

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

***Reserved on:- 04.12.2024
Pronounced on:- 11.12.2024***

**Case No. OWP No. 884/2013
IA No. 1212/2013**

Building Operation Controlling Authority,
Municipal Area, Jammu through its Joint
Commissioner Municipal Corporation, Jammu
Town Hall, Jammu.

.... Petitioner(s)

Through: - Mr. Mayank Gupta, Advocate

V/s

1. Renu Gupta
W/o Sh. Vijay Gupta
R/o Lane No. 3 Greater Kailash
Jammu.
2. J&K Special Tribunal,
Jammu.

....Respondent(s)

Through: - Mr. Sunil Sethi, Sr. Advocate with
Mr. Vaibhav Gupta, Advocate

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

PRAYER

1. Through the medium of instant petition, the petitioner is invoking writ jurisdiction of this Court under Article 226 of the Constitution of India and has sought the following relief:

- a) *“Writ of certiorari quashing the order dated 10.12.2012 of respondent no. 2 passed in case file no. STJ/51/2012 date of institution 31.01.2012 and date of decision dated 10.12.2012 titled Renu Gupta*

v/s BOCA and Ors. may kindly be issued in favour of the petitioner.”

2. Before proceeding further in the matter and to clinch the controversy in question, it is apposite to give brief resume of the facts, which, in nutshell, are summarized as under:-

FACTUAL MATRIX OF THE CASE

3. The specific case of the petitioner in the instant petition is that respondent no. 1 was permitted to raise the construction of ground floor and 1st floor with built up area of 1900sft at ground floor and 1500sft at 1st floor over the plot area of 3826sft vide Building permit no. 168/BS/2011 dated 14-05-2011. The respondent no. 1 was required to keep 20'-00 front set back 6'-6" rear set back and 6'-6" side set back at one side.

4. The further case of the petitioner is that on 28.12.2011, Khilafwarzi Inspector of the area reported that respondent no. 1 has started the construction of 2nd floor of one room, kitchen, bathroom and varandh without obtaining any building permission from the Authority. Notice nos. MJ/CEO/234/1/2011 dated 28-12-2011, MJ/CEO/234/2/2011 dated 28-12-2011 under Section 7(1) and 12(1) of J&K Control of Building Operation Act 1988 were issued to the respondent no. 1-Renu Gupta to show cause within a period of 48 hours, as to why the Khilafwarzi/violation as detailed in the notice should not be demolished. Respondent no. 1 was also directed to discontinue the construction. However, respondent no. 1 neither responded to the aforesaid notices nor discontinued the construction. Thereafter, notice no. MJ/234/3/2011 dated 21-1-2012 was issued by the Joint Commissioner (Adm)/Executive Officer JMC under Section 7(3) of

J&K Control of Building Operation Act 1988, whereby respondent no. 1 was directed to demolish the unauthorised construction within five days. It is stated that these officers have been authorized by the Authority to issue such notices vide Resolution no. 4th dated 27-11-1999 notified in the official Gazette on 3rd Feb 2000.

5. The further fact of the matter is that respondent no. 1 filed an appeal against the demolition notice dated 21-01-2012 before respondent no. 2 and respondent no.2 vide order dated 2-2-2012 directed the parties to maintain status quo on spot.

6. The further case of the petitioner is that a complete report of violation committed by the respondent no. 1 while raising the construction was submitted to respondent no. 2 for kind consideration, however, respondent no. 2 without taking into consideration the gravity and seriousness of violation, set aside the order of demolition vide order dated 10.12.2012, which is impugned in the present petition and has been challenged on the ground that the same is in violation of Regulations 10 and 11 of the J&K Control of Building Operation Regulations 1998, which provides the guidelines for making decision of construction raised in contravention to the provisions of the sanctioned plan or raised unauthorisedly. For facility of reference, Regulations 10 and 11 are reproduced as under:-

10. Appeals:(1) An appeal against the order of the authority made under Section 5 and 7 of the Act shall lie before the Chairman of the J&K Special Tribunal or such other member of the said Tribunal as may be decided by the same Chairman.

11. (1) The appellate authority may compound an offence of a minor nature specified in Sub-section (2) of these Regulations:

Provided that the compounding fee shall be worked out on the basis of rates to be notified by the Government.

