

## HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

OWP No. 310/2008

CMP Nos. 471/2008 & 1412/2008

Date of Decision: 26.12.2008

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*Jammu Municipal Corporation and anr*      v.      *Ram Kumar Gupta*

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**CORAM:**

***MR. JUSTICE J. P. SINGH, JUDGE.***

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**Appearing counsel:**

For Petitioner(s)                      : Mr. S. S. Nanda, Advocate.

For Respondent(s)                    : Mr. K. S. Johal, Advocate.

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| i)  | Whether approved for reporting<br>in Press/Journal/Media | : <b>Yes</b> |
| ii) | Whether to be reported<br>in Digest/Journal              | : <b>Yes</b> |
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Jammu Municipal Corporation has filed this writ petition seeking quashing of Jammu and Kashmir Special Tribunal, Jammu's order of January 18, 2008 whereby, besides quashing Notice no. JMC/RB/3268-69 dated 10.09.2003, the Tribunal had directed petitioner-Corporation to pay Rs. 10,000/- as costs within two months and in default thereof to pay Rs.500/- per month till costs were recovered.

Facts leading to the filing of this petition may be stated thus:-

**FACTS:**

Taking exception to the misuse of Municipal Flat No. 1 (Centre) situated at Sabzi Mandi, Jammu, the petitioner-Corporation had served notices on Charan Dass Gupta, now deceased, as to why his allotment for use of Municipal Flat No.1 be not withdrawn. Respondent Ram Kumar Gupta's

reply to one of such notices i.e. Notice No. JMC/RB/3165-66 dated 22.08.2003 had not been found satisfactory by the Corporation. Rather than taking requisite action against the respondent, the Corporation had issued yet another notice, termed as its final notice, to the respondent to appear before its Executive Officer to explain his position, failing which Corporation had to resort to eviction proceedings. This final notice of petitioner no.1 ✎ Executive Officer being Notice no. JMC/RB/3268-69 dated 10.09.2003 was questioned by the respondent before the Jammu and Kashmir Special Tribunal, Jammu by his Appeal/Revision.

Petitioner-Corporation had, besides remaining absent from the proceedings, even failed to produce the records which the Tribunal had asked it to produce.

Irrked by the conduct of the Corporation, in not producing the records sent for, the Tribunal had allowed the appeal and quashed Corporation ✎ Notice No. JMC/RB/3268-69 dated 10.09.2003, besides directing it to pay costs as indicated at the threshold.

Corporation ✎ writ petition challenging the Jammu and Kashmir Special Tribunal, Jammu ✎ order thus arises in the background of above mentioned facts.

Before examining the order of the Tribunal and the submissions made at the Bar by learned counsel for the parties, regard needs to be had to what has been said by the Tribunal while quashing Corporation ✎ final notice of September 10, 2003. Paragraph nos. 8, 9, 11 & 12 of the order of the Tribunal are reproduced hereunder for facility of reference:-

8. Today neither the advocate for the respondent is present nor has record been produced. Shri Gulshan Kumar Parokar on behalf of the respondent is present and he has neither filed an application nor affidavit nor expressed any responsible excuse for further adjournment of the case. Accordingly no adjournment is granted and right of the respondent to file record is hereby closed.

9. It is the cardinal law that no body should suffer for the mistake of the Court. I am aware of my limitations and refrain from commenting upon the delay caused in this case which has traversed through a period of more than 4 years only for the purpose of procuring record from the respondent, whose Standing Counsel/Advocate is always present in the Tribunal and Parokar is regularly attending all the three Benches being held at Jammu and although the office of the respondent is situated only a distance of one kilometer from this Tribunal.

11. Allegations against the appellant by virtue of notice No.:JMC/RB/3079 dated 5.8.2003 a show cause notice, is that he had been allotted Municipal Flat No.:1 (Centre) at Sabzi mandi Jammu and had been using the said building as a guest house. He was called upon a show cause as to why he will not be evicted from there. Despite the lapses of more than 4 years the respondent have failed to produce any proof of allegations leveled against the applicant/petitioner nor even record has been produced and therefore, this Tribunal is of the considered opinion that the respondent have charged the appellant only with bald and false allegation without even an iota of evidence against him. The appellant has been let to suffer during all this period and he has undergone undue expenditure in engaging the advocate attending this Tribunal each and every date of hearing besides the mental agony & unnecessary harassment he has suffered from due to non-cooperation of the Municipal Authority Jammu, which has miserably failed to establish the charge leveled against the appellant.

