

(2023) 05 J&K CK 0009

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No. 641 Of 2015, IA No. 1 Of 2015

Amrita Puri

APPELLANT

Vs

J And K Special Tribunal And Ors

RESPONDENT

Date of Decision : 08-05-2023

Acts Referred:

Jammu And Kashmir Control Of Building Operations Act, 1988 — Section 7(3)

Citation : (2023) 05 J&K CK 0009

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : Rohit Kohli, Harshwardhan Gupta

Final Decision : Disposed Of

Judgement

Sanjay Dhar, J

1. A only grievance projected by the petitioner in this writ petition is that by virtue of the impugned order, the J and K Special Tribunal has, despite observing that there was no unauthorised construction undertaken by the petitioner and asking her to file an undertaking that the she shall not use the premises for commercial purposes, allowed the impugned notice under Section 7(3) of Control of Building Operation Act to remain intact.

2. It appears that the contesting respondents issued a notice under Section 7(3) of Control of Building Operation Act against the petitioner, alleging therein that the petitioner has put the premises situated at Plot No. 280, Sector No. 2, Channi Himmat, Jammu to commercial use. The said notice came to be challenged by the petitioner before respondent No. 1-Tribunal by way of an appeal. While disposing of the appeal vide the order impugned, the learned Tribunal observed that there is no unauthorized structure existing on spot and that the only grievance of the contesting respondents was that the petitioner is putting the premises to commercial use, regarding which, the petitioner had given an undertaking before the Tribunal that she will not use the premises for commercial

use. Infact it was the case of the petitioner that she had never put the premises to commercial use and she had only let out the premises to a company for residential use of its employees, which cannot be termed as commercial use. Taking note of the undertaking furnished by the petitioner, the learned Tribunal disposed of the appeal with a direction to the petitioner to file an undertaking before the contesting respondents to their satisfaction that she will not put the structure for any commercial use without obtaining proper permission from the competent authority. It was further provided that if the respondents are satisfied with the undertaking, then they will drop the proceedings under Section 7(3) of the Control of Building Operation Act and if they are not satisfied, they are at liberty to take action against the petitioner herein.

3. Heard learned counsels for the parties.

4. It has been submitted by the learned counsel for the petitioner that by passing the aforesaid direction, the learned Tribunal has infact kept the impugned notice under Section 7(3) of Control of Building Operation Act alive against the petitioner and left her at mercy of the contesting respondents. It is being urged that once the petitioner had undertaken not to use the premises for commercial purpose, the impugned notice deserved to be quashed.

5. Learned counsel for the respondents on the other hand has submitted that the order passed by the learned Tribunal is innocuous in nature, inasmuch, as the contesting respondents have been given liberty to drop the proceedings against the petitioner if they are satisfied with the undertaking and that the petitioner should not have any grievance against the same.

6. As is clear from the aforesaid contentions of the learned counsels for the parties, the controversy appears to be in a very narrow compass and can be settled by passing proper directions to further clarify the directions passed by the Tribunal. While doing so, it is to be noted that the notice that was impugned before the Tribunal relates to only usage of the premises and it does not related to any unauthorized construction.

7. Therefore, once the petitioner filed an undertaking before the contesting respondents that she would not put the premises to commercial use without permission from the competent authority, the necessary consequence thereof has to be that notice under Section 7(3) of Control of Building Operation Act issued against the petitioner shall stand quashed. Further, if the contesting respondents find that there is any violation other than the usage of premises, they would be well within their rights to proceed against the petitioner in accordance with law.

8. With the aforesaid clarification, the petition is disposed of.