

(2024) 05 J&K CK 0013

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No. 2110 Of 2017

Mohammad Amin Bhat

APPELLANT

Vs

State Of J&K & Others

RESPONDENT

Date of Decision : 01-05-2024

Acts Referred:

Jammu And Kashmir Civic Laws (Special Provisions) Act, 2014 — Section 1, 1(3), 3
Jammu And Kashmir Development Act, 1970 — Section 12(2)

Citation : (2024) 05 J&K CK 0013

Hon'ble Judges : Sanjeev Kumar, J

Bench : Single Bench

Advocate : Salih Pirzada, Syed Musaib

Final Decision : Dismissed

Judgement

Sanjeev Kumar, J

1) The petitioner is claimably running a Guest House under the name ?Al-Hamra Guest House? at Shalimar Srinagar. The building, which housed the aforesaid Guest House, was constructed as a two storied residential building in terms of building sanction granted by the competent authority vide order No.51 of September, 2003. With a view to expand the Guest House activities and to cater to the needs of the tourists effectively and efficiently, additional space was utilized and fresh construction over an area measuring 4500 sqft was completed in the year 2004. Indisputably, the construction activity was undertaken by the petitioner without proper building permission from the competent authority.

2) The case of the petitioner as set up in this petition is that he undertook the construction without seeking proper permission from the competent authority in anticipation of regularization of his structure in accordance with the law. It is submitted that with the promulgation of the Jammu and Kashmir Civic Laws (Special Provisions) Act, 2014 ["Act of 2014"], all demolition proceedings, orders, sealing or penalty remained suspended in respect of buildings which had come

into existence upto March, 2014 and by subsequent amendments, the date of existence was extended upto September, 2017. It is pleaded that since, the building in question was immune to any demolition proceedings by operation of the Act of 2014 and, therefore, threatened interference by the respondents was questioned by the petitioner in OWP No.945/2014. While the aforesaid petition was pending adjudication in this Court, the then State Government came up with a policy promulgated vide SRO 391 dated 20th September, 2017 to regulate unauthorized constructions in certain notified areas. The grievance of the petitioner is that clause 2.2 of the policy arbitrarily excluded the areas coming under the Lakes and Waterways Development authority ["LAWDA"]. It is this Clause of the policy along with Clauses 2.9 and 3 which are challenged by the petitioner in this petition.

3) The short argument that was put forth by Mr. Salih Pirzada, learned counsel appearing for the petitioner is that Clause 2.2 of the Policy framed by the Government in terms of Section 3 of the Act of 2014 is beyond the competence of the Government. It is argued that in terms of section 3 of the Act of 2014, the Government has been authorized to formulate a policy to deal with or regulate unauthorized construction of buildings or structures in the local areas to which the Act applies and in terms of sub-section (3) of Section 1, the Act of 2014 has been extended to the local areas of Jammu, Srinagar and Katra notified under the provisions of the Jammu and Kashmir Development Act, 1970 ["Act of 1970"]. Learned counsel submits that the area Shalimar, where the offending structure of the petitioner is located, falls within the notified area of Srinagar Development Authority ["SDA" for short] and, therefore, the Government by issuing the impugned policy could not have validly excluded Shalimar area which incidentally also falls within the notified limits of J&K LAWDA. There is, however, no foundation laid for challenging Clauses 2.9 and 3 of the impugned policy nor any arguments were addressed in respect thereto during the course of hearing of the matter.

4) Having heard learned counsel for the parties and perused the material on record, I am of the considered opinion that the challenge thrown to Clauses 2.2, 2.9 and 3 of the impugned policy issued by the Government vide SRO 391 dated 20th September, 2017 is not maintainable. For facility of reference, Clauses 2.2, 2.9 and 3 of the impugned Policy are set out below:

2.2. Applicability of Police:

This police shall be applicable for a period of one year i.e. from 01.04.2017 to 31.03.2018 for the local areas of Srinagar, Jammu and Katra excluding the area coming under J&K Lakes and Waterways Development Authority.

2.9 Consequences for non-submission of application for regularization of unauthorized Constructions and Land use/Building use conversion etc.

