

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

OWP No. 647/2003

Date of pronouncement: 20.11.2025

Date of uploading: 24.11.2025

Building Operation Controlling
Authority, Municipal Area, Jammu
through Executive Officer,
Municipality Jammu.

.....Appellant(s)/Petitioner(s)

Through: Mr. Ravinder Gupta, AAG

vs

1. Mrs. Ratno Devi w/o Shri Shiv Ram
R/o Bohri Main Road, near Wine Factory,
Jammu.
2. J&K Special Tribunal Jammu.

..... Respondent(s)

Through: Mr. Aayush Pangotra, Advocate

CORAM: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE
JUDGMENT (ORAL)

1. The petitioner, in the instant petition, filed under Article 226 of the Constitution of India has sought the following prayer:

Issuance of writ of Certiorari quashing the order of Respondent no. 2 dated 20.01.2003 in appeal titled *Smt. Ratno Devi Vs. Executive Officer, Jammu Municipality*, whereby respondent No. 2 set aside the order of demolition dated 01.01.2000 of the petitioner.
2. The facts pleaded in the petition reveal that a notice, under Section 225 of the Jammu & Kashmir Municipal Act, 2008 (1951 A.D.) [for short "**the Act**"] came to be issued by Chief Khilafwarzi Officer of Jammu Municipality bearing No. 140/1/CKO/99 dated 29.12.1999

requiring the deceased husband of respondent No. 1 herein to stop the construction, alleged to have been raised against the Act, as well as the rules framed thereunder. A further notice bearing No. 140/2/CKO/99 dated 29.12.1999 had also been issued by Khilafwarzi Officer, Jammu Municipality under Section 229 of the Act calling upon the husband petitioner to alter/demolish the construction, alleged to have been raised in violation of the Municipal Act/Municipal Building Bye-Laws, within three days from the date of service of the notice also envisaging therein the notice that, in case, the deceased husband of the respondent No. 1 herein has to say anything in the matter, he may do so within the time specified in the notice. A further demolition notice bearing No. 140/4/CKO/99 dated 06.01.2000 came to be issued and addressed to the petitioner by Executive Officer, Jammu Municipality under Section 229(3) of the Act directing the husband of respondent No. 1 herein to demolish the alleged unauthorised construction within seven days from the date of notice providing further therein that, in the event, the husband of respondent No. 1 fail to demolish the same, the same shall be demolished at his own risk and cost.

3. The husband of respondent No. 1, feeling aggrieved of the demolition notice dated 06.01.2000 preferred an appeal before respondent No. 2 herein under and in terms of the provisions of the Act on 17.01.2000 stating therein that building in question came to be purchased by his brother in the year 1965 pursuant to a sale deed dated 06.04.1965 duly registered with Sub-Registrar, Jammu, whereafter the said property

came to be gifted by the legal heirs of the said brother after his death and that since the building was comprised of an old structure and had developed cracks, as such, the appellant, the husband of respondent No. 1 herein, in the month of June, 1999, applied to the Municipality for grant of permission for changing the existing roof of the said house and in this regard, completed all formalities as well as paid the requisite fee, however, the Municipality did not either grant the permission or rejected the same whereafter owing to the urgency for effecting repairs and in order to protect the lives of his family members, necessary repairs came to be effected therein the said house including changing the roof, however, the Municipality, arbitrarily and mechanically served the demolition notice dated 06.01.2000 on 10.01.2000 while stating further that the authority issuing the demolition notice dated 06.01.2000 did not strictly follow the Municipal Act and did not issue and serve a show-cause notice upon the appellant and that while effecting repairs in the building in question, no violation of Municipal Bye-Laws, City Master Plan, Zonal Regulation or else Ribbon Development Act were committed.

The Municipal authorities, respondents in the said appeal and the petitioner herein did not file any written response to the pleas urged by the appellant therein the appeal before the Tribunal, instead submitted a written report on 16.03.2000 through Executive Officer stating therein the said report that the appellant before the Tribunal/husband of respondent No. 1

herein pulled down the existing structure in question and constructed ground floor unauthorisedly on the edge of the road comprising of two shops, two rooms and staircase without obtaining permission and therefore, violated the Municipal Act besides utilising 100% coverage area beyond the permissible 60% for raising the construction in question thereby committing a major violation and also having raised 3 feet wide balcony projection overhanging the road unauthorizedly and illegally and also having violated City Master Plan and Ribbon Development Act by raising the construction within 20 feet away from the central line of the road instead of 60 feet.

4. The Tribunal-Respondent No. 2 herein after hearing the appearing counsel for the parties in terms of impugned order dated 20.01.2003 allowed the appeal quashing the demolition notice dated 06.01.2000 holding the Municipality entitled to receive the prescribed building permission fee if not already paid from the appellant also for compounding the balcony projection on payment of Rs. 30/- per sq. Ft. as compounding fee.
5. Municipality-petitioner herein dis-satisfied with order dated 20.01.2003, has maintained the instant petition and called in question the impugned order, *inter alia*, on the grounds that the Tribunal wrongly exercised the jurisdiction vested in it while passing the impugned order compounding the illegally raised construction by the

husband of respondent No. 1 herein, in violation of the provisions of City Master Plan and Ribbon Development Act under the guise of “**deemed permission**” and also committed patent error of law in this regard committing manifest injustice.

6. Reply affidavit has been filed by Respondent No. 1 herein to the petition, wherein the petition is being opposed, *inter alia*, on the premise that her deceased husband had applied for grant of permission for raising construction in question before the petitioner, which was neither sanctioned nor refused and that since the structure required immediate repairs, as such, same necessary repairs came to be effected by the husband of the respondent No. 1 herein changing the existing roof strictly in accordance with the permission sought and that the Tribunal rightly passed the order under challenge after examining the record file of the building permission case submitted by her husband before the petitioner-authorities and noticed that her husband had applied for the said building permission and that the petitioner, before issuance of the demolition notice did not issue any show-cause notice under the provisions of the Act and issued the demolition notice against the fact and law, more so, when there has been no violation committed on any provisions of Municipal Bye-Laws, Ribbon Development Act, City Master Plan or Zonal Regulations.

Heard counsel for the parties and perused the record.

7. It is pertinent to note here that the husband of respondent No. 1 herein namely Shiv Ram have had initially preferred the appeal against the

demolishing notice dated 06.01.2000 before the Tribunal-respondent No. 2 herein and during the pendency of the said appeal said Shiv Ram died and consequently respondent No.1 namely Ratno Devi have had substituted in his place as appellant before the Tribunal.

8. Perusal of the record of the Tribunal in general and the contents of the appeal preferred by above named Shiv Ram in particular thereof manifestly demonstrates that it had been specifically pleaded therein the appeal that an application for grant of permission for effecting repairs in the structure came to be submitted before the Municipal authorities in the month of June, 1999. Record also reveals that the said plea urged in the appeal or else in the report submitted before the Tribunal by the Municipality was never either disputed or denied by the Municipality instead, the Tribunal after summoning the record case of the said building permission case noticed that an application is available, which was submitted by said Shiv Ram for seeking building permission.
9. It also emerges from the record that in the said appeal, the said Shiv Ram had also specifically pleaded that before issuance of demolition order dated 06.01.2000, the Municipality did not issue any show-cause notice to him or else followed the prescribed procedure under the Act which plea as well has not been disputed or denied. No record pertains to the issuance of notices or else service thereof is available on the record file of the Tribunal, however, the record of the instant petition would reveal that the petitioner-Municipality has annexed with the

petition notice dated 29.12.1999, issued under Section 225 of the Act claimed to have been affixed on the offended structure on 30.12.1999 followed by another notice dated 29.12.1999 issued under Section 229 of the Act also claimed to have been affixed on the offending structure on 30.12.1999.

Even if it is assumed that the said notices came to be issued by the Municipality-petitioner herein and were affixed upon the offended structure, yet perusal of the provisions of Section 225 read with Section 229 manifestly demonstrate that the procedure prescribed therein before issuance of a demolition notice under Section 229(3) has not been strictly followed in tune with the said provisions. Since the service of the said notices has been disputed by the husband of the respondent No. 1 herein before the Tribunal as also the Municipality-petitioner having failed to produce the record of the said notices or proof of the said notices affixing on the offending structure before the Tribunal, the Municipality-petitioner herein cannot be permitted to raise such factual pleas in the instant petition for the first time and seek determination of such factual questions by invoking extraordinary writ jurisdiction, more so in view of uncontroverted plea of the husband of the respondent No. 1 herein urged in the appeal before the Tribunal that he had applied for building permission in the month of June, 1999, which was never ever rejected or

granted entitling him to proceed ahead with the construction in accordance with the terms of the permission sought. A closer examination of the impugned order would also reveal that the Tribunal has been alive to the aforesaid facts and had also got it confirmed by examining the record produced by the Municipality-petitioner before it, lending support to the said plea of the husband of the respondent No. 1 that, in fact, building permission was applied for in the month of June, 1999.

10. Having regard to the aforesaid position obtaining in the matter, the aforesaid factual pleas can neither be entertained or else adjudicated upon in view of law laid down by the Hon'ble Apex Court in view of law laid down by the Hon'ble Apex Court in case titled as *Administrator Municipality Jammu Vs. M/S K. C. Hotels Private Ltd. & Ors.* reported in AIR 1995 JK 85, wherein at para 20 following has been held:

“20. In this appeal, we are not expected to go into a question of fact as to what sort of violation has been committed in raising of construction, and if any, whether it was as pre-sanctioned plan or revised plan, and whether it was minor or major in nature. All these things have been well considered by the Tribunal, which was required to go into such questions. The Tribunal has after a thorough inquiry come to the conclusions on a question of fact and recorded a finding about the nature of the violation, and regularized it under law by compounding the same. The Tribunal, in our

opinion, is fully competent to compound the violation, keeping in view its nature, and if it is so, the learned single judge has not erred in upholding the findings of the Tribunal. The learned single Judge also appears to have considered the matter in its entirety in coming to the conclusion that the violations were of minor nature. As a matter of fact, strictly speaking, the writ jurisdiction of the High Court could not be invoked in such matters, as the dispute was in substance relating to a question of fact. The Tribunal is the final arbiter in such matters. It appears to us a unique case where the Municipality itself has filed a writ petition against the order of Tribunal, perhaps to cover up its lapses and omissions/ commissions. The writ jurisdiction is invoked mainly where fundamental rights are infringed. However, for violating of legal rights too, such jurisdiction may be invoked provided alternate remedy is not available. In the present case, the alternate remedy has already been availed of and even then on a disputed question of fact writ jurisdiction is sought to be invoked. Not only that, now Letters Patent appeal too has been filed and at the expenses of badly needed funds of the Municipality. It appears to us to be a litigation of attrition only for the purpose known to the Municipality only.”

11. For what has been observed, considered and analysed hereinabove, this court is of the considered view that the Tribunal-Respondent No. 2 herein has not committed any error, perversity, illegality or fault while passing the impugned order.
12. Resultantly, the petition fails and is, accordingly, dismissed upholding the order of the Tribunal.

13. Registry is directed to retain a copy of the record of the Tribunal on the file of the instant petition and send down the original record of the Tribunal.
14. **Disposed of** along with all connected application(s).

(Javed Iqbal Wani)
Judge

Jammu
20.11.2025
Vishal Sharma

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

