HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT JAMMU

WP(C) No. 3617/2026

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Zaffer Ul Khan @ Zaffer Ullah Khan .....Petitioner(s)/Appellant (s)

Through: Mr. Rohit Verma, Advocate.

vs

Member, J&K Special Tribunal, Jammu & Ors. .....Respondent(s)

Through: None.

CORAM: HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT
16.11.2026

(ORAL)

1. Petitioner has invoked extraordinary writ jurisdiction of this Court, under Article 226 of the Constitution of India, to assail order dated 04.11.2026, passed by Jammu and Kashmir Special Tribunal, Jammu ["the Tribunal"], whereby an appeal preferred by him under Section 13 of J&K Control of Building Operations Act, 1988 ("the Act" for short) came to be dismissed.

2. As factual matrix of the case would unfurl, a notice dated 09.03.2024 under Section 7(1) of the Act came to be issued to the petitioner, whereby he was asked to show cause, within 48 hours, as to why the Khilafwarzi/violations detailed in the notice be not sealed/demolished. It was followed by final notice dated 17.09.2024, under Section 7(3) of the Act, whereby he was directed to remove the violations, within five days from the service of the notice.

3. The final notice under Section 7(3) of the Act came to be assailed by the petitioner contending inter alia that land in question measuring 10 marlas, covered under Survey No. 8, situated near Graveyard, Masjid Mohalla, Bagh-e-Bahu,

came into the possession of his father in the year 1975 and thereafter it has been in his possession for over two decades, upon which residential building in question came to be raised. According to the petitioner, his case for regularization of the colony, where his house is situated remained pending with the Government. He has placed on record the electricity and water bills and some communications in support of his contention.

4. It was contention of the petitioner that when one Sudesh Kumar, residing in his locality, started raising construction of his residential house on Forest land without any approved plan, he filed a complaint against him before the respondents and impugned demolition notice came to be issued against him at the behest of said Sudesh Kumar.

5. The petitioner impugned the demolition notice under Section 7(3) of the Act before the Tribunal primarily on the ground that land in question was not under the jurisdiction of Jammu Municipality and no permission was required in the year 1975, when his home came to be constructed.

6. The plea was opposed by the respondents, *inter alia*, on the grounds that petitioner was not owner of the subject land and he raised a four-storeyed building over the State land, without permission from the competent authority.

7. According to the respondents, the whole structure raised by the petitioner is against the Building Bye-laws, J&K Municipal Corporation Act, 2000, and since violation was major in nature, seriously affecting the planned development of the city and without permission from the competent authority, it was not compoundable.

8. Learned Tribunal dismissed the appeal preferred by the petitioner primarily on the ground that he failed to produce any evidence of his ownership.

9. Petitioner is aggrieved of the impugned order primarily on the ground that both the notices under Sections 7(1) and 7(3) of the Act are *void ab initio* for want of jurisdiction.

10. It is primary contention of the petitioner that building in question came to be raised in 1970s/80s, well prior to the coming into force of the Act and respondents have failed to determine age of the building scientifically through any expert agency, carbon dating, architectural analysis or any other accepted method, after his specific plea that it was constructed by his father in the year 1975, when area was not under the jurisdiction of Municipal Corporation.

11. According to the petitioner, the documentary evidence, including the electricity bills, water bills, marriage card and his appointment in the Government service, would conclusively establish that a fully constructed residential house existed on the site prior to 1988 and he, along with his father, has been residing there since 1975.

12. It is also contention of the petitioner that he never admitted encroachment on the State land. He only stated long-standing possession through his father since 1975 and sought regularization of the colony. According to the petitioner, respondents have not produced any revenue record to establish nature of the land, which according to him is a Wakaf land.

13. Another ground urged by the petitioner is that respondents have failed to consider the reply submitted by him to the show cause notice under Section 7(1) of the Act and proceeded mechanically to issue final notice under Section 7(3), thereby violating the principles of natural justice, and no opportunity of being heard was accorded to him.

14. Having heard Mr. Rohit Verma, learned counsel for the petitioner, I have gone through the writ record.

15. Concededly, petitioner has failed to produce any evidence with respect to his ownership. The petitioner, denying the allegation that he has raised a four-storeyed residential house over the State land, has contended that land in question is in the nature of Wakaf. However, he has neither placed on record any document with respect to the allotment of land in his favour by the State or the Wakaf authorities or any other competent authority.

16. Be that as it may, fact of the matter remains that petitioner has raised unauthorised construction over the land in question without any valid permission from any authority.

17. Petitioner has questioned the impugned order passed by the Tribunal primarily on the ground that learned Tribunal has failed to consider vital aspect of the matter that building in question came to be raised by his father in the year 1975, when the land underneath was not under the jurisdiction of the respondent Municipality and no permission for erection was required. Pertinently, petitioner has said so on the strength of the electricity and water bills and some communications annexed with the petition. However, the electricity and water bills annexed by the petitioner in the present petition are of the year 1991 and thereafter, when the area in question admittedly came under the jurisdiction of the respondent Municipal Corporation.

18. Be that as it may, writ Court is not the forum to decide disputed factual questions, whether the disputed structure predates the datum line or was previously allowed to be raised by the authorities. These disputed questions of fact cannot be entertained by this Court in exercise of its writ jurisdiction and can only be resolved in appropriate civil proceedings, and even their existence would not automatically entitle an encroacher to continue with the construction without valid permission from the competent authority.