(2)For the purpose of this Regulations an offence of minor nature shall include an erection or re-erection of the building which has taken place in violation of permission referred in Section 4 of the Act or deemed permission as specified in sub-clause(2)of clause (7) of these Regulations provided that such erection or re- erection,-

(i) does not violate the approved land use of area as notified in the Master plan or Town Planning Scheme,

(ii) does not violate the permissible front, rear or side setbacks prescribed in the bye laws.

(iii) does not violate by more than 10% the permissible grounds coverage as prescribed in the bye-laws: and

(iv) does not violate the permissible height of the building as prescribed in the by-laws.

SUBMISSION ON BEHALF OF THE PETITIONER

7. Mr. Mayank Gupta, learned counsel for the petitioner has argued that as per the Regulation of J&K Control of Building Operation Regulation 1998, it shows that any construction raised in violation of the Master Plan or Town Plan Scheme permissible, front, rear or side setbacks and height prescribes in the bye laws and more than 10% of the permissible ground coverage are major violations. Since the respondent no. 1 had violated the front, rear, and side setbacks of the plot area, as such, the order under Section 7(3) of the Act was passed.

8. The further case of the petitioner is that the respondent no. 1 was required to cover 50% of the plot area whereas he has covered 21% more than the permissible ground coverage of the plot area and the respondent no. 1 was permitted to raise the height of the building upto 26' from the road level, whereas, respondent no. 1 has raised the height of the Building upto 33', which is 7' more than the prescribed height and thus, the respondent no. 1 has

committed the major violations. This aspect of the matter has not been examined by the respondent no. 2 and has quashed the notice impugned dated 21.01.2012 vide order dated 10.12.2012 and by passing the aforesaid order, the respondent no. 2 has virtually allowed the major violations to stand. Thus, according to the learned counsel for the petitioner, the order impugned is illegal, which has occasioned miscarriage of justice and is required to be set aside.

9. That further fact of the matter is that respondent no. 1 was permitted to raise the construction of ground floor and 1st floor vide permit no. 168/BS/2011 dated 14.05.2011 and when the respondent no. 1 started the construction of 2nd floor notice under Section 7(1) of J&K Control of Building Operation Act, was served upon her. Since respondent no. 1 did not show any cause, and the final order under Section 7(3) of the aforesaid Act was issued to respondent no. 1 to remove the contravention at the ground floor and first floor which was raised in deviation of the sanctioned plan, she was also directed to remove the unauthorized construction raised at 2nd floor without obtaining any building permission from the authority.

10. Thus, according to the learned counsel for the petitioner, the respondent no. 2 has failed to exercise the jurisdiction vested in it and he submits that the order passed by the Tribunal is liable to be quashed. It is stated that respondent no. 2 has not considered the major violations done by respondent no. 1 and instead has allowed the major violations to stand by passing the order impugned.

11. The further case of the petitioner is that respondent no. 1 was permitted to cover 1900sft at ground floor and 1500sft at first floor whereas respondent no. 1 has covered 2306 sft at ground floor and 1880sft at first floor, as such, respondent no. 1 had covered 21% more than the permissible ground coverage at ground

floor and 16.3% more than permissible ground coverage at 1st floor. As per regulation 11 more than 10% of the permissible ground coverage is a major violation and cannot be compounded, whereas respondent no. 1 has covered 21% more area at ground floor and 16.3% more area at 1st floor and had committed major violation. The respondent no. 2 without examining this factor has set aside the demolition order and by the order impugned major violations have been allowed to stand. It is stated that the order impugned is illegal and has resulted in manifest injustice. Learned counsel for the petitioner submits that order impugned is not sustainable and requires to be set aside.

12. The further case of the petitioner is that respondent no. 1 has to keep 20' front set back, 6'-6" rear set back and 6'-6" side set back on one side. Respondent no. 1 has kept 13'.3" front set back and covered 6'-9" of the front set back with construction. Respondent no. 1 has not kept rear and side setbacks of the plot area and covered the same with construction. As per regulation 11 of J&K Control of Building Operation Act 1988 the violations of the set back are major in nature and cannot be compounded. Respondent no. 2 had failed to appreciate this aspect of the matter and held that these allegations of setback cannot be held against respondent no. 1.

