

(2021) 11 J&K CK 0035

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 1270 Of 2020, Civil Miscellaneous No. 3239 Of 2020

Sadat Ahmad Qadri

APPELLANT

Vs

Competent Authority For Building Permission & Ors

RESPONDENT

Date of Decision : 15-11-2021

Acts Referred:

Jammu And Kashmir Migrant Immovable Property (Preservation Protection And Restraint On Distress Sales) Act, 1997 — Section 2(a)
Advocates Act, 1961 — Section 23(4), 29A
Commercial Courts Act, 2015 — Section 12A
Negotiable Instruments Act, 1881 — Section 138(b), 138(c)
Arbitration And Conciliation Act, 1996 — Section 23(4), 29A
Jammu And Kashmir Municipal Corporation Act, 2000 — Section 403

Citation : (2021) 11 J&K CK 0035

Hon'ble Judges : Ali Mohammad Magrey, J

Bench : Single Bench

Advocate : M. A. Qayoom, Mian Muzaffar, D. C. Raina, Sajad Ashraf, Moomin Khan

Final Decision : Dismissed

Judgement

Ali Mohammad Magrey, J

1. The petitioner has filed this petition seeking quashing of order no.142 of 2020 dated 09.07.2020 issued by respondent no.3, Joint Commissioner (Planning), Srinagar Municipal Corporation, rejecting the application of the petitioner for grant of building permission. The petitioner has also prayed for a mandamus to direct the respondents to allow the petitioner to raise the commercial construction on the leased land, as per the plans submitted by him before respondent nos.1 to 3 on the principle of deemed permission and not to cause any kind of interference with the raising of the said construction in any manner, whatsoever.

2. The case of the petitioner is this: That in terms of lease deed executed on

08.08.2013, registered on 12.08.2013 by Sub-Registrar, Srinagar, land measuring 01 Kanal and 10 Marlas, falling under Survey no.695 min, Khewat No.3, Khata No.40 situate in Mouza Nursing Garh (Solina), Tehsil and District Srinagar, was leased out by Swami Tapna Nand Ji, Chaila of Swami Sukhanandji Saraswati, Mahant Narayan Mutt, Mandir Shivji, Solina, Srinagar, to the petitioner in consideration of an amount of Rs.1,00,000/-paid as premium before execution of the lease deed and in consideration of monthly rent of Rs.2,150/- for an initial period of 40 years on the terms and conditions incorporated in the lease deed. It is averred that in terms of the stipulations in the lease deed, the lessee-petitioner is authorised and empowered to raise construction of any commercial building viz. hotel, guest house, hostel etc. and to use and allow others to use the same without any interference from the lessor. There is a photocopy of a receipt dated 23.10.2013 placed by the petitioner on record of the petition showing that subsequent to the registration of the aforesaid lease deed, Swami Tapan Nand Ji purportedly received an amount of Rs.27,32,200/- from the petitioner representing as rent to the extent of Rs.25,54,200/- for 99 years and Rs.1.78 lacs as premium, extending the lease of 40 years to 99 years. It is further averred that vide another lease deed executed on 22.02.2019 and registered by the Sub-Registrar, Srinagar, on 10.03.2019, the above named lessor also leased out to the petitioner land measuring 10½ Marlas, falling in the very same Survey, Khewat and Khata Nos. in consideration of an amount of Rs.50,000/- paid as premium on monthly rent of Rs.1500/- for an initial period of 99 years on the terms and conditions incorporated therein. Thus, in total, land measuring 02 Kanals and ½ Marla is stated to have been leased out to the petitioner.

3. It is the further case of the petitioner that with a view to raising construction of commercial building on the aforesaid land, he, after obtaining NOCs from various authorities, including Electric Inspection Division, Srinagar, Kashmir; Sewerage and Drainage Division 2nd, Srinagar, Municipal Corporation, Srinagar; Assistant Commissioner (Nazool), Srinagar; PWD(R&B) Circle, Srinagar-Budgam, submitted the same to respondent no.1 under Submit No.7452 dated 26.12.2019. It is averred that after receiving the papers from the petitioner, respondent no.3, i.e, Joint Commissioner (Planning), Srinagar Municipal Corporation, wrote communication no.SMC/BS/L/1313-14 dated 03.02.2020 to Assistant Commissioner, Nazool, Srinagar, saying that the papers were deficient as regards NOC from him. According to the petitioner, in response thereto, respondent no.9, i.e. Tehsildar, Nazool, vide his communication no.302/BP/CAN/19 dated 18. 02.2020, informed respondent no.2, i.e., the Commissioner, Srinagar Municipal Corporation, that the land was leased out to the petitioner and as per details put out in the revenue extracts, it was not Sarkar/Nazool land.

