

(2023) 11 J&K CK 0004
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 2213 Of 2023

Hotel Welcome Gulmarg

APPELLANT

Vs

UT Of J&K And Ors

RESPONDENT

Date of Decision : 03-11-2023

Acts Referred:

Land Grant Rules, 2021 — Rule 12

Citation : (2023) 11 J&K CK 0004

Hon'ble Judges : N.Kotiswar Singh, CJ;M.A. Chowdhary, J

Bench : Division Bench

Advocate : Sharaf Wani, Illayas Nazir Laway

Final Decision : Disposed Of

Judgement

N. Kotiswar Singh, CJ

1. Heard Ms. Sharaf Wani, learned counsel for the petitioner, and also heard Mr. Illayas Nazir Laway, learned GA, for the respondents.

2. In this petition, the petitioner has challenged the order bearing No. GDA/F-PIL/2022/1614 dated 13.08.2022 passed by the Gulmarg Development Authority. The petitioner further seeks a direction upon the respondents to allow renovation/repair of the hotel building under the name and style of Welcome Hotel, situated at Site No. 1, Plot No. 2, in Gulmarg.

3. It is the case of the petitioner that the petitioner has been running the aforesaid hotel business under the name and style of Hotel Welcome at Gulmarg since 1978, as a lessee in terms of permission granted by the then Gulmarg Project Organization (now Gulmarg Development Authority).

4. According to the petitioner, in terms of the extant policy, the lease would continue for 40 years and would normally be extended by another 40 years, and as such, under normal circumstances, the lease would remain valid till now.

5. Be that as it may, during this period, the need for repairing of the aforesaid

premise became necessary for which permission was sought from the Gulmarg Development Authorities. The Gulmarg Development Authorities granted conditional permission vide order dated 13.08.2022, based on a report submitted by the Court-appointed Commissioners in PIL No. 14/2012. The relevant portions of the said conditional permission granted by the Gulmarg Development Authority read as follows:

"Refer to the abovementioned subject matter, it is to inform that your application for repairs of bathroom/tilling etc. repairs room ceiling, paneling repairs of room flooring, repairs/replacement of doors/windows of rooms, repairs renovation of staff hut replacement of 580 No. GI Sheets of roof, erection of canopy over the entrance gate, renovation of parking area/compound repairs/ replacement repairs of bathrooms/tilling etc. repairs room ceiling, paneling repairs of room flooring, repairs / replacement of doors/windows of rooms, repairs renovation of staff hut, replacement of 580 No.G.I Sheets of roof, erection of canopy over the entrance gate, renovation of parking area/compound repairs /replacement of outer wooden paneling of outer wooden paneling, was put before BOCA meeting held on 26.05.2022 and 19.07.2022 for taking the decision, wherein it was decided that:

'BOCA agreed in principal to grant permission for certain repairs, subject to some conditions". Among others, the conditions of seeking environmental clearance from JKEIAA has been kept for grant of permission by the BOCA, which may be submitted to this office before proceeding further in the matter.

It was further observed by BOCA that "the hotelier has made deviations from the Permission and exceeded the permitted construction area by 0.36 marlas (however, formal permission could not be granted because of revelations about illegal encroachment)there is non-availability of old site plan. BOCA is of the considered opinion to make the Hon'ble High Court Government apprised of the facts for approval/orders, before granting present permission".

The decision of BOCA was accordingly submitted to the Hon'ble High Court for approvals, and further the matter stands taken up with the Government for necessary approvals and orders.

Therefore, the formal permission can only be granted after the furnishing of environmental clearance from JKEIAA and receipt of approval / orders from the Govt."

6. Ms. Sharaf Wani, learned counsel for the petitioner, submits that in the case of the petitioner, the environmental clearance from Jammu and Kashmir Environment Impact Assessment Authority is not necessary, inasmuch as the petitioner runs a hotel which is beyond the ambit of the Environment Impact Assessment Authority in terms of S.O. 1533(E) of 2006. Since, the petitioner's hotel does not come under the purview of the aforementioned S.O., the environmental clearance is not required, as insisted by the Gulmarg Development Authority.

7. Accordingly, it has been submitted that there should not be any difficulty on the part of the Gulmarg Development Authority to accord formal permission to the petitioner in order to make necessary renovations, which have been recommended by the Judges Committee appointed by this Court in the aforementioned PIL.

