the notice shall be deemed to have been duly served upon the owner or occupier of the building and as per Sub Section (7), if the person fails or refuses to show cause within the period specified under Sub Section (1) or if the authorities are not satisfied with the response of the owner/occupier of the building, an order of demolition of the building in question can be made by the authority. From a reading of the aforesaid provisions, it is clear that if authority decides to pass an order of sealing post proceedings under Section 7 of the Act, the procedure prescribed under Section 7 of the Act has to be followed.

9. A perusal of the impugned sealing order reveals that the respondent authority is claimed to have served notices under Section 7 (1) and (2) of Act of 1988 upon the petitioner before passing the said order. However, the petitioner claims that he has not received any notice under Section 7(1) of Act nor copy of the notice has been pasted on the premises in question. As per the stand of the respondent-Jammu Development Authority, both these requirements have been fulfilled by it.

10. The record produced by the respondent-Jammu Development Authority, however, does not support its aforesaid contention. In the record which has been produced, there is no report of the Serving Officer and there is nothing on the record to show as to who has served the notices under Section 7(1) and 7(2) upon the petitioner. It is also not coming forthwith as to when the notice under Section 7(2) of the Act has been pasted on the premises and by whom.

11. In the face of aforesaid position, the contention of the petitioner that notices under Section 7(1) or 7(2) of the Act of 1988 were not served upon him appears to be well founded. Thus, it appears that the petitioner has not been afforded proper opportunity by the respondent-Jammu Development Authority before passing the impugned sealing order. The same, therefore, becomes unsustainable in law.

12. In view of the above, the writ petition is allowed and the impugned sealing order is set aside. The respondent-Jammu Development Authority shall, however, be at liberty to proceed against the petitioner afresh after following the procedure prescribed under law.

13. Disposed of, accordingly.

(SANJAY DHAR)
JUDGE

JAMMU
30.09.2025
Shivalee

Whether the order is speaking: Yes
Whether the order is reportable: No