

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

**Case:OWP No.1316/2017**

Reserved on : 27.05.2019  
Pronounced on: 30.05.2019

Sanjay Singh

---Petitioner(s)

Through:- Mr. Jagpal Singh, Advocate

V/s

State of J&K and ors

---Respondent(s)

Through: - Mr. S. S. Nanda, Sr. AAG for respondent  
Nos.1 to 8.

Mr. Sunil Sethi, Sr. Advocate with  
Mr. Lavenya Sharma, Advocate for

respondent No.9.

**CORAM:**

**HON'BLE MR. JUSTICE SANJAY KUMAR GUPTA**

**JUDGMENT**

1. Through the instant petition, petitioner seeks the following reliefs:-

“a) Mandamus commanding the respondents to take appropriate steps to stop the illegal running of M/s South Indian Madrasi Dosa Dhaba and two other adjoining dhabas situated opposite to the house of the petitioner as the same are being run by its proprietor illegally/unauthorizedly in a residential area.

b) Mandamus commanding the respondents No.2 and 3 to fix no eating point boards in the residential area of the petitioner.

c) Mandamus commanding the respondents to ensure that there is no parking of vehicles in front of the house of the petitioner and further direct the respondents to ensure that vehicles are parked only in parking slots.”

2. The case of the petitioner is that he along with his two brothers and their family members are residing in their house situated at H. No. 229

Shastri Nagar, Jammu, opposite Dogra Academy School, which is a residential area. It is stated that petitioner and his family members are facing a great deal of undue inconvenience and harassment as right opposite to the house of the petitioner a South Indian Dhaba is being run by its proprietor illegally under the name and style of M/s South Indian Madrasi Dosa Dhaba and adjacent to the said Dhaba there are two more Dhabas. It is further stated that all these Dhabas are being run in an illegal and unauthorized manner in a residential area. Further case of the petitioner is that these Dhabas have no parking facilities as the people come and park their vehicles on both sides of road and even right in front of the gate of the petitioner and as a result thereof petitioner cannot even move out of his house.

3. This Court on 19.08.2017, at the time of issuing notice to the respondents, directed the Commissioner, Municipal Commissioner, Jammu to file a detailed affidavit stating therein as to whether the business being run in and around the house of the petitioner, is with appropriate permission and whether the same is in accordance with the master plan for the said area. It was further ordered by this Court that, if the Commissioner comes to a conclusion that the business being run in the said locality is unauthorized, what steps the Municipal Corporation has taken to stop the violation in that regard.
4. Jammu Municipal Corporation has filed objections, wherein it is stated that in compliance to the direction dated 19.08.2017, Enforcement Inspector of the area has reported that as per the record, subject is a private property/land and no NOC/permission has been granted in favour of M/s South Indian Madarsi Dosa Dhaba and

adjoining shops by the Jammu Municipal Corporation. It has further been stated that on ascertaining the facts, the Department of Food and Drugs Administration, J&K has issued license/registration to M/s South Indian Madarsi Dosa Dhaba and other Dhabas in the area under the Food Safety and Standards Act, vide registration no. 21016152000109 dated 29.8.2016. The further stand taken in the objections is that respondent-Jammu Municipal Corporation had initiated legal proceedings against respondent No.9, who has changed the land use from residential to commercial and notice under Section 7(1) of J&K Control of Building Operation Act, 1988 to show cause was served vide No. MJ/CEO/23/1/2017 dated 28.09.2017 upon respondent No. 9.

5. Respondent No. 9 has also filed objections. The stand taken in the objections is that brother of the petitioner is running a shop just in front of Dhaba of respondent No. 9 in violation of the municipal laws as no permission has ever been taken by him. It is stated that even Municipal Authority has not taken any action against him, because of the petitioner yielding political influence. The further stand taken is that petitioner wants to close down the business of respondent in order to flourish his own business of same nature. It is stated that answering respondent is barely earning enough income to sustain himself and his family by running the Dhaba strictly in accordance with the municipal laws.
6. I have heard counsel for the parties. Counsel for petitioner has reiterated all grounds taken in the petition. In support of his contention, learned counsel for the petitioner relies upon the

judgments of this Court in case titled **Balwan Singh and ors. vs. Union of India and ors.** reported in **2003 (1) JKJ (HC) 108**, and **Kanav Khajuria and ors. vs. State of J&K and ors.** reported in **2015 (3) JKJ 420**. Whereas counsel for official respondents has stated that Jammu Municipal Corporation has complied with the provisions of Municipal Act and has issued necessary orders, whereas counsel for private respondent has stated that he has valid license for running the business under name and style Madrasi Dosa Dhaba.