4. Thereafter, according to the petitioner, respondent no.3, instead of granting the building permission in favour of the petitioner for raising the construction of commercial building on the said land, vide order bearing no.142 of 2020 dated 09.07.2020, rejected the petitioner's application on the grounds mentioned

therein which have been reproduced by the petitioner in para 3(f)(i to iv) of the petition. On this, the petitioner is stated to have submitted an application and issued notice for demand of justice on 16.07.2020 to the respondents, seeking revocation of the order and grant of the request for building permission. It is averred that in the aforesaid notice, the petitioner stated that he had submitted before respondents 1 to 3 copies of the aforesaid lease deeds at the time he had made the application seeking the building permission, and that there was no direction passed by the High Court to withhold or reject the permission to those persons who had acquired the Mandir properties legally. According to the petitioner, in the notice he also stated that there was no contempt petition pending before the High Court and that the one, which was filed, had been disposed of by order dated 06.05.2019 and the directions issued in that petition did not pertain to the petitioner. In the notice, according to the averments made in the petition, it was further stated that the petitioner has been granted lease of the property under valid/registered lease deeds by an authorised person.

5. The petitioner also states to have filed an application before respondent no.6, the Divisional Commissioner, Kashmir, raising his aforesaid grievance before him, stating therein that the property for which he had sought the building permission had been leased out to him under valid/registered lease deeds, and that he had not encroached upon any Mandir property in any manner, whatsoever. It is stated by the petitioner that no action was taken by respondents 1 to 3 on his applications and the aforesaid notice issued by him, therefore, he has filed this writ petition impugning the rejection order of his building permission case issued by respondent no.3, on the grounds taken therein.

6. Respondents 1 to 5, i.e., the Srinagar Municipal Corporation and its officers, in their reply have contested the petition taking the preliminary grounds that none of the rights of the petitioner have been infringed; that disputed questions of facts have been raised in the petition; and that the petitioner has no cause of action against the respondents. On facts, it is stated that the petitioner applied for grant of building permission for construction of ground + four storey commercial building, having ground floor as stilt parking on the land belonging to Mandir Shiv Ji which, as per the letter of Tehsildar Nazool, bearing no.302/BP/CAN/19 dated 18.02.2020, is under the control of Sant Tapanand, Chaila. It is averred that since the land in question is the property of a Mandir, the Srinagar Municipal Corporation and other such authorities, who grant building permissions, have been directed by the Revenue Authorities, especially the Divisional Commissioner, Kashmir, in compliance to the orders of the High Court passed in Contempt petition no.217/2017 titled Sanjay Tikoo v. Mr. Baseer Ahmad Khan, to ensure that the Mandir properties were not encroached upon by any person. It is also stated that the petitioner was directed to provide the original sale deeds/lease deeds on the basis of which the proposal of the petitioner could be considered, but he failed to produce the same before the Competent Authority. On the above grounds, it is stated that the petitioner's proposal was rejected. It is further averred that the contention of the petitioner

that he may be allowed to initiate the construction on the basis of deemed sanction is grossly misconceived.

7. Respondents 6 and 7 in the preliminary objections taken in their reply have stated that because the lease executed by the mahant in favour of the petitioner is not tenable in the eyes of law, the writ petition by the petitioner is not maintainable. To buttress this statement, the respondents have referred to and quoted a passage from Mayne's Treatise on Hindu Law (11th Edition) in their reply. They have also referred to the judgment of the Supreme Court in *Sridhar Suar v. Shri Jagan Nath Temple*, MANU/SC0021/1976 : AIR 1976 SC 1860 wherein it has been held that it is beyond the powers of a manager to grant permanent lease at a fixed rent in the absence of unavoidable necessity etc. It is averred that no compelling reason has been mentioned in the instant lease deeds.

