

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

...

**LPA No. 154/2023**

*Reserved on: 07-07-2025*

*Pronounced on: 25.07.2025*

1. Mohamad Rafiq Sheikh (aged 62 yrs)  
S/O: Habibulllah Sheikh
2. Bashir Ahmad Sheikh (aged 57 yrs)  
S/O: Habibullah Sheikh  
All Residents of Nowgam, Srinagar

...Appellant(s)

Through: Mr. Altaf Haqani, Senior Advocate with  
Mr. Shakir Haqani, Advocate

**VERSUS**

1. Deputy Director Enforcement, Srinagar Development Authority  
Srinagar
2. Chairman Building Operation Controlling Authority (Vice Chairman,  
Srinagar Development Authority), Srinagar.
3. Chairman, J&K Special Tribunal, Srinagar.

...Respondent(s)

Through: Mr. Ilyas Nazir Laway, Govt. Advocate

**CORAM:**

**HON'BLE MR JUSTICE SANJEEV KUMAR, JUDGE  
HON'BLE MR JUSTICE SANJAY PARIHAR, JUDGE.**

**JUDGMENT**

**Sanjeev Kumar J:**

**01.** This intra-court appeal filed under Clause 12 of the Letters Patent arises from an order and judgment dated 03.08.2023, passed by a learned Single Judge of this Court ["the writ Court"] in OWP No. 203/2017, titled

*“Deputy Director Enforcement. Vs. Mohd Rafiq Sheikh and Ors.”*, whereby the writ petition filed by the respondents herein, challenging the order of Jammu and Kashmir Special tribunal [‘the Tribunal’] dated 23-01-2017, compounding violations committed by the appellants, has been set aside and the respondents have been directed to proceed in the matter in accordance with law to deal with the violations committed by the appellants.

### **FACTUAL MATRIX**

**02.** Briefly put, the relevant facts leading to filing of this appeal, as are gatherable from the pleadings of the parties and the judgment passed by the Writ Court, are that the appellants along with their father, namely, Habibullah Sheikh had obtained three separate/individual building permissions from the Srinagar Development Authority ( ‘SDA’) for raising construction of three separate Hostels/Guest Houses on their proprietary land. The building permission granted in favour of father of the appellants was in respect of a four-storey Hostel building (Commercial), whereas the building permission in respect of appellant-Bashir Ahmad Sheikh was for raising construction of four-storey Guest House. The building permission in favour of appellant-Mohamad Rafiq Sheikh was for raising the commercial construction of a four-storied Hostel. There is no dispute with regard to the fact that all the buildings were required to leave setback/gap of 30 feet between the two structures. The writ petitioners, instead of observing the setbacks and raising the construction as per the approved building permission/plan, combined all the three buildings into one, leaving no

gap/setback in-between the three buildings. The violations committed by the writ petitioners were even brought to the notice of police for registration of FIR.

**03.** It is alleged by the respondents that the writ petitioners, taking advantage of the unrest in the valley during the year 2016, raised illegal construction despite repeated directions by the respondents and its staff. It is also the complaint of the respondents that on 22.07.2016, the Authorities of the SDA visited the site and found the writ petitioners continuing with the illegal construction by engaging about 80 persons. The appellants even threatened the respondents on spot. The respondents initiated action under law and issued notices to the appellants for stopping the illegal construction they were raising. The police team sent by the SHO to enforce stoppage of the construction also could not deter the writ petitioners from raising the illegal construction. A final show cause notice was issued by the respondents to the appellants, which was also published in the daily "Greater Kashmir" on 08.08.2016. The notice was not responded to by the writ petitioners nor did they demolish the illegal construction. As is claimed, the SDA even approached the Deputy Commissioner, Srinagar, Senior Superintendent of Police Srinagar as also the Commissioner Srinagar Municipal Corporation to provide them requisite security and machinery for ensuring the demolition of the illegal structure raised by the writ petitioners. The date of demolition/sealing was fixed for 12.09.2016. However, before the illegal construction could be demolished, the appellants approached the Tribunal by

way of an appeal and succeeded in persuading the Tribunal to pass an interim order restraining the SDA and its officials from interfering with the structures of the appellants.

