

Serial No. 11
Regular Cause List

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

**WP(C) 238/2023
CM(447/2023) c/w
CCP(S) 152/2023**

SHOWKAT ALI KHAN

... Petitioner(s)

Through Mr. Fayaz Ahmad Lone, Advocate

Vs.

Union Territory of J&K and Ors.

...Respondent(s)

Through: Mr. Ilayas Laway, GA for R 1-6 &
Mr. Hashir Shafiq, Advocate for R 7 & 8

CORAM:

HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

**ORDER
25.03.2025**

1. In the instant petition filed under Article 226 of the Constitution of India, the petitioner herein has prayed for following reliefs:-

Certiorari thereby quashing and setting aside the whole parallel proceedings initiated by respondent no. 7 Additional District Magistrate including quashment of impugned order passed in the matter by Additional District Magistrate, Pulwama vide order No. 730-34/DMP/JC dated 11.10.2022 as the order impugned has been passed is without having any legal justification and authority under law.

The respondents be restrained from making any illegal interference with the construction and land beneath of the petitioner.

2. The background facts under the cover of which the aforesaid reliefs are being prayed by the petitioner are that the petitioner being owner in possession of land being 19 marlas falling under survey No. 4342 situated at Khrew Pampore intended to construct a residential house thereon and for that purpose, applied to Municipal Committee Khrew, Pulwama for grant of permission, which consequently came to be granted vide order dated 12.11.2020 *inter alia* permitting the petitioner to raise the construction on a built up area of 58 x 17 sq fts while maintaining proper setbacks.

It is being stated that the petitioner undertook the constructional activities pursuant to the permission in tune therewith, however, the adjacent land owner being respondents 8 and 9 herein started interfering in the raising of the said construction by the petitioner and got the Municipal Authorities as well involved therein, compelling the petitioner to file a suit before the court of Musniff, Pampore along with an application for interim relief against the private respondents herein as also the Municipal Authorities, wherein, in the application for interim relief, the said court by an interim order allowed the petitioner to raise the construction, however, strictly in accordance with the permission.

It is stated that during the pendency of the said suit and in presence of the interim order passed therein, the private respondents got the Revenue Authorities involved in the matter even without challenging the interim order passed by the civil court and lodged a complaint before the Deputy Commissioner, Pulwama, wherein proceedings came to be initiated by the Additional District Magistrate, Pulwama being respondent 7 herein and in terms of impugned order No. 730-34/DMP/JC dated 11.10.2022, respondent 7 called upon the Executive Officer Municipal Committee, Khrew to seal the construction raised by the petitioner.

3. The petitioner herein has challenged the impugned order/communication dated 11.10.2022 *inter alia* on the grounds that the respondent 7 has no jurisdiction to deal with the matter *qua* the construction raised by the petitioner even if the petitioner may have deviated in the process of raising of such construction.
4. **Objections** to the petition have been filed by the respondents.
5. In the objections filed by respondents 1, 5 , 6 & 7 it is being stated that upon receipt of a complaint from two neighbours of the petitioner, namely, Mohammad Shafi Bhat and Ashiq Ahmad Sheikh that the petitioner is raising construction in violation of the permission, various legal infirmities were noticed in the matter and a team was constituted headed by Tehsildar Awantipora for spot inspection who upon the said inspection found that the construction has been raised in violation of the building

permission granted and that the land upon which the construction has been permitted in fact is classified as Madani as per the revenue records requiring permission for conversion from the competent authority and owing to the said reasons, the construction raised by the petitioner was directed to be sealed in terms of the impugned order.

6. In the objections filed by respondent 2 a similar stand has been taken which has been taken by respondents 1, 5, 6 & 7.
7. In the objections filed by respondents 8 & 9 to the writ petition it is being stated that the petitioner connived with the authorities of the Municipal Committee and obtained the permission, when in fact the petitioner have had earlier applied for raising construction of a shopping complex over the land in question which however had been declined.

It is being further stated that upon a complaint filed by the answering respondents before Deputy Commissioner, Pulwama a team was constituted for spot inspection which team found the construction is being raised in violation of the permission and consequently the Municipal Authorities came to be directed to stop and seal the construction raised by the petitioner.

It is being lastly stated that the order under challenge in the petition has been passed by the respondent 7 in consonance with law in force in that the construction raised by the petitioner threatens the residents of the locality.

Heard learned counsel for the parties and perused the record.

8. Perusal of the record available on the file would reveal that admittedly the petitioner herein came to be accorded sanction for construction of a double storied residential house under and in terms of the permission No. MC/KH/BPC/20/138 dated 20.11.2020 pursuant to Section 203 of the J&K Municipal Act, 2000 by respondent-4. The said permission stands accorded to the petitioner subject to various terms and conditions including the condition that in case of any deviation from approved site building plan, the construction shall be demolished at the cost of the petitioner and the sanction will be deemed to have been revoked without serving any notice.

