

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

CM(M) No. 46/2026
CM No. 1384/2026

**Mushtaq Hussain, age 42 years S/o Lt Mohd Shafi
R/o Mohalla Baba Jeevan Shah, Jammu**

.....Petitioner(s)

Through: Mr. Imtiaz Hussain, Advocate

Vs

- 1. Member J&K Special Tribunal, Jammu**
- 2. Commissioner, JMC Town Hall, Jammu**
- 3. Joint Commissioner, JMC Town Hall, Jammu**
- 4. Khilafwarzi Officer, JMC Town Hall, Jammu**
- 5. Dr Javed Chowdhary, S/o Late Fateh Ali Chowdhary
R/o Residency Road, Jammu.**

..... Respondent(s)

Through:

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT
(10.03.2026)

(ORAL)

- 01.** Through the medium of instant petition, the petitioner has called in question the order dated 16.02.2026 passed by the respondent No.1 in Appeal bearing No. STJ/242/2018 to the extent whereby the respondent No.1 was directed to depute a team of officials to verify the factual position on spot *viz-a-viz* the allegations of respondent No.5 and to submit his report by the next date of hearing.
- 02.** It is specific case of the petitioner that respondent No.1 was required only to verify the factual position *viz-a-viz* the notice under Section 7(1) of *the*

Jammu and Kashmir Control of Building Operations Act, 1988 and not beyond that. It is further contended that the respondent No.1 cannot enlarge the scope of said verification beyond the ambit of the order/judgment passed by the Hon'ble Division Bench.

03. It has been vehemently argued by the learned counsel for the petitioner that the allegations which have been leveled by the respondents herein tantamount to re-opening an issue which has already been clinched by the Hon'ble Division Bench, inasmuch as, the verification could only be to the extent of what has already been ordered/observed by the Hon'ble Division Bench and not otherwise. It is further contended that any observation in the impugned order to the contrary would tantamount to overreaching the order of the Hon'ble Division Bench, which is not permissible under law. Thus, the verification by the respondent No.1 cannot be beyond the scope and ambit of what has already been observed by the **Hon'ble Division Bench in LPA No.09/2024**, paragraphs 4, 5 and 6 whereof, are reproduced as under:

“4. Upon being pointedly asked as to whether the issue as regards unauthorized construction upon a portion of a public lane was a subject matter of the notice under Section 7 (1) of the Act, learned counsel for the respondents expresses his inability to respond thereto.

5. However, learned counsel for the Jammu Municipal Corporation fairly submits that the notice, the appellant was allegedly served with under Section 7(1) of the Act as also the order passed under Section 7(3) of the Act, did not refer to any such unauthorized construction on any public lane/street. However, if so advised, the Corporation would take necessary measures even in this regard in accordance with the law.

6. In the wake of above and in terms of the statement made by the learned counsel for the parties, the impugned order and judgment is modified to the extent that the Tribunal shall proceed

to decide the appeal preferred by the appellant only as regards the alleged unauthorized construction /deviation /violation that were the subject matter of the notice under Section 7(1) of the Act and qua which the order under provisions of Section 7 (3) of the Act was subsequently passed”.

04. Thus in the light of what has been argued by the learned counsel for the petitioner, this Court deems it proper to dispose of the instant petition at the very threshold, since an innocuous prayer has been made, by clarifying/modifying the order passed by the learned Tribunal to the extent that the respondent No.1 shall be within its limit to depute a team of officials to verify the factual position on spot *viz-a-viz* the observations of the Hon’ble Division Bench in LPA No 09/2024 and not with regard to the allegation leveled by the respondent No.5. The said verification shall be carried out strictly in conformity with what has already been observed and directed by the Hon’ble Division Bench and not beyond that, as this Court is of the view that any verification beyond what has already been observed by the Hon’ble Division Bench would not only be contemptuous but would also be over and above the order/observations made by the Hon’ble Division Bench in the aforesaid appeal.

05. In the aforesaid backdrop, the order passed by the Tribunal is modified/clarified to the extent that the verification of the factual position on spot shall confine strictly in conformity with the order/judgment passed by the Hon’ble Division Bench in LPA No. 09/2024 and the Tribunal shall proceed to decide the appeal preferred by the appellant only as regards the alleged unauthorized construction/deviation/violation that were the subject matter of the notice under Section 7(1) of the Act and qua which the order

under provisions of Section 7(3) of the Act was subsequently passed.

06. The writ petition is *allowed* to that extent.

(WASIM SADIQ NARGAL)
JUDGE

JAMMU
10.03.2026
Vijay

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