12. In view of the aforementioned appeal filed by him he seeks to quash the notice No. JMC/RB/2368-69 dated 10.9.2003. His appeal succeeds and is accepted on the grounds mentioned hereinabove. The appeal is, therefore, allowed and the impugned notice referred to hereinabove is hereby quashed. But, for the involving the appellant in frivolous litigation which caused him only undue harassment & mental agony besides loss of valuable time & his business, respondent Municipal Corporation Jammu shall pay a costs of Rs. 10,000/- to the appellant within a period of two months from this order positively failing which the appellant/petitioner can approach the right forum therefor. After the expiry of two months period the appellant shall be entitled to recover the said amount with further costs of Rs. 500/- per month till the same is paid. Shri K. B. Gupta Standing Counsel and Shri Gulshan Kumar Parokar are present in the court and order announced in their presence. 9

Perusal of Tribunal's order indicates that rather than examining the legality and propriety of the impugned final notice, the Tribunal had proceeded to allow respondent's appeal quashing Corporation's notice, only

because the Corporation had failed to produce the records which the Tribunal had sent for.

The question that, therefore, arises for consideration in this writ petition is as to whether an Appellate or Revisional Forum is justified in annulling impugned action of the subordinate forum, without recording any finding, as to the illegality or impropriety from which the impugned action had suffered, and merely on the ground that the subordinate forum had failed to produce the records which the Appellate or Revisional Forum had called?

Emphatic ~~No~~ is the answer. This is so because the Appellate and Revisional Forums may annul the decision or action of the subordinate forum only if the order of the subordinate forum was found legally impermissible or factually unsustainable. To annul it as legally unsustainable, reasons justified in law are required to be spelt out to support the appellate or revisional order. Factual un-sustainability of the impugned action or order may be justified either on the basis of the records of the subordinate forum which are before the Authority, and if the records are not so available, for one or the other reason, on the basis of the material available on the records of the Appellate or Revisional Forum.

There was no material available before the Tribunal, on the basis whereof, the impugned final notice may be held to be based on bald and false allegations, as observed by the Tribunal. No reasons either have been spelt out by the Tribunal to hold the notice legally untenable.

It thus appears that the Tribunal had quashed the Corporation's notice without any material on records and without any justification therefor.

All that appears from the perusal of the impugned order of the Tribunal is that non-production of records by the Corporation and its absence before the Tribunal on many occasions, had led the Tribunal to quash Corporation's notice.

Tribunal's order of quashing Corporation's notice thus appears to be wholly unjustified, in that, failure of the Corporation to appear or produce records, cannot by itself, render its action invalid.

Appellate, Revisional and all Adjudicatory functionaries are required to keep their mind calm and composed while adjudicating upon the rights of parties and deciding the issues raised before them. They are required to do so, unruffled by any amount of anger or bias which the conduct of any of the litigating parties, may attempt to generate so as to disturb the calm, cool and composed mind of the adjudicator. This is so because anger or/and bias would affect, and that too, seriously, adjudicator's sense of discrimination, ultimately affecting the right decision and dispensation of justice.

Adverse inference for non-production of records or for any other default of a party to a lis, may be drawn, only if it is so permissible, and that too, within the prescribed parameters, and to the extent, permissible. Default of a party may not, however, sit on adjudicator's mind in ruling against the defaulting party, when facts on records may not justify such decision.

The adjudicatory functionaries are thus required to act with patience and sapience.

It further appears that the Corporation had not taken any adverse decision against the respondent, in that, neither his allotment had been

cancelled nor any decision had been taken by the Corporation to initiate eviction proceedings against him. There was, therefore, no occasion for the respondent to have approached the Tribunal as no adverse order had been either initiated or taken against him by the Corporation.

The final notice issued by the Corporation informing the respondent to appear before it failing which eviction proceedings had been proposed to be initiated against him, without providing him any further opportunity of hearing, is not, as such, appealable before the Tribunal, in that, no provision of law had been referred to by respondent's counsel to support the maintainability of respondent's appeal before the Tribunal against petitioner-Corporations show cause notice.

The Tribunal had, therefore, absolutely no jurisdiction to entertain respondent's appeal and annul the show cause notice in exercise of its appellate jurisdiction, which it had erroneously done.

I do not find any substance in petitioner's Counsel's submission that although there was no provision for appeal against the Corporation's final notice, yet the Tribunal possessing revisional jurisdiction could still quash the impugned notice. This is so because Corporation's impugned notice does not affect any of respondent's right qua the Flat in question, and in that view of the matter, the Tribunal would not have been justified in entertaining respondent's revision petition.

For all what has been said above, I am of the opinion that by filing proceedings before the Special Tribunal, the respondent had unnecessarily



delayed the action which the Corporation may contemplate on the basis of its final show cause notice.

Rather than approaching the Tribunal, the respondent was required to approach the Corporation to show cause against the action which the Corporation had been contemplating against him. His approaching the Tribunal was thus unwarranted, intended only to delay the action which the Corporation had been contemplated against him.

The impugned order of the Tribunal cannot thus be justified on any count whatsoever.

Allowing this writ petition, with costs quantified at Rs.5000/-, order dated 18.01.2008 of the Jammu and Kashmir Special Tribunal, Jammu, is, accordingly, quashed.

**(J. P. Singh)**  
**Judge**

**JAMMU:**  
**26.12.2008:**  
Anil Raina, SECY: