

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

WP(C) No. 2153/2025
CM No. 4911/2025
CM No. 5874/2025 c/w
CCP(S) No. 382/2025

Reserved on: 11.02.2026
Pronounced on: 05.03.2026
Uploaded on: 05.03.2026

Whether the operative part or full judgment is pronounced: **Full**

1. Anoop Uppal, Age 70 years,
S/o Chuni Lal R/o 242/4
Near Aap Shambhu Mandir,
Roop Nagar,
Tehsil & District Jammu.
2. Anu Radha Age 61 years,
Wd./o Darshan Kumar
R/o H. No.7 Nar Singh Kucha,
Panjtirthi, Tehsil & District Jammu
3. Saroj Rajput, Age 51 years,
D/o Sansar Singh Jasrotia
R/o H. No. 332 Exchange Road,
Tehsil & District Jammu.
4. Dev Kumar Age 72 years,
S/o Krishan Daas
R/o H. No. 230 Ustad Mohalla,
Tehsil & District Jammu.
5. Sanjay Pandoh Age 55 years,
S/o Late Om Parkash Pandoh
R/o 376 Jullaka Mohalla,
Tehsil & District Jammu.
6. Sitanshoo Sharma, Age 39 years,
S/o Sh. Kastori Lal Sharma
R/o 27-B Basant Nagar Janipur,
Tehsil & District Jammu.
7. Raman Bajaj, Age 54 years,
S/o Late Kailash Chander
R/o 149-A Dogra Hall,
Tehsil & District Jammu

.... Petitioner(s)

Through:- Mr. Nirmal K. Kotwal, Sr. Adv
with Mr. Rajveer Singh Isher, Adv.

Vs.

1. Jammu Municipal Corporation
through its Commissioner,
Town Hall, Jammu.
2. District Magistrate, Jammu
3. Add. District Magistrate, Jammu
4. Executive Engineer,
PWD (R&B) Division,
Jammu-East
5. Assistant Executive Engineer,
PWD (R&B) Division,
Jammu-East
6. Naresh Kumar Gandotra,
S/o Sh. Prem Nath Gandotra,
R/o H. No. 5-6 Friends Colony,
Trikuta Nagar, East-Ext,
Jammu
7. Mrs. Shobha Gandotra,
W/o Lt. Sh. Rajesh Kumar Gandotra,
R/o 70-Exchange Road,
Jammu

.....Respondent(s)

Through:- Ms. Priyanka Bhat, Advocate
vice Mrs. Monika Kohli, Sr. AAG
for R-2 & R-3
Mr. Mayank Gupta, Advocate
for R-1.
Mr. Nirmal Kotwal, Advocate
vice Mr. Ravinder Gupta, AAG
for R- 4 & R-5
Mr. Piyush Gupta, Advocate for R-6
& R-7.

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

Prayer:

1. Petitioners, through the medium of the instant writ petition, have sought the following reliefs:
 - i) *Issue a writ of certiorari quashing the impugned order No. 41 of 2025 dated 26.07.2025 passed by the Commissioner, Jammu Municipal Corporation (respondent No.1)*

- ii) *Issue a writ of mandamus directing the respondent No.1 to permit the petitioners to open their shops already found safe by the committee of officers headed by executive engineer PWD (respondent No.4)*

Factual Matrix:

2. Petitioners are aggrieved of order No. 41/2025 dated 26.07.2025 issued by the Commissioner, Jammu Municipal Corporation, whereby it has been directed that a firm empanelled for safety audit of buildings by the Municipal Corporation, Jammu shall inspect and furnish a detailed report within one week regarding the safety of the building situated at 70, Exchange Road, Jammu.
3. By virtue of the aforesaid order, the Commissioner, Jammu Municipal Corporation, directed that the said inspection shall be carried out in the presence of representatives of the owners, i.e., respondent Nos. 6 and 7, as well as the tenants, i.e., the petitioners. The petitioners claim to be tenants and are running their respective businesses in the shops owned by respondent Nos. 6 and 7 for several decades at 70, Exchange Road, Jammu. It is the specific case of the petitioners that they have been carrying out lawful business activities from the said shops for decades and that the shops are their sole source of livelihood. It has also been clarified that the building consists of residential and commercial portions, and the petitioners are tenants in the commercial portion situated on the ground floor.
4. It is the specific case of the petitioners that respondent Nos. 6 and 7, with *mala fide* intention to forcibly evict them, submitted an application dated 29.08.2024 before the Jammu Municipal Corporation seeking declaration of the building as unsafe. Pursuant thereto, respondent No. 1 directed respondent Nos. 6 and 7 to obtain a safety/unsafety certificate from the Public Works Department vide communication dated 07.10.2024. Thereafter, respondent No. 4, Executive Engineer, PWD (R&B), Jammu East, issued communication dated 13.11.2024 declaring the building unsafe.

5. Based on the aforesaid communication, the Commissioner, Jammu Municipal Corporation, issued notice dated 07.01.2025, purportedly under Section 258(2) of the Jammu Municipal Corporation Act, 2000, directing demolition or securing/repair of the building within a period of 30 days from the receipt of the said notice, failing which, it was conveyed that action under rules shall be initiated against the petitioners. Although the said notice was addressed to respondent Nos. 6 and 7 but the same directly affected the petitioners, who were occupying the shops in question. Feeling aggrieved thereof, the petitioners preferred writ petition bearing WP(C) No. 299/2025, challenging the aforesaid notice dated 07.01.2025 and the communication dated 13.11.2024 on various grounds including violations of natural justice congenial between private owners and Municipal Authorities and also absence of any scientific inspection.
6. The further case of the petitioners is that they came to know of the aforesaid demolition notice only upon receiving eviction notice dated 22.01.2025 issued by respondent No. 1 claiming that the building had been declared unsafe and had to be vacated.
7. The matter did not end there. The Jammu Municipal Corporation issued yet another order dated 26.07.2025 vide No. 41/2025, allegedly in compliance with the direction passed by this Court on 16.07.2025, wherein after hearing both the parties as well as considering the clarification of the Executive Engineer, Division Jammu East, regarding issuing contradictory reports dated 13.11.2024 and 26.05.2025, it was held that the firm empanelled for safety audit of the building by Municipal Corporation, Jammu, shall be directed to inspect and furnish a detailed report within a week with regard to the safety of the building situated at 70, Exchange Road, Jammu, and the Commissioner, Municipal Corporation, Jammu, through the aforesaid order dated 26.07.2025, directed that the said inspection shall be done in the presence of representatives of the owners as well as the tenants.