8. In the para-wise reply, respondents 6 & 7, reiterating the above submission, have stated that the answering respondent (Divisional Commissioner), being the custodian of the temple / migrant properties in terms of J&K Migrant Immovable Property (Prevention, Protection and Restraint on Distress Sales) Act, 1997, and Rules made thereunder, has authority to issue directions for non-alienation of the temple / migrant property, and that, whatever action has been taken by any authority pursuant to the lease deeds executed contrary to law is illegal.

9. The petitioner has also filed a rejoinder affidavit, primarily, responding therein to the preliminary objections taken by respondents 6 and 7, in an attempt to demonstrate and establish the right of Swami Tapanand Ji, Chaila of Swami Sukhnand Ji Saraswati, Mahant Narayan Muth, Mandir Shivji, Solina Srinagar, to lease out the properties in favour of the petitioner. It is stated that Swami Tapanand Ji is a permanent resident of the UT of J&K. He did not migrate from Srinagar at any point of time in the past; that Swami Brahma Nandji Saraswati of Narain Mutt, Srinagar, who was in possession of landed property of Narain Mutt and Raghunath Temple alongwith the properties attached thereto in the form of shops, buildings and gardens, appointed Swami Sukhanand Saraswati as his Chaila (deciple) vide Will deed executed on 05.10.1936; that Swami Sukhanand Saraswati on his turn executed a Will deed dated 15.03.1979 appointing Swami Tapanand as his Chaila and handed over full control of the properties of Narain Mutt, consisting of Narain Mutt, Raghunath temple and other properties attached to the temple to him; that due to the floods of September, 2014, the properties of Narain Mutt, Srinagar, suffered extensive damage; that Swami Tapanand approached the Commissioner, Srinagar Municipal Corporation, seeking permission to reconstruct/repair the damaged structures; that the Srinagar Municipal Corporation in terms of Government order no.1199 of 2015 dated 16.01.2015 permitted him to reconstruct/repair the damaged structure; that since he had no money, for meeting the expenses incurable on the reconstruction/repairs of the structure, he entered into lease deeds with the petitioner; that Sawami Tapanand spent Rs.8,87,764/- on the reconstruction/repairs of the structures of the temple; that he also paid an amount of Rs.35.00 lakhs to Tariq

Ahmad Bhat, Hilal Ahmad Bhat, Muneera Akhter, sons and daughter of Late Khazir Muhammad Bhat of Khosabagh, Baghat-i-Kaniporak, Budgam for surrendering possession of land measuring

7 Kanals covered under Survey no.74-min situated at Mouza Rakh-i-Sathu, Tehsil Baghat-i-Kanipora, District Budgam in favour of Swami Tapanand. It is further averred that 'it was for paying the amount of Rs.35,00,000/- to the aforesaid persons and make them to surrender the possession of 7 Kanals of land in favour of the temple that Swami Tapanand had to execute the lease deeds dated 08.08.2013 and 22.02.2019 in favour of the petitioner so as to lease out land measuring 2 Kanal and ½ Marla, falling under Survey No.695 min, Khewat No.3, Khata No.40 situate in Mouza Nursing Garh (Solina), Tehsil and District Srinagar, for a consideration of Rs.45,64,200/-'. It is stated that lease deeds 08.08.2013 and 22.02.2019 were executed in favour of the petitioner only because there was an unavoidable necessity for him to do so. It is stated that there is no bar for a Manager/Mahant to lease out the said properties for compelling reasons. Reference in this connection is made to Section 2(a) of the J&K Migrant Immovable Property (Preservation, Protection and Restraint on Distress Sales) Act, 1997. It is averred that since Swami Tapanand has not made any sale, gift, mortgage with possession or exchange of the Mandir property, therefore, there was no restriction to the execution of the lease deeds by him in favour of the petitioner.

