

HIGH COURT OF JAMMU AND KASHMIR
AT JAMMU

LPAOW no. 79/2010
CMP no. 114/2010

Date of order: 22.02.2011

Jammu Municipal Corporation. v. S. Darshan Singh & ors.

Coram:

Hon'ble Mr. Justice Dr. Aftab H. Saikia, Chief Justice

Hon'ble Mr. Justice Mansoor Ahmad Mir, Judge

Appearing counsel:

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

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

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| i) | Whether approved for reporting in Law Journals? | Yes. |
| ii) | Whether approved for reporting in Press? | Yes. |
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Dr. Saikia, CJ:

Heard Mr. S. S. Nanda, learned counsel for the appellant as well as Mr. K. S. Johal, learned counsel for the respondents.

2. This Letters Patent Appeal registers a challenge to the judgment and order dated 16.11.2010 passed by

the Writ Court in OWP no. 235/2010 by which the learned Single Judge disposed of the writ petition preferred by the appellant as the writ petitioner upholding the order of Jammu and Kashmir Special Tribunal, Jammu (for short 'the Tribunal'), whereby respondent Nos. 1 & 2 herein (hereinafter referred to as 'the respondents') were given liberty to use their houses for commercial purposes.

3. The factual matrix of the case, in brief, is that the respondents, being husband and wife respectively, are the owners of plot of land being No. 69 adjoining to B. C. Road, Jammu, which is bifurcated in two parts, one part is 2915 sq. ft. in area, when the other part covers an area of 2773 sq. ft. In the year 2003, the respondents, with an object to construct the residential houses, applied for grant of building permission from the appellant, for which sanction was accorded vide two orders dated 16.8.2003 and 28.7.2004 respectively.

4. The respondents raised the construction in respective portions in the year 2003 and 2004 strictly in accordance with the building permission.

5. Master Plan 2021 has been brought into force by the Government vide Order No. 263 dated 9.8.2004, which permits the use of land at B. C. Road both for residential and commercial purposes.

6. In pursuance of Master Plan 2021, with a view to run the commercial activities in their respective houses, the respondents submitted an application to the appellant on 7.4.2006 for grant of permission. When appellant did not respond for three years to the said application, the respondents initiated a writ proceeding, being OWP no. 560/2009 along with CMP no. 741/2001 in this Court wherein directions to the appellant were sought to grant permission to the respondents for using their residential houses for commercial purposes in terms of new Master Plan.

7. The learned Single Judge by its order dated 21.5.2009, passed in the CMP above mentioned, directed the appellant to take a decision on the said application filed by the respondents within a timeframe of four weeks.

8. For facility of reference, interim order dated 21.5.2009 is quoted hereunder:-

"Notice and appearance as above.

It seems that the petitioners have under No: 263 dated 9.8.2004 filed an application before the Commissioner, Municipal Corporation, Jammu for grant of permission for using raised construction for commercial purposes. No decision thereon has been taken till date. The respondent, Municipal Corporation shall take decision on the said application within four weeks. Result be communicated to the petitioner.

Further completion of the construction in terms of the earlier approved site plan is not opposed but shall be raised strictly in accordance with the approved plan, if not otherwise barred and shall be under the close supervision of the Municipal Officers so that no deviation from the actual plan is made by the petitioner. Objections, if any, within the notice period."

9. In compliance of the said direction, while taking decision on the application of the respondents, the appellant by its order dated 15.7.2009 rejected the prayer of the respondents, who sought permission for use of their residential premises for commercial activities and in rejecting such prayer, the appellant recorded the reasoning as under:-

"Whereas the application of S. Darshan Singh and Smt. Manjeet Kour for raising construction for commercial purpose has been considered in terms of directions of the Hon'ble High Court and the same has been found as, without merits **due to the reason that the building raised for commercial purposes necessarily should have adequate space for parking of vehicles which in the instant case does not exist, as the said applicants have not kept provisions of parking of the vehicles required in the proposed Building.(emphasis supplied)** More so the cases of Building Permissions for commercial purposes which are bound to generate additional, traffic as per the existing rules need to be referred to UTEIC for ensuring that such of the areas which are already overcrowded do not further hamper the traffic movement and effect the convenience of general public adversely. **The instant case of building permission is located at B. C. Road Highway near Rehari Crossing which is already congested and overcrowded, (emphasis supplied)** as such, the permission for converting residential building to commercial use cannot be considered without sufficient provision of parking in the proposed construction."

10. Aggrieved by the above action of appellant, the respondents again approached the Tribunal.

11. The Tribunal by its order dated 31.12.2009 disposed of the appeal filed by the respondents by passing a well reasoned order. The Tribunal exclusively dealt with the entire factual scenario and found that the appellant was not justified in refusing permission for the use of plot in question for commercial purposes on the grounds of lack of space for Car parking as well as B. C. Road adjoining to the Plot in question being already congested and overcrowded. Consequently, the Tribunal observed that the respondents were at liberty to use their houses for commercial purposes.

12. The findings of the Tribunal is being assailed by the appellant in the Writ Court by initiating the instant writ proceedings.