8. The aforesaid notice and the communication were called in question by the petitioners in another petition which came to be registered as WP(C) No. 299/2025. However, this Court, vide order dated 08.08.2025 passed in the instant matter has kept the order impugned dated 26.07.2025 in abeyance.
9. It has been brought to the notice of this Court by the learned senior counsel for the petitioner that this Court, vide order dated 02.04.2025 in WP(C) No. 299/2025, has passed a detailed order, wherein the following direction was issued:

“06. Keeping in view the peculiar facts and circumstances of the case and the urgency involved, this Court direct respondent nos. 4 and 5 to constitute an expert committee of the engineering wing, afresh, with a view to conduct an on spot inspection of all the shops occupied by the petitioners and the building as well separately. The entire exercise of carrying on the inspection and submitting the report to this Court with regard to the condition of the said shops as well as building shall be done strictly in accordance with the procedure as envisaged under the Municipal Corporation Act and the rules framed thereunder by associating the petitioners and other stakeholders including the landlord of the said building as well as all the tenants of the shops on or before the next date of hearing.

07. It is made clear that the assessment of the building and taking of the samples of the shops in question be carried out in presence of the owner of the building/shops, the tenants (petitioners herein) occupying the said shops and the representatives of PWD(R&B) by notifying the date in advance so that all the parties are aware of such process. The entire exercise shall be carried out in presence of respondent no. 3 (Additional District Magistrate Jammu) and the report be submitted by respondent no. 4 (Executive Engineer PWD (R&B) Division Jammu East and respondent no. 5 (Assistant Executive Engineer PWD (R&B) Sub-Division No. 1 Jammu East in consultation with respondent no. 1 (Commissioner, Jammu Municipal

Corporation) under the supervision of respondent no. 3 before this Court on or before the next date of hearing.

08. Learned counsel for the petitioners is directed to give the detailed particulars of all petitioners, who are occupying the said shops and are before this Court today against proper receipt to Mr. Ravinder Gupta, learned AAG so that they are notified well in advance.”

10. Thus, from a bare perusal of the aforesaid order, it is apparently clear that this Court directed respondent Nos. 4 and 5 to constitute an expert committee of the Engineering Wing afresh with a view to conduct on-spot inspection of all the shops in question occupied by the petitioners and the building as well, separately, strictly in terms of the procedure envisaged under the Municipal Corporation Act and the Rules framed thereunder, by associating the petitioners and other stakeholders, including the landlords of the said building, i.e., respondent Nos. 6 and 7 herein, as well as the tenants of the shops (petitioners herein).
11. This Court further made it clear that the assessment of the building and taking of samples of the shops in question shall be carried out in the presence of the owners of the building/shops, the tenant-petitioners occupying the said shops, and the representatives of PWD (R&B) Department, by notifying the date in advance so that all parties are made aware of such process. The entire exercise was required to be carried out in the presence of the Additional District Magistrate, Jammu. The order further reveals that the report was required to be submitted by respondent No. 4, Executive Engineer, PWD (R&B), Division Jammu East, and respondent No. 5, Assistant Executive Engineer, PWD (R&B), Sub-Division No. 1 Jammu East, in consultation with respondent No. 1, Commissioner, Jammu Municipal Corporation, under the supervision of respondent No. 3 before this Court.
12. In compliance with the aforesaid order, a Committee was constituted pursuant to the order passed by this Court, wherein all the stakeholders were taken on board. The said Committee

conducted on-spot inspection of the building as well as the shops. The Assistant Executive Engineer, PWD (R&B), Sub-Division Gandhi Nagar, Jammu, submitted the report on 26.05.2025, stating clearly that the shops occupied by petitioner Nos. 1 to 5 and 7 were structurally safe, and insofar as one shop was concerned, minor repairs were required to make the same fit for public use.

13. Pursuant to the aforesaid order, the Assistant Executive Engineer has submitted a detailed report, which has been placed on record with the instant petition. From a bare perusal of the report, it is apparent that the shops which are occupied by the petitioners are safe and fit for public use, the details of which find mention in the inquiry report barring one shop, i.e., Shop No. 5, which has been declared fit for use subject to removal of the wooden plank roof and laying of an RCC slab.
14. Once it is the specific case of the petitioners that the inspection had already been conducted by the Engineering Wing after taking on board all the stakeholders in compliance with the order passed by this Court, and the report submitted by the Engineering Wing holds the field as on date and has not been called in question by any person, there was no occasion for the Commissioner to have issued the aforesaid order which is impugned in the instant petition.
15. The petitioners, with a view to fortify their claim, have placed on record the aforesaid report, which was later submitted to the Additional District Magistrate, Jammu, who concurred with and endorsed the same.
16. According to Mr. Nirmal Kotwal, learned senior counsel, the Commissioner ought to have relied upon the report submitted by the PWD (R&B) Department which was pursuant to the direction issued by this Court, and which report was submitted after taking on board all the stakeholders, and no grievance was ever raised by any party challenging the said report, and thus there was no occasion for the Commissioner to raise doubts about the said report which had been accepted by all.