10. I heard learned counsel for the parties and considered the matter.

11. The first and the foremost submission made by Mr. M. A. Qayoom, learned counsel for the petitioner, is that the 'Authority' has to be deemed to have accorded the sanction to the building permission in favour of the petitioner, and that the petitioner has to be declared to be at liberty to commence with the construction of the building in accordance with his intention expressed in the notice/documents/plans submitted by him. In this regard, he referred to Clause 5.1 of the Srinagar Municipal Corporation (Building) Bye-laws, 2011 (the Bye-Laws), which says that in case the applicant has fulfilled all the requisite formalities and the Authority has failed to refuse the sanction of the building or work or upon refusal he has failed to communicate the refusal of the Building Permit to the applicant within sixty (60) days, the Authority be deemed to have accorded the sanction to the building or work and the applicant shall be at liberty to commence or proceed with such building or work in accordance with his/her intention expressed in the notice and the documents and plans accompanying the same provided it is in conformity with Master Plan/Zonal Plan/Building Bye-Laws and other instructions issued from time to time by the Government and the concerned Authority. He further submitted that the petitioner had fulfilled all the requisite formalities by 18.02.2020 and that, in terms of Clause 5.1 of the Bye-Laws, the Authority was obliged to grant or refuse the building permit and communicate the refusal, if it so intended, to the petitioner within sixty days from such date, i.e., by 18.04.2020. However, the Authority refused the building

permission vide order dated 09.07.2020. Mr. Qayoom submitted that since the Authority failed to refuse the sanction of the building permit within sixty days, therefore, in terms of Clause 5.1 of the Bye-laws, the Authority has to be deemed to have accorded the sanction. To buttress his argument, Mr. Qayoom cited and relied upon the judgments of the Court in Krishen Chand v. State & ors, 2007 (3) 263[HC] and Mahant Vidaya Puri v. State of J&K, 2015(1) JKJ 297[HC].

12. On the other hand, arguments in response to the above were advanced by Mr. Moomin Khan, learned counsel, representing the Srinagar Municipal Corporation. Since Mr. D. C. Raina, learned Advocate General, appeared in the case on behalf of respondents 6 to 9, the Court thinks it appropriate for the sake of maintaining the statutory decorum in this judgment of the prior audience of the learned Advocate General envisaged by Section 23(4) of the Advocates Act, 1961, the point in reference and the arguments of Mr. Moomin Khan would be dealt with later in the judgment.

13. Mr. Qayoom, referring to the impugned order of refusal of building permission in favour of the petitioner, next argued that the grounds mentioned therein are not at all attracted in his case. He submitted that when a statutory functionary makes an order based on certain grounds, the validity of the order has to be judged by the reasons so mentioned therein and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. To buttress his submission, the learned counsel cited the decision of the Supreme Court in Mohinder Singh v. Chief Election Commissioner, AIR 1978 SC 851.

14. This Court is of the opinion that with a view to elucidating the submissions made by Mr. Qayoom in this regard, it is necessary to extract hereunder the relevant grounds mentioned in the impugned order on the basis of which the application of the petitioner for building permission has been rejected. The order is extracted thus:

"Whereas one namely Mr. Sadat Ahmad Qadri applied for building permission on the subject cited above for construction of G+4 storey commercial building having ground floor as stilt parking;

Whereas the land on which building was proposed to be constructed by the applicant belongs to Mandir Shiv Ji under the control of Sant Tapanand, Chaila, as revealed in the letter of Tehsildar Nazool Dt: 18/02/2020 vide No.302/BP/CAN/19;"

Whereas as per the said letter of Tehsildar Nazool dated 18/02/2020, two lease deeds Dt: 12/08/2013 for 01 Kanal 10 Marlas and 03/2019 for 10 Marlas 136 Sft respectively seem (to) have been made and the applicant has not provided the said lease deeds to the competent authority;

Whereas such mandir properties including Shiv Mandir / Anand Math at Solina is subject matter of writ petition / contempt proceedings, Contempt Petition No.217/2017 titled Sanjay Tickoo V/S State & Others;

Whereas an IA No.1 of 2019 came to be filed in the above titled contempt petition No.217/2017 in which a list of various mandir properties which have been encroached have been provided, which includes the property of Shiv Mandir / Anand Math, Solina Srinagar. With regard to the said property it has been further alleged that dozens of illegal commercial and residential constructions had been allowed on the property with close nexus with SMC office and further stated that pictures of same could not be collected due to life threat issued by the locals (at the behest of non-State subject caretaker) who had illegally transferred the temple properties in their name sold by the non-State subject self proclaimed mahant of the mandir;