19. The long possession, payment of taxes, electricity bills, water bills or even payment of user charges would neither create any title nor equity in favour of a person who is alleged to have encroached upon a land. In other words, long possession for decades over a disputed structure, payment of electricity or water bills and even shop establishment certificates would neither confer ownership status nor prevent demolition, if the structure is found to have been raised without an approved building plan. A challenge can hold weight only if the alleged violator is able to produce evidence of ownership, official land allotment papers, a valid lease deed, or evidence that land or structure was wrongly surveyed by the officials.

20. Hon'ble Supreme Court, in its long line of decisions, has clearly held that unauthorised construction cannot be allowed to be perpetuated and a construction raised in contravention of the Acts/Rules would be construed as illegal and unauthorised, which must necessarily be demolished. It cannot be legitimised or protected solely under the ruse of the passage of time or citing inaction of the authorities or by taking recourse to the excuse that substantial money has been spent.

21. In **M.I. Builders (P) Ltd. vs. Radhey Shyam Sahu; (1999) 6 SCC 464**, the Apex Court held that there is no alternative to the construction, which is unauthorised and illegal, to be dismantled.

Relevant abstract contained in para 13 reads as below:

> *"13. There is no alternative to the construction which is unauthorised and illegal to be dismantled. The whole structure built is in contravention of the provisions of law as contained in the Development Act. The decision to award contract and the agreement itself was unreasonable. The construction of the underground shopping complex, if allowed to stand, would perpetuate an illegality. Mahapalika could not be allowed to benefit from the illegality. A decision of this Court in Seth Badri Prasad and others vs. Seth Nagarmal and others (1959 (1) Supp. SCR 769 at 774) was referred to, to contend that the court could not exclude from its consideration a public statute and since the construction of the underground shopping complex was wholly illegal it had to be dismantled. No question of moulding a relief can arise as the builder made construction on the basis of the interim order of this Court and at its own risk."*

22. In a similar fact situation, Supreme Court in **Esha Ekta Apartments Coop Housing Society Limited vs. Municipal Corporation of Mumbai; (2013) 3 SCC (Civil) 89**, held that courts are expected to refrain from exercising equitable jurisdiction for regularisation of illegal and unauthorised constructions.

Relevant observation for the ease of reference is extracted below:

> *"56. We would like to reiterate that no authority administering municipal laws and other similar laws can encourage violation of the sanctioned plan. The Courts are also expected to refrain from exercising equitable jurisdiction for regularization of illegal and unauthorized constructions else it would encourage violators of the planning laws and destroy the very idea and concept of planned development of urban as well as rural areas."*

23. The aforesaid principle came to be reiterated by Supreme Court in **Supertech Limited vs. Emerald Court Owner Resident Welfare Association and Ors.; (2021) 10 SCC 1**, by holding that illegal constructions have to be dealt with strictly to ensure compliance with the rule of law.

Relevant paragraph reads as under:

> *"160.From commencement to completion, the process of construction by developers is regulated within the framework of law. The regulatory framework encompasses all stages of construction, including allocation of land, sanctioning of the plan for construction, regulation of the structural integrity of the structures under construction, obtaining clearances from different departments (fire, garden, sewage, etc.), and the issuance of occupation and completion certificates. While the availability of housing stock, especially in metropolitan cities, is necessary to accommodate the constant influx of people, it has to be balanced with two crucial considerations – the protection of the environment and the well-being and safety of those who occupy these constructions. The regulation of the entire process is intended to ensure that constructions which will have a severe negative environmental impact are not sanctioned. Hence, when these regulations are brazenly violated by developers, more often than not with the connivance of regulatory authorities, it strikes at the very core of urban planning, thereby directly resulting in an increased harm to the environment and a dilution of safety standards. Hence, illegal construction has to be dealt with strictly to ensure compliance with the rule of law."*

24. Similar observation came to be made by Hon'ble Supreme Court in **Kerala State Coastal Zone Management Authority vs. Maradu Municipality; (2021) 16 SCC 822,** by reiterating that illegal and unauthorised constructions put up with brazen immunity cannot be permitted to remain.

25. The aforesaid principle came to be reaffirmed by Hon'ble Supreme Court in **Rajendra Kumar Bharjatya & Anr. vs. U.P. Avas Evam Vikas Parishad &**

Ors.; 2024 Supreme (SC) 1199, whereby it was held that unauthorised constructions cannot be legitimised by the passage of time or by the inaction of authorities.

26. If we approach the present case with the aforesaid principles of law enunciated by the Hon'ble Supreme Court, it is clear that contention of the petitioner in the present case that building in question has existed for more than 50 years will not clothe him with any right in law, because it is well settled that there cannot be any estoppel against law. Delay on the part of the enforcement agencies, heavy investment by a violator or administrative lapses of the authorities cannot be shields against demolition of an illegally raised structure. Therefore, contention of the petitioner that action on the part of the respondents is arbitrary in nature and violative of the principles of natural justice is nothing but a fig leaf of defence, which can hardly have any basis in law.

27. For what has been observed, analysed and discussed above, petitioner has failed to make out a case for intervention. Hence, present petition is dismissed in limine.

(Rajesh Sekhri)
Judge

Jammu
16.11.2026
Abinash

Whether the judgment is speaking? ***Yes***
Whether the judgment is reportable? ***Yes***