17. According to Mr. Nirmal Kotwal, learned senior counsel, reopening of an issue which already stood concluded by this Court would amount to acting in derogation to the mandate and spirit of the order passed by this Court, wherein a direction was issued to reconsider the issue in the light of the report already submitted by the Engineering Wing. However, the Commissioner, in most contemptuous manner on his own has rejected the said report, which was beyond his jurisdiction once the matter already stood concluded by this Court and the Court appointed committee comprising of the engineering wing of PWD (R&B) has already declared the shops as safe.
18. The record reveals that this court in the earlier round of litigation after hearing all the parties, passed a final judgment on 16.07.2025 in WP(C) No. 299/2025 quashing the order dated 07.01.2025 and directing the Commissioner, JMC, to reconsider the matter strictly in the light of the report submitted by PWD (R&B) Department dated 26.05.2025, after affording an opportunity of hearing to all the stakeholders by passing a reasoned order within two weeks but the Municipal Commissioner, acting as super authority, over and above this Court and in flagrant violation of the direction passed by this Court, has issued the impugned order which, is not sustainable in the eyes of law, being contemptuous and tantamount to reopening an issue which already stood concluded by this Court.
19. Surprisingly, respondent No. 1, instead of complying with the binding directions of this Court, passed a fresh order No. 41/2025 dated 26.07.2025, which is impugned in the present petition, whereby respondent No. 1 directed that a further audit be carried out by a private empanelled firm, thereby evading the obligation to decide the matter finally.
20. The learned Counsel for the petitioners submits that the impugned order is evasive, non-speaking, and has the effect of nullifying the binding directions of this Court dated 16.07.2025. It is further submitted that, by virtue of the impugned order, the issue which

had already been clinched has been reopened, thereby prolonging the agony and uncertainty faced by the petitioners.

21. As per the petitioners, the impugned order is in violation of the judgment passed by this Court dated 16.07.2025, whereby, directions were issued to reconsider the matter in light of the report of respondent No. 4 dated 26.05.2025, after hearing all parties by passing a fresh order.
22. It is further submitted that the impugned order is non-speaking, devoid of any reasoning, finding, or reference to the report submitted by PWD (R&B) dated 26.05.2025, and thus the action of respondent No. 1 falls within the realm of abuse of process. The learned counsel submits that the impugned order is contemptuous and ignores the findings of the competent public authority, i.e., PWD (R&B), thereby denying finality to judicial adjudication and causing undue harassment to the petitioners.
23. It has also been alleged that the decision of the Commissioner is intended to aid the private interest of respondent Nos. 6 and 7 at the cost of public justice. Lastly, it is submitted that the impugned order is arbitrary, illegal, and violative of the principles of natural justice and is liable to be quashed.
24. Therefore, this Court, after feeling *prima facie* satisfied on the very first day of hearing, vide order dated 08.08.2025, has kept the aforesaid order dated 26.07.2025 in abeyance by making it clear that the Municipal Commissioner shall be at liberty to take a decision in accordance with the direction dated 16.07.2025 passed in WP(C) No. 299/2025.

Submissions on behalf of the respondents:

25. Reply stands filed on behalf of respondent Nos. 1, 6 and 7.
26. Mr. Mayank Gupta, learned counsel appearing on behalf of respondent No. 1, while raising preliminary objections, submits that the present writ petition is not maintainable as the same constitutes a second round of litigation initiated by the petitioners on the same cause of action, wherein the same petitioners had

already challenged notice dated 07.01.2025 and communication dated 13.11.2024 by filing a writ petition which was registered as WP(C) No. 299/2025, whereby directions were issued to respondent Nos. 6 and 7 to demolish, secure, or repair the building situated at House No. 70, Exchange Road, Jammu.

27. It is further submitted that respondent No. 1 convened a personal hearing on 21.07.2025 in his office chamber, which was attended by officials of the Municipal Corporation, owners (respondent Nos. 6 and 7), and the tenants (petitioners herein). After hearing the parties, following directions were issued:

“(a) The Executive Engineer, PWD (R&B) Division Jammu East was asked to furnish an explanation regarding the contradiction in the reports dated 13.11.2024 and 26.05.2025.

(b) The Joint Commissioner (Works) was directed to ensure that a representative of the firm empanelled with JMC for Building Safety Audits appears on the next date of hearing.”

28. Thus, the respondents have justified the issuance of the impugned order on the ground of carrying out the safety audit by an independent third party, which firm was directed to carry out a comprehensive safety inspection of the building situated at 70, Exchange Road, Jammu, in the presence of both the owners and tenants and submit a detailed report within one week. However, respondent No. 1 has not filed any para-wise reply to the averments made by the writ petitioners and has instead filed the reply by taking only preliminary objections.

29. Another set of reply also stands filed on behalf of respondent Nos. 6 and 7, wherein objections have been raised that no cause of action has accrued to the petitioners for filing the instant petition. Respondent Nos. 6 and 7 have justified their stand by asserting that the building is unsafe and have also justified the action of the Jammu Municipal Corporation by virtue of the impugned order. Respondent Nos. 6 and 7, while filing their reply, have also questioned the report submitted by the Engineering Wing of PWD (R&B) pursuant to the order passed by this Court, although no

formal challenge has been made by respondent Nos. 6 and 7 to the said report before any competent forum.

30. The record further reveals that the instant petition was listed before this Court on 08.08.2025, wherein the Coordinate Bench of this Court was pleased to keep in abeyance the impugned order dated 26.07.2025 issued by respondent No. 1. While granting the aforesaid interim protection, this Court further clarified that the Municipal Commissioner shall be at liberty to take a decision strictly in accordance with the directions dated 16.07.2025 passed in WP(C) No. 299/2025.
31. However, Ms. Priyanka Bhat, learned counsel appearing on behalf of Mrs. Monika Kohli, learned Sr. AAG for respondent Nos. 2 and 3, has not filed any separate reply and has instead relied upon the reply filed by respondent No. 1. Similarly, no separate reply has been filed by Mr. Ravinder Gupta, learned AAG appearing on behalf of respondent Nos. 4 and 5. Rather, Mr. Nirmal Kotwal, learned Senior Counsel, has placed reliance upon the report submitted by PWD (R&B) pursuant to the directions passed by this Court dated 02.04.2025 in WP(C) No. 299/2025, and has submitted that there was no occasion for respondent No. 1 to have issued the impugned order in light of the said report.

