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(2014) 07 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 1097 of 2013

Bashir Ahmad Shahdhar — APPELLANT

Vs

Srinagar Municipal Corp. — RESPONDENT

Date of Decision : 10-07-2014

Acts Referred:

Citation : (2014) 4 JKJ 533

Hon'ble Judges : Muzaffar Hussain Attar, J

Bench : Single Bench

Advocate : Zafar A. Shah, Advocate and Asif Hamid, Advocate for the Appellant; N.A. Beigh, Advocate and F.A. Mir, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Muzaffar Hussain Attar, J.—Vide order No. 673of 2013 dated 05/01/2013, provisional permission has been granted in favour of the

petitioner for construction of plinth of proposed three storeyed residential house after dismantling the existing house and construction of C/walling

around the plot comprising survey No. 092/43 min situated in estate Maisuma, which stands delineated in the duly attested drawings enclosed with

the permission.

2. After grant of provisional permission, the Commissioner, Srinagar Municipal Corporation (SMC), on 06-05-2013, kept in abeyance the

permission dated 05/01/2013 for raising construction upto the plinth level. It is provided in the aforesaid order that, in view of points raised by the

BSNL authorities in the under reference communication, the issue will be reviewed by the BOCA separately. The abeyance order was passed by

the Commissioner, SMC, after receiving communication dated 30-04-2013 from

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the General Manager, BSNL, Kashmir, Srinagar.

3. Though the BSNL was not party respondent in the writ petition but they had filed a caveat No. 580/2013 and on their behalf, Mr. N.A.Beigh,

Advocate, appeared before the Court, on 14-08-2013. On the said date, the Court passed a detailed order and while issuing notice in the main

case, the impugned order dated 06-05-2013 was also stayed and Mr. Beigh, learned counsel for the BSNL was specifically asked by the Court

as to whether the competent statutory Authority could refuse the permission for construction on the ground of threat perception. He had stated that

same could be refused in public interest, however, no specific provision of law was referred to by him in this behalf.

4. Respondents have not filed the Reply Affidavit in this case.

5. On 02/07/2014, in view of urgency involved and at the request of learned counsel for the petitioner, case was ordered to be listed on 03rd July,

2014. On the said date case was heard in part and was ordered to be listed on 07th July, 2014 and then at request, it was ordered to be listed on

10th July, 2014.

6. It is submitted at the bar by learned counsel for the petitioner that in pursuance of the permission granted to the petitioner, he has constructed the

plinth. Learned counsel also submitted that there is no law which would prevent the competent statutory Authority to issue permission for

construction of residential house for security reasons of any State or central authority. Learned counsel further submitted that there is no provision

in Jammu and Kashmir Control of Building Operations Act, 1988 and Jammu and Kashmir Control of Building Operations (Revised) Regulations

2001, which can authorize the competent statutory Authority to deny permission for raising construction on the basis of threat perception. Learned

counsel further stated that the BSNL is a stranger to the aforesaid Act of 1988 and Regulations of 2001 and on request of a person, who satisfies

all the prescribed legal requirements, permission for raising construction can not be denied to him. Learned counsel, accordingly, prayed for setting

aside of the impugned order.

7. Mr. N.A.Beigh, learned counsel for the BSNL, however, submitted that the competent statutory Authority, BOCA, has to accord consideration

to the concerns of BSNL. He submitted that by raising of construction, the Micro

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Wave Towers and other machinery existing in the adjoining

BSNL premises will get affected and even the security of BSNL personnel may be jeopardized.

8. Having ones own residential house to live in is definitely one of the important facets of living a hassle free life. It is an essential component of right

to life guaranteed under article 21 of the Constitution of India. When a citizen satisfies the prescribed legal requirements for raising construction of

residential house or for construction of any other nature, it becomes duty of the concerned statutory Authority to consider claim for grant of

permission for raising such construction.

9. It is of common knowledge that not only the prices of constructional material keep on sky rocketing but even the cost of labour component

keeps on increasing. A person may be in a position to raise construction at the time when he applies for grant of permission but because of rising

cost factor, he may not be in a position in the next year in case permission is denied to him or he is prevented from raising construction for other

reason. Such action will certainly affect his right guaranteed under article 21 of the Constitution of India.

10. In this case, permission for raising of plinth has been granted and, as submitted at the bar, same has been constructed. The respondent - SMC,

has to consider claim of the petitioner for grant of permission for raising of construction above plinth level. The abeyance order dated 06/05/2013,

in the facts of this case, is unsustainable in law for the following reasons:

a. The abeyance order has been passed without affording opportunity of hearing to the petitioner;

b. It has been passed without spelling out as to what were the concerns projected by the BSNL Authorities;

c. It suffers from lack of application of mind as it does not disclose the actual reasons for keeping it in abeyance and it is not mentioned as to which

of the statutory provision is infringed.

11. For the above stated reasons, writ petition is disposed of along with connected IAs. The impugned order bearing No. SMC/PS/Com/945-50

dated 06-05-2013, forming annexure (A) to the writ petition, is set aside.

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