

(2024) 02 J&K CK 0031

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 1044, 1026 Of 2022

Ghulam Nabi Mir & Anr

APPELLANT

Vs

UT Of J&K & Ors

RESPONDENT

Date of Decision : 26-02-2024

Acts Referred:

Citation : (2024) 02 J&K CK 0031

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : Azhar-Ul-Amin, Momin Khan, M. A. Makhdoomi

Final Decision : Disposed Of

Judgement

Rajnesh Oswal, J

WP(C) No.1044/2022

1. Mr. Azhar-ul-Amin, Advocate, shall respond to the preliminary objection raised by Mr. M. A. Makhdoomi appearing on behalf of private respondent in respect of maintainability of the petition.

2. List on 02.03.2024.

WP(C) No.1026/2022

1) The petitioners through the medium of present petition have impugned order dated 25.02.2022 whereby the J&K Special Tribunal, in a revision petition preferred by the respondent, has set aside order dated 10.11.2021 by virtue of which the construction raised by the respondent was sealed. The order has been assailed on the ground that the learned Tribunal has observed that the petitioners instead of acting on the observations of the Tribunal for accord of fresh consideration had passed the sealing order. It is stated that the respondent had undertaken construction in violation of the status quo order passed by the learned Tribunal and considering the case of the respondent pursuant to the

directions of the Tribunal was entirely a distinct and separate issue. It is further urged by the petitioners that the learned Tribunal has assigned the reason in the order that Rule 2.1.2 deals with unauthorized construction and buildings and the offending structure has been raised after obtaining proper valid building permission from the competent authority. It is further averred that the learned Tribunal has placed reliance upon the reports submitted by Police Station, Kothibagh, on 09.12.2021 and 09.02.2022 to the SMC authorities that no construction was being raised on spot of the said dates as there was no question of raising construction on spot when the building had already been sealed vide order dated 28.09.2021, which fact has not been taken note of by the learned Tribunal.

2) The respondent has filed his response stating therein that he had constructed the building as per the building permission but due to necessary architectural changes, there were some deviations and, accordingly, he approached the petitioners with application dated 06.12.2021 for regularization of deviations but the said application was not decided by the petitioners till the time they filed the present petition and rather annexed rejection order dated 22.03.2022 with their writ petition. It is also averred that against the rejection order dated 22.03.2022, the respondent has already filed a revision petition before the J&K Special Tribunal.

3) Mr. Moomin Khan, learned counsel for the petitioners submitted that the petitioners are aggrieved only in respect of the finding returned by the learned Tribunal that the petitioners instead of acting upon its directions passed the impugned order of sealing and that no fresh construction was being raised on spot as per reports dated 09.12.2021 and 09.02.2022 as it could not have been made the basis for passing the order impugned as the building in question stood seal prior to the submission of the aforesaid two reports. He further submitted that the construction was sealed only when the respondent violated the order of status quo passed by the learned Tribunal vide order dated 10.08.2021. Mr. Moomin Khan further argued that the learned Tribunal could not have branded the construction raised on spot as 'authorized construction', more particularly when the learned Tribunal had already directed the petitioners to accord consideration to the application of the respondent for revised building permission in a timebound manner. He further submitted that the concern of the petitioners is that no fresh construction be raised without any order from the competent authority.

4) Per contra, learned counsel for the respondent vehemently argued that the learned Tribunal has rightly passed the impugned order and there is no infirmity in the said order and the petitioners have wrongly rejected the application preferred by the respondent for accord of fresh construction to his revised building permission.

5) Heard and perused the record.

6) The perusal of the record depicts that the respondent against the demolition notice dated 26.07.2021 preferred a statutory appeal which was disposed of by the learned Tribunal by directing the petitioners to accord fresh consideration in the light of revised building permission application submitted by the respondent in a timebound manner and simultaneously the order of demolition was kept in abeyance and the parties were directed to maintain status quo with regard to the offending structure. The record further depicts that the respondent was issued show cause notice dated 20.09.2021 whereby he was called upon to show cause why the structure/building in question be not sealed. In the said show cause notice, it was specifically mentioned that the Ward Officer vide his communication dated 14.09.2021 reported that fresh construction was being raised on spot in violation of the status quo order. When the said notice was not responded to by the respondent, order dated 10.11.2021 was issued. The said order was impugned by the respondent in a revision petition which was allowed by the Tribunal vide order dated 25.02.2021 which is impugned in the present petition.

7) As the learned counsel for the petitioners has submitted that the petitioners are only concerned that no fresh construction is raised on the structure which is subject matter in question, as such, this Court would not like to go into the merits of rival claims of the parties, more particularly in view of the fact that the learned Tribunal is already seized of the matter in the revision petition preferred by the respondent against the rejection of application for regularization of the deviation submitted by the respondent.

8) In view of above, the present writ petition is disposed of by directing SHO P/S Kothibagh and Ward Officer Ward No.2 of Srinagar Municipal Corporation to ensure that no fresh construction is raised on spot. It is further directed that the reasons assigned by the learned Tribunal while passing the impugned order shall be ignored by the Tribunal while deciding the revision petition preferred by the respondent and shall proceed in the matter in accordance with law, un-influenced in any manner by any observation made by it in the order impugned.