

(2014) 10 J&K CK 0043

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 1514 and CMP No. 2465/2014

Mudasir Rasool Punzoo

APPELLANT

Vs

Municipal Committee, Handwara and Others

RESPONDENT

Date of Decision : 31-10-2014

Acts Referred:

Citation : (2015) 1 JKJ 327

Hon'ble Judges : Ali Mohd. Magrey, J.

Bench : Single Bench

Advocate : M. Moomin Khan, Advocate, for the Appellant

Final Decision : Disposed off

Judgement

Ali Mohd. Magrey, J.â?"The petitioner has filed this writ petition for issue of a writ in the nature of Mandamus commanding the respondents in

general, and respondent Nos. 6 to 9 in particular, to allow her to raise and complete, without any let or hindrance, the construction of her house

and an adjoining nursing home on the land exclusively owned and possessed by her comprised in Khasra No. 2499, measuring 2 Kanals and 01

Marla, situate at Bypass Road, Braripora, Handwara, in accordance with the building permission granted in her favour by the competent authority,

namely, respondents 1 and 2 vide order No. MC/H/2013-14/3218-22 dated 22.02.2014. The case of the petitioner is that she is a Medical

Doctor by profession, having specialization in Gynaecology, and has been practising privately for the last seven years at a privately owned clinic

under the name and style of Doctor Medicare Centre at Main Market, Handwara. She exclusively owns and possesses land measuring 2 Kanals

and 01 Marla covered under Khasra No. 2499, situate at Bypass Road, Braripora,

Handwara. With an intention to construct a house and an adjoining nursing home on the aforesaid piece of land, the petitioner approached respondent No. 1, the Municipal Committee, Handwara, for accord of requisite building permission. Processing the application of the petitioner for grant of building permission, respondent No. 2 is said to have sought No Objection Certificates from all required and concerned quarters, including the revenue authorities. Photocopies of such no objection certificates tendered by such quarters have been collectively placed on record of this petition as Annexure P3. It is stated that after receipt of the no objection certificates from different quarters and after the Chairman, Building Operation Controlling Authority, Municipal Committee, Handwara, accorded its approval, respondent No. 2, the Executive Officer of the Municipal Committee issued the requisite building permission in favour of the petitioner vide order No. MC/H/2013-14/3218-22 dated 22.02.2014. The petitioner has placed on record of this petition, photocopies of the aforesaid order as well as the approved site plan of the buildings as annexures Annexure P4 and P5. The petitioner is also said to have deposited the requisite building permission fee of Rs. 27,145.00 vide receipt dated 22.02.2014.

2. The further case of the petitioner is that after obtaining the requisite building permission, the petitioner hired the services of Architect and Design

Engineer, engaged the necessary workmen force, dumped the required building material, incurring huge sums of money, and commenced the

construction work in accordance with the approved site plant. However, it is stated, while the petitioner was constructing the plinth of the two

proposed structures, respondent Nos. 6 to 9 and their subordinate staff, without any reason or justification, started interfering with the construction

work on the assumed ground that the petitioner was raising the said constructions without any permission. It is stated that when the petitioner

supplied them the copies of the requisite building permission and approved site plan, the said respondents, feeling satisfied, left the spot, but

returned few days thereafter and confiscated the machinery and tools of the working labour force.

3. The grievance of the petitioner is that the respondents 6 to 9 have no cause, reason or even authority to interfere with, or stop, the construction

work undertaken by the petitioner pursuant to a valid building permission and site plan approved by the competent authority in due course of law.

It is further submitted that the action of respondents 6 to 9 is based on extraneous considerations and driven by oblique motives of these respondents and their subordinate staff.

4. On consideration of the averments made in the petition, the material placed on record, the submissions made by the learned counsel for the petitioner and the nature of the controversy involved, I feel it would be unnecessary to keep this petition pending on board. Therefore, with consent of the learned counsel for the petitioner, it is taken up for final disposal.

5. Order No. MC7H/2013-14/3218-22 dated 22.02.2014 issued by respondent No. 2, i.e., the Executive Officer, Municipal Committee,

Handwara, forming annexure P4 to the petition, depicts that consequent upon the approval of Chairman, Building Operation Controlling Authority,

Municipal Committee, Handwara, sanction has been accorded to the grant of Building Permission in favour of the petitioner for construction of

Nursing Home and Residential House (Single Story) on a patch of land in Survey No. 2499 measuring 02 Kanals, 01 Marla after obtaining no

objection certificates from Tehsildar, Handwara; Executive Engineer R&B, Handwara; Executive Engineer PHE, Handwara; Executive Engineer

Electric Division, Handwara; Executive Engineer, Irrigation Division, Handwara; and Incharge Khilaf-warzi Inspector concerned. Annexure P6

shows that the petitioner has deposited the requisite building permission fee of Rs. 27,145.00. Thus, the site plan and the building permission

having been approved and granted by the competent authority in accordance with the provisions of law, there seems to be no reason or ground at

all for any authority, muchless respondents 6 to 9 or their subordinate staff to interfere with the construction work of the petitioner or to stop her

from going ahead with such constructions, especially so when the vicinity is said to have been commercialized inasmuch as commercial complexes

are existing in the surroundings. As rightly put by the learned counsel, the action of the concerned respondents seems to be actuated by extraneous

considerations to achieve some oblique motives. This petition is, accordingly, disposed of together with the connected CMP, after admitting it to

hearing, with the following directions:

That the respondents in general, and respondents 6 to 9 in particular together with their subordinate staff, shall not, in any manner, directly, indirectly or otherwise, interfere with the construction work of the petitioner undertaken by her pursuant to the building permission granted in her favour by the competent authority in terms of Order No. MC/H/2013-14/3218-22 dated 22.02.2014 issued by respondent No. 2, i.e., the Executive Officer, Municipal Committee, Handwara. Further, respondent No. 5, i.e., the Deputy Commissioner, Kupwara, shall ensure that this order is strictly complied with and respondents 6 to 9 and their subordinate staff are stopped from resorting to any sort of highhandedness for extraneous and oblique motives.