

(2018) 08 J&K CK 0059
In the Jammu And Kashmir High Court
Case No : Other Writ Petition No.1545 Of 2018

Shakeela Ban @APPELLANT@Hash State Of Jammu & Kashmir & Ors

Date of Decision : 24-08-2018

Acts Referred:

Jammu and Kashmir Municipal Corporation Act, 2000 — Section 253(2)

Citation : (2018) 08 J&K CK 0059

Hon'ble Judges : Gita Mittal, CJ;Alok Aradhe, J

Bench : Division Bench

Final Decision : Disposed Off

Judgement

GITA MITTAL, CJ

1. The instant writ petition has been filed assailing the order dated 01.08.2018 passed by the Commissioner, Srinagar Municipal Corporation directing sealing of the Building/Premises/Shopping Complex constructed by the petitioner on the ground that the same was in violation of the sanctioned building plan. The Commissioner, SMC has also taken a view that petitioner is guilty of misuser of the premises having converted parking facility into utility one. The order of sealing refers to provisions of Bye-rule 2.1.2(b) of the Jammu and Kashmir Municipal Corporation (Building) Bye-Laws 2011.
2. We have queried learned counsel for the petitioner as to whether the petitioner does not have an equally efficacious remedy by way of a statutory appeal under the provisions of the J&K Municipal Corporation Act, 2000. Learned counsel for the petitioner would submit that the order of sealing having been passed under the Bye-Laws, is not appealable.
3. We have examined the provisions of the J&K Municipal Corporation Act, 2000, which for expediency may be extracted here-under:-

253. Order of demolition and stoppage of building and works in certain cases and

appeal.

(1) Where the erection of any work has been commenced, or is being carried on or has been completed without or contrary to the sanction referred to

in section 246 or in contravention of any condition subject to which such sanction has been accorded or in contravention of the provisions of this Act

or bye-laws made thereunder, the Commissioner may in addition to any other action that may be taken under this Act, make an order directing that

such erection or work shall be demolished by the person at whose instance the erection or work has been commenced or is being carried on or has

been completed within such period (not being less than seven days from the date on which a copy of the order of demolition with a brief statement of

the reasons therefore has been delivered to that person) as may be specified in the order of demolition:Â

Provided that no order of demotion shall be made unless the person has been given, by means of a notice served in such manner as the Commissioner

may think fit, a reasonable opportunity of showing cause why such order should not be made:Â

Provided further that where the erection nor work has not been completed, the Commissioner may be the same order or by a separate order, whether

made at the time of the issue of the notice under the first proviso or at any other time, direct the person to stop the erection or work until the expiry of

the period within which an appeal against the order of demolition, if made, may be preferred under sub-section (2).Â

(2) Any person aggrieved by an order of the Commissioner made under subsection (1) may prefer an appeal against the order to the Special Tribunal

within the period specified in the order for the demolition of the erection or work to which it relates.Â Â Â Â Â

4. The legislature has carefully referred to erection of work or work being carried out or completed without or contrary to the sanction referred to in

SectionÂ 246 or in contravention of any condition subject to which sanction has beenÂ accorded. On account of said contravention, the

Commissioner has been empowered to take action under the Act including an order of demolition of the work which has been commenced or is being

carried or has been completed. Subsection 1 of Section 253 clearly refers to contravention of not only the provisions of the statute, but also of the

Bye-Laws made thereunder.Â Â Â Â

5. So far as the impugned order is concerned, it refers to and sources the order of sealing to Bye-Laws 2.1.2 of the J&K Municipal Corporation

(Building) ByeLaws, 2011 as well as the J&K Municipal Building Bye-Laws Regulations.Â Â

6. In our view, the legislature did not intend to restrict the availability of the remedy of appeal under sub-Section 2 of Section 253 to an order of

demolition only. Sub-section 1 contains a clear reference to â??any other actionthat may be taken under this Actâ? which could be directed by the

Commissioner. Sealing is one such action. In any case, the Bye-Laws and the Regulations have been framed by the Municipal Corporation in exercise

of power conferred under the provisions of the J&K Municipal Corporation Act, 2000 and cannot relate or refer to any matter which is beyond the

statutory provisions. In view of the above, we are of the view that the petitioner has available an equally efficacious remedy by way of statutory

appeal under sub-section 2 of Section 253 of the J&K Municipal Corporation Act, 2000 even in respect of the impugned order of sealing passed by the

Commissioner of SMC.Â Â Â Â Â Â Â Â Â Â Â Â

7. In view of the above, learned counsel for the petitioner prays for leave to withdraw this writ petition with liberty to invoke the remedy of the

statutory appeal as aforesaid. This writ petition is, therefore, disposed of as above with liberty as prayed.Â

8. Copy of this order be supplied to learned counsel for the petitioner under the seal and signatures of Bench Secretary of this Court.