13. The further fact of the matter is that respondent no. 1 had raised the construction of 2nd floor without obtaining any building permission from the Authority. Respondent no. 2 did not take any notice of the construction raised on the 2nd floor for which show cause notice was served upon her. The error is apparent on the face of the record which has occasioned miscarriage of Justice.

14. Learned counsel for the petitioner submits that respondent no. 1 was given permission for raising the construction of ground floor and 1st floor at the height

of 26', whereas she has raised the height of building upto 33' i.e., 7' more than the sanction granted by the Authority. As per regulation 11 of J&K Control of Building Operation Act 1988, the height of the building, which is more than permissible height is a major violation and cannot be compounded, as such, respondent no. 2 has allowed a major violation.

SUBMISSION ON BEHALF OF THE RESPONDENTS

15. *Per contra*, reply has been filed on behalf of respondent no. 1, wherein a preliminary objection has been raised with regard to the maintainability of the instant petition on the ground that Tribunal has rightly set aside the notice/order under Section 7(3) of the J&K Control of Building Operation Act, 1988, as the notice under Section 7(1) contained such particulars of alleged violation which were different and distinct than what has been stated in the final notice/order impugned dated 21.01.2012.

16. The further stand of the respondent is that the impugned notice/order of demolition issued by the petitioner under Section 7(3) of the J&K Control of Building Operations Act, 1988 was not in conformity with the proposal made in the show cause notice issued under Section 7(1) of the J&K Control of Building Operations Act, 1988. In the notice dated 28.12.2012 issued under Section 7(1) of the Act, it was alleged that respondent no. 1 had started the construction work on the 2nd floor without the permission of Municipal Corporation and the said notice nowhere states any violation on ground and first floor, whereas in the notice/order of demolition dated 21.01.2012 under section 7(3) of the Act it was stated that the respondent no.1 has committed violation while raising the construction of ground floor, first floor and second floor. The grounds, on which order of demolition was passed, were never conveyed to the respondent no. 1 in

the notice issued under section 7(1) of the Act nor she was ever given any opportunity to explain her position as regards the alleged violation at ground floor and first floor.

17. It is submitted by Mr. Sunil Sethi, learned Senior counsel that respondent no. 1 being lawful and absolute owner in possession of land measuring 13 ½ Marlas comprising Khasra No. 492 min. Khata no. 7 349 min. and Khewat No.16, situated in village Sunjwan Tehsil & District Jammu (now known as Greater Kaliash, Jammu), applied for grant of permission for construction on her aforesaid land from the Jammu Municipal Corporation and her claim was considered and necessary building permission was granted in her favour by the Municipal authorities. Subsequent to grant of building permission, the respondent no. 1 raised the construction on the aforesaid plot as per the approved site plan with some minor alterations here and there due to the practical difficulties which erupted during the course of construction on spot due to the nature of plot, construction and surroundings and nothing was constructed by her, which could give any cause to the petitioner to issue notice to the respondent no.1. Further, it is submitted that the nature of construction raised by her is strictly in line with the construction already existing in the area. The petitioner issued notice dated 28.12.2011 to the respondent no. 1 under Section 7(1) of the J&K Control of Building Operations Act, 1988 alleging therein that she has started construction work on the 2nd floor without obtaining permission from the Municipal Corporation. The aforesaid notice nowhere states anything about the violation on the ground and first floor. In fact, the respondent No. 1 has raised a room in the shape of Mountry on 2nd floor to keep the water tank on the Mountry, therefore, there was no violation of any sort committed by the respondent no. 1.

Subsequent to the notice under section 7(1), the petitioner issued another notice/order under section 7(3) directing her to demolish the construction. The said notice/order was issued just to harass her as the violations shown in the notice under section 7(3) of the Act were not indicated in the notice under section 7(1) of the Act, which rendered the impugned notice under section 7(3) bad in the eyes of law.

