

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

OWP No. 573/2014

**Building Operation Controlling Authority
Jammu Municipal Area, Jammu
Through its Joint-Commissioner,
Municipal Corporation, Town Hall, Jammu**

.... Petitioner/Appellant(s)

Through:- Mr. Mayank Gupta, Advocate.

Vs.

**1. Shanker Singh,
S/o Sh. Karan Singh,
R/o Anand Vihar, Talab Tillo,
Bohri, Jammu
A/P Ext. Trikuta Nagar,
Opp. Chopra Market, Jammu
Adjoining Plot No. 14, Sector 2,
Trikuta Nagar, Jammu**

2. J&K Special Tribunal, Jammu

.....Respondent(s)

Through:- None.

CORAM: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE
JUDGMENT (ORAL)

01. Through the medium of the instant petition filed under Article 226 of the Constitution of India, the petitioner has called in question the order dated 11.12.2013, whereby the respondent No. 2-J&K Special Tribunal (hereinafter referred to as 'learned Tribunal') has set aside notice of demolition issued vide No. MJ/CEO/38/3/2012 dated 22.10.2012.

02. The brief facts of the case are that the Khilafwarzi Inspector of the area reported on 28.09.2012 that one Sh. Kewal Krishan Gupta S/o Jamit Raj Gupta has started the construction of compound wall towards the road side by encroaching upon the public land without seeking any building permission. Thereafter the said Khilafwarzi Inspector issued show cause notice as well as notice dated 29.09.2012 under section 7(1) of J&K Control

of Building Operation Act 1988 to discontinue the construction which were served upon to the said Kewal Krishan Gupta. The respondent No. 1 replied to the said show cause notice on 17.10.2012, wherein he has submitted that the boundary wall over the strip is being raised by him and not by Kewal Krishan Gupta. Thereafter the show cause notice dated 11.10.2012 as well as the notice to discontinue the construction were served upon respondent No. 1, whose reply to the show cause notice was not convincing, thereafter notice dated 22.10.2012 directing for demolition of the unauthorized construction was served upon said respondent No. 1.

03. It is pertinent to mention here that respondent No. 1 had filed a civil suit before the learned 1st Civil Subordinate Judge, Jammu, the learned Court vide order dated 24.09.2012, temporarily restrained the petitioner from causing any interference over the suit land without adopting due course of law. Thereafter, respondent No. 1 filed an appeal against the order of demolition dated 22.10.2012 before the learned Tribunal-respondent No. 2 and the petitioner had also filed their objection. The learned Tribunal without taking into consideration the objection and the record of the petitioner, set aside the demolition order vide order dated 11.12.2013, which is impugned in the present petition.

04. Record reveals that the instant matter is pending before this Court since 2014 and the respondents have already been set *ex-parte* vide order dated 11.11.2024 and even today, none has appeared on behalf of the respondents.

05. Through the medium of the instant petition, the petitioner has called in question the order dated 11.12.2013 and the only ground which has been canvassed by learned counsel for the petitioner is that the learned Tribunal

while deciding the appeal has not redressed the issue of construction of the boundary wall which was being raised without permission.

06. It has been vehemently argued by learned counsel for the petitioner that while not deciding the aforesaid question, the learned Tribunal has practically regularized the construction of the boundary wall raised without permission. Thus, the order impugned to that extent is illegal and has caused failure of justice and is liable to be set aside.

07. It has also been urged by learned counsel for the petitioner that respondent No. 1 had constructed the boundary wall without obtaining any permission from the concerned authority and this was the precise reason that the action was taken by the petitioner against the illegal erection. Thus, according to learned counsel for the petitioner, it was incumbent on part of the learned Tribunal to have recorded the finding on the issue raised in the appeal but the learned Tribunal has decided the appeal without taking into consideration the aforesaid aspect of the matter and has passed the order in a *hush-hush* manner, which is not sustainable in the eyes of law and is liable to be set aside.

08. In addition, it has also been urged by the learned counsel that the strip of land in question of the Government/Jammu Development Authority land was not in possession of respondent No. 1 but respondent No. 1 deliberately encroached the said piece of land by raising boundary wall and the learned Tribunal without deciding the aforesaid question, in a mechanical manner has passed the order dated 11.12.2013 which is impugned in the present petition.