Whereas pursuant to the various orders passed by the Hon'ble High Court in the above titled writ/contempt petition and directions of Divisional Commissioner, Kashmir, the Srinagar Municipal Corporation has issued show cause notices dated 22.06.2020 regarding cancellation / revocation of permissions to those applicants/permitees who have previously obtained building permission on mandir properties;

Now, therefore, in light of above facts and circumstances, and in view of the fact that the applicant has misrepresented before the competent authority, the application of Mr. Sadat Ahmed Qadri s/o Mohammad Amin Qadri S/A Solina, Srinagar, for building permission on the above cited subject is rejected. Hence be informed.

By order."

Mr. Qayoom submitted that the petitioner was not a party in any of the writ petitions or contempt petition referred to in the impugned order. Therefore, any direction passed therein is not binding on him. He submitted that, in any case, the contempt petition No.217/2017 stands disposed of. He further submitted that Swami Tapna Nand Ji is not a non-local, and that he had not encroached upon any Mandir properties, but was a validly appointed Chaila having full control of the land in question. He further submitted that the petitioner has valid lease hold rights over the landed properties and that such lease deeds have not been challenged by any person. The learned counsel, referring to the averments made in the Rejoinder affidavit also submitted that the land in question actually belongs to Narain Mutt and that it is not a temple property. The learned counsel made detailed submissions to draw a distinction between a Mutt and Temple with reference to the principles of Hindu law. Citing the judgment of the Privy Council in Ram Charan v. Naurangi Lal, AIR 1933 Privy Council 75, the learned counsel submitted that a Mahant has power to create an interest in the property appertaining to the Mutt which will continue during his own life or during his tenure of office of Mahant. Alternatively, Mr. Qayoom submitted that it is permissible for a Mahant to alienate temple debutter property for the benefit of the estate of the temple. In this connection, the learned counsel, referring to the details of the compelling reasons and necessity to lease out the properties in question given in the Rejoinder affidavit, relied upon the judgment of the

Supreme Court in *Sridhar v. Shri Jagan Nath Temple*, AIR 1976 SC 1860.

15. On the other hand, Mr. D. C. Raina, learned Advocate General, invited the attention of the Court to direction (c) of order dated 09.10.2013 passed by the Court while finally disposing of the writ petition, OWP no.610/2007, *Sanjay Tickoo v. State*, whereby the State of J&K through Chief Secretary was directed to take all required steps in accordance with law for protection of religious places of petitioners. He submitted that the Government and the concerned authorities of the Administration were obliged to ensure that the Court direction was obeyed in its letter and spirit and intervene to protect the Mandir properties. Further, inviting the attention of the Court to the extracts of revenue records placed by the petitioner on the file as annexures with his writ petition, the learned Advocate General submitted that the owner of the land in the said revenue records is clearly shown to be Mandir Shiv Ji. The learned Advocate General submitted that in the Rejoinder affidavit the petitioner has, in fact, sought to put forth and introduce a fresh case that the land in question belonged to Narain Mutt, which stand is clearly belied by the revenue records produced and relied upon by the petitioner himself. The learned Advocate General submitted that since the land, admittedly, belongs to the Temple Shiv Ji, it was not, and is not, permissible for the Mahant to part with the same or to grant a permanent lease in favour of the petitioner. The learned Advocate General also, in this regard, relied upon the decision of the Supreme Court in *Sridhar v Shri Jagan Nath Temple* (supra). Reading out the contents of the lease deeds and the receipts of payments placed on record by the petitioner, the learned Advocate General submitted that the lease deeds actually are sale deeds, and that, thereby, what the Mahant could not have done directly has been done by him indirectly. So far as the ground of necessity for the estate of the Temple taken by the petitioner in his Rejoinder is concerned, the learned Advocate General submitted that it is just an afterthought on the part of the petitioner, and that such necessity has not been stated or disclosed in the lease deeds in question.

16. As to the rival submissions made, as hereinabove narrated, it needs to be observed at the outset that this Court in the present proceeding is not required to determine or decide about the title of the land, nor could such an issue be raised in the writ petition. Going by the judgment cited by Mr. Qayoom in *Mohinder Singh v. Chief Election Commissioner* (supra), this Court in its power of review is required to judge the validity of the impugned order by the reasons mentioned therein. Perusal of the impugned order reveals that there are various facts and circumstances mentioned as reasons therein which have prompted the Authority to refuse the building permission in favour of the petitioner. The principal reason mentioned therein, apparently, is that the land on which building was proposed to be constructed by the petitioner belongs to Mandir Shiv Ji under the control of Sant Tapanand, Chaila, and that pursuant to the various orders passed by the High Court in the writ/contempt petition and directions of Divisional Commissioner, Kashmir, the Srinagar Municipal Corporation has issued show cause notices dated 22.06.2020 regarding cancellation / revocation of

permissions to those applicants who had previously obtained building permission on mandir properties. The Authority has clearly mentioned the directions of the Court passed in the writ petition and the contempt petition as well as the orders issued by the Divisional Commissioner, Kashmir. The Court in the writ petition, OWP no.610/2007, Sanjay Tickoo v. State, while finally disposing it of on 09.10.2013 has issued clear direction to the State of J&K through Chief Secretary to take all required steps in accordance with law for protection of religious places of the petitioners therein. Perusal of para 5 of that order reveals that the petitioners had raised a grievance that some Mahants, who, in some cases, were non-Kashmiri Pundits, had illegally and unauthorisedly created third party interest in properties of religious places, and that action in accordance with law had to be taken for dealing with these Mahants who had illegally disposed or such properties, and that religious places were required to be protected. It is thus seen that grievance was not raised only against non-Kashmir Pundits, but against all Mahants. It is seen that the petitioners in that writ petition had raised a general grievance, not specific to any temple, and the direction so passed by the Court to the State was in rem, imposing a general liability and responsibility on the Government to protect all religious places of petitioners. The use of the words 'of petitioners' made in the order, naturally and axiomatically, referred to the religious places of Hindus. In compliance to the said direction and other orders passed by the Court in the contempt petition, according to the learned Advocate General, the Government intervened and took necessary action. The impugned order states that pursuant to the directions issued by the Divisional Commissioner, Kashmir, the Srinagar Municipal Corporation issued notices even to those persons for cancellation of building permissions in whose favour such permissions had already been issued by it, meaning thereby that the Divisional Commissioner, Kashmir, in compliance to the Court orders had issued directions to the Srinagar Municipal Corporation not only to desist from issuing building permissions for construction on the lands belonging to the religious places, but also to revoke and cancel those building permissions which the Corporation had already issued. The fact/reason thus stated in the impugned order about the orders issued by the Divisional Commissioner is not denied by the learned Advocate General, but is, in fact, admitted by him by saying that pursuant to the Court direction, the Government and its functionaries had to take action and intervene.

17. Now, it is the admitted case of the petitioner that the land in question belonged to Mandir Shiv Ji. Reference in this regard may be made to para 3(g) under the heading 'factual background of the case' of the writ petition wherein, the petitioner has stated 'that he had submitted copies of lease deeds with the application and that there is no direction passed by the Hon'ble High Court to withhold or reject the permission to those persons who have acquired the Mandir properties legally'. The extracts of revenue records placed by the petitioner with the file as its annexures also show the Mandir Shiv Ji as owner of the land. That being the factual position, given the fact that the Divisional Commissioner had

issued orders to the Srinagar Municipal Corporation in compliance to the Court's orders, it cannot be said that the said ground of refusal of building permission, clearly mentioned in the impugned order, was not attracted in the case of the petitioner.

