

HIGH COURT OF JAMMU AND KASHMIR  
AT JAMMU

OWP No. 1370/2012

CMA No. 1919/2012

Date of Order: 11.10.2012

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Arshad Ali Chowdhary. v. The Jammu and Kashmir Special Tribunal, Jammu and ors.

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Coram:

**Mr. Justice J. P. Singh.**

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Appearing Counsel:

For Petitioner(s) : Mr. S.M. Choudhary, Advocate.

For Respondent(s) : Mr. S.S. Nand, Advocate.

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| i)  | Whether approved for reporting<br>in Press/Media | : | Yes/No |
| ii) | Whether to be reported<br>in Digest/Journal      | : | Yes    |
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The petitioner has filed this Writ Petition questioning Jammu and Kashmir Special Tribunal, Jammu's order 3.8.2012 whereby requiring the petitioner to seek review of findings recorded in his earlier Appeal against Building Operation Controlling Authority's order dated 29.09.2003, his Appeal against Building Operation Controlling Authority, Municipal Area Jammu's Order dated 22.06.2012 was consigned to records.

Heard learned counsel for the parties and considered their submissions.

The petitioner had filed Appeal against Building Operation Controlling Authority, Municipal Area, Jammu's Order No. MJ/CE/65/3/12 dated 22.6.2012 before the Jammu and Kashmir Special Tribunal, Jammu raising various pleas in support to question the order of the Authority.

Rather than considering the Appeal on its merit, the learned Member, Jammu and Kashmir Special Tribunal,

seized of the Appeal, consigned it to records proceeding on the premise that the petitioner needs to have review of the findings appearing in Jammu and Kashmir Special Tribunal, Jammu's order dated 27.04.2012 whereby while allowing the petitioner's Appeal, the Building Operation Controlling Authority's earlier order dated 29.9.2003 was set aside permitting the Authority to pass fresh orders after affording opportunity of hearing to the petitioner.

Perusal of the Tribunal's order reveals that it had failed to exercise the appellate powers vested in it under the Jammu and Kashmir Special Tribunal Act, 1988. The Statutory Authority exercising appellate powers, is bound, in law, to decide the Appeals preferred before it in accordance with law. The law does not contemplate consigning of the Appeals to records without dealing therewith. Therefore, the course followed by the learned Member of the Special Tribunal consigning petitioner's Appeal to records without dealing therewith and determining the issues raised therein questioning the Building Operation Controlling Authority Municipal Area Jammu's order passed after the Tribunal's earlier order dated 27.04.2012, is erroneous.

This apart, the *prima facie* view taken by the Tribunal on the petitioner's construction, in the earlier round of litigation, was required to be dealt with by the Tribunal considering its affect on the fresh order passed by the Building Operation Controlling Authority and it was none of its function to advise the petitioner to seek review thereof.

The Tribunal has, therefore, erred in omitting to deal with the petitioner's Appeal on its own merit by consigning it to records and the order passed by it cannot, therefore, be sustained.

This Petition, accordingly, succeeds and is, therefore, allowed setting aside Jammu and Kashmir Special Tribunal, Jammu's order dated 3.8.2012. The petitioner's Appeal before the Jammu and Kashmir Special Tribunal, Jammu shall accordingly revive for its consideration afresh in accordance with law.

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

Jammu:  
11.10.2012  
Tilak, Secy