

(2018) 02 J&K CK 0001
In the Jammu And Kashmir High Court
Case No : 100 of 2017

Mohammad Ishaq Pampori

APPELLANT

Vs

State of J&K and others

RESPONDENT

Date of Decision : 16-02-2018

Acts Referred:

Citation : (2018) 02 J&K CK 0001

Hon'ble Judges : Mohammad Yaqoob Mir, Sanjeev Kumar

Bench : Division Bench

Advocate : M. M. Dar, Moomin Khan, Shuja-ul-Haq

Judgement

1. Aggrieved by the interim order dated 22.06.2017, passed by learned Single Judge in OWP No.827/2017, MP No.02/2017, instant appeal has been preferred.

2. BACKGROUND OF THE CASE: (I) Appellant applied for permission to the Municipal Corporation, Srinagar, for construction of two storied building with attic, which was granted vide building permission order No.1387 of 2015 dated 17.08.2015.

(II) Appellant again applied to the respondent Municipal Corporation for conversion of ground floor into profession office and attic floor into full floor with roofing. Respondent Corporation approved the said build plan vide order No.129 of 2017 dated 01.03.2017 for a plinth area of 2414 Sq.ft. The said order is in supersession to the earlier permission order No.1387 of 2015 dated 17.08.2015. Thereafter the appellant started the plinth work and fixed the iron rods for column work.

(III) Respondent No.2-Commissioner, SMC, subsequently issued order No.03 of 2017 dated 12.04.2017, whereby permission order No.129 of 2017 dated 01.03.2017 has been kept in abeyance until appellant maintains setbacks as per permission. It is the said abeyance dated 12.04.2017, which has been challenged by medium of a revision petition before J&K Special Tribunal, Srinagar. The revision petition has been disposed of vide detailed judgment dated 16.05.2017

with a direction that the permission order No.129 of 2017 dated 01.03.2017 shall remain intact subject to a condition that the appellant shall submit an undertaking to the effect that he will maintain the setbacks as per the said permission order and shall use the structure for residential purposes with ground floor for professional office and attic floor into full floor with roofing.

(IV) Inhabitants of Umar Colony, Lal Bazar, respondents No.7 to 11 herein, have filed writ petition(OWP) No.827/2017, wherein by way of an interim measure, following direction has been issued:

"In the meantime, taking an overall view of the matter, the operation of the impugned order dated 16th May, 2017, passed by the learned Special Tribunal, Srinagar, shall remain stayed till next date of hearing before the Bench."

(V) Aggrieved by this order dated 22nd June, 2017, instant LPA has been filed by the appellant.

3. This Court (Division Bench) vide order dated 17.07.2017, directed Chief Enforcement Officer, SMC, to visit the subject premises and point out the deviations in respect of permission order No.129 of 2017 dated 01.03.2017. The deviations were to be pointed out to the appellant who was to ensure removal within ten days.

4. Again in the order of this Court dated 09.08.2017, it is recorded that the Chief Enforcement Officer, Srinagar Municipal Corporation, on visiting the subject premises has noticed that there is an issue with regard to the dimension of the plot. He has taken up the matter with Assistant Commissioner (Revenue), Srinagar, vide his letter dated 05.08.2017. Assistant Commissioner (Revenue) was directed to expedite the process of verification so as to enable Chief Enforcement Officer, SMC, to present a comprehensive report with regard to any deviations so that same are removed by the appellant within ten days.

5. In the order of this Court dated 22.08.2017, it is mentioned that the Assistant Commissioner (Revenue) has prepared the report, copy of which was handed over to the learned counsel appearing for Srinagar Municipal Corporation. Chief Enforcement Officer, SMC, was directed to present a comprehensive report with regard to any deviations and once those deviations, if any, are pointed out, same shall be removed by the appellant within ten days.

6. In the order of this Court dated 19th September, 2017, it has been mentioned that the counsel for the Srinagar Municipal Corporation has handed over copy of a letter dated 09.09.2017 addressed by the Divisional Town Planner, SMC, to the Assistant Commissioner (Revenue) indicating therein that Tehsildar North had forwarded the fresh revenue extracts only but had not authenticated the correct site plan as per site conditions as on date. In short, site plan as per the site conditions was to be authenticated. Assistant Commissioner (Revenue), Srinagar, was directed to do the needful at an earliest.

7. In the order dated 25.10.2017 of this Court, it is recorded that the counsel for

the appellant has shown a copy of the letter written by the Assistant Commissioner (Revenue), Srinagar, to the Divisional Town Planner, Srinagar Municipal Corporation, which indicates that the authenticated site plan along with revenue extracts have been submitted to the Divisional Town Planner. Noticing so, Srinagar Municipal Corporation was directed to point out the deviations, if any, within a week so as to be removed by the appellant thereafter within one week.

8. Compliance report has been filed by the respondents No.2 to 4 wherein it is stated that during spot inspection it was found that the appellant had earlier deviated the setbacks on the front side i.e. facing towards West, inasmuch as instead of 20'-0"/21'-0", from the nearest edge of plot and 32'-0" from the central line, the setback maintained was less than the sanctioned one. However, after pointing out the deviations earlier, the appellant had removed the deviation. On the date of inspection, it was found that the existing setbacks at site on the West side were 23'-0"/29'-0". Thus no deviation has been committed on the Western side. Similarly no deviation was found on the Northern and Southern side of the structure. It has been added in the report that on the Eastern side, the setback from the Eastern edge of the plot was found to be 13'-0" instead of 21'-11" required as per the building permission. On verification, it was found that the dimensions of the structure had not been changed and, in fact, instead of permitted plinth area of 2414 sft, the appellant had constructed plinth area of 2310 sft. It is further stated that the deviation in the setback on the Eastern side was found on account of the fact that there was variation between the actual site plan existent at the spot and the plan which had been submitted by the appellant at the time of obtaining the building permission. It has been further submitted that since essentially appellant has not committed any violation with regard to the change of dimensions of the structure or the plinth area, the deviation is solely attributable to the change of the site plan of the land in question. Then it has been stated that since the sanctioned plan and the ground conditions are not in conformity with each other, the appellant has been advised to submit revised plan as per ground condition duly authenticated by the revenue authorities.

9. Appellant has filed an application on 23.01.2018 before this Court seeking direction so as to command the respondents No.1 to 4 to take into consideration the revised plan as per the ground condition of the land duly authenticated by the revenue authorities for according permission with regard to raising of construction within reasonable dispatch.

10. Keeping in view the status report filed by the respondents No.2 to 4 and the application filed by the appellant, it is clear that the sanctioned plan and the ground conditions are not in conformity with each other, that is why appellant has been advised to submit the revised plan as per ground conditions duly authenticated by the revenue authorities. The appellant appear to have acted on such advice so has filed the application praying therein that the respondents No.1 to 4 be directed to take into consideration the revised plan as per the

ground condition of the land duly authenticated by the revenue authorities for according permission with respect to raising the construction with reasonable dispatch.

11. Controversy, in effect, has been resolved. Respondents No.2 to 4 have to accord permission afresh on the basis of revised plan as per the ground conditions of the land duly authenticated by the revenue authorities. To avoid any further protraction in the litigation, various directions were issued from time to time by this Court as referred to above which now has fructified into resolution of the controversy, therefore, this appeal is allowed. Respondents No.2 to 4 are directed to accord consideration to the revised plan as per ground condition of the land duly authenticated by the revenue authorities and then to consider accord of permission for raising the construction.

12. Learned counsel for the appellant submits that since a lot of time has already been consumed, therefore, respondents No.2 to 4 may be directed to accord consideration to the revised plan and also to accord consideration for permission within some time limit.

13. Such a submission is not opposed, therefore, respondents No.2 to 4 are directed to undertake the process and finalize the same. Decision regarding grant or otherwise of the permission whatever shall be taken be conveyed to the appellant within one month.

14. The order passed by learned Special Tribunal dated 16.05.2017 is set aside. Matter is remitted back to the Tribunal for passing appropriate orders after respondents No.2 to 4 will submit the copy of the order which shall be passed by them vis-a-vis revised plan consistent with ground conditions of the land.

15. Copy of the judgment be sent to the J&K Special Tribunal, Srinagar, for information.

16. Disposed of as above.