18. As regards the alternate plea of necessity taken by the petitioner in his Rejoinder affidavit, first and the foremost, it is suffice to say that there is nothing like that mentioned in the lease deeds. In fact, such is also not the case set up by the petitioner in his writ petition. It is only by way of an afterthought that he has taken such stand in the Rejoinder affidavit and, thus, introduced a new case which he cannot be allowed to do. It may be observed here that in an attempt to substantiate his plea of necessity, the petitioner alongwith his Rejoinder affidavit has filed an affidavit of Swami Tapanad in which he has sought to make out a case that he leased out the land in question as he required the money for repairs of the structures of the temple etc. Since there was an unambiguous direction passed by the Court in OWP no.610/2007, Sanjay Tickoo v. State, directing the State of J&K through Chief Secretary to take all required steps in accordance with law for protection of religious places of the petitioners therein, if Swami Tapanad had the necessity to lease out or sell any part of the Temple properties, he was legally obliged to approach that Court in that writ petition, even if it had been disposed of, to seek necessary orders or clarification, as the case might have been, in that behalf; or else, if Swami Tapanad was aggrieved of the aforesaid Court direction in any way, the other course available to him was to file an appeal against the same. This Court in this petition, in its capacity as being a coordinate Bench, cannot overlook, ignore or undo the aforesaid direction passed by the coordinate Bench of the Court. Swami Tapanand having failed to take recourse to either of the options available to him, the Government and its all concerned functionaries are bound by the direction passed by the Court in the said writ petition and the Srinagar Municipal Corporation is not excepted. It is, therefore, immaterial that the lease deeds have not been challenged by any person. Viewed thus, the judgment of the Supreme Court in Sridhar v Shri Jagan Nath Temple (supra), cited and relied upon by Mr. Qayoom, cannot help him.

19. Coming back to the plea of deemed permission taken by Mr. Qayoom, Mr. Moomin Khan, learned counsel for respondent 1 to 5, submitted that on account of the onset of the deadly pandemic of Covid-19, there was a lockdown ordered by the Administration in the UT of Jammu and Kashmir, especially in the City of Srinagar, with effect from 19.03.2020, as a result the government offices, including that of the Srinagar Municipal Corporation, were closed. He submitted that, thereafter, the unlocking commenced from 2nd week of June, 2020 with specific direction to have only minimal attendance of the staff to avoid spread of the pandemic. He submitted that it was because of such unprecedented situation that the limitation period of 60 days provided in Clause 5.1 of the Bye-laws could not be adhered to. In this regard, he further submitted that, in fact, the Supreme Court of India was pleased to take suo motu cognizance of the situation prevailing all over the country on account of the Pandemic and passed an order

on 23.03.2020 in Suo Motu Writ Petition (Civil) No.3 of 2020 'In re: Cognizance for extension of limitation', that the period of limitation in all proceedings, irrespective of the limitation prescribed under the general law or special laws, whether condonable or not, shall stand extended with effect from 15.03.2020 till further orders to be passed by that Court in such suo motu proceedings, and that the Supreme Court was further pleased to declare that the order was binding within the meaning of Article 141 on all Courts/Tribunals and authorities. The learned counsel submitted that the aforesaid order dated 23.03.2020 was extended by the Supreme Court from time to time and finally by order dated 08.03.2021, the suo motu writ petition was disposed of with certain directions, including that the period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings. The learned counsel submitted that in light of the above and on the analogy of the directions of the Supreme Court referred to above, the period of assumed delay in passing the refusal order from 18.04.2020 to 08.07.2020 has to be excluded from computation and, therefore, it cannot be said that the refusal order was passed by the Corporation beyond the period of 60 days. In fact, he submitted that the refusal order has to be held to have been passed within the period of limitation. The learned counsel submitted that in light of the unprecedented, peculiar facts and circumstances attendant to the case, the judgments cited at the Bar and relied upon by the learned counsel for the petitioner are not attracted.

20. I have given my thoughtful consideration to the submissions made at the Bar on the point. It is true that Clause 5.1 of the Bye-laws provides that in case the applicant has fulfilled all the requisite formalities and the Authority has failed to refuse the sanction of the building or work or upon refusal he has failed to communicate the refusal of the building permit to the applicant within sixty (60) days, the Authority shall be deemed to have accorded the sanction to the building etc and the applicant shall be at liberty to commence or proceed with such building or work in accordance with the plans. It is also found that the requisite formalities in the instant case had been fulfilled on or around 18.02.2020 and, therefore, ordinarily, the period of limitation of 60 days provided under Clause 5.1 of the Bye-laws would come to an end on or around 18.04.2020; whereas the sanction of the building permission has been refused by order dated 09.07.2020. However, as rightly put forth by Mr. Moomin Khan, an unprecedented situation on account of the Covid-19 Pandemic intervened on account of which the life had come to a stand still. Taking suo motu judicial notice of the situation, even the Supreme Court was pleased to pass a general order on 23.03.2020 extending the period of limitation prescribed under the general law or special laws whether compoundable or not with effect from

15.03.2020 till further orders. The order dated 23.03.2020 was extended from time to time. Finally, by order dated 08.03.2021, while disposing of the suo motu writ petition, the Supreme Court was pleased to pass the following directions:

"2. We have considered the suggestions of the learned Attorney General for India regarding the future course of action. We deem it appropriate to issue the following directions:-

1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15. 03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.

2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15. 03.2021, is greater than 90 days, that longer period shall apply.

3. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

4. The Government of India shall amend the guidelines for containment zones, to state.

'Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements.'

3. The Suo Motu Writ Petition is disposed of accordingly."

Though a perusal of the orders passed by the Supreme Court on 23.03.2020 and 08.03.2021 reveals that the periods of limitation were ordered to be extended / excluded from 15.03.2020 till 14.03.2021 for the benefit of litigants, for example, in computing the period of limitation for filing any suit, appeal, application or instituting any proceedings, yet, since the concerned staff of the Srinagar Municipal Corporation was not immune from the peculiar situation, and taking judicial notice of the fact that the Corporation, as rightly submitted by Mr. Moomin Khan, was at the forefront of taking necessary measures in containing the spread of the Pandemic in Srinagar, on the analogy of the Supreme Court orders, referred to above, the period of limitation prescribed under Clause 5.1 of the Bye-laws can validly be deemed to have been extended/excluded for computation, especially so when the order of refusal has been passed almost

immediately after the lockdown in the City of Srinagar was eased out. Viewing thus, on account of the peculiar circumstances, the judgments cited by Mr. Qayoom are not attracted and the argument advanced by him in this regard cannot be accepted. Consequently, the question of deemed building permission in favour of the petitioner, in the given facts and circumstances, would not arise.

21. Mr. Moomin Khan, learned counsel for Srinagar Municipal Corporation also raised an objection to the maintainability of this writ petition on the ground that in terms of Section 403 of the Jammu and Kashmir Municipal Corporation Act, 2000, there is an alternate remedy of revision available to the petitioner. Section 403 says that the Government may, at any time, for the purposes of satisfying itself as to the correctness, legality, propriety or regularity of any proceeding or order passed by any officer of the Government or the Commissioner or any officer subordinate to him, call for and examine the record and may pass such order with reference thereto as it may think fit. The learned counsel submitted that going by the language of the provision, the power of revision under the aforesaid provision of Section 403 is wider in its amplitude. He submitted that from a bare glance of the language of the said Section, pursuant to the power of revision as is conferred upon Government, and, by operation of Jammu and Kashmir Special Tribunal Act, 1988, upon the Jammu and Kashmir Special Tribunal, the Government can satisfy itself as to the correctness or legality or propriety or regularity of any order. These terms are much wider and confer a greater power upon the Government/Tribunal, which is further signified by the power conferred by the Section upon the Government to pass such order with reference thereto as it may think fit. According to the learned counsel, contrary to the same, the power of judicial review is much narrower in its amplitude. Under judicial review the power of High Court is restricted to only examining whether the procedure laid down by a particular statute has been followed or not. The outcome of such exercise of power, whether right or wrong, is not open to the High Court to be interfered with. The High Court can neither substitute its own opinion with regard to the final decision which has been taken by the authority in question nor can sit in appeal over such a decision. Thus, according to the learned counsel, the revision in the instant case is an efficacious, alternate remedy as opposed to invoking the power of judicial review of the High Court. As against this, Mr. Qayoom submitted that availability of the remedy of revision is no bar to filing the writ petition. To buttress his argument Mr. Qayoom referred to numerous judgments on the point.

22. Since the Court has come to a definite conclusion on merits of the case, the question of maintainability of the writ petition is left to be decided in future in some other case. The judgments cited by Mr. Qayoom at the Bar, therefore, need not be mentioned.

23. In light of what has been discussed above, this petition is held to be without merit and, therefore, deserves to be dismissed. It is so hereby dismissed together with the connected CM.

24. No order as to costs.