Legal analysis:

32. Heard learned counsel for the parties at length and perused the record.
33. I have also perused the impugned order passed by respondent No. 1, minutely.
34. It appears that the reason for issuing the impugned order was the alleged contradictory reports dated 13.11.2024 and 26.05.2025. Being influenced by the said reports, the Municipal Commissioner directed that a firm empanelled for safety audit by the Municipal Corporation, Jammu, shall inspect and furnish a detailed report regarding the safety of the building situated at 70, Exchange Road, Jammu, in the presence of representatives of the owners as well as

the tenants. However, this Court is of the view that the order passed by the Commissioner is in flagrant violation of the judgment passed by this Court dated 16.07.2025 in WP(C) No. 299/2025, whereby a specific direction was issued to reconsider the matter strictly in light of the report of respondent No.4, i.e., PWD (R&B), Jammu East dated 26.05.2025, after hearing all parties and passing a fresh order within two weeks. The Commissioner, while passing the impugned order, has violated the said direction with impunity and brushed aside the report submitted by the committee of engineers constituted pursuant to the order dated 02.04.2025 passed by this Court in the earlier round of litigation.

35. It is trite that once a competent court issues a direction requiring reconsideration strictly in light of a specified report, the scope of such reconsideration stands circumscribed by the judicial mandate itself. The authority is bound to act within the contours of the directions issued and cannot reopen or re-agitate the foundational issue which stood concluded by virtue of the expert determination obtained pursuant to the orders of this Court.
36. Reconsideration “in light of the report” necessarily obligated the authority either to accept the findings of the expert body or, in the alternative, to record cogent, legally sustainable and reasoned grounds for differing from such findings. In absence of any such recorded reasons, the direction for a fresh safety audit through another agency amounts to abdication of the duty cast upon respondent No. 1 and cannot be sustained in law.
37. This Court cannot lose sight of the fact emerging from the record that the petitioners are shopkeepers dependent upon the said premises for their livelihood, who have been carrying on their businesses in the subject premises and have suffered severe prejudice, financial loss and interruption of livelihood for nearly two years on account of an initial official report declaring the building structurally unsafe. The said report, which formed the basis of administrative action by the Municipal Commissioner and

was also noticed by this Court at an interim stage, has now been rendered factually incorrect upon a detailed, court-supervised inquiry conducted by the Engineering Wing of the PWD Department under the supervision of a Magistrate. The subsequent technical report categorically concludes that the building is structurally safe, thereby vindicating the consistent stand taken by the petitioners from the very inception. The reliance upon an erroneous report has thus resulted in avoidable litigation, prolonged closure of shops, loss of income and mental anguish to the petitioners, which squarely warrants judicial scrutiny.

38. At the outset, it is necessary to observe that the determination as to whether a building is structurally safe or unsafe squarely falls within the exclusive domain of technical experts, i.e. the competent Engineering Wing or a duly authorized technical agency. Courts of law do not possess the technical expertise to independently assess structural safety, nor are they expected to substitute expert opinion with judicial assessment. Once a competent engineering authority, after conducting an extensive technical exercise under the supervision of a Magistrate, submits its report, there remains no legal justification either for this Court or for the administrative authorities to doubt the findings recorded therein, unless the same is shown to be perverse, *mala fide*, or subject matter of challenge before any appropriate fora.
39. The Hon'ble Apex Court in **"State of Tamil Nadu and others v. K. Shyam Sunder and others"** (2011) AIR SC 3470, has authoritatively held that in matters involving technical and expert determination, courts should ordinarily refrain from substituting their own views for that of expert bodies and must show due deference to expert opinion, by holding as under:

"V. Interference by the Court with expert body's opinion

42. Undoubtedly, the court lacks expertise especially in disputes relating to policies of pure academic educational matters. Therefore, generally it should abide by the opinion of the expert body. The Constitution Bench of this Court in University Of

Mysore v. C.D. Govinda Rao AIR 1965 SC 491 (AIR p. 496 , para 13) held that “normally the courts should be slow to interfere with the opinions expressed by the experts”. It would normally be wise and safe for the courts to leave such decisions to experts who are more familiar with the problems they face than the courts generally can be. This view has consistently been reiterated by this Court in Neelima Misra v. Harinder Kaur Paintal (1990) 2 SCC 746 , (1990) 13 ATC 732, AIR 1990 SC 1402, Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity (2010) 3 SCC 732 , AIR 2010 SC 1285, Basavaiah (Dr.) v. Dr. H.L Ramesh (2010) 8 SCC 372 and State of H.P v. H.P Nizi Vyavsayik Prishikshan Kendra Sangh (2011) 6 SCC 597.”