8. In this regard, Ms. Sharaf Wani, learned counsel for the petitioner, has drawn our attention to the recommendation of the Judges Committee in which the following has been specifically mentioned:

"v. Application of Shri Riyaz Ahmad Shahdad, proprietor, Hotel Welcome for permission to effect repairs/renovations in his hotel:-

Shri Riyaz Ahmad Shahdad, Proprietor Hotel Welcome Gulmarg, has sought for permission to carryout some needful repairments/renovations in his hotel. Upon spot inspection by the Committee, the following repairments/renovations were found needful:

- a) Replacement of 6 to 8 tin sheets in the roof.
- b) Tiling of six numbers of bathrooms.
- c) Repairment of staff hut.
- d) Erection of wooden canopy over the entrance gate.
- e) Renovation of compound

The repairments/renovations are, accordingly, recommended."

9. Mr. Illayas Nazir Laway, learned GA., for the respondents, on the other hand has submitted that the refusal of the Gulmarg Development Authority to grant permission for undertaking the aforesaid repairs are, for the following, inter alia, reasons:

- a. The petitioner's lease has already expired in 2018, which is not disputed by the petitioner.
- b. In the meantime, a new land policy has been formulated by the Government, under which, if the lease has expired as stipulated in Rule 12 of the Land Grant Rules, 2021, the land would revert back to the State.
- c. Since there is no valid lease as on date, the petitioner cannot undertake any repairs.
- d. Further, the petitioner's hotel is not registered with the

Department of Tourism, as the registration has also expired on 31.03.2002. Therefore, permission for carrying out repairs/renovation cannot be granted to petitioner's hotel, as it is being operated without registration form the concerned authority.

e. The order dated 13.08.2022 that has been challenged by the petitioner is not a permission but merely an information, outlining the proposed course of action that could be taken by the authorities regarding the petitioner's request for permission to make necessary renovation/repairs of the hotel.

f. The recommendation made by the Judges Committee for allowing the renovations was based on concealed facts, inasmuch as the petitioner did not portray the correct picture before the Judges Committee.

10. Thus, we are confronted with conflicting claims regarding the prayer for making renovation and objections from the authorities, which would require proper adjudication by us.

11. However, the fact remains that despite the respondents' insistence that the petitioner's hotel registration has expired or that the lease has expired, the petitioner continues to operate the hotel business and till date the respondent authorities have not stopped the operation or running of the hotel.

12. We have also noted that the repairs sought by the petitioner and recommended by the Judges Committee as reproduced above, are minor in nature, but essential for the proper and efficacious running of the hotel. If the hotel is operational and the authorities have not raised objections to this main and essential act of the petitioner of running the hotel, there seems to be no reason why the supplementary and collateral act of repairs as mentioned above cannot be allowed. These repairs appear to be minor in nature and do not involve substantial change in the structure but are merely intended to plug the deficiencies and make the existing structure better habitable.

13. In our assessment, the replacement of 6 to 8 tin sheets in the roof as also recommended by the Judges Committee does not, in any way, alter the fundamental character of the building. Similarly, the tiling of six number of bathrooms or repairing of the staff hut, which are essential for the convenience of the residents/guests and for smooth operation of the business, also do not change the basic character of the structure. Likewise, the erection of wooden canopy over the entrance gate cannot be considered a major alteration. However, as regards renovation of compound, it has not been explained in detail. Accordingly, we direct that any renovation of the compound shall be done without making any structural changes and must be in accordance with the permission which has been earlier granted. Thus, we are of the view that the permission for renovation/repair as recommended by the Judges Committee may be granted as these do not involve any major structural change.

14. We have, however, kept in mind the serious objections raised by the authorities, as mentioned above, and that similar issues are pending consideration before this Court in PIL No. 14/2012, since 2012. At the same time, we are also mindful of the fact that the tourism is booming in the Union Territory of Jammu and Kashmir and there is substantial increase in the inflow of tourists. If the existing structures and the infrastructures are not in a position to

cater to the needs of the tourists, and if these are not permitted to undergo renovation, wherever, these are required, it may result in severe inconvenience to the tourists.

15. Accordingly, we are of the opinion that the petitioner would be at liberty to undertake the necessary repairs/renovations as recommended by the Judges Committee as mentioned above, at his own risk and expense.

However, it is made clear that these renovations/repairs will be without any deviation from the original permit granted by the authorities and have to be also strictly in terms of the recommendations of the Judges Committee.

16. At this stage, when this order has been dictated in the open Court, Mr. Illayas Nazir Laway, learned GA, submits that, under these circumstances, nothing remains to be decided in the writ petition, as the final relief has been virtually granted to the petitioner and accordingly, the writ petition may be disposed of.

17. In view of the above submission made by Mr. Illayas Nazir Laway, learned GA, without making any observation as regards the rival contentions of the parties and on the merit of the issues raised which we leave these to be decided in the appropriate proceeding, we close this petition with the above liberty granted to the petitioner for making renovations/repairs as mentioned above. However, liberty is also granted to the respondents to proceed against the petitioner in accordance with the applicable rules in the event of any violation of the law.

18. With the above observations and directions, the present petition is disposed of.