**04.** The appeal filed by the appellants before the Tribunal was contested by the SDA. The Presiding officer of the Tribunal, with a view to taking stock of the ground situation, also paid a visit to the site and found that the appellants, despite having been granted permission for construction of three separate buildings, had raised the construction as a single unit without leaving any gap/setback in-between. During the visit, it also surfaced that the appellants, after getting three different permissions for raising their separate commercial complexes, entered into a partnership on 03.11.2016 and thus raised a single construction. The Tribunal, after visiting the spot and giving an opportunity of hearing to both the sides and also obtaining the deviation/violation report from the SDA, though found the violations/deviations to the extent of 16800 square feet by utilizing the gaps/setbacks and 14164 square feet by making the additional construction beyond the approved plan, yet proceeded to compound the violations. The Tribunal vide its order and judgment dated 23.01.2017, allowed the appeal filed by the appellants and set aside the impugned notice dated 08.08.2016 issued by the SDA and compounded the violations to the extent of 42964 square feet for all the floors by payment of an amount of Rs. 21,48,200/- by calculating the compounding fee at the rate of Rs. 50 per square feet.

**05.** Feeling aggrieved, the respondents challenged the order of the Tribunal dated 23.01.2017 in OWP No. 203/2017, which has been allowed by the writ Court vide judgment and order impugned in this appeal. Apart from holding that the violations committed by the appellants are major violations and, therefore, not compoundable under any law, the writ Court has gone to the extent of holding that in the absence of proper prayer made by the appellants for compounding of the violations, the Tribunal, on its own, could not have passed the order compounding the major violations. It is in the backdrop of this factual position, the appellants are before us in this appeal.

**GROUND OF CHALLENGE: ARGUMENTS BY THE COUNSEL ON BOTH SIDES:**

**06.** The judgment impugned is challenged by the appellants *inter alia* on the following grounds:-

- (i) That the writ Court has not appreciated that the appellants are owners in possession of a huge chunk of land measuring 18 kanals and that they belong to the same family. The appellants have not been found guilty of violations in respect of any front or rear setbacks or the height of the building, or any other requirements of the master plan.
- (ii) That the writ Court did not appreciate that the violations committed by the appellants by joining the three buildings without encroaching upon any public or private land were

not in violation of the master plan and, therefore, were compoundable. The writ Court however failed to appreciate this aspect of the matter and thus landed in an error of allowing the writ petition of the respondents and setting aside the well reasoned order of the Tribunal.

- (iii) That the writ Court did not appreciate that the writ petition was not maintainable, in that, the same had been signed and presented by the Deputy Director Enforcement, SDA, without having any lawful authority.
- (iv) That the writ Court also failed to appreciate that the respondents by accepting the compounding fee of Rs. 21,48,200/- were stopped by their conduct to challenge the order of the Tribunal.
- (v) That the writ Court also did not appreciate that during the currency of construction process, the appellants had preferred a joint application for sanction of revised plan seeking permission to raise the construction between the gaps of the three approved buildings and that the respondents having failed to take the decision within the stipulated period, shall be deemed to have accorded permission.
- (vi) That the writ Court also did not consider, in right perspective, the contention raised before it that

respondents had not issued any show cause notice before issuing the demolition notice impugned before the Tribunal.

(vii) That the writ Court also did not consider, in right perspective, the argument made on behalf of the appellants that Regulations of 2001, which purported to repeal the Regulations of 1998, were not valid in the eye of law, in that, the Regulations of 2001 had been framed by the Building Operation Controlling Authority appointed under SRO 289 dated 21.07.1999, without any previous approval by the Government, as was required under Section 19 of the Control of Building Operations Act, 1988 [“the Act of 1988”].

(viii) That the writ Court also did not appreciate that the Deputy Director Enforcement, SDA, was not delegated any authority to exercise powers under Section 7 of the Act of 1988.

**07.** Mr. A. Haqani, learned senior counsel appearing for the appellants, during the course of arguments, elaborated the grounds of challenge which we have taken note of hereinabove and would submit that the judgment of the writ Court is not sustainable in law and, therefore, deserves to be set aside. He would also urge us to take note of the huge investments made by the appellants and pray that the appellants are ready to pay whatever amount

of fine is directed by this Court provided the building raised by them is saved from demolition.

**08.** *Per contra*, learned counsel appearing for the SDA would submit that the judgment passed by the writ Court is perfectly legal and in consonance with law. It is argued that the Tribunal could not have compounded the major violations committed by the appellants, that too, when there was no such prayer made in the appeal by the appellants. It is further argued that the deposition of compounding fee by the appellants in the account of the SDA was without permission or even without an intimation to the SDA and, therefore, could not operate as estoppel against the respondents. Rather, the appellants by accepting the violations and depositing the compounding fee, have admitted that they have committed major violations and, therefore, cannot be permitted to challenge the authority of the respondents to issue notice of demolition. They are, however, required to justify as to under what provision of law such major violations can be compounded by the Tribunal.

