
(2022) 03 J&K CK 0022
In the Jammu And Kashmir High Court
Case No : Writ Petition (C) No. 471 Of 2022

Vijay Kumari And Another	Vs	APPELLANT
UT Of J&K And Others		RESPONDENT

Date of Decision : 09-03-2022

Acts Referred:

Control Of Building Operations Act, 1988 — Section 7(3), 8, 13

Citation : (2022) 03 J&K CK 0022

Hon'ble Judges : Pankaj Mithal, CJ; Sindhu Sharma, J

Bench : Division Bench

Advocate : Anil Sethi, Rajnish Raina

Final Decision : Disposed Of

Judgement

1. Heard Sh. Anil Sethi, learned counsel for the petitioners and Sh. Rajnish Raina, learned counsel for the respondents.
2. The petitioners, through the medium of this writ petition, have challenged the order dated 26.02.2022, passed by the Secretary, Municipal Corporation, Jammu directing for the sealing of the premises of the petitioners i.e. a shop at 7/G in Sainik Colony, Jammu in exercise of power under Section 8 of Control of Building Operations Act, 1988 (for short 'the Act').
3. It appears that a demolition order under Section 7(3) of the Act came to be passed against the petitioners on 23.03.2021 in respect of the above shop.
4. The said order was challenged by the petitioners by filing an appeal under Section 13 of the Act before the J&K Special Tribunal and an order of status quo was passed.
5. The said appeal was dismissed in default and the order of status quo was vacated. As soon as the appeal was so dismissed, the impugned order of sealing has been passed.
6. The submission of Sh. Sethi, learned counsel for the petitioners is that there is

no reason for passing the sealing order as at the relevant time the petitioners were not erecting or re-erecting any building or were contravening any provision of the Act.

7. Sh. Rajnish Raina, learned counsel for the respondents, on the other hand, submits that the petitioners are running a shop in a residential area which cannot be permitted and, the order of sealing has been passed with the intention to implement the order of demolition.

8. All this is not reflected in the impugned order, though inference can be drawn that it is only on account of the dismissal of the appeal of the petitioners that the sealing order has been passed. The validity of the impugned order is to be judged on the basis of its contents and not otherwise.

9. It is not disputed that the petitioners have already moved an application for the restoration of their appeal on 02.03.2021 and the same is pending consideration before the Tribunal.

10. In view of the aforesaid facts and circumstances, with the consent of parties, we dispose of the writ petition quashing the impugned order dated 26.02.2022 with liberty to the respondents to pass a fresh order after the restoration application of the petitioners is considered and decided, and directing the J&K Special Tribunal to consider and decide the above restoration application of the petitioners most expeditiously, preferably, within a period of six weeks from the date a copy of this order is produced before it and may also consider deciding the appeal as well, if necessary, within a period of three months.

11. The writ petition is accordingly disposed of.