09. Heard learned counsel for the petitioner at length and perused the record.

10. Record reveals that for last many dates of hearing, no one has appeared on behalf of the respondents. Today also, when the instant petition was taken up, there is no representation on their behalf. Record further reveals that on 11.11.2024, no one had appeared on behalf of the respondents despite service and, accordingly, they were set *ex-parte*. As the instant petition is pending before this Court since 2014, this Court deems it appropriate to decide the aforesaid writ petition, as the litigation is being protracted unnecessarily due to non-appearance of the respondents.

11. Before proceeding further in the matter, this Court deems it appropriate to refer to Sections 4 and 7(1) of the J&K Control of Building Operations Act, 1988. Section 4 provides that no person shall undertake or carry out development of any site in any municipal area, local area, town area, notified area or area notified under the J&K State Town Planning Act, nor erect or re-erect any building except with the previous permission of the competent authority. Section 7(1) of the Act provides that where the erection or re-erection of any building has been commenced or carried on or has been completed without the permission referred to in Section 4, the Authority shall issue a notice in writing calling upon the person concerned to show cause within a period of 48 hours as to why the building should not be altered or demolished so as to remove the contravention. The relevant provisions are reproduced hereunder:

4. Control of development and building operation.—No person shall undertake or carry out the development of any site in any Municipal Area, Local Area, Town Area, Notified Area or Area notified under the Jammu and Kashmir State Town Planning Act, 1963, or erect or re-erect any building

or make or extend any excavation or lay out any means of access to a road in such area except with the previous permission of the Authority concerned in writing.

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.

Thus, a conjoint reading of Section 4 and Section 7(1) leads to an irresistible conclusion that raising of a wall means erection of a building against which proposed action under Section 7 has been taken as the wall was being raised without seeking permission from the competent authority.

12. It is an admitted fact that respondent No. 1 had started raising construction of the wall over a piece of Government land without obtaining building permission from the competent authority. In such circumstances, the petitioner was within its jurisdiction to initiate action against respondent No. 1 in terms of Section 7 of the J&K Control of Building Operations Act, 1988. However, despite the aforesaid legal issue having been raised before the learned Tribunal, the Tribunal, without considering and deciding this aspect of the matter, set aside the demolition order. On this ground alone, the order passed by the learned Tribunal cannot sustain the test of law.

13. The record further reveals that the respondent No. 1 was raising the construction on the strip of the land owned by Government/JDA with the

sole intention to encroach the aforesaid strip on which respondent No. 1 has no legal right, title or interest and to the contrary, the learned Tribunal has legalized the said action of the respondent No. 1 by not deciding the issues raised in the appeal. Thus, this Court is of the view that the order impugned cannot sustain the test of law, as the basic question raised in the appeal pertaining to the construction of boundary wall raised without permission has not been addressed by the learned Tribunal while passing the aforesaid order.

14. The primary controversy in the appeal before the J&K Special Tribunal hinges around the fact that the construction of a boundary wall by respondent No. 1 was raised without obtaining the requisite permission from the competent Authority. It was thus, incumbent upon the Tribunal to record a specific finding regarding this "*illegal erection*".

15. Before examining the impugned order of the learned Tribunal in the light of the aforesaid factual and legal position, it would be appropriate to refer to the settled legal position with regard to the necessity of recording reasons while passing judicial or quasi-judicial orders. The Hon'ble Supreme Court has consistently held that recording of reasons is an indispensable component of the decision-making process, as it demonstrates application of mind and enables the higher courts to examine the correctness of the decision rendered.

16. The Hon'ble Apex Court in "**Sant Lal Gupta and Others vs. Modern Cooperative Group and Others**", 2010 SCC 13 336 , has held as under:-

“28. It is a settled legal proposition that not only administrative but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of order and exercise of judicial power by a judicial forum is for the forum to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of the justice - delivery system, to make it known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of the principles of natural justice. "The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before Courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the Court concerned had really applied its mind." The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected must know why his application has been rejected.”

17. In **“Siemens Engineering and Manufacturing Co. of India Ltd. v. The Union of India and another”**, AIR 1976 SC 1785, the Hon’ble Apex Court held as under:

“6. ...If courts of law are to be replaced by administrative authorities and tribunals, as indeed, in some kinds of cases, with the proliferation of Administrative law, they may have to be so replaced, it is essential that administrative authorities and tribunals should accord fair and proper hearing to the persons sought to be affected by their orders and give sufficiently clear and explicit reasons in support of the orders made by them. Then alone administrative authorities and tribunals exercising quasi-judicial function will be

able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is, like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law....”

