
(2016) 04 J&K CK 0034

In the Jammu And Kashmir High Court

Case No : OWP No.388 of 2016 and MP No.01 of 2016

Maresh Kumar Raina

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 21-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Jammu and Kashmir Control of Building Operations Act, 1988 — Section 7, Section 8

Citation : (2016) 3 JKJ 669

Hon'ble Judges : Mr. Mohammad Yaqoob Mir, J.

Bench : Single Bench

Advocate : Mr. Gagan Basotra, Advocate, for the Petitioner; Mr. Vikram Sharma, Advocate, for the Respondent

Final Decision : Disposed off

Judgement

Mr. Mohammad Yaqoob Mir, J. - Petitioner seeks quashment of the notice issued under Section 7(1) of the J&K Control of Building

Operations Act, 1988 dated 10.02.2016 and also the notice issued under Section 8(1) of the said Act.

2. It is projected that the petitioner had acquired a portion of land measuring 14~18 sq ft by virtue of partition. After acquiring the same in the

year 1999, he has constructed a shop on the ground floor and also a Hall on the 1st Floor. Further it has been stated in the petition that the

petitioner is using the said structure for parking and the hall (room) as Store-room. It is also added that the petitioner was not residing there.

3. According to the respondents, the petitioner has undertaken the construction which was reported by the field officer as having been raised

without proper permission as required under the J&K Control of Building Operations Act. It is in the same background notice under Section 7(1)

of the J&K Control of Building Operations Act alongside notice under Section 12(1) of the said Act was issued on 10.02.2016 asking the

petitioner to discontinue the operation of the unauthorized construction. An irresponsible approach of the petitioner constrained the respondents to

issue notice under Section 8(1) of the said Act directing the sealing of the premises which has been sealed and it is only thereafter the petitioner has

filed the instant petition.

4. According to learned counsel for the petitioner, notice under Section 7(1) was never served upon him when according to the respondents;

notice has been affixed at the place of violation.

5. According to learned counsel for the respondents, the petitioner has a remedy of appeal after the further action under Section 7(3) of the said

Act is taken but that cannot be acceptable. Petitioner has every right to show cause against the grounds mentioned in the notice issued under

Section 7(1) of the Act.

6. Keeping in view the particular facts of this case, it will be in the interest of justice as well as for the advancing the object of J&K Control of

Building Operations Act to provide petitioner time to respond to the notice under Section 7(1) of the Act dated 10.02.2016 by or before

26.04.2016. Respondent authorities shall then proceed in accordance with the provisions of the Act. It could not be allowed but since notice had

been affixed at the place of violation when in the memo of petition, petitioner has claimed that he was not residing at the place of alleged violation.

7. The notice issued under Section 8(1) dated 13.02.2016 is set-aside. Premises are directed to be desealed subject to the following conditions:

(1) Responsible officer of the respondent authorities will go on spot and will note down the present position of the structure as it is.

(2) That the petitioner will file an undertaking to the satisfaction of the Registrar Judicial by or before 25.04.2016 to the effect that he will not use

the premises for any commercial activity nor will effect any type of change in the premises till the matter is settled by the authorities.

8. The officer who was under legal obligation to report the violation to the concerned authorities has already been proceeded administratively.

Setting aside of notice under Section 8(1) shall not in any manner effect the administrative action so initiated.

9. Disposed of, as above.