



HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

OWP No. 747/2005

Reserved on: 04.04.2025

Pronounced on: 17.07.2025

Jammu Municipal Corporation Petitioner/Appellant(s)
and another

Through:- Mr. S.S. Nanda, Sr. AAG

V/s

Apurab Mahajan and othersRespondent(s)

Through:- Mr. Gagan Oswal, Advocate

CORAM: HON'BLE MRS. JUSTICE SINDHU SHARMA, JUDGE

JUDGMENT

1. This petition has been preferred under Article 226 of the Constitution of India by the Jammu Municipal Corporation, seeking quashing of order dated 08.09.2005, passed by the J&K Special Tribunal in appeal titled “Sanjay Mahajan (deceased through LRs) and another v. Jammu Municipality and others”.
2. The respondents sought permission for construction of commercial complex at Samdian Land, below Gumat Jammu, comprising of ground floor, first floor and second floor, with a built-up area of 1080 sft., which was granted vide permission No. No. 271 dated 25.10.1998. It is submitted that the construction was raised in violation of the sanctioned plan, resulting in proceeding against the respondents for violation under Section 7(1) of Control of Building Operations Act for unauthorisedly construction against the approved plan. Thereafter, notice under Section 7(3) was issued to



the respondents directing to demolish the unauthorized construction within a period of five days from the date of the service of notice.

3. The respondents filed an appeal against the demolition notice dated 30.10.2000.
4. The Tribunal vide order dated 08.12.2000, issued a notice and called for the record and sought the report from the Jammu Municipality on the following grounds: -
 - i. Nature and extent of violation showing setback, roads, lanes etc and distance thereof from the allegedly offending structure;
 - ii. Map to scale;
 - iii. Whether there is any violation of Municipal Bye-laws, prevention of Ribbon Development Act, Town Planning Act or Zoning Regulations applicable to that area.
5. The contention of the respondents in the appeal was that they are in possession of a banquet hall and they have raised construction strictly as per duly approved sanctioned plan issued by the JMC. There is no violation of Municipal Bye-laws and respondent No. 3 was well within her right to raise the construction as per her choice.
6. In the objections before the Tribunal, the petitioners (hereinafter referred as JMC) submitted that the construction has been raised against the sanctioned plan. There are major violations as instead of built up area of 1080 sq. feet in each floor, he has raised construction of 4720 sq. feet in ground floor and first floor. The respondents have failed to keep 15 feet set back at front and back and 10 feet rear, but no set backs have been kept which is a major



violation of the sanctioned plan. The respondents have also constructed over hanging balcony and basement floor of dimensions of 19x06x25 against the sanctioned plan.

7. The JMC in their report submitted that the construction raised against sanctioned plan and violation chart was as under: -

S. No.	Type of floor	Built up area as per the sanctioned plan	Built up area as per actual construction raised at site	Excess over the sanctioned plan
1	Basement floor	—	543 sft	543 sft
2	Ground floor	1080 sft	4720 sft	3640 sft
3	First floor	1080 sft	4720 sft	3640 sft
4	Balcony projection	—	236 sft	236 sft

8. The respondent has constructed basement floor without any permission and did not keep setback of 15 feet front, 10 feet on both sides and 10 feet rear setbacks as per the sanctioned plan, which constituted major violation. Besides this, there is also balcony projection overhanging over the road.
9. The Tribunal after considering the submissions decided the appeal vide order dated 08.09.2005 and held as under: -

“As admitted by both the learned counsels for the parties, it is fact that 90% commercial activities in the area and there are huge commercial complexes have come up in the area, so in my considered view, there is no violation of Master plan or zoning regulation applicable to the area. The appellant has made some deviations from the sanctioned plan which was sanctioned for commercial purposes, so in my considered view, the case can safely be compounded. I would also like to comment that Shri Sanjay Mahajan expired during his prime life leaving behind his widow, Smt. Anita Mahajan and two minor children as brought to the notice of this bench by the advocate for the appellant and this is an unfortunate affair. In my considered view, at this stage if the respondents are allowed to remove the alleged unauthorized structure raised by the appellant, it will cause irreparable loss and injury to the legal representatives of the deceased. So in fact and circumstances of the case, it hereby, order the composition of the unauthorized structure. The appellant has raised total 9983 sft structure out of which an area of 2160 sft is a sanctioned one. So there is an area of 7823 sft. @ Rs. 25/- sft. Apart for the above the appellant has also raised balcony



projection of 236 sft., which is also regularized and for that the appellant shall pay compounding fee @ Rs. 30/- sft. The appellants shall deposit the compounding fee with the respondents within a period of 30 days failing which the appeal filed by the appellant shall be deemed to have been dismissed.”