**ANALYSIS AND DISCUSSION:**

**09.** Having heard learned counsel for parties and perused the material on record, the following questions arise for determination in this appeal:-

- (i) Whether the notice dated 08-08-2016, issued by the Deputy Director Enforcement, SDA, Srinagar, directing the appellants to remove the un-authorised construction within 24 hours and stop the work immediately, is a final notice under Section 7 (3) of the Jammu and Kashmir Control of Building Operation Act,

1988 [‘the Act of 1988’] and, therefore, appealable under Section 13 thereof ?

- (ii) Whether the appellants, having accepted the judgment dated 23-01-2017 passed by the Jammu and Kashmir Special Tribunal and having deposited the compounding fee in terms thereof, are estopped by their conduct and acquiescence to challenge the validity of the notice of demolition issued by the Deputy Director Enforcement, SDA, Srinagar?
- (iii) Whether mere deposit of the compounding fee by the appellants with the respondent-authority without the same having been accepted by the Competent Authority, could denude the respondent-authority of its right to challenge the order of the Tribunal?
- (iv) Whether the offending structure in respect of which notice of demolition was issued by the Deputy Director Enforcement, SDA, Srinagar, was governed by the Jammu and Kashmir Control of Building Operation Regulations, 1988 [‘the Regulations of 1988’] or the Jammu and Kashmir Control of Building Operations (Revised) Regulations, 2001 [‘ the Revised Regulations of 2001’] and whether the Revised Regulations of 2001 are issued in compliance with Section 19 of the Act of 1988 ?

- (v) Whether the Regulations of 1998 or the Revised Regulations of 2001 permit compounding of violations in respect of permissible front, rear or side setbacks prescribed in the permission?
- (vi) Whether there is any provision in the Act of 1988 and the Regulations framed thereunder providing for submission of revised plan so as to seek permission to raise construction on the setbacks left in the buildings already constructed pursuant to permission granted by the Competent Authority?

**10.** In addition to the questions formulated herein above, Mr. A. Haqani, learned senior counsel appearing for the appellants, has also raised the issue of competence of the Deputy Director Enforcement, SDA, Srinagar, to file the Writ Petition on behalf of the respondent-Authority.

**11.** Before we address the issues raised in this appeal, we need to have a quick but careful look on various provisions of the Jammu and Kashmir Development Act, 1970, [‘the Development Act’], the Act of 1988 and the Regulations of 1998 and 2001 framed thereunder.

**12.** With a view to providing for the development of the State according to plan and addressing the other ancillary matters, the Jammu and Kashmir State Legislature in the year 1970 enacted the Development Act. In the exercise of powers conferred by Section 3, various areas, throughout the State of Jammu and Kashmir (now UT of J&K), were declared to be ‘local areas’ for the purposes of the Act and an authority for each local area to be called the ‘Development Authority’ was constituted. It is under Section 3 of

this Act, the SDA also came to be constituted to ensure a planned development of the area notified as the 'local area' of the SDA. The Development Act and the Rules framed thereunder is a complete code in itself and contains sufficient provisions with regard to preparation of the Master Plan and Zonal Development plans. There are specific provisions dealing with the permission to be taken by a person including the departments of the Government, who wishes to undertake and carry out development of any land or building in the Zone. Section 13 to Section 15-A of Chapter IV of the Development Act are the provisions dealing with grant of permission for undertaking development including building operations. Section 25 and 26 deal with the power of the Development Authority to stop construction and pass appropriate orders for demolition of the development/building operations undertaken within a local area without or in violation of the permission referred to in Section 13 of the Act.

**13.** The constructions within the notified local area falling within the jurisdiction of a particular Development Authority were regulated by the Development Act and the Rules and Regulation framed thereunder until the year 1988. It seems that the provisions made for ensuring the planned development of the then State of Jammu and Kashmir (now the J&K) under Development Act, the Municipal Act, State Town planning Act and the Town Area Act, were not found adequate to meet the desired requirements of planned development. There were issues of over-lapping of jurisdiction of these authorities leading to confusion and ambiguities in the matter of

implementation of the provisions relating to the planned development. Keeping in view all these aspects and to ensure that a uniform law specifying the authorities, which shall only be competent to grant permission in a Local Area, Municipal Area, Notified Area etc. and effectively curbs the unauthorized constructions on public and private lands and encroachment on the public streets, the than State Legislature in the year 1988 enacted the Act of 1988 called as the Jammu and Kashmir Control of Building Operations Act, 1988. The Act of 1988, as is evident from Section 1, extends to the whole the State of Jammu and Kashmir/ UT of J&K. The term 'Local Area' is defined under Section 2 (12) of the Act of 1988, which reads thus:

*"Local Area" means any area declared to be a Local Area under sub-section (1) of section 3 of the Jammu and Kashmir Development Act 1970."*

**14.** Section 3 deals with constitution of an Authority for a Local Area, Municipal Area, Town Area, Notified Area or Area notified under the Jammu and Kashmir State Town Planning Act, 1963. Section 3, for facility of reference, is reproduced as under:-

**3. Constitution of the Authority.**—(1) With the commencement of this Act, the authorities for the propose of this Act in any Local Area, Municipal Area, Town Area, Notified Area or Area notified under the Jammu and Kashmir State Town Planning Act, 1963 shall be as under :—

(2) The Authority in respect of—

- (a) 'Municipal Area' notified under the J&K Municipal Act, Samvat 2008 ;
  - (b) 'Local Area' not included in the Municipal Area ;
  - (c) 'Town Area' notified under the J&K Town Area Act, Samvat 2011 ;
  - (d) 'Notified Area' specified under section 283 of the Jammu and Kashmir Municipal Act, Samvat 2008 ;
  - (e) Area notified under the Jammu and Kashmir Town Planning Act, 1963 which is not a 'Local Area', 'Town Area' or 'Notified Area' ;
- shall be appointed by the Government from time to time by notifying in the Government Gazette."

**15.** As is evident from Section 3 (2) (b), the Government is empowered to constitute an Authority for a Local Area not included in the Municipal Area. It is in the exercise of this power conferred upon the Government, that it has constituted Authorities for various Local Areas under the control of their respective Development Authorities. The Srinagar Development Authority came to be constituted by the Government vide SRO 152 dated 31.05.2005. The Authority constituted for the Local Area of SDA, outside the municipal area of Srinagar Municipal Corporation, consists of the following:-

- i.) Vice-Chairman Srinagar Development Authority (Chairman)
- ii.) Director Land Management, SDA (Member).
- iii.) Executive Engineer, PHE (Member).
- iv.) Executive Engineer Inspections, PDD (Member).
- v.) Executive Engineer Sewerage and Drainage (Member).
- vi.) Secretary Lakes and Water member.
- vii.) Senior Town Planner, SDA Member Secretary.

**16.** Sections 4 and 5 specifically deals with the permission required to be obtained by a person seeking to undertake or carry out development of any site in different areas including a Local Area. For facility of reference Sections 4 and 5 are also set out below:-

**“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.

**5. Application for permission.—**(1) Every person desiring to obtain the permission, referred to in section 4 shall make an application in writing to the Authority or through any agency authorised, in such form and containing such information as may be prescribed by regulations made under this Act.

(2) The Authority shall, within a period of 7 days of the receipt of application under sub-section (1) decline to accept a plan as sufficient for

purposes of granting sanction under this Act if it does not bear the signature and seal of a Registered Architect or a Draftsman registered with the Authority.

(3) On receipt of such application the Authority, after making such enquiry as it considers necessary, keeping in view the area and the laws, rules and regulations applicable therein, shall by an order in writing, either grant the permission, subject to such conditions, if any, as may be specified in the order or refuse to grant such permission, under the State Town Planning Act, 1963 or any Master Plan.

(4) Where the permission is refused, the grounds of such refusal shall be communicated to the applicant in writing within a period of 30 days."

**17.** From plain reading of Sections 4 and 5, it clearly transpires that no person is permitted to undertake or carry out development of any site in any Municipal Area, Town Area, Notified Area including a Local Area 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 concerned authority in writing. Section 5 lays down the procedure for making an application to seek permission to carry out the development as per the plan appended with the application. As is apparent from reading of sub-section 4 of Section 5, there is no timeline prescribed for grant of permission. However, in case the permission is refused by the Authority, the grounds of refusal shall be communicated to the person concerned in writing within a period of 30 days.

**18.** The Regulations of 1998 framed by the Government in terms of Section 19 of the Act, contain a provision of deemed grant of sanction.

Regulation 7 (3) prescribes as under:-

"7.(3) The Authority shall decide the matter within a maximum period of sixty days from the date of submission of the application and in case no decision can be taken within this stipulated period, the permission shall be deemed to have been accorded."

**19.** However, the Revised Regulations of 2001 though contain a similar provision but provide that the deemed permission shall be subject to various conditions. Regulation 7(3)(1) of the Regulations of 2001 is relevant for the discussion we have undertaken and the same is reproduced hereunder:-

**“7. Grant of Permission.**

- (i).....
- (ii).....
- (iii) In case the applicant has fulfilled all the requisite formalities and the Authority has not decided the