18. It is submitted that the Tribunal after evaluating the alleged violations in reference to the relevant records produced by the petitioner has passed the impugned order in which entire gamut of the case was considered and impugned notice under section 7(3) of the J&K Control of Building Operation Act, 1988 was set aside on the ground that the same was not in conformity with the provisions of law as well as in consonance with the proposal put forth in the notice under section 7(1) of the Act. It is stated that no violation on the ground as well as on the first floor was ever committed by the respondent no. 1 and this is the precise reason that while issuing notice under section 7(1) of the Act, the petitioner did not point out any violation qua ground floor and first floor. The learned Tribunal after taking note of this crucial aspect of the matter set aside the notice/order impugned under section 7(3) of the Act.

LEGAL ANALYSIS

19. Heard learned counsel for the parties at length and perused the material on record as well as the order passed by the learned Tribunal.

20. The perusal of the record tends to show that respondent no. 1 preferred an appeal before the learned Tribunal against the demolition notice issued under Section 7(3) of COBO Act 1988 by the Joint Commissioner (JMC) vide No. order No. MJ/CEO/234/3/2011 date 21.01.2012.

21. It was the specific case of respondent no. 1 before the Tribunal that she is the owner and in possession of land measuring 13 ½ Marlas falling under khasra no. 492 min, khata no. 349-Min, and khewat no. 16, situated in village Sunjwan tehsil and district Jammu, now known as Greater Kailash, Jammu. Respondent no. 1 intended to raise construction on the aforesaid plot and, as such, applied for grant of permission for construction on the aforesaid land from the Jammu Municipal Corporation and submitted necessary documents for the same and accordingly, JMC granted requisite permission to raise the construction and the respondent no. 1 raised construction on the aforesaid plot as per the approved site plan with some alterations due to practical problems, which crop up during construction on spot. The Building Operation Controlling Authority issued notice vide no. MJ/CEO/234/1/2011 dated 28.12.2011 under section 7(1) alleging therein that the respondent no. 1 had started the construction work on the 2nd floor without the permission of Municipal Corporation and the said notice nowhere alleges any violation on ground and 1st floor and that the notice under section 7(3) has been issued without application of mind only to harass respondent no. 1 as the violations shown in the notice issued under Section 7(3) were not mentioned in notice under section 7(1) which clearly shows that the notice under Section 7(3) of the Building Operation Act is bad in the eyes of law. It was the specific case of the respondent no. 1 that she has not violated the approved master plan and has not violated any set back and the construction raised by her does not interfere with anyone's right including the public at large or Planned Development Department, Jammu city or Zoning regulation and prayed that the notice issued under section 7(3) may be set aside.

22. A perusal of the notice issued under Section 7(1) of the J&K Control of Building Operations Act, 1988 issued by the Chief Khilafwarzi Officer, Municipal Corporation Jammu dated 28.12.2011 shows that the Khilafwarzi Inspector of the area in question on 28.12.2011 informed the authority that respondent no. 1 has commenced/ are carrying on the unauthorized construction at Lane No. 3, Greater Kailash, Jammu with the following violations:

- 1. That you have started the construct work of one room, kitchen & bathroom on 2nd floor without the permission of Jammu Municipal Corporation.*
- 2. That you have not observed the required set back areas.*
- 3. Whereas the said illegal construction seriously effects the planned development of Jammu City and contravenes the zoning regulations.*

23. Therefore, in exercise of the powers conferred under Section 7(1) of the J&K State Control of Building Operation Act, 1988 read with Jammu Municipal Area Building Operation Controlling Authority No. 4th dated 27.11.1999, the petitioner was called upon to show cause within a period of 48 hours from the date of service of the said notice, as to why the violation as detailed above, should not be demolished. The aforesaid notice was followed by final order of demolition passed under the provisions of Section 7(3) of the aforesaid Act dated 21.01.2012 wherein certain more violations have been expanded and the details of which are as under:-

| Particulars | As per permission | As per Site | Qtm of Violation | % of the violations | Remarks |
|-----------------------|-------------------|-----------------|------------------|---------------------|---------|
| Plot Area | 3826 sft | | | | |
| Average | | | | | |
| Ground Floor | 1900 sft | 2306 sft | 406 sft | 21% | |
| 1 st Floor | 1500 sft | 1880 sft | 380 sft | 16.3% | |
| 2 nd Floor | Nil | 439 sft | 439 sft | 100% | |