7. The only grievance of the petitioner is that respondent-Municipal Authority has not taken any action against the opening of shop i.e., M/s South Indian Madarsi Dosa Dhaba. But from perusal of the objections as narrated above, it is evident that respondent-Municipal Corporation, Jammu has already issued a notice dated 28.09.2017, under provisions of Section 7(1) of J&K Control of Building Operation Act, 1988. The said notice reads as under:-

*"1.S. Surjeet Singh,  
S/o S. Netar Singh (Owner)*

*2. Sh. Abimanan (Tenant)  
M/s South Indian, Madrasi Dosa Dhaba  
Opp. H.no. 229, Shastri Naga,  
Jammu*

*No. MJ/CEO/23/1/2017*

*Dated: 28/9/2017*

*Sub:-Notice under Provision of Section 7 (1) of J&K Control of Building Operation Act,1988:*

*It is reported by the Khilafwarzi Inspector I/c area that you are running a MadrasiDosa Dhaba with the following violations:*

*That you have changed the land use of the area from Residential to Commercial*

*There is no provision for parking as required under Law*

*That you have not the requisite permission form Jammu Municipal Corporation to run the said Commercial activity*

*Whereas the said illegal running of said Dhaba seriously effects the planned development of Jammu City and contravenes the zoning regulation.*

*Now, therefore, in exercise of powers conferred under section 7 (1) of J&K Statecontrol of Building Operation Act, 1988 read with*

*resolution No: 1<sup>st</sup> Dated: 21.05.2010 published in the Government Gazette dated: 2<sup>nd</sup> Jan 2014. I hereby call upon you to show cause within a period of 48 hours from the date of service of this notice, in the matter failing which further appropriate action shall be taken against you.*

*Sd/-  
Building Operation Controlling Authority  
Municipal Corporation,  
Jammu.”*

8. After issuing the aforesaid notice, even final notice under provisions of Section 7(3) of J&K Control of Building Operation Act, 1988 has also been issued on 17.12.2018. The said notice reads as under:-

*“1.S. Surjeet Singh*

*S/o S. Netar Singh (Owner).  
2. sh. Abimanan (Tenant)  
M/s South Indian, Madrasi Dosa Dhaba  
Opp. H.no. 229, Shastri Nagar,  
Jammu*

*No. MJ/CEO/23/3/2018*

*Dated:17.12.2018*

*Sub: Order under Provisions of Section 7 (3) of J&K Control of Building Operation Act 1988.*

*Whereas vide No: MJ/CEO/23/1/2017 Dated: 28.09.2017 you were asked to show cause, as to why the Khilafwarzi/violations should not be demolished.*

*Whereas you have failed to show cause in the matter and committed the following violations:*

*That you have changed the land use of the area from Residential to Commercial*

*There is no provision for parking as required under Law.*

*That you have not the requisite permission form Jammu Municipal Corporation to run the said Commercial activity*

*Whereas the said illegal running of said Dhaba seriously effects the planned development of Jammu City and contravenes the zoning regulation.*

*Now, therefore, in exercise of powers conferred under section 7 (3) of the J&K State control of Building Operation Act, 1988 read with resolution No: 1<sup>st</sup> Dated:21.05.2010 published in the Government Gazette dated: 2<sup>nd</sup> Jan 2014 of the Building Operation Controlling Authority Municipal Area, Jammu, you are directed to demolish the construction/violations as detailed above within 5 five days from the date of service of this notice failing which the same will be demolished at your risk and cost by the Jammu Municipal Corporation.*

*Sd/-  
Joint Commissioner (Adm)  
Municipal Corporation  
Jammu.”*

9. From perusal of the record, it further appears that landlord of respondent No.9 has filed an appeal before the statutory authority i.e., Special Tribunal, Jammu and on 20.12.2018, the J&K Special Tribunal, Jammu has directed the parties to maintain status quo on spot.
10. In view of the facts of the case, it is evident that main grievance of petitioner has been redressed. Another argument of counsel for petitioner that private respondent is running the business by illegal means and in unauthorized manner in a residential area; this argument is not tenable as Department of Food and Drugs Administration, J&K has issued registration certificate under the Food Safety and Standards Act for food vendee establishment, vide registration no. 21016152000109 dated 29.8.2016 in favour private respondent. Another argument of counsel for petitioner that Dhabas have no parking facilities as the people come and park their vehicles on both sides of road and even right in front of the gate of the petitioner and as a result thereof nuisance is being caused in the area and to him; this argument is also not tenable as proper remedy in this regard is to proceed against private respondent under section 133 Cr.P.C. The laws cited by counsel for petitioner is not applicable in present set of circumstances, because these laws deal with sealing of premises in terms of section 8 of J&K Control of Building Operation Act and duty of municipal authorities to implement Municipal Laws. As already held, in present case, JMC has already issued final notice in terms of section 7(3) of J&K Control of Building Operation Act 1988

and matter is sub judice before statutory authority (J&K Special Tribunal) in appeal.

11. In view of the above, the instant petition is not maintainable. It is **dismissed** accordingly.

( Sanjay Kumar Gupta )  
Judge

Jammu:  
30.05.2019  
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