

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

OWP No. 592 of 2010 (O&M)  
c/w  
OWP No. 249 of 2010 (O&M)

Reserved on: 29.09.2021  
Pronounced on: 29.10.2021

Raman Gupta and others

.....Appellant/Petitioner(s)

Through :- Mr. M. K. Bhardwaj, Sr. Advocate with'  
Mr. Gagan Kohli, Advocate.  
Mr. A. K. Sawhney, Advocate

v/s

State of J&K and others

.....Respondent(s)

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

**Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE**

**JUDGMENT**

1. Since same order is impugned in both the writ petitions on identical grounds, as such, with the consent of learned counsels for the parties, both the petitions are taken up for final disposal.

2. The petitioners, through the medium of these present petitions, have impugned the Order No. CEO-KDA/K/01-07/2010 dated 04.01.2010 (herein-after to be referred as 'the order impugned') passed by the respondents, by virtue of which, Building Operations and Control Authority (BOCA) of Katra Development Authority has fixed fee @ Rs. 70/- Sft./year for erection of display add/boards/hoardings on private land. No challenge has been thrown to the other part of the order levying fee for public land.

3. Briefly stated the facts necessary for deciding both the writ petitions are that in one of the petitions, the petitioners claim to be the proprietors of the advertisement agencies, who hire sites and install hoardings of their clients where as in the other petition the petitioners claim to be the owners of the land. They have assailed the order impugned on the grounds that the BOCA of Katra Development Authority has no jurisdiction to charge any tax or fee with regard to adds/boards/hoardings displayed on the private lands; that the rates of fees have been fixed after taking into consideration the rates applicable in the Jammu Municipal Corporation; that the Municipal Committee/Corporation is competent and authorized to impose tax and fee on certain items mentioned in the Municipal Act and the procedure laid down in the Municipal Act has to be strictly followed for imposing the said fee/tax; that after the resolution for imposing fees/tax is passed by the Municipal Committee, subject to conditions laid down by the Government by the issuance of rules/orders, the said decision has to be communicated to the Government and then the Government after approving the same has to notify the same in the Government Gazette and the said tax/fee would be applicable w.e.f. appointed date; that the order impugned is discriminatory, unfair, unreasonable and wrong as the publicity material is erected by the owner of the property for display sometimes for one day, one week, one month, two months etc. and therefore, the decision to charge fee annually is totally unwarranted, unjustified and illegal. The petitioners have also placed on record notice dated 08.03.2010 issued by respondent No. 3 whereby petitioner No. 3 has been asked to deposit the fee as per the approved rates.

4. Response stands filed by the respondents No. 2 to 4 in which they have denied that the order impugned is arbitrary, illegal or wrong as it did not

affect the right of the petitioners, who are conducting the business in the said field. The respondents have admitted the issuance of notice to respondent No.3 for depositing requisite fee as per the approved rates. It is submitted that the BOCA of Katra Development Authority has jurisdiction to charge fee with regard to adds/boards/hoardings displayed on the private land which fall in the jurisdiction of Katra Development Authority. The Katra Development Authority is very much entitled to levy charges in respect of adds/boards/hoardings displayed on the private lands. There is nothing wrong to apply the analogy with the regard to the rates applicable to the Jammu Municipal Corporation so far as fixation of fee by the BOCA of Katra Development Authority is concerned, as such, the same is not arbitrary, illegal and wrong. It is also stated that the fee/charges imposed by virtue of order, which is impugned in both the petitions, are levied as per the provisions contained in the Act. It is further submitted that under the Development Act/Municipal Act, answering respondent authority/Municipal Committee is entitled to impose charges/fee for laying advertisements/boards/hoardings in the public as well as private land falling within its jurisdiction.

5. Mr. M. K. Bhardwaj, learned Sr. Counsel assisted by Mr. Gagan Kohli, Advocate vehemently argued that the BOCA of Katra Development Authority has no jurisdiction to impose fee/charges with regard to the display adds/hoardings/boards on private land. Mr. A. K. Sawhney too has argued on the similar lines.

6. *Per contra*, Mr. S. S. Nanda, learned Sr. AAG appearing for the respondents submits that BOCA of Katra Development Authority has the power and authority to levy fee/charges for displaying advertisements/boards/hoardings in the public as well as private land.