10. The petitioners are aggrieved of the impugned order on the ground that the Tribunal without deciding the fact whether the violations committed by the respondents are major or minor has compounded the construction raised unauthorisedly. The compounding of construction raised unauthorisedly is provided in Clause 10 and 11 of the Jammu and Kashmir Control of Building Operations Regulations, 1998. These clauses read 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.

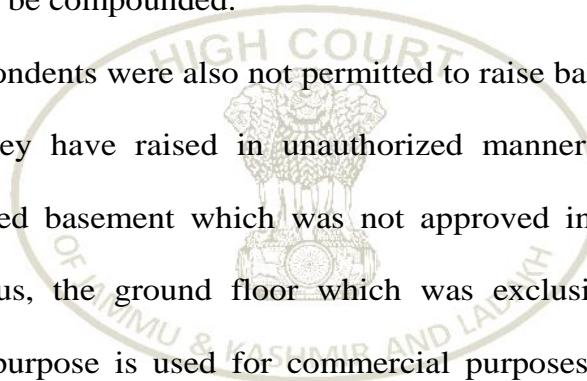
11. Compounding of offence

- (1) The appellant authority may compound the offence of minor nature specified in sub-clause 2 of the Regulation. 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 regulation, an offence of a 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 referred to in sub-clause 2 of clause 7 of the Regulation, provided that such erection or re-erection: -
 - (i) Does not violate the approved land use of the area as notified in the Master Plan or Town Planning Scheme;
 - (ii) Does not violate permissible front, rear, or side setbacks prescribed in the bye-laws;
 - (iii) Does not violate by more than 10% the permissible ground coverage as prescribed in the bye-laws; and
 - (iv) Does not violate the permissible height of the building as prescribed in the bye-laws.

11. In terms of these clauses, only minor violations can be compounded. Major and serious violations cannot be compounded. These regulations do not violate the approved land use of the area,



as notified. The violations of front, rear or side setbacks and permissible ground coverage exceeding 10% does not fall in the category of minor offences and are non compoundable. The respondents as per the report of the municipality were allowed to raise construction of a built up area of 1080 sft. on each floor as per the sanctioned plan. The respondents, however, have raised the built up area of 4270 sft, which is a major violation and could not be compounded. As per the sanctioned plan, the respondents have failed to keep the requisite setbacks of 15 feet front, 10 feet both sides and 10 feet rear, which has resulted in major violations, which could not be compounded.

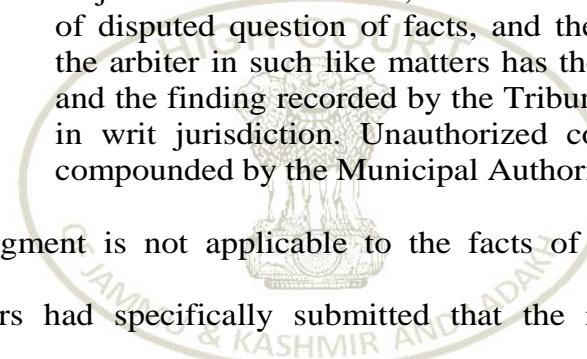


12. The respondents were also not permitted to raise balcony projection which they have raised in unauthorized manner and have also constructed basement which was not approved in the sanctioned plan. Thus, the ground floor which was exclusively meant for parking purpose is used for commercial purposes in violation of sanctioned plan and master plan.
13. The respondents submits that Tribunal has returned a finding and every order made by it is fine and a specific statutory bar exists against challenging such orders, the maintainability of any petition seeking to question the order, particularly on disputed questions of fact is not permitted in law.
14. Reliance is placed on the judgment of this Court in "**Building Operation Controlling Authority v. Nageen Ara**", decided on 29.08.2023, whereby, this Court has held that once finding of compounding of construction is given by that court, then this Court



cannot go in to fact whether violation is major or minor. The same reads as under: -