18. Similarly, in **‘Assistant Commissioner vs. M/s Shukla & Brothers’, (2010) 4 SCC 785**, the Hon’ble Apex Court has held as under:

“11. The administrative authority and tribunals are obliged to give reasons, absence whereof could render the order liable to judicial chastise. Thus, it will not be far from absolute principle of law that the Courts should record reasons for its conclusions to enable the appellate or higher Courts to exercise their jurisdiction appropriately and in accordance with law. It is the reasoning alone, that can enable a higher or an appellate court to appreciate the controversy in issue in its correct perspective and to hold whether the reasoning recorded by the Court whose order is impugned, is sustainable in law and whether it has adopted the correct legal approach. To sub-serve the purpose of justice delivery system, therefore, it is essential that the Courts should record reasons for its conclusions, whether disposing of the case at admission stage or after regular hearing.

12. At the cost of repetition, we may notice, that this Court has consistently taken the view that recording of reasons is an essential feature of dispensation of justice. A litigant who approaches the Court with any grievance in accordance with law is entitled to know the reasons for grant or rejection of his prayer. Reasons are the soul of orders. Non-recording of reasons could lead to dual infirmities; firstly, it may cause prejudice to the affected party and secondly, more particularly, hamper the proper administration of justice...”

19. From the aforesaid authoritative pronouncements of the Hon’ble Supreme Court, it is abundantly clear that every judicial or quasi-judicial authority is duty bound to pass a reasoned order reflecting due application of

mind to the issues raised before it. Recording of reasons is not a mere formality but a fundamental requirement of the principles of natural justice. In the absence of reasons, the order becomes vulnerable to judicial scrutiny as it fails to disclose the basis upon which the conclusion has been arrived at.

20. However, the impugned order reveals a complete failure to address this pivotal aspect of the dispute. Such an omission signifies that the Tribunal failed to exercise the jurisdiction vested in it, leading to a decision-making process that is inherently flawed and legally unsustainable. Furthermore, the learned Tribunal has bypassed the fundamental question raised by the petitioner herein. The learned Tribunal without deciding the moot question, has practically regularized construction raised without permission, thereby causing a manifest failure of justice that necessitates the setting aside of the impugned order.

21. I have gone through the order of learned Tribunal and also the objections preferred by the petitioner herein before the learned Tribunal. For facility of reference, relevant part of the objections filed by the petitioner before the learned Tribunal is reproduced as under:-

3. That the appellant had raised the compound wall without seeking permission from JMC. The appellant has violated the provision of J&K Control of Building Operation Act, 1988 and J&K Control of Building Operations Regulation, 1988. The appellant has encroached the Government land thus respondent issued the process under Control of Building Operation Act, 1988.

4. That the contents of the appeal are baseless and hence denied. The appellant has raised the construction in contravention to the provision of J&K Control of Building Operations Act, 1988,

J&K. Control of Building Operations Regulation, 1998, prescribed Bye Laws and Master Plan. The appeal filed by the appellant is baseless and therefore deserves no consideration and required merit dismissal.

22. There is merit in the submission made by Mr. Mayank Gupta, learned counsel for the petitioner, that the objections raised by the petitioner herein have not been gone into by the learned Tribunal and instead the Tribunal in most haste manner allowed the appeal preferred by private respondent and set aside the impugned notice, thereby legalizing the said illegal action. The record reveals that no reply has been filed by the other side in the instant petition and thus the averments pleaded in the instant writ petition have gone un rebutted. Thus, in light of no objection from other side and since the plea of the petitioner has not been rebutted by the respondents, the same is accepted in light of the record produced.

Conclusion:

23. Keeping in view the aforesaid discussion and circumstances of the case, the instant petition is allowed and the impugned order dated 11.12.2013 passed by the learned Tribunal is hereby quashed. Consequently, the matter is remanded back to the learned Tribunal for fresh consideration of the appeal in accordance with law and after taking into account the objections filed by the petitioner. The learned Tribunal shall make an endeavor to decide the matter expeditiously, preferably within a period of two months from the date the parties appear before it. The parties are directed to appear before the learned Tribunal on 12.03.2026.

24. The instant petition is **disposed of** along with all the connected application(s).

(Wasim Sadiq Nargal)
Judge

Jammu:
02.03.2026
Mihul

Whether the judgment is speaking	:	Yes/No
Whether approved for reporting	:	Yes/No

