
(2021) 12 J&K CK 0024
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 2766 Of 2021

Sunita Suri

APPELLANT

Vs

Union Territory Of J&K And Others

RESPONDENT

Date of Decision : 17-12-2021

Acts Referred:

Jammu And Kashmir Control Of Building Operations Act, 1988 — Section 7(1), 7(3), 8(1)

Citation : (2021) 12 J&K CK 0024

Hon'ble Judges : Pankaj Mithal, CJ;Javed Iqbal Wani, J

Bench : Division Bench

Advocate : Tarun Sharma, Rajnish Raina

Final Decision : Disposed Of

Judgement

1. Heard Sh. Tarun Sharma, learned counsel for the petitioner and Sh. Rajnish Raina, learned counsel for the respondents 2 and 3.
2. The petitioner has come up in this writ petition against the order dated 12.11.2021 passed by the Commissioner, Municipal Corporation, Jammu refusing to de-seal the property of the petitioner i.e. 784-A, Gandhi Nagar, Jammu as the petitioner is likely to use it for commercial purposes though the land use is residential only.
3. The facts leading to the filing of the writ petition reveal that though the aforesaid property belongs to the petitioner, previously a sealing order under Section 8(1) of the J&K Control of Building Operations Act, 1988 (for short 'the Act') was passed on 01.11.2019 after issuing a notice in the name of the deceased husband of the petitioner, who had died in 2011. Accordingly, the said order was challenged by the petitioner by filing a writ petition which was disposed of with the direction that since the petitioner has already submitted a representation against the sealing on 27.01.2020, the authority will look into the matter and decide the said representation.

4. It is in pursuance of the above order that on the basis of the fresh status report to the effect that the petitioner has got done the interiors of the premises as if it is going to be used as a shop that the Commissioner came to the conclusion that the petitioner intends to use the premises for commercial purposes if it is de-sealed.

5. It may be pertinent to mention here that the petitioner in her representation dated 23.09.2021 has given an undertaking that she will not use the premises for commercial purposes. In support thereof, she has also filed her affidavit dated 22.09.2021 stating that she undertakes that she will not use the aforesaid premises for any commercial purposes.

6. In view of the aforesaid facts and circumstances and the undertaking already furnished by the petitioner, it cannot be said with any certainty at this stage that merely because the petitioner has got the interiors done in such a fashion as if it is a shop, that the petitioner is using or likely to use it for commercial purposes. The respondents cannot keep the property sealed indefinitely that too only on the apprehension of misuse of property in future.

7. It may also be pertinent to mention that if any constructions have been raised by the petitioner in violation of the bye-laws or the permission granted, the respondents are free to initiate action under Section 7(1) of the Act and pass an order under Section 7(3) of the Act, rather than resorting to sealing of the property.

8. In view of the facts and circumstances, the impugned order dated 12.11.2021 is hereby quashed with the direction to the Commissioner, Municipal Corporation to revisit the matter and to pass a fresh order whether the premises has to be kept sealed or it can be de-sealed taking into account the undertaking of the petitioner and the observations made hereinabove.

9. The Commissioner, Municipal Corporation, Jammu shall complete the above exercise, as expeditiously as possible, preferably within a period of three weeks.

10. The writ petition is disposed of.