| Particulars | As per permission | As per site | Qtm Violation | % of the violations | Remarks |
|----------------|-------------------|-------------|---------------|---------------------|---------|
| Front set back | 20'-0'' | 13'-3'' | 6'-9'' | 33.75% | |
| Rear Set Back | 6'-6'' | Nil | 6'-6'' | 100% | |
| Side Set Back | 6'-6'' | Nil | 6'-6'' | 100% | |
| Other side | | | | | |

| Particulars | As per permission | Actual at Site | Violations | % of the violations | Remarks |
|-------------|-------------------|----------------|------------|---------------------|---------|
| Land use | Residential | Residential | | | |
| Height | 26'-0'' | 33'-0'' | 7'-0'' | 26.72% | |
| FAR | 88.86 | 120.88 | 32.02 | 36% | |

24. Therefore, in exercise of the powers conferred under Section 7(3) of the J&K State Control of Building Operation Act, 1988 read with Jammu Municipal Area Building Operation Controlling Authority's No. 4th of 1988 dated 27.11.1999, respondent no. 1 was directed to demolish the construction/violations as detailed above within 5 days from the date of issuance of the said notice failing which, the respondent no. 1 was conveyed that the same will be demolished at her risk and cost by the Jammu Municipal Corporation. With a view to appreciate the controversy in question, it would be apt to reproduce Section 7(1) and 7(3) of the J&K Control of Building Operations Act, 1988 hereunder:-

7. Order of demolition of building in certain areas.-(i)
Where the erection or re-erection of any building has been commenced or is being carried on or has been completed without the permission referred to in section 4 or in contravention of any condition subject to which any permission has been granted, the Authority shall issue a notice in writing calling upon the person to show cause within a period of 48 hours, why the building should not be altered or demolished as may be deemed necessary to remove the contravention.

(3) If the person to whom the notice has been given refuses or fails to show cause within a period specified under sub-

section (1) or if after hearing that person, the Authority is satisfied that the erection or re-erection of the building is in contravention of the provisions of this section, the Authority shall by order directed the person to demolish, alter or pull down the building or part thereof so far as is necessary to remove the contravention within a period not exceeding five days as may be specified in the order and if the person fails to comply with the direction, the Authority may itself cause the erection or re-erection to be demolished after the expiry of the said period and may for that purpose use such Police Force as may be necessary which shall be made available to him by the Police Department on requisition.

25. The power under Section 7(1) is confined to the extent of erection or re-erection of any building without the permission referred under Section 4 or in contravention of any condition subject to any permission which has been granted that the authority is competent to issue notice in writing calling upon the said violator to show cause within a period of 48 hours why the building should not be altered or demolished as the case may be deemed necessary to remove the contravention. The notice under Section 7(1) has to be followed by final notice under Section 7(3) which makes it amply clear that a person to whom the notice has been issued, refuses or fails to show cause within the specified period under sub section (1) or if after hearing that person, the Authority is satisfied that the erection or re-erection of the building is in contravention of the provision of this section than the authority shall by order direct the person to demolish alter or pull down the building or part thereof so far is necessary to remove the contravention within a period not exceeding five days as may be specified in the order. If the person fails to comply with the directions, the Authority may itself cause the erection or re-erection to be demolished after the expiry of the said period.

26. Thus, from a conjoint reading of the aforesaid sections, it is apparently clear that a notice of show cause giving details of the alleged violation has to be conveyed to the defaulter which will precede the final order of demolition.

27. In the instant case, the respondent no. 1 was taken by surprise by issuance of the final order of demolition whereby the violations have been amplified and were not known to the said respondent. Thus, it can safely be concluded that the respondent no. 1 has been condemned unheard. Even otherwise, the statute makers in their wisdom have given power to the authorities to issue a notice of show cause giving details of the alleged violations of a particular building and only when the said allegations are conveyed to the alleged violator, power under Section 7(3) has to be exercised for such violation.

28. In the instant case, the very purpose of the show cause notice has been defeated by resorting to demolition straightway without conveying the allegation to the respondent no. 1. On this ground alone, the order passed by the Tribunal is legal, sustainable and is, accordingly, upheld.

29. Thus, from a conjoint reading of both the statutory provisions, it can safely be concluded that a person can only be held responsible for violations alleged in the notice under Section 7(1) of the COBOA, which has to precede the order under Section 7(3) of the aforesaid Act.