In case an application is not submitted by the concerned Promoter/Developer/plot holder/building owner as the case may be, within the stipulated time for

regularization of un-authorized construction, following consequences shall follow:-

- i. Such construction or building shall remain as un-authorized and offense shall be treated as continuing against the promoter/developer/plot holder/building owner as the case may be and appropriate action under the law shall be initiated.
- ii. No connection for water supply and allied services like sewerage, drainage, electricity etc; shall be provided or the existing connection to be snapped as the case may be to such building.
- iii. Such unauthorized building shall be reported to the concerned Registration Authority of the Revenue Department and no sale transaction or transfer or disposal of any disposal kind shall be allowed in such unauthorized building.
- iv. Other enforcement action including demolition of the unapproved building shall be initiated.

3. The violations have been classified in three categories as given below:

- A. Building built at permissible sites but built without permission.
- B. Building built at permissible sites with permissions but having violated the permission, but without change of the land use.
- C. Buildings having resorted to the conversion of land uses.....

5) It is true that having regard to large scale violations committed by the citizens while raising constructions, both residential as well as commercial, in the cities of Jammu, Srinagar and Township of Katra, the Legislature of the then State of Jammu and Kashmir decided, as a one-time dispensation, to come up with a legislation providing for dealing with and regularizing unauthorized constructions of buildings and structures in the local areas of Jammu, Srinagar and Katra. It seems that the Government had failed to ensure rule of law in the matter of raising constructions within the notified areas of the aforesaid three major townships in the State. The situation had reached a point of no return.

6) Be that as it may, with a view to enable the State to formulate a policy in this regard, the Legislature enacted the Act of 2014 which was published in the Government Gazette on 5th March, 2014. Section 1 of the Act of 2014, which is relevant for our purpose, is set out below:

1. Short title, extent and commencement.--(1) This Act may be called the Jammu and Kashmir Civic Laws (Special Provisions) Act, 2014.

(2) It shall be deemed to have come into force from the date of its publication in the Government Gazette and shall cease to exist on 30th day of September, 2017.

(3) It extends to the local areas of Jammu, Srinagar and Katra notified under the provisions of the Jammu and Kashmir Development Act, 1970.

7) From the above it is clear, that the Act extends to the local areas of Jammu, Srinagar and Katra notified under the provisions of the Act of 1970. From the reading of Section 1 (supra), the Act of 2014 came into force with effect from 5th March, 2014 and was to cease to exist on 30th of September, 2017.

8) In terms of Section 3 of the Act of 2014, the Government was authorized to formulate a policy before 30th of September, 2017 to deal with and regulate unauthorized construction of the buildings or structures in the local areas of Jammu, Srinagar and Katra. This is evident from the reading of Section 3 of the Act of 2014, which for facility of reference is also set out below:

3. Government to formulate policy to deal with unauthorized constructions.-- Nothing contained in any law, rule, regulation, bye-law or order, for the time being in force in the State, shall prevent the Government from formulating a policy before 30th day of September, 2017 to deal with or regulate unauthorized construction of buildings or structures in the local areas to which this Act applies:

Provided that such policy shall be in consonance with the master plan as may be modified or reviewed under sub-section (2) of section 12 of the Jammu and Kashmir Development Act, 1970.

9) As is rightly pointed out by Mr. Salih Pirzada, learned counsel for the petitioner that the area/village Shalimar was, inter-alia, notified as local area under the Act of 1970 vide SRO 43 of 1971 dated 2nd February, 1971. The village/area Shalimar figures at serial No.34 of Annexure-A appended with SRO 43 of 1971. It needs to be noted that it is in terms of Section 3 of the Act of 1970, the Government is empowered to declare any area to be a local area for the purposes of the Act by issuing a notification in the Government Gazette and constitute therefor an Authority to be called as Development Authority. Section 3 of the Act of 1970 is set out below:

(1) As soon as may be after the commencement of this Act, the Government may, by notification in the *Government Gazette], declare any area to be local area for purposes of this Act and constitute therefor an authority to be called the Development Authority hereinafter referred to as the Authority.

(2) The Authority shall be a body corporate by the name of the Local Area having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall in the said name sue and be sued.

(3) Notwithstanding anything contained in this Act, the Government may on the written request of an Army officer not below the rank of Corp Commander, declare an area as Strategic Area within a local area, only for direct operational and training requirements of armed forces, which may be excluded from the operation of this Act and rules/regulations made there under in the manner and to the extent specified in the declaration and the Government may satisfy itself about the reasons cited for declaring the area as strategic area and will have

such area notified accordingly with such conditions as may be required.