7. Heard learned counsel for the parties and perused the record.
8. Order impugned dated 04.01.2010 is reproduced as under:

*“Subject: erection of Display Add/boards Hoarding on public and private land.*

*In the meeting of BOCA of KDA, the above subject was discussed, the Executive Officer, Municipal Committee, Katra informed that Rs. 50/- Sft. is the rate in MC area. This is old, fixed about 5/6 years back. Also taking into account location-wise rates of JMC rates for private land boards will be Rs. 70/- Sft./year and for public land, rate will be Rs. 100/- Sft./year. Charging of fee for erection on public land shall not in any way give any right to the party, and he shall remove the board etc. On notice, at his cost, without claiming for loss, if any. Fee shall be paid at the starting of year. It is also decided to remove boards coming near to the carriage way. These rates shall be for out of municipal area i.e. from Asia Chowk to Domail and from Bhumika Temple to Panthel and nearby areas.”*

9. From the order impugned, it is evident that BOCA of Katra Development Authority has not only imposed fee for displaying adds/boards/hoardings on public land, but has also imposed fee for private land as well. In the case of private land, the fee has been fixed @ Rs. 70/- Sft./year. Now the issue that arises for consideration of this Court whether BOCA has jurisdiction to impose fee for erection of displaying adds/boards/hoardings on private land or not.

10. The Katra Development Authority owes its origin to the Development Act whereas BOCA of Katra Development Authority owes its existence to Section 3 of the J&K Control of Building Operations Act, 1988 (for short, **the Act of 1988**). The perusal of the statement of objects and reasons for enacting the Act of 1988 reveals that it was framed with intent to have a uniform law specifying the Authorities which only shall be competent to grant permission in a local area, municipal area, notified area and town area and effectively curb the un-authorized construction on public and private lands

and encroachment on public streets. Section 4 of the Act of 1988 is reproduced as under:

**“4. Control of development and building operation**

No person shall undertake or carry out the development of any site in any Municipal Area, Local Area, Town Area, Notified Area or Area Notified under the Jammu and Kashmir State Town Planning Act, 1963, or erect or re-erect any building or make or extend any excavation or lay out any means of access to a road in such area except with the previous permission of the authority concerned in writing.”

11. As per the mandate of Section 4 of the Act of 1988, the control of development and building operation vests in the Building Operations Controlling Authority (BOCA) and building operation includes erection or re-erection of any building or make or extend any excavation or lay out any means of access to a road in such area within the jurisdiction of the BOCA as per section 2(5) of the Act of 1988. Section 2(7) of the Act of 1988 defines development which means carrying out of building engineering, quarrying or extraction of manufacture of building materials or other operations in, on, over or under the land or erecting or re-erecting of any building on land or over the water making any physical change in or on land and includes redevelopment. Similarly section 2(9) defines erect or re-erect of any building.

12. Thus, it is evident that the BOCA is vested with power to regulate development on any site for erection or re-erection of any building. BOCA under the Act of 1988 has also been vested with power of entry on building or land and can even order for demolition of building when there is violation of the Act of 1988. In the Act of 1988, there is no provision that vests any power in the BOCA to levy fee for erection of displaying adds/boards/hoardings on

private land. The respondents have not been able to demonstrate as to under which provisions of law, the BOCA of Katra Development Authority has levied fee/charges for the purpose of displaying adds/boards/hoardings on private land. Even Regulation No. 7 of the J&K Control of Building Operations Regulations 1988 prescribes that the permission shall be accorded only after the applicant, who has applied for grant of permission for erection/re-erection/development of the land/building, deposits the building permission fees as approved by the competent Authority and not for the purpose of erection of display adds/Boards Hoardings on private lands.

13. Hence, this Court is of the considered view that BOCA under the Act of 1988 has not been vested with any power to levy fee for displaying adds/boards/hoardings on private land. The stand of the respondents that under the Municipal Act, fee can be levied, is without any substance as the territorial jurisdiction of the Katra Development Authority is with respect to the area outside the limits of Katra Municipality and this fact is duly reflected in the order impugned.

14. Viewed thus, the order impugned is not sustainable in the eye of law and as such, the same is quashed to the extent of levying fee for erection of display add/boards/hoardings on private land is concerned. The writ petitions are, accordingly, allowed.

**(RAJNESH OSWAL)**  
**JUDGE**

JAMMU  
29.10.2021  
Paramjeet

Whether the order is speaking	:	Yes / No
Whether the order is reportable	:	Yes / No