

IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

WP(C) 2085/2021 CM(2856/2022) CM(6839/2021)

HAWA BASHIR

...Petitioner(s)

Through: Mr. M. I. Qadri, Sr. Advocate with
Mr. Tawheed Sofi, Advocate.

Vs.

SRINAGAR MUNICIPAL CORPORATION AND ORS

...Respondent(s)

Through: Mr. Bikramdeep Singh, Dy.AG with
Ms. Nowbahar Khan, AC.

CORAM:

HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE

ORDER

27.03.2025

(ORAL)

1. The petitioner in the instant petition filed under Article 226 of the Constitution has prayed for the following reliefs: -

IN THE PREMISES, it is, therefore, prayed that in view of the above submissions the Hon'ble Court may be pleased to issue writ, direction or order in the nature of mandamus commanding the respondents to return the building permission fee deposited by the petitioner vide Annexure-II & VI and Rs. 26000/-, by cheque, to the tune of Rs. 549832/-, along with interest at banking rate from the date of filing of the application of withdrawal by the petitioner i.e., 09.11.2020, with costs.

2. Facts under the shade and cover of which the aforesaid reliefs have been prayed and as are stated in the petition are that the petitioner obtained land measuring two kanals under Survey No.1609/350 min from the Custodian Department situated at Bagat Barzulla in terms of order No.1438/2015 dated 7th of October, 2015, whereupon the petitioner intended to raise construction of a residential house and, in this regard, obtained permission from the Custodian General vide order No.65/2017 dated 6th of June, 2017, as also a sanction from Srinagar Municipal Corporation in terms of sanction order No. 3102/2015 dated 28th of July, 2015, followed by a revised sanction No. 1438/2015 dated 7th of October, 2015, against the payment of Rs.17,220/- as construction fee deposited by the petitioner on 6th of October, 2015.

3. It is the further stated in the petition that aforesaid sanction/s being valid for a period of three years, however, the petitioner could not avail raise the construction in question on account of shortage of resources, but the petitioner subsequently applied to the respondents for conversion of building permission granted for construction of double storey residential house with attic into the construction of a Guest House in tune with the Master Plan which, upon being considered by the respondents, was accorded and granted on 27th/28th of July 2017, and consequently the petitioner was directed to deposit an amount of Rs.506630/- as building permission fee which the petitioner deposited on 28th of July 2017 through cheque.
4. It is being next stated in the petition that even the said permission could not be availed by the petitioner for raising the construction in question owing to various family arrangements and reasons connected therewith as such, the petitioner yet again applied to the respondents for modification of the building permission which came to be granted vide permission No.38/2018 dated 26th of June 2018 whereupon the petitioner paid an amount of Rs.26000/- through cheque as building permission fee on 6th of June 2018 with the respondents compounding the total amount of building permission fee as Rs.549832/-.
5. It is further stated in the petition that in the year 2019 when the petitioner again intended to commence the construction yet, the same got stalled on account of law and order and disturbed situation in the valley, followed by outbreak of COVID-19 pandemic in March 2020, as such, the petitioner could not yet again avail the building permission in question, as such, the petitioner moved an application before the respondents for refund of the building permission fee amounting to Rs.549832/-, which the respondents however, refused to refund on the premise that there is no rule or regulation providing for refund of the same, leaving thus no option to the petitioner except to approach this Court through the medium of instant petition.
6. The petitioner, while maintaining the instant petition for seeking aforesaid relief, has pleaded that the fee charged by the respondents meant for availing the services by the petitioner and in case such services are not availed, the respondents are liable to refund said fee.

Heard counsel for the parties and perused the record available on the file.

7. Record reveals that ever since the petition was entertained and notices issued to the respondents thereof, respondents though entered appearance in response thereto, however, have chosen not to file reply to the petition and contest the case set up by the petitioner in the petition.
8. It is significant to mention here that during the pendency of the petition, the petitioner herein also filed CM No. 2856/2022 seeking a direction thereupon the respondents to deposit the sanction fee, the subject matter of the writ petition before this Court wherein vide order dated 12th of October 2021, the respondents herein came to be directed to deposit the said amount before this court which subsequently came to be released in favour of the petitioner in terms of order dated 12th of August 2022 by this court.
9. Having regard to the facts of the case inasmuch as the amount in question stands released in favour of the petitioner herein inasmuch as that the respondents did not choose to contest the case set up by the petitioner herein in the petition, it is deemed appropriate to settle the instant petition, taking into consideration the aforesaid position obtaining in the matter in particular, that the respondents did not contest the claim lodged by the petitioner.

Accordingly, the petition shall stand settled and disposed of while providing a liberty to the respondents to seek recovery of the amount in question from the petitioner if same is provided in any law, rules or regulation applicable thereto.

10. It is made clear that having regard to the aforesaid peculiar facts and circumstances of the case, the instant order shall not form a precedent for any other case.
11. Disposed of.

**(JAVED IQBAL WANI)
JUDGE**

SRINAGAR

27.03.2025

Ishaq

*Whether the order is speaking? Yes/No
Whether approved for reporting ? Yes/No*