40. Similarly, the Bombay High Court in “**Anahita Pandole (Dr.) v. State of Maharashtra & Others**”, Writ Petition No. 1132/2002 along with connected matters, decided on 05.05.2004, has held that where a statutory expert body is vested with authority to render technical recommendations, the administrative head is bound to act in accordance with such expert opinion and cannot substitute it with his personal view. It was observed as under:

“26. Equally fundamental, to our mind, is the objection to the validity of the approach which has been adopted by the Municipal Commissioner in the present case. The Heritage Conservation Committee is an expert body charged and vested with a special obligation under the provisions contained in D.C Regulation 67. Regulation 67(2) mandates that the Commissioner “shall act on the advice of in consultation with” the Heritage Conservation Committee. The power of the Municipal Commissioner to overrule the decision of the Committee is confined to exceptional cases and for reasons to be recorded in writing. The power is to be exercised by the Commissioner himself and is not to be delegated to any other Officer. In our judgment delivered on 19th April, 2003, we had occasion to consider the status of the Heritage Conservation Committee and the role and position of the Municipal Commissioner in relation to the recommendations of the Committee. We have held that the Municipal Commissioner must invariably act in accordance with the expert recommendations of the Committee. Committee consists of experts drawn from the areas of urban conservation, environment and

history, apart from experts with experience in structural engineering. What the Municipal Commissioner has done in the present case is simply to reject the view of the Heritage Conservation Committee and to substitute his own personal opinion for the view which has been formed by the Heritage Committee. What the Municipal Commissioner does is to tell us that he does not agree with the Committee. There are no exceptional reasons for the Municipal Commissioner to have overridden the Heritage Committee...

47. The present case relates to the illuminated hoarding admeasuring 16 ft. × 12 ft. erected in the compound of Islam Club situated at N.A Purandare Marg, Chowpatty. Chowpatty sea face buildings have been listed at Sr. No. 458 of the Heritage List. The Heritage Committee has dealt with this hoarding at Sr. No. 22 in its second list and has come to the conclusion that Guidelines 1 and 3 of its guidelines are violated by the hoarding. The Expert Committee appointed by this Court was also of the view that the hoarding was liable to be removed since it was in violation of Guidelines 16(a) and (g) framed by the Municipal Corporation. The Municipal Corporation had not accepted the recommendation and was of the view that the hoarding should be retained since it is on a Grade III building. We have specifically disapproved of the approach of the Municipal Commissioner and overruled his findings in regard to Grade III structures. For the reasons already indicated in the body of the main judgment, we are of the view that the Municipal Commissioner was not justified in interfering with the well considered findings of the Heritage Conservation Committee. We do not find any merit in the petition which is accordingly rejected."

41. Once the committee of engineers was constituted in compliance with the directions passed by this Court vide order dated 02.04.2025, and the said committee submitted a detailed report regarding each and every shop occupied by the petitioners and the residential building in the presence of the Additional District Magistrate, Jammu, the Commissioner was legally bound to follow the said report in its letter and spirit and was under a legal obligation qua the petitioners to have acted in furtherance of the said report by allowing the petitioners to carry on their business in their respective shops in conformity with the findings recorded

therein. However, to the contrary, the Commissioner, respondent No. 1 herein, has acted in contravention of the directions passed by this Court dated 16.07.2025 and has brushed aside the report of the Committee of engineers constituted pursuant to the order passed by this Court in the earlier round of litigation. *Prima facie*, it appears that the Commissioner, under a misconception of law, with a view to overreach the directions passed by this Court, issued the impugned order which tantamount to reopening an issue which already stood concluded by virtue of the report submitted by the said committee and that too after giving an opportunity to all the stakeholders. Once a competent expert body has rendered its findings pursuant to judicial directions, the administrative authority cannot sit in appeal over such findings, nor can it arrogate to itself the power to order a fresh inquiry through another agency.

42. This Court, in the earlier round of litigation, had already quashed the impugned notice/order dated 07.01.2025 issued by respondent No. 1, whereby directions were issued to respondent Nos. 6 and 7 to demolish, secure or repair the building strictly as per norms and rules within 30 days, failing which action under rules was to be initiated. Though the said notice was addressed to respondent Nos. 6 and 7, but in a way it directly pertains to the petitioners, who are the tenants of the shops in question. This Court, while quashing the aforesaid notice dated 07.01.2025, had directed respondent No. 1 to reconsider the matter strictly in light of the report of respondent No. 4 dated 26.05.2025, after hearing all the parties by passing a fresh order within a period of two weeks. However, instead of reconsidering the matter in light of the said report, the Commissioner, in violation of the directions of this Court, has brushed aside the said report and issued fresh directions to an empanelled firm for conducting a safety audit and furnishing a detailed report which was beyond his domain.
43. Thus, this Court is of the considered view that the order issued by the Commissioner, which is the subject matter of the instant petition, is contrary to the directions passed by this Court and

appears to be an attempt to overreach the binding directions issued by this Court and therefore cannot sustain the test of law and is liable to be set aside. A duty was cast upon the Commissioner to reconsider the matter strictly in light of the report of respondent No. 4 dated 26.05.2025, instead of referring the matter to another empanelled private firm for safety audit by ignoring the report already submitted by the committee of engineers constituted under the supervision of the Additional District Magistrate, Jammu, pursuant to the directions passed by this Court dated 02.04.2025.

44. An administrative order which disregards a binding judicial direction and fails to assign reasons for discarding an expert report placed before it is arbitrary. Reasoned decision making is an essential facet of fairness in administrative action, and absence of reasons renders the exercise of power susceptible to judicial correction.
45. Further, where administrative action results in closure of commercial establishments and deprivation of livelihood despite a subsisting expert certification of structural safety, such action must also satisfy the test of proportionality. Closure of shops declared safe by a duly constituted technical committee would be disproportionate to the object sought to be achieved and therefore constitutionally impermissible.
46. It is well settled that once a Court-appointed inquiry committee has concluded its inquiry after due testing and technical evaluation of a building, the administrative authorities are denuded of any power to constitute another committee or order a parallel inquiry on the same issue. Any such action would not only amount to reopening a settled issue but would also constitute a clear attempt to overreach and nullify the binding judicial directions. The action of the Municipal Commissioner in referring the matter afresh to an empanelled firm, despite the subsistence of a valid and unchallenged expert report, *prima facie* reflects an

excess of jurisdiction, rendering the impugned order legally unsustainable.