30. From a bare perusal of the record which has been examined by this Court, it has come to fore that the notice under Section 7(1) of COBOA dated 28.12.2011 alleges that the respondent no. 1 has started the construction of one room, kitchen and bathroom on second floor, but the order impugned notice issued under Section 7(3) refers to deviations on the ground and 1st floor as well

and, therefore, the order impugned is vague and has rightly been quashed by the learned Tribunal.

31. A person can only be held responsible for the violations alleged in the notice under Section 7(1) which has to precede the order under Section 7(3) of the aforesaid Act. The allegations regarding ground coverage and the absence of setbacks, which has been reflected in the order dated 21.01.2012 issued under Section 7(3) of the J&K Control of Building Operations Act, 1988 is palpably bad in the eyes of law and has rightly been quashed by the Tribunal.

32. Thus, this Court is in agreement with the finding recorded by the Tribunal, as this Court does not find any illegality or infirmity with the same. The notice issued under Section 7(1) of the J&K Control of Building Operations Act, 1988 contains such particulars of alleged violation, which were different and distinct than what has been stated in the final notice/order impugned dated 21.01.2012 before the Tribunal.

33. This Court is fortified by the judgment passed by the Madras High Court in case titled **R. Ramadas v. Joint Commissioner of C. Ex. Puducherry, 2021 (44) G.S.T.L. 258 (Mad.)**. Paras 7 and 11 of the said judgment are reproduced as under:-

"7. It is a settled proposition of law that a show cause notice, is the foundation on which the demand is passed and therefore, it should not only be specific and must give full details regarding the proposal of demand, but the demand itself must be in conformity with the proposals made in the show cause notice and should not traverse beyond such proposals.

11. The very purpose of the show cause notice issued is to enable the recipient to raise objections, if any, to the proposals made and the concerned Authority are required to address such objections raised.

This is the basis of the fundamental Principles of Natural Justice. In cases where the consequential demand traverses beyond the scope of the show cause notice, it would be deemed that no show cause notice has been given for that particular demand for which a proposal has not been made."

34. Since the respondent no.1 was never put to any show cause notice with respect to alleged violation made by her while raising construction over ground floor and first floor, therefore, in the light of the law laid down by the Hon'ble Madras High Court, the impugned order dated 21.01 .2012 has rightly been set aside by the learned Tribunal vide order impugned dated 10.12.2012.

35. The learned counsel for the respondent no -1 has relied upon a judgment of this Court rendered in case titled **Building Operation Controlling Authority Municipal Area Jammu v. Nageen Ara**, while questioning the maintainability of the writ petition, this Court in para 23 has held as under:-

“23. The issue whether this court while exercising the power as a writ court can go into question of fact is no more res integra and can't assume the role of the appellate authority by re-appreciating the evidence to ponder as to what sort of violation has been committed in raising of the construction whether it was minor or major in nature, whether it was sanctioned plan or revised plan. All these things can well be considered had appreciated by the tribunal which can go into question of fact after thorough inquiry. In the instant case, the tribunal after the thorough inquiry has drawn the conclusion on a question of fact and recorded the finding about the nature of violation and regularise it under law by compounding the same. In my view, the tribunal is fully competent to compound the violation keeping in view its nature and this court while exercising the writ jurisdiction cannot upset the finding of the tribunal based on appreciation of evidence. As a matter of fact strictly speaking the writ jurisdiction of court cannot be invoked in such like matter as the dispute in question relates to a question of fact i.e whether the violation is minor or major and according to my view the tribunal is a final arbiter in such like matters. It goes without saying that the writ jurisdiction is invoked mainly where fundamental rights are infringed and for violating of legal rights too, such jurisdiction maybe invoked only in eventuality, where the

alternate remedy is not available. In the instant case, alternate remedy which has been availed on a disputed question of fact before the tribunal which after appreciation of all material facts and evidence on record has recorded the finding and thus the writ jurisdiction in the peculiar facts and circumstances cannot be invoked against the said order.”

