

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) 1733/2025 CM(4524/2025)

ARSHAD SHAFI

...Petitioner(s)/appellant(s)

Through: Ms. Mehreen Altaf, Advocate

Vs.

UNION TERRITORY OF J AND K AND ORS

...Respondent(s)

Through: Mr. Faheem Nisar, GA

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

ORDER

31-07-2025

1. Petitioner (Arshad Shafi) prays for a certiorari to quash the impugned order dated June 4, 2025 vide which the demised premises owned by the petitioner was sealed.
2. Learned counsel for the petitioner submits that before the impugned order dated June 4, 2025 was passed, the petitioner was served with a notice dated May 17, 2025 by the Tourism Development Authority, Gulmarg whereby he was conveyed, that the construction raised by him upon the subject site was illegal/unauthorized for want of any valid permission. Accordingly, he was required to demolish the alleged illegal structure within 48 hours. To which, she submits that the petitioner had submitted a detailed response on May 19, 2024. And clarified that the construction raised at site was purely residential. Further, the site was constructed in the year 2023 in due compliance to the

Panchayati Raj Act, after obtaining permission from the competent authority.

3. As regards the Master Plan, it was stated that the same had no bearing on the matter in issue being prospective in nature. And even otherwise the construction raised by the petitioner was not hit by Jammu and Kashmir Development Act, 1970 and the Master Plan. She submits that post submission of response by the petitioner, no order has been passed by the respondent to date. But, yet vide impugned order dated June 4, 2025, the premises of the petitioner, has been sealed under Section 8 of the Jammu and Kashmir Control of Building Operations Act, 1988.
4. Upon being pointedly asked, learned counsel for the respondents fairly concedes that the petitioner was never served with any show cause notice under Section 7(1) of the Act. Naturally, he was never afforded any opportunity to respond thereto. Similarly, no order in terms of Section 7(3) of the Act has been passed either.
5. Faced with the above, learned counsel for the respondents, as always, fairly submits that in the given circumstances, the only option available to the authorities in law is to first serve the petitioner with a show cause notice in terms of Section 7(1) of the Act and, thereafter, if so advised, follow the procedure as envisaged therein.
6. Accordingly, he fairly submits that a notice in this regard shall be issued within a week from today to enable the petitioner to submit response. Whereafter, the authorities, if so advised, would proceed in terms of the procedure envisaged under the Act and pass appropriate orders.

7. Thus, in the given circumstances, he fairly submits that even the sealing order dated June 4, 2025 be also deemed to have been withdrawn/recalled without prejudice to the rights/interests of the respondent authorities. And if necessary, a fresh order under Section 8 of the Act, shall be passed. Accordingly, he submits that the demised premises shall be de-sealed today itself.
8. In the wake of the position sketched out above and in terms of the statement made by the learned counsel for the respondents, we are not required to delve in the matter and the merits of the claims of the respective parties.
9. We are sanguine that the competent authority shall, if so advised, proceed strictly in terms of the provisions of the Act and pass necessary orders.
10. Disposed of.

(RAJNESH OSWAL)
JUDGE

(ARUN PALLI)
CHIEF JUSTICE

SRINAGAR
31-07-2025
Shameem H.