10) It seems that long after the constitution of SDA, a need was felt to constitute a separate Development Authority for the preservation of Lakes and Waterways and, accordingly, the Government vide SRO 109 dated 27th March, 1997, issued a notification constituting the LAWDA and specifying the areas to be the notified areas for the purposes of Development Act to be administered by the Authority. As per Annexure-B appended with the SRO 109, area of Shalimar from Khasra Nos.1 to 1357 was declared as areas falling within the jurisdiction of LAWDA. Apparently, there is overlapping with regard to the jurisdiction of SDA and LAWDA in respect of areas comprising in Survey Nos.1 to 1357 of village Shalimar. Ordinarily and in the fitness of things it would have been prudent for the Government to exclude by a specific notification, such area from the notified areas falling in the jurisdiction of SDA. However, this did not happen.

Taking the benefit of this omission, learned counsel for the petitioner would argue that the area where the offending structure of the petitioner exists continues to be the part of SDA and, therefore, covered by the policy for regularization of unauthorised constructions issued by the Government under the Act of 2014.

11) I have given my thoughtful consideration to this aspect of the matter. The counsel for the respondents could not bring to my notice any such notification which would show that the area of Shalimar, which now falls within the jurisdiction of LAWDA in terms of SRO 109 (supra), has been excluded from the jurisdiction of SDA. However, SRO 109 of 1997 constituting LAWDA is a subsequent Statutory Order by the Government and the areas which are now declared as notified areas subject to the jurisdiction of LAWDA shall be deemed to have been excluded from the jurisdiction of SDA by necessary implication. However, the areas which fall outside Survey Nos.1 to 1357 would still be within the jurisdiction of SDA. This is the only way we can read the two SROs i.e. SRO 43 of 1971 and SRO 109 of 1997 in harmony with each other.

12) Viewed thus, I find no ambiguity in the matter and hold that the Act of 2014, by virtue of provisions of sub-section (3) of Section 1, excludes from its operation all areas comprised in different Development Authorities other than the local areas of Jammu, Srinagar and Katra administered by Jammu Development Authority, Srinagar Development Authority and Katra Development Authority respectively. The Government was, thus, well within its right to frame a policy only for these three notified areas and exclude others. The Government, thus, carried the mandate of the Act of 2014 when it promulgated policy in terms of Section 3 of the Act of 2014 by issuing SRO 391 of 2017. The benefit of the policy was rightly made available to the constructions raised upto cutoff date only within the local areas of Jammu, Srinagar and Katra and the area coming under the J&K LAWDA was specifically excluded. The plea of learned counsel for the petitioner that by framing Clause 2.2 of the Policy, the Government acted beyond its mandate is neither legally nor factually correct. The policy in terms of

Section 3 of the Act of 2014, in any case, was to be framed for dealing with and regulating the unauthorized constructions in the local areas of Srinagar, Jammu and Katra administered by their respective Development Authorities. The need to specifically exclude LAWDA arose because of overlapping of some areas falling in SDA as well as LAWDA, as is explained above. Since this Court has already held that SRO 109 of 1997, whereby LAWDA was constituted and the areas therefor were notified, was later in point of time to SRO 43 of 1971 whereby SDA was constituted and the areas therefor were notified, as such, the area like Shalimar (Survey No.1 to 1357), which was earlier within the notified area limits of SDA, shall be deemed to have been excluded therefrom by necessary implication.

13) Viewed thus, it cannot be said by any stretch of reasoning that Clause 2.2 of the Policy is beyond the mandate and competence of the Government. The petitioner has not challenged the vires of sub-section (3) of Section 1, whereby the benefit of policy to be framed by the Government in terms of Section 3 of the Act of 2014 has been extended only to the local areas of Jammu Development Authority, Srinagar Development Authority and Katra Development Authority and not to other Development Authorities like LAWDA. In the absence of any such challenge, I am not inclined to deal with the argument raised by learned counsel for the petitioner during the course of arguments to attack sub-section (3) of Section 1 of the Act of 2014 being per se arbitrary and discriminatory.

14) For all these reasons, I do not find any merit in this petition and the same is, accordingly, dismissed.