36. The Allahabad High Court while deciding the case titled **Ramlala v. State of U.P. (2024) 162 ALR 42** in paragraph 9 observed as under:-

“A show cause notice is required to provide the details of the nature of the offence and grounds on which the show cause notice has been issued. Furthermore, the order that is subsequently passed, based on the show cause notice, cannot go beyond the said show cause notice and cannot in any manner penalize the noticee on the grounds that were not stated in the show cause notice.

37. In catena of judgments the Hon’ble Supreme Court has held, that the grounds upon which the action is to be taken against the person, the same are required to be mentioned in the show cause notice and the authorities cannot transgress boundaries of the show cause notice.

38. The Hon’ble Supreme Court in case titled **State of Punjab vs. Davinder Pal Singh Bhullar &ors. 2011(14) SCC 770** in para 72 has laid down as under:-

“It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact-situation, the legal maxim “sublatofundamentocaditopus” meaning thereby that foundation being removed, all structure / work falls, comes into play and applies on all scores in the present case.”

39. Thus, from the conjoint reading of both the notices issued under section 7(1) and 7(3) of the J&K Control of Building Operation Act, 1988, it can clearly be made out that the ambit of the Section 7(3) Notice has been amplified since the violations alleged in Section 7(3) Notice have not at all been mentioned in the Section 7(1) notice. Therefore, the said action is violative of principles of

nature justice, as she did not have the opportunity to put forward her case and defend herself.

CONCLUSION

40. This Court upon reviewing both notices concludes that the contested demolition order issued by the authorities under Section 7(3) of the J&K Control of Building Operations, Act 1988, does not align with the proposal outlined in the show cause notice issued under Section 7(1) of the aforementioned Act. The allegations were limited solely to the purported construction work in contravention of the permission for the 2nd floor, and the notice does not indicate any violation concerning the ground level, 1st floor or setbacks.

41. The respondent no. 1 was not issued a show cause notice concerning the violation cited in the final demolition order, nor was she afforded an opportunity to clarify her stance regarding the claimed infractions on the ground level, 1st floor or setbacks.

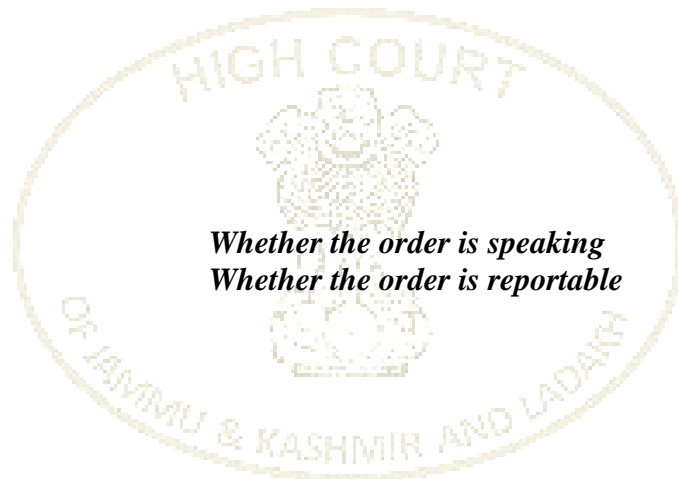
42. Consequently, this Court unequivocally asserts that respondent no. 1 has been condemned without a hearing regarding the purported violation and has not been afforded any opportunity to rectify the error within the timeframe specified in Section 7(1) of Control of Building Operations Act, 1988. Moreover, in the absence of any show cause notice regarding the violations on the ground floor, 1st floor or setbacks as well as the lack of a show cause notice concerning the allegation of illegal construction by respondent no. 1 that significantly impacts the planned development of the Jammu city and contravenes zoning regulation, the order challenged before the Tribunal was not aligned with the intent and provisions of COBOA 1988. Consequently, the Tribunal appropriately quashed the order.

43. Consequently, this Court concurs with the findings established by the learned Tribunal, and for the reasons articulated above, the Tribunal's order is upheld. The petitioner's challenge to the aforementioned order is unfounded, and the writ petition, lacking any merit, warrants dismissal along with all associated application(s).

44. The writ petition, as such, is *dismissed* along with all connected application(s).

(Wasim Sadiq Nargal)
Judge

Jammu:
11.12.2024
Mihul



Whether the order is speaking : Yes/No
Whether the order is reportable : Yes/No