47. This Court is, thus, of the considered view that the Commissioner, Jammu Municipal Corporation, has not only failed to comply with the order passed by this Court dated 02.04.2025, but has also acted in contravention of the binding directions issued by this Court vide judgment dated 16.07.2025 passed in WP(C) No. 299/2025. Once the report submitted by the Engineering Wing pursuant to the directions of this Court had been placed on record and accepted by both the parties, as the same has neither been challenged before any competent forum nor set aside, respondent No.1 could neither have ignored the same nor referred the matter afresh for a safety audit.
48. The Hon'ble Apex Court in '**Maninderjit Singh Bitta Vs Union of India and ors.**' (2012) 1 SCC 273, has emphatically reiterated that orders passed by constitutional courts are binding on all authorities and must be complied with in letter and spirit, by holding as under:

“20. Every person is required to respect and obey the orders of the court with due dignity for the institution. The government departments are no exception to it. The departments or instrumentalities of the State must act expeditiously as per orders of the court and if such orders postulate any schedule, then it must be adhered to. Whenever there are obstructions or difficulties in compliance with the orders of the court, least that is expected of the government department or its functionaries is to approach the court for extension of time or clarifications, if called for. But, where the party neither obeys the orders of the court nor approaches the court making appropriate prayers for extension of time or variation of order, the only possible inference in law is that such party disobeys the orders of the court. In other words, it is intentionally not carrying out the orders of the court. Flagrant violation of the court's orders would reflect the attitude of the party concerned to under-mine the authority of the courts, its dignity and the administration of justice...”

49. It is evident from the record that the issue regarding the structural safety of the shops already stood concluded on the basis of the

report dated 26.05.2025 submitted by the Engineering Wing pursuant to the directions of this Court. The judgment dated 16.07.2025 passed by this Court directing reconsideration in light of the said report had attained finality. Therefore, respondent No.1 was under a legal obligation to act in furtherance of the said judgment and reconsider the matter accordingly, instead of reopening the issue by directing another safety audit. Viewed from any angle, the impugned order cannot sustain in the eyes of law, as the same is arbitrary, contrary to the directions of this Court and tantamount to reopening an issue which already stood concluded.

50. It is a well-settled principle that judicial and administrative processes must be founded on integrity, truth, and fidelity to law and facts. In the present case, the circumstances *prima facie* suggest that the initial report declaring the building unsafe was obtained with the oblique intention of dispossessing the petitioners from the shops in question without resorting to lawful eviction proceedings. If an official report is procured or influenced to achieve such a collateral purpose, the same would amount to fraud on power and would vitiate all consequential actions founded thereon. The Supreme Court has also consistently held that fraud or misrepresentation which induces judicial or quasi-judicial action renders the proceedings void *ab initio*. In this regard, the Hon'ble Supreme Court in **“Vishnu Vardhan @ Vishnu Pradhan v. State of Uttar Pradesh”, 2025 INSC 884**, has held as under:

“61. In decisions abound, the Courts have consistently nullified orders obtained through fraudulent means. Key excerpts from some of these decisions read thus:

....c. In A.V. Papayya Sastry v. Govt. of A.P., this Court held:

21. Now, it is well-settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed: "Fraud avoids all judicial acts, ecclesiastical or temporal."

22. It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the court, tribunal or authority is a nullity and non est in the eye of the law. Such a judgment, decree or order— by the first court or by the final court—has to be treated as nullity by every court, superior or inferior. It can be challenged in any court, at any time, in appeal, revision, writ or even in collateral proceedings.”

51. The Hon’ble Supreme Court in **“Express Newspapers Pvt. Ltd. and Others v. Union of India and Others” (AIR 1986 SC 872)**, has elaborately explained the doctrine of “fraud on power” and has held that where statutory power is exercised for a purpose other than that for which it is conferred, such action stands vitiated in law, by holding as under:

“119. Fraud on power voids the order if it is not exercised bona fide for the end design. There is a distinction between exercise of power in good faith and misuse in bad faith. The former arises when an authority misuses its power in breach of law, say, by taking into account bona fide, and with best of intentions, some extraneous matters or by ignoring relevant matters. That would render the impugned act or order ultra vires. It would be a case of fraud on powers. The misuse in bad faith arises when the power is exercised for an improper motive, say, to satisfy a private or personal grudge or for wreaking vengeance of a Minister as in S. Pratap Singh v. State of Punjab AIR 1964 SC 72, (1964) 4 SCR 733. A power is exercised maliciously if its repository is motivated by personal animosity towards those who are directly affected by its exercise. Use of a power for an “alien” purpose other than the one for which the power is conferred is mala fide use of that power. Same is the position when an order is made for a purpose other than that which finds place in the order. The ulterior or alien purpose clearly speaks of the misuse of the power and it was observed as early as in 1904 by Lord Lindley in General Assembly of Free Church of Scotland v. Overtown LR 1904 AC 515 “that there is a condition implied in this as well as in other instruments which create powers, namely, that the powers shall be used bona fide for the purpose for which they are conferred”. It was said by Warrington, C.J in Short v. Poole Corpn. LR 1926 ChD 66 that: “No public body can be regarded as having statutory authority to act in bad faith or from corrupt motives,

and any action purporting to be of that body, but proved to be committed in bad faith or from corrupt motives, would certainly be held to be inoperative.”

