
(2022) 12 J&K CK 0030

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 2833 Of 2022, Civil Miscellaneous No. 7135 Of 2022, Caveat No.2299, 2460 Of 2022

Tariq Ahmad Malik & Anr

APPELLANT

Vs

J&K Special Tribunal & Ors

RESPONDENT

Date of Decision : 14-12-2022

Acts Referred:

Jammu And Kashmir Municipal Corporation Act, 2000 — Section 253, 253(1)

Citation : (2022) 12 J&K CK 0030

Hon'ble Judges : Sanjay Dhar, J

Bench : Single Bench

Advocate : M. A. Qayoom, Muzaffar, Areeb Javaid Kawoosa

Final Decision : Allowed

Judgement

Sanjay Dhar, J

1) The petitioners have challenged notices bearing No.SMC/Enf/W/1051-55 dated 25.10.2022 and SMC/Enf/W/1091-95 dated 28.10.2022, as also order dated 14.11.2022 passed by respondent No.1, whereby respondents No.8 and 9 have been impleaded as parties to the appeal filed by the petitioners. Challenge has also been thrown to order dated 01.12.2022 passed by respondent No.1, whereby appeal filed by the petitioners against the impugned notices has been dismissed and certain other directions have been passed.

2) Heard learned counsel for the parties and perused the record of the case.

3) The case projected by the petitioners is that they are owners in possession of land measuring 05 kanals 17 marlas falling under Khasra No.1521 situated at Rambirgarh Partabgarh, out of which petitioner No.2 has sold 06 marlas whereas rest of the land is under their ownership and possession. It is claimed that the aforesaid land is located outside the limits of Srinagar Municipal Corporation and, as such, after obtaining permission from the concerned Block Development Officer in terms of provisions of Panchayati Raj Act, the petitioners constructed a

one storied building on the land in question. It seems that some interference was caused by Srinagar Municipal Corporation in raising of construction and in this regard two separate suits came to be filed by the petitioners before the Court of 1st Civil Subordinate Judge(Municipal Magistrate), Srinagar, in which certain interim orders came to be passed by the said Court. It also appears that respondents No.8 and 9 also filed a civil suit before 3rd Additional District Judge, Srinagar, against the petitioners, wherein an interim order has been passed, whereby the petitioners have been restrained from raising any unauthorized/illegal construction on spot, which includes the land under Khasra No.1521.

4) While the civil litigation was going on, impugned notice dated 25.10.2022 came to be issued by respondent No.4 in terms of Section 253(1) of the J&K Municipal Corporation Act, 2000, whereby the petitioners were asked to show cause as to why the construction raised in contravention of provisions of the Act be not demolished. Thereafter impugned notice dated 28.10.2022 came to be issued by respondent No.4 whereby the petitioners were directed to demolish the illegal/unauthorized construction.

5) The petitioners challenged the demolition notice dated 28.10.2022 before the J&K Special Tribunal by way of an appeal in terms of Section 253 of the J&K Municipal Corporation Act, 2000. The said appeal has been dismissed vide impugned order dated 01.12.2022 and the interim order regarding maintenance of status quo, that was initially passed in the appeal, has been vacated. Certain other directions have also been extended by respondent No.1.

6) Although a number of grounds have been urged by the petitioners in the writ petition impugning the judgment/order of respondent No.1 and the notice of demolition, yet the main thrust of argument raised by learned counsel for the petitioners was on the fact that the learned Tribunal has passed the impugned judgment/order without adhering to the principles of natural justice, inasmuch as the petitioners were not heard at all before deciding their appeal. It has been submitted that on the date when the appeal was reserved for judgment, the Presiding Officer of the Tribunal was not present and, in fact, none of the parties was present before the Tribunal, as is clear from the minutes of the proceedings dated 21.11.2022. The learned counsel has further submitted that the application of respondents No.8 and 9 for impleadment has been allowed by respondent No.1, without hearing the petitioners, on a date when the case was not fixed before it.

7) Learned counsel appearing on behalf of respondents No.8 and 9 has submitted that there has been suppression of material facts by the petitioners before the Tribunal because they have not referred to the civil litigation that was going on in respect of the subject matter of the case. It has been further submitted that, admittedly, the petitioners have raised construction on spot without obtaining any prior permission from the Srinagar Municipal Corporation and, as such, even on merits the impugned notice of demolition cannot be interfered with.

8) One thing which emerges from the perusal of the record is that the learned Tribunal has passed the impugned judgment/order dismissing the appeal of the petitioners without hearing either the petitioners or the Municipal Corporation or even respondents No.8 and 9, who were impleaded as parties to the appeal.

9) It appears from the documents produced on record that on 14.11.2022, the appeal filed by the petitioners came up for consideration before the Tribunal. On the said date, notice was issued to the respondents for filing response with a week's time and till next date of hearing, it was provided that no further construction shall be allowed and status quo shall be maintained. The matter was posted to 21.11.2022. In between 14.11.2022 to 21.11.2022, application of respondents No.8 and 9 for impleadment was allowed by the Tribunal. On 21.11.2022, neither the petitioners nor the respondents were present. Even the response was not\ filed by the Srinagar Municipal Corporation but the learned Presiding Officer reserved the appeal for orders and announced the judgment/order on 01.12.2022.

10) From the foregoing sequence of events, it is clear that the learned Presiding Officer of the Tribunal appears to have been in tearing hurry to decide the appeal without even hearing the appellants/petitioners and the Srinagar Municipal Corporation who had issued the impugned notice of demolition. Even private respondents No.8 and 9, that were impleaded as parties, were not heard before passing the impugned judgment/order. The approach adopted by the learned Tribunal clearly smacks of non-adherence to the principles of natural justice. Whatever may be the sensitivity of the issue involved and whatever may be the seriousness of the allegations against the petitioners, they could not have been condemned unheard and their appeal could not have been decided without giving them an opportunity of hearing. the Presiding Officer by showing undue hurry in deciding the appeal without even hearing the appellants, has given a complete go bye to the principles of natural justice which is intrinsic to any judicial or quasi-judicial proceeding.

11) For the foregoing reason, while no comment is being made with regard to merits of the contentions raised by learned counsel for the parties, this Court deems it appropriate to remand the case back to the Tribunal for its decision on merits after hearing the parties.

12) Accordingly, the writ petition is allowed to the extent that the impugned judgment/order dated 01.12.2022 passed by the learned Tribunal is set aside and the case is remanded to the learned Tribunal for its fresh decision on merits after hearing the parties. Till such time the matter is heard and decided by the Tribunal, no further construction shall be raised by the petitioners on spot and the official respondents shall ensure that status quo, as is existing on date, is maintained on spot. They shall, however, not take any further action in pursuance to the impugned demolition notice till the disposal of the appeal by the Tribunal. The parties are directed to appear before the Chairman of the Tribunal on 19.12.2022.

13) Having regard to the fact that the Presiding Officer of Bench No.III, that has passed the impugned judgment/order dated 01.12.2022, has acted in a manner which is absolutely de hors the principles of natural justice, the learned Chairman shall do well to assign this matter to any Bench other than the Bench No.III.

14) The appeal shall be decided by the Tribunal expeditiously, preferably within a period of one month from the date of appearance of the parties before it.

15) Copy of this order be sent to the learned Tribunal for information and compliance.