
(1998) 09 J&K CK 0003
In the Jammu And Kashmir High Court
Case No : O.W.P. No. 781 of 1989

Ab. Rashid Badu	Vs	APPELLANT
Executive Officer		RESPONDENT

Date of Decision : 10-09-1998

Acts Referred:

Jammu and Kashmir Municipal Act, 2008 — Section 222

Citation : AIR 1999 J&K 87

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

Advocate : Z.A. Qurashi, for the Appellant; R. Bazaz, Government Advocate, for the Respondent

Judgement

T.S. Doabia, J.—An order passed by the Secretary to the Srinagar Municipality, by which a building application submitted by the petitioner

was rejected is subject matter of challenge in this petition. The order of rejection reads as under:--

... rejected until the shed constructed within the premises without permission not dismantled.

2. The further fact is that against the construction of the shed which was constructed without permission a notice was issued by the Municipality.

This was subject matter of challenge before the J. and K. Special Tribunal Srinagar. On 7-3-89 an order was passed directing the parties to

maintain status quo. As to what was the final out come of this appeal is not known to any of the parties.

3. In case the appeal stands decided and in case any direction has been given by the Tribunal vis-a-vis the Shed in question then that has to be

implemented and naturally to be taken note of by the Municipality also. If the

matter is still pending a direction is given to the Special Tribunal to

see to it, the matter is decided now and in any case not later than four months from the date copy of the order passed by this Court is made

available to the Tribunal the Registry shall send a copy of this order to the Tribunal.

4. The reasons given for rejection be examined. The petitioner submits that this is not a ground for rejecting the building application. He submits

Section 222 of Municipal Act confers power on the respondents Municipality to reject the building application. The parameters within which the

application is to be rejected, have been laid down. Reference is being made Section 222 of the Act. It is submitted that the ground referred to

above does not fall within the purview of Section 222 (2). It is submitted that Section 222 (2) of the Act in so far as it empowers the Executive

Officer to reject any application seeking permission to raise any building for any reasons to be communicated in writing is ultra vires to the

Constitution and is to be struck down for the simple reason that it gives an arbitrarily power to the Executive Officer. It is stated that there are no

guidelines laid down in Section 222 (2) of the Act. It is stated that this section confers unfettered, unchecked power on the Executive Officer.

5. Before proceeding further Section 222(2) of the Act be noticed. This reads as under:--

222. Powers of Executive Officer to refuse erection or re-erection of building :--

(1)

(2) The Executive Officer may refuse to sanction the erection or re-erection of any building for any other reasons, to be communicated in writing to

the applicant, which he deems to be just and sufficient, as affecting such building, or if the land, on which it is proposed to erect or re-erect such

building, is Government property or rests in the Council and the consent of the Government or, as the case may be, of the Council has not been

obtained, or if the title to the land is in dispute between such person and the Council of the Government.

6. It be seen that the Executive Officer of the Municipality has been conferred with power to reject the building for any reason. It be seen that the

permission has not been granted as the petitioner has already raised a shed without the sanction of the committee. A notice as indicated above was

given for its demolition. The purpose of the act is to see that the building activity in Municipal areas is under taken in a planned manner. This would naturally mean that the building permission is to be granted within the four corners of Act. If a person who has already committed a breach of the provisions of the Act is asked to first get the same rectified then that can be taken as a good and sufficient ground for rejection of the building application. In any case equitable jurisdiction under Article 226 can not be exercised where a person has already committed breach of mandatory provisions of Municipal Act. Courts do and should take human and sympathetic view of matters. That is very essence of justice. But considerations of judicial policy also dictate that the tendency where some advantage has been gained by violating statutory provisions has to be curbed. Any interference can embolden the errant into the belief that gains achieved by illegal means can be retained. Such benevolence is antithesis of writ jurisdiction. In this view of the matter, I do not find any justification to interfere with the order passed by the Municipality.

7. It is however, made clear that in case any direction has been given by the Tribunal in the appeal referred to above, the municipality would take notice of that and proceed with further. Accordingly following directions are given to respondents :

- (i) the respondents committee would examine as to what order has to be passed in the Tribunal.
- (ii) if any direction has been given vis-a-vis the shed then that be taken note of and in that event matter be decided afresh.

8. Disposed of accordingly.