52. In “**State of Punjab and Another vs. Gurdial Singh and Others**”, (1980 AIR SC 319), the Hon’ble Supreme Court has held as under:

“9. The question, then, is what is mala fides in the jurisprudence of power? Legal malice is gibberish unless juristic clarity keeps it separate from the popular concept of personal vice. Pithily put, bad faith which invalidates the exercise of power — sometimes called colourable exercise or fraud on power and oftentimes overlaps motives, passions and satisfactions — is the attainment of ends beyond the sanctioned purposes of power by simulation or pretension of gaining a legitimate goal. If the use of the power is for the fulfilment of a legitimate object the actuation or catalysation by malice is not legicidal. The action is bad where the true object is to reach an end different from the one for which the power is entrusted, goaded by extraneous considerations, good or bad, but irrelevant to the entrustment. When the custodian of power is influenced in its exercise by considerations outside those for promotion of which the power is vested the court calls it a colourable exercise and is undeceived by illusion. In a broad, blurred sense, Benjamin Disraeli was not off the mark even in law when he stated: “I repeat . . . that all power is a trust — that we are accountable for its exercise — that, from the people, and for the people, all springs, and all must exist”. Fraud on power voids the order if it is not exercised bona fide for the end designed. Fraud in this context is not equal to moral turpitude and embraces all cases in which the action impugned is to effect some object which is beyond the purpose and intent of the power, whether this be malice-laden or even benign. If the purpose is corrupt the resultant act is bad. If considerations, foreign to the scope of the power or extraneous to the statute, enter the verdict or impel the action, mala fides or fraud on power vitiates the acquisition or other official act.”

53. This Court cannot also lose sight of the fact that the petitioners are petty shopkeepers whose livelihood is directly and exclusively dependent upon the shops in question. They are lawful tenants who

earn their daily bread from these establishments. Any arbitrary administrative action of Municipal Commissioner resulting in closure of the shops, despite a clear cut finding by the Engineering Wing declaring them safe, subsequently would not only be illegal but would also amount to a direct infringement of the petitioners' fundamental right to livelihood guaranteed under Article 21 of the Constitution of India. Administrative discretion cannot be exercised in a manner that jeopardizes the subsistence of citizens without lawful justification. The petitioners were subjected to prolonged closure of their shops, avoidable litigation and mental anguish on the basis of an initial report which has since been found to be factually incorrect upon a technically detailed inquiry conducted under judicial supervision. Such circumstances also warrant deeper examination to preserve public confidence in institutional reports and regulatory processes. Besides, the implication and fallout of such false reports in nation building more particularly, when a building which was actually safe but declared unsafe at the behest of the landlord is of serious concern.

54. It pains this Court to note that how these poor shopkeepers would have survived during the intervening period when the shops in question were their sole source of livelihood. They have remained entangled in avoidable and uncalled-for litigation, for no fault attributable to them for such a long time. This prolonged closure of their establishments has caused financial hardship and disruption of their daily sustenance, which this Court cannot overlook while adjudicating the present controversy.
55. Applying the aforesaid principles to the facts of the present case, the record *prima facie* reveals that the initial report declaring the building unsafe has been completely discredited by a detailed inquiry conducted under judicial supervision. Despite this, the said report was acted upon to the grave detriment of the petitioners. This Court is *prima facie* satisfied that there exist serious circumstances warranting an inference that the initial unsafe report may have been engineered at the instance or under

the influence of the landlord, with an oblique motive to oust the lawful tenants by bypassing the legally prescribed civil process for ejectment. This court cannot countenance a situation where false documentation and engineered misrepresentation was deployed as a tactical device to deprive citizens of their livelihood and to entangle them in needless and protracted litigation.

56. The Hon'ble Supreme Court while emphasizing the vital distinction between commercial and residential tenancies and the profound impact of eviction from commercial premises on the right to livelihood, in **“Gauri Shanker and Others v. Union Of India and Others”** (AIR 1995 SC 55), has held as under:

“11. It is also appropriate to state that a commercial tenancy is much more valuable and precious than a residential tenancy. In the above decision of the Supreme Court, this aspect was highlighted to the following effect in paragraph 34 of the judgment thus:

“Business carried on by a tenant of any commercial premises may be and often is, his only occupation and the source of livelihood of the tenant and his family. Out of the income earned by the tenant from his business in the commercial premises, the tenant maintains himself and his family; and the tenant, if he is residing in a tenanted house, may also be paying his rent out of the said income. Even if a tenant is evicted from his residential premises, he may with the earnings out of the business be in a position to arrange for some other accommodation for his residence with his family. When, however, a tenant is thrown out of the commercial premises his business which enables him to maintain himself and his family comes to a standstill. It is common knowledge that it is much more difficult to find suitable business premises than to find suitable premises for residence. It is no secret that for securing commercial accommodation, large sums of money by way of salami, even though not legally payable, may have to be paid and rents of commercial premises are usually very high. Besides, a business which has been carried on for years at a particular place has its own goodwill and other distinct advantages…….”

57. Furthermore, this Court reiterates that the law does not permit adoption of indirect methods to achieve what cannot be done

directly. If the intention is to seek eviction of tenants, the only lawful course available is to initiate appropriate civil proceedings for ejectment in accordance with law. The process of declaring a building unsafe cannot be misused as a tool to dispossess tenants or to scuttle their lawful occupation. What cannot be achieved directly through legal means cannot be permitted to be achieved indirectly by invoking safety concerns contrary to an authoritative technical report. Any such exercise would be a colorable use of power and an abuse of the administrative process.

58. The Hon'ble Supreme Court in **“NOIDA Entrepreneurs Association v. NOIDA & Others”, (2011) 6 SCC 508**, has reiterated the settled principle that what cannot be done directly in law cannot be permitted to be achieved indirectly by adopting circuitous methods, by holding as under:

“22. It is a settled proposition of law that whatever is prohibited by law to be done, cannot legally be affected by an indirect and circuitous contrivance on the principle of "quando aliquid prohibetur, prohibetur at omne per quod devenitur ad illud", which means "whenever a thing is prohibited, it is prohibited whether done directly or indirectly”.

23. In Jagir Singh v. Ranbir Singh & Anr., AIR 1979 SC 381, this Court has observed that an authority cannot be permitted to evade a law by "shift or contrivance." While deciding the said case, the Court placed reliance on the judgment in Fox v. Bishop of Chester, (1824) 2 B & C 635, wherein it has been observed as under:-

"To carry out effectually the object of a statute, it must be construed as to defeat all attempts to do, or avoid doing in an indirect or circuitous manner that which it has prohibited or enjoined.”