13. The learned Single Judge, while affirming the Tribunal's findings, held that the appellant failed to consider the availability of the space for parking of Cars which was primary reason for rejecting the permission for the purpose of commercial use of the plot in question. Agreeing with the views expressed by the Tribunal and having scrupulously examined the core

issue of space requirement for car parking, the learned Single Judge held as under:-

"The learned Tribunal has correctly appreciated the matter and while referring to Master Plan of 2021 and Govt. order No. 263 dated 9.8.2004, has dealt with the objection of the petitioner vis-à-vis lack of space for parking and has opined that at page 97 of the Master Plan 2021, for an area of 1999 sft, there shall be parking area for 1 ½ cars. On the said analogy learned Tribunal has opined that as per sanction plan, respondent No. 1 (petitioner No. 1 therein) has a total area of 2915 sft and after covering the area under building, the open area remains 1457.9 sft, thus there is a space for parking 4.5 cars and in the case of respondent No. 2 (petitioner No. 2 therein), there is an open area of 1291 sft, so a space for parking 4 cars. The learned Tribunal while noticing the said details, has observed that the petitioners have not considered the matter in its right perspective.

Learned counsel for the petitioner, when confronted with the stated position, could not convince the Court as to how the authorities took decision about the lack of space for car parking. Therefore, the order passed by the learned Tribunal impugned to the extent leaving the respondents at liberty to use their houses for commercial purposes as permissible under Master Plan 2021, cannot be interfered with."

14. Having meticulously scrutinised the material placed before us including the impugned judgment and

orders of the Tribunal as well as of the Writ Court, it is seen that the appellant rejected the prayer of the respondents for granting permission for use of the land in question basically on two grounds: (a) there was no adequate space for parking of vehicles as required for using the building for commercial purpose; and (b) B. C. Road, by the side of which building in question did situate, was already congested and overcrowded.

15. From close scrutiny of the order of the Tribunal dated 31.12.2009 and the impugned judgment and order dated 16.11.2010, it is abundantly clear that the Writ Court wholly concurred with the findings of the Tribunal which having thoroughly examined the records including the new Master Plan 2021, unmistakably held that there was no space constraint as regards the parking of vehicles taking into account the space area of the plot in question owned and possessed by the respondents observing further that since the B. C. Road was declared to be a commercial area under the new Master Plan, permission for use of the building in the area for commercial use, could not be refused.

16. Situated thus, we are of the firm opinion that since, *ex facie*, it is a matter of concurrent finding of facts of both the Tribunal as well as of the Writ Court, there is no justification for this Writ Appellate Court to interfere with the same.

17. The Supreme Court in a case of *Kewal Krishan Gupta v. Jammu and Kashmir Special Tribunal and others*, reported in AIR 2005 SC 2578, relying on the view taken by High Powered Body, in paragraph 15, it was clearly held that the commercial activities could be permitted alongside the B. C. Road. In that case, a question arose as to whether commercial activities could be permitted by the side of the B.C. Road which was shown as residential zone in the Master Plan. Paragraph 4 and relevant portion of paragraph 15 of the cited case would be necessary to be noticed:

"4. It is the case of the appellant that although B. C. Road was shown as residential zone in the Master Plan, factually and predominantly, most of the properties situated at B. C. Road were being used for commercial purposes. The buildings on the said road used for commercial purposes belonged not only to private parties, but also consisted of several Government offices as well as banks

and public sector undertakings. In the appeal memo, the appellant has named a large number such commercial entities, which were using buildings along the B. C. Road at the time of lease deed was entered into.

15.It was precisely for this reason that the High Powered body took the view that commercial activities could be permitted at selected points along the said road and opined "B.C. Road is totally commercial at present and to thrust residential activity on the area would be putting cart before the horse. In areas like B. C. Road whenever there is an application for grant of B.P. the applicant submits a plan for residential purposes where in fact he has commercial activity in mind. This results in loss of revenue to the Jammu Municipality /J.D.A./J&K. Housing Board together with hassle of unauthorized constructions, it was, therefore, decided in the meeting to come-up with a proposal where areas like B.C. Road would be identified so that the same is submitted to the Government for issuing necessary modification in the land use as envisaged in the Master Plan approved by the Government in 1978."

18. This Court in a case of *Building Operation Authority v. Smt. Jyoti Singh*, (OWP no. 778/05 disposed of on 22.4.2006), relying on *Kewal Krishan Gupta's* case (supra), categorically held that B. C.

Road, by the side of which the plot in question situated, was declared to be a commercial area under the new Master Plan.

19. Having regard to the above judicial decisions as well as upon careful consideration of the facts and circumstances of the case in its totality, we find no plausible or cogent reason to demolish the concurrent findings of the Writ Court as well of the Tribunal.

20. The appeal stands dismissed.

21. There shall be no order as to costs.

(Mansoor Ahmad Mir)
Judge

(Dr. Aftab H. Saikia)
Chief Justice

Jammu:
22.02.2011
Tilak, Secy.

