

S. No. 14
Regular

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) No. 2366/2022
CM No. (2844/2026)

Hajira

...Petitioner/Appellant(s)

Through: Mr. Nisar Ahmad Bhat, Advocate with
Ms. Shah Bareera Fatima, Advocate

Vs.

Union Territory of J&K And Ors.

...Respondent(s)

Through: Mr. Bikramdeep Singh, Dy.AG
Mr. M. M. Dar, Advocate with
Mr. Zaffar Mehdi, Advocate

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE

ORDER
01.09.2026

1. The petitioner, through the medium of the present writ petition, calls in question the order dated 20.09.2022 passed by the J&K Special Tribunal, Srinagar, whereby the appeal preferred against Demolition Order No. SMC/ENF/2021-27 dated 04.11.2019, issued under Section 253(1) of the J&K Municipal Corporation Act, 2000, came to be dismissed.
2. The case set up by the petitioner is that she is owner of land comprising Survey Nos. 699/610/106, 559/377/107 and 608/105 situated at Barthana, Qamarwari, PC Depot, Srinagar. Building permission was initially granted in her favour by the Srinagar

Municipal Corporation vide Order No. 4132 of 2019 dated 18.07.2019 for raising a four-storeyed mixed-use building, subject, inter alia, to the condition that the eastern and western sides of the building were to remain blind. During execution of the construction, certain deviations were made, including provision of windows on the eastern and western sides. The petitioner thereafter obtained another building permission dated 14.09.2019, whereby permission was granted for raising the second and third floors over the existing double-storeyed structure and the deviations were regularized as reflected in the duly authenticated plans.

3. Subsequently, on a complaint stated to have been lodged by respondent No. 5, the Srinagar Municipal Corporation issued Demolition Order No. SMC/ENF/2021-27 dated 04.11.2019. The violations alleged therein included construction of a room measuring 17' × 15' at the top floor and provision of windows towards the side which, according to the Corporation, was required to remain blind. Aggrieved of the demolition order, the petitioner approached the J&K Special Tribunal. During the proceedings, the Tribunal also obtained a report from a Technical Expert. On consideration of the matter, however, the Tribunal dismissed the appeal vide order dated 20.09.2022, which has led to the filing of the present petition.
4. Ld.Counsel for the petitioner submits that the Tribunal failed to appreciate the effect of the subsequent building permission dated 14.09.2019, whereby the deviations pertaining to the eastern and western sides had already been regularized. It is further urged that the structure measuring 17' × 15' at the top was necessitated by

technical considerations relating to roofing and accumulation/fall of snow, while keeping the overall height of the building within the permissible limit.

5. Per contra, ld. counsel for the Srinagar Municipal Corporation and private respondent, submits that the petitioner had raised construction in deviation of the sanctioned building plan and that the Technical Expert appointed by the Tribunal had also noticed deviations, including conversion of the floor meant for parking into a utility floor and erection of windows towards the side required to remain blind. It is, accordingly, submitted that the Tribunal committed no illegality in dismissing the appeal.
6. Heard learned counsel for the parties and perused the record.
7. The initial building permission dated 18.07.2019 undoubtedly required the petitioner to keep the eastern and western sides of the building blind. It is equally borne out from the record, however, that the subsequent permission dated 14.09.2019 specifically permitted raising of the second and third floors over the existing double-storeyed building and also provided for “regularization of deviations granted as shown in the enclosed plans duly authenticated.” The subsequent permission, therefore, had a material bearing upon the controversy relating to the windows/openings on the eastern and western sides. The record indicates that the deviations existing at the relevant stage had been subjected to consideration by the competent Municipal authority and regularized in terms of the authenticated plans. The Tribunal was, therefore, required to examine the precise scope and effect of the permission dated 14.09.2019 before returning

a finding that the petitioner continued to be in violation of the requirement of keeping the eastern and western sides blind.

8. The demolition order impugned before the Tribunal principally referred to the provision of windows on the blind side and the construction of the room measuring 17' × 15' at the top floor. The Technical Expert subsequently noticed certain other deviations, including conversion of the floor earmarked for parking into a utility floor. Such subsequent factual developments required proper examination with reference to the sanctioned plans, permissions and the nature and timing of the alleged deviations.
9. The Tribunal also appears not to have adequately dealt with the petitioner's specific plea regarding the structure measuring 17' × 15' at the top floor. The petitioner had attributed the same to technical requirements associated with the roofing of the building so as to prevent snow from falling upon adjoining properties while maintaining the permissible overall height. Whether such construction constitutes a permissible feature or an actionable deviation is a question which requires consideration on the basis of the sanctioned plans, applicable building regulations and proper technical material.
10. The J&K Special Tribunal, being the final fact-finding forum in an appeal arising out of an order passed under the J&K Municipal Corporation Act, 2000, was required to examine these material aspects and return findings upon the precise nature and extent of the alleged deviations. The effect of the subsequent permission dated 14.09.2019, in particular, could not have been overlooked while

determining whether the alleged violation relating to the eastern and western sides continued to subsist.

11. In view of the above, this Court is of the considered view that the impugned order dated 20.09.2022 suffers from non-consideration of material factual aspects and, consequently, cannot be sustained. It would, however, not be appropriate for this Court, in exercise of writ jurisdiction, to record any final finding regarding the legality or otherwise of each alleged deviation, the same being a matter which is required to be determined by the Tribunal upon proper appreciation of the sanctioned plans, permissions, technical/field reports and the applicable law. Accordingly, the writ petition is **allowed**. The order dated 20.09.2022 passed by the J&K Special Tribunal, Srinagar is **set aside**.
12. The matter is remanded to the J&K Special Tribunal, Srinagar for consideration afresh. The Tribunal shall, after affording due opportunity of hearing to all concerned parties and after obtaining such field/technical reports as may be considered necessary, examine the matter in the light of the sanctioned building permissions, authenticated plans and applicable law and thereafter pass a reasoned order expeditiously. It is made clear that this Court has not expressed any final opinion on the merits of the alleged deviations, and all questions in that regard are left open for determination by the Tribunal.
13. Pending fresh determination of the appeal by the Tribunal, the parties shall maintain status quo with respect to the subject matter. The parties shall appear before the J&K Special Tribunal, Srinagar on

22.09.2026, without awaiting any further notice. The writ petition,
along with all connected application(s), stands disposed of in the
above terms.

(SANJAY PARIHAR)
JUDGE

SRINAGAR:

01.09.2026

Akhil Dev