59. Similarly, in **‘State of Tamil Nadu and Others vs. K. Shyam Sunder and Others’, (2011) AIR SC 3470**, the Hon'ble Supreme Court again emphasized this doctrine under the heading **“What cannot be done directly cannot be done indirectly”** and observed as under:

“VI. What cannot be done directly—cannot be done indirectly

43. *“21. It is a settled proposition of law that what cannot be done directly, is not permissible to be done obliquely, meaning thereby, whatever is prohibited by law to be done, cannot legally be effected by an indirect and circuitous contrivance on the principle of quando aliquid prohibetur, prohibetur at omne per quod devenitur ad illud. An authority cannot be permitted to evade a law by ‘shift or contrivance’.” (See: Jagir Singh v. Ranbir Singh, AIR 1979 SC 381; M.C. Mehta v. Kamal Nath & Ors., AIR 2000 SC 1997; and Sant Lal Gupta & Ors. v. Modern Co-operative Group Housing Society Ltd. & Ors., JT 2010 (11) SC 273).*

60. Thus, this Court is of the view that one cannot adopt a different mechanism to achieve a nefarious design by scuttling the process envisaged under law, i.e., the filing of a civil suit for ejectment instead of adopting indirect method of throwing the tenants outside by getting the building declared as unsafe.

Conclusion:-

61. In the considered opinion of this Court, the impugned order dated 26.07.2025 is palpably bad in the eyes of law, being arbitrary and contrary to the binding directions issued by this Court, and is therefore liable to be set aside. Accordingly, the same is hereby quashed/set aside for the reasons recorded in the preceding paragraphs.
62. Since the committee of engineers had already submitted a detailed report pursuant to the directions passed by this Court in WP(C) No.299/2025 dated 02.04.2025, in the presence of the Additional District Magistrate, Jammu, after affording opportunity to all stakeholders and upon detailed analysis of relevant parameters, the said committee prepared a comprehensive status report in respect of each shop, stair and residential portion of the building. All concerned officers of the PWD (R&B) are signatories to the said report. The report has

neither been called in question before any competent forum nor set aside and as such continues to hold the field.

63. This Court reiterates that reopening of an issue which has already stood concluded pursuant to the directions passed by this Court, would amount to overreaching the said direction and acting in derogation to the mandate and spirit of the judgment dated 16.07.2025, wherein a specific direction was issued to reconsider the matter strictly in light of the report already submitted by the Engineering Wing. Respondent No.1 was, therefore, bound to act in compliance with the said judgment and could not have reopened the matter, which was beyond his jurisdiction and contrary to the directions of this Court.
64. In light of the foregoing discussion and the findings recorded hereinabove, this Court deems it appropriate to allow and dispose of the petition with the following directions:

a) The petitioners shall be permitted to use and occupy the shops which have been declared structurally safe and fit for public use by the Engineering Wing, and possession thereof shall be handed over to them forthwith so that they may resume their respective business activities, subject to there being no other legal impediment. Insofar as Shop No. 5 is concerned, the technical report indicates that it shall be fit for occupation only upon removal of the existing wooden plank roof and laying of an RCC slab. Respondent Nos. 6 and 7 are, accordingly, directed to carry out the said rectification expeditiously, strictly in accordance with the technical recommendations contained in the report.

b) To ensure transparency, accountability and to prevent any misuse of official process, the Chief Secretary, Union Territory of Jammu & Kashmir, shall constitute an independent inquiry committee within a period of two weeks from the date of pronouncement of this judgment, who shall examine the circumstances leading to the

issuance of the initial report declaring the building unsafe, including whether any collusion, undue influence, procedural violation or *mala fide* intent was involved. The said inquiry shall be concluded and the report thereof shall be submitted before the Registrar Judicial of this Court positively within a period of four weeks thereafter. Upon completion of the inquiry, if any officer(s) of the Public Works Department (R&B), Jammu or the Jammu Municipal Corporation is found responsible for issuing, facilitating or endorsing the misleading "*unsafe*" report, such officer(s) shall be personally liable to pay costs of Rs. 10,000/- (Rs. Ten Thousand) to each of the seven petitioners, towards compensation for loss of income, mental harassment and litigation expenses. The said amount to the tune of Rs. 70,000/- (Rs. Seventy Thousand) shall be recovered from the salaries of the delinquent officer (s) in equal proportion. However, if the inquiry discloses that the Commissioner (respondent No. 1) himself acted in derogation of the binding directions of this Court or was instrumental in disregarding the findings of the court-constituted committee, then the entire cost liability shall be borne by the Commissioner in accordance with law. The report of the inquiry committee shall be placed before this Court within a period of six weeks from the date of pronouncement of this judgment. The Registrar Judicial is directed to forward copy of this judgment to the Chief Secretary, Union Territory of Jammu and Kashmir for compliance.

c) The determination of responsibility for purposes of imposition of costs shall be made strictly on the basis of the findings recorded in the inquiry and only after affording due opportunity of hearing to the officer(s) concerned. The direction regarding personal costs shall operate subject to such determination. It is, however, directed that the

aforesaid amount of costs shall, in all circumstances and irrespective of the ultimate findings of the inquiry, be deposited before this Court within a period of four weeks from the date of submission of the inquiry report.

- 65. The writ petition is, accordingly, disposed of in the above terms along with all the connected applications.
- 66. In view of the disposal of the main writ petition, nothing further survives for adjudication in the contempt petition. Accordingly, the proceedings in the contempt petition, i.e., CCP(S) No. 382/2025 shall also stand closed.

(Wasim Sadiq Nargal)
Judge

Jammu:
05.03.2026
Michal Sharma/PS

<i>Whether the order is speaking</i>	:	<i>Yes</i>
<i>Whether approved for reporting</i>	:	<i>Yes</i>