“...Once the Tribunal has given finding by compounding the construction, then this Court cannot go into the questions and reasoning which lead to the passing of the aforesaid order, which is based on appreciation of evidence. This Court does not have any mechanism or yardstick to go into the question of fact by conducting enquiry with respect to the fact whether there is any minor or major violation, as alleged by the petitioner. This Court, while exercising the powers under writ jurisdiction, cannot re-appreciate the evidence by way of an appellate authority to go into the disputed questions of facts which have been arrived at by the Learned Tribunal after appreciating all the material facts and record and adducing evidence. This Court can't assume the power/role of Commissioner to go on spot to verify whether it is major or minor violation, which falls within the realm of disputed question of facts, and the Tribunal being the arbiter in such like matters has the final authority, and the finding recorded by the Tribunal can't be upset in writ jurisdiction. Unauthorized construction once compounded by the Municipal Authorities...”



15. This judgment is not applicable to the facts of the case as the petitioners had specifically submitted that the respondents had committed major violations while raising the construction, which could not be compounded. The respondents in their reply to the report of the JMC has only stated that the structure raised is not causing any obstruction to anyone, as the entire area is full of commercial complexes and thus did not warrant satisfaction of the authority. Therefore, the Tribunal failed to consider this aspect.
16. Perusal of report reveals that the required setbacks were completely encroached upon and the basement was unauthorisedly constructed. Such violations clearly fall within the category of major infractions and are, therefore, not compoundable under the applicable law.



17. The respondents have, thus, committed major violation which is not permissible in terms of Section 11 of Control of Buildings Act. This apart, learned Tribunal while passing the impugned order has relied upon the fact that 90 % of the building existing in the vicinity have covered up their setbacks while raising the construction and there is parking provision in the structure as the basement floor would be used for parking purpose. The Tribunal has totally ignored the fact that there was no sanction plan for basement of the building. This apart, reliance has been placed by the learned counsel for the petitioners with regard to the finality of the orders.

18. The Tribunal while noticing the violation has failed to return a finding whether the violation committed by the respondents was major or minor and has in fact exceeded the jurisdiction by compounding the offence which being in major violation could not be compounded by this Court, regulations and by law.

19. The learned Tribunal has failed to decide whether the violation was major or minor and whether it had the authority to compound the same. The Tribunal without considering this aspect has decided the same and compounded the same which is in violation of the mandate of Act.

20. In **Pratibha Coop. Housing Society Ltd. v. State of Maharashtra, (1991) 3 SCC 341**, the Hon'ble Supreme Court has held as under: -

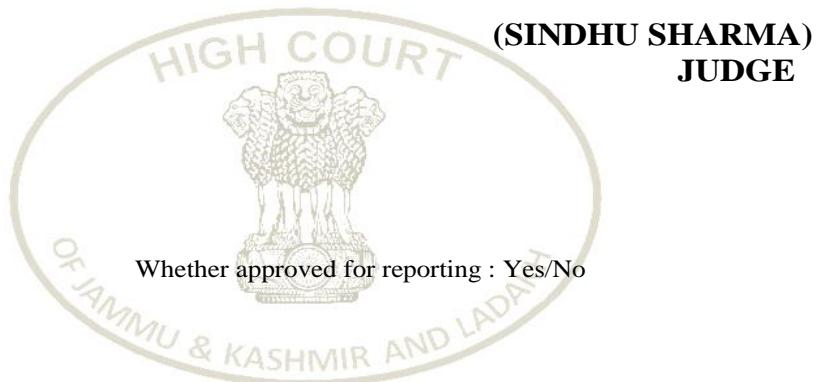
"Before parting with the case we would like to observe that this case should be a pointer to all the builders that making of unauthorised constructions never pays and is against the interest of the society at large. The rules, regulations and bylaws and made by the Corporations or development authorities taking in



view the larger public interest of the society and it is the bounden duty of the Citizens to obey and follow such rules which are made for their own benefits.”

21. In view of the aforesaid facts and circumstances, the impugned order passed by the learned Tribunal is illegal and unreasonable and does not sustain in the eyes of law and is accordingly quashed. The mater is remitted back to the Tribunal to decide the same afresh. The Tribunal shall proceed on the basis of material before it and pass an order expeditiously, preferably within three months.

22. **Disposed of.**



Jammu:

17.07.2025

Vishal Khajuria