

HIGH COURT OF JAMMU & KASHMIR & LADAKH AT SRINAGAR

WP (c) 200/2025

Aijaz Ahmad Kar

....Petitioner.

Through: Mr. Arfat Rashid lone, adv.

v.

J & K Special Tribunal and ors

....Respondents.

Through: Mr. Bikram Deep Singh, Sr. AG

Coram:

Hon'ble Mr. Justice Mohammad Yousuf Wani, Judge

ORDER

21.02.2025

1. Through the medium of instant writ petition filed under the Article 226 of the Constitution of India, the petitioner has sought issuance of writs/directions *inter alia*, a writ in the nature of a) Certiorari for quashing the impugned order dated 30.01.2025, passed by respondent No.1 to the extent of directing sealing of the subject structure with quashment of impugned notice of demolition issued by respondent No.4 u/s 253(1) of the J&K Municipal Corporation Act, 2000, vide order No. SMC/Enf/W/6371-79 dated 27.01.2025; b) Mandamus for commanding the respondents to refrain from demolishing, sealing or in any way interfering with the three storied plus attic floor building of the petitioner and his co-owners constructed on a plot of land measuring 9 Marlas comprised under Survey Nos. 441/177/48 and 443/178/148 Min situated at estate Qamarwari, site at Bilal Colony Srinagar; c) Mandamus for commanding the respondents 2 to 5, in particular respondent No.3 to consider the case of the petitioner for regularization under rules as per online request for the same dated 21.02.2024 made by the petitioner.
2. The case of the petitioner in nutshell is that he and his co-owners own a construction in the nature of house which is decades old housing various shops run by them. That they were using the said shops for the

purpose of earning their livelihood and which were duly registered under the J&K Shops and Establishment Act and also with the Corporation of the respondents 2 to 5. That unfortunately their structure housing the said shops later on came to be demolished during floods of September 2014, where-after the structure came to be re-constructed. That the Corporation of respondents 2 to 5 accorded permission for regularization of the two storied with attic residential house in columns in the year 2023. That prior to the accord of regularization by the respondents, a demolition notice had been issued in respect of the said house which was assailed by him and his co-owners through the medium of an Appeal before the respondent No.1 but the same was later on withdrawn in view of the grant of aforesaid permission. That thereafter the petitioner and his co-owners made a request to the respondent-corporation for regularization of the rest portion of the structure with further request for formal change of use. That he was compelled to construct the attic floor after notifying the respondent-Corporation about the same when the regularization was not considered along-with the formal change of use. That the petitioner and his co-owners also approached the civil court through a formal suit and the court was convinced to pass an interim direction against the respondent-corporation, whereby they came to be restrained from demolishing the said structure. That notwithstanding the completion of the structure in accordance with the law, respondent No.4 issued a notice dated 25.01.25 to the petitioner which came to be served upon him on 26.01.2025 at 11:30 AM, for showing cause within 48 hours as to why the construction raised allegedly in contravention of the Provisions of the Municipal Corporation Act be not demolished or pull down. That, however, without providing him a reasonable opportunity of being heard, the respondent No. 4 proceeded to issue the demolition notice, thereby condemning him unheard. That by virtue of the said demolition notice it was directed to demolish/pull down the alleged unauthorized construction within seven days commencing from the date of issuance of the notice. That he (petitioner) challenged the said demolition notice before the respondent No. 1 through medium of an Appeal along with application for interim relief. That the respondent

No. 1, by the order impugned dated 30.01.2025 while staying the operation of the impugned demolition notice, however, simultaneously directed the sealing of the structure which has visited the petitioner and his co-owners with severe hardships.

3. While hearing the learned counsel for the petitioner in respect of his prayer for grant of interim relief in this petition, the learned counsel frankly consented in response to a suggestion of this court, for disposal of this petition at this threshold stage with the direction to respondent No.1 to dispose of the pending appeal expeditiously as the continued sealing of the subject house is running harsh against him and the co-owners.
4. Accordingly, the instant petition is disposed of at this threshold stage, with the direction to the learned J&K Special Tribunal to decide the pending appeal in an expeditious manner and make an endeavour to do the needful within a period of four weeks.
5. Disposed of.

(Mohd Yousuf Wani)
Judge

Srinagar
21.02.2025
Syed Ayaz Hussain Jalali
Secretary