9. It is significant to mention here that the Act of 2000 provides a full-fledged mechanism *qua* the violation or contravention of a sanction granted to any person for raising the construction. A reference in this regard to following section 211 becomes imperative:-

Section 211:- Penalty for disobedience

(1) Should a building be begun, erected or re-erected—

(a) without sanction as required by sub-section (1) of section 203 ; or

(b) without notice as required by sub-section (2) of section 203 ; or

(c) when sanction has been refused ;

(d) in contravention of the terms of any sanction granted ;

(e) when the sanction lapsed ; or

(f) in contravention of any bye-law made under sanction 204 or, in the case of a building, of which the erection has been deemed to be sanctioned under sub-section (5) of section 208, if it contravenes any scheme sanctioned under sanction 205 , the municipality may by notice to be delivered to the owner within six months from the completion of building, require the building to be

altered in such manner as it may deem necessary, within the period specified in such notice :

Provided that the municipality shall require a building to be demolished or altered so far as is necessary to avoid contravention of a building scheme drawn up under section 205 :

Provided further that where the erection or the work has not been completed, the Executive Officer may by the same or separate order, whether made at the time of the issue of the notice under this sub-section or at another time, direct the person to stop erection or work till the expiry of the period within which an appeal against the order of demolition if made, may be preferred under sub-section (1) of sanction 212 :

Provided further that if any notice issued by the Executive Officer or Secretary, as the case may be, under this section on the ground that a building has been begun or has been erected in contravention of the terms of any sanction granted or in contravention of any bye-law made under section 204 the person to whom the notice is issued may, within fifteen days from the date of service of such notice appeal to the municipality and subject to the provisions of section 212, 264 and 269, the decision of the municipality shall be final :

Provided further that the copy of the final order of the municipality shall be given free of costs to the appellant immediately after it is made.

(2) Where the owner of the building submits the revised plan, after the work has been stopped by him or the work is completed by him and deviation from the sanctioned plan are minor in nature, the municipality may, subject to the special or general directions of the Government under sub-section (3), compound the cases of deviation.

Explanation.— For the purpose of this sub-section the expression “minor” shall not include—

(a) addition of a storey beyond the sanctioned plan ;

(b) erection of a building—

(i) on any Government land or the land vested in municipality or a local authority ;

(ii) by covering any public road, street, path or drain. (3) Without prejudice to the provisions contained in this Act the Government may, from time to time, give such special or general directions in the matters of policy in relation to the compounding of cases involving deviations from the sanctioned plans as in its opinion are required to be followed by the municipality for compounding such cases under sub-section (2) of this section.

(4) Notwithstanding anything to the contrary contained in this Act the municipality may, after affording a reasonable opportunity of being heard, deny or withdraw the civic amenities including water and sewerage connections, if the owner of the building makes deviations from the sanctioned plan by addition of a storey beyond the sanctioned plan or

erection of a building on any Government land, or land vested in the municipality or by covering any public road, street, path or drain.

(5) Any person failing to comply with the direction to stop erection or work under second proviso to sub-section (1) shall be punishable with fine which may extend to one thousand rupees and when the non-compliance is a continuing one, with a further fine, which may extend to fifty rupees for every day during which the non-compliance continues.

As is manifest from the plain reading of section 211 *supra*, a person violating the terms of a sanction or raising construction in contravention thereof could be proceeded against by the authorities provided under the Act of 2000, be it the Executive Officer or Secretary of the Municipal Committee. Neither the Deputy Commissioner/District Magistrate nor Additional Deputy Commissioner/Additional District Magistrate has been provided to be any authority under the Act of 2000 in general or under section 211 of the Act of 2000 to deal with the matter of violation of the terms of any sanction or contravention thereof.

10. Since Additional Deputy Commissioner/District Magistrate respondent 7 herein while taking cognizance of the complaint filed by the respondents 8 & 9 has intervened in the matter of the violation of the sanction alleged by respondents 8 & 9 by the petitioner herein and in the process in terms of the impugned order has directed the Municipal Committee concerned to seal the construction of the petitioner in question, the respondent 7 herein indisputably has acted without any competence and jurisdiction in the matter, thus rendering the impugned order dated 11.10.2022 legally unsustainable.

11. Viewed thus for the aforesaid reason alone the instant petition deserves to be allowed.

12. Accordingly, the petition is allowed and by issuance of a writ of certiorari impugned order/communication dated 11.10.2022 is quashed leaving it open to the concerned competent authority under the Act of 2000 to proceed in the matter against the petitioner in the event the petitioner is found to have violated the permission granted to him for raising construction in terms of sanction dated MC/KH/BPC/20/138 dated 20.11.2020.

13. *Disposed of.*

CCP(S) No. 152/2023

In view of the disposal of the main petition as above, the instant contempt petition need not to be proceeded with. Accordingly, contempt notice issued y is recalled and contempt proceedings *closed*.

(JAVED IQBAL WANI)

JUDGE

SRINAGAR:

25.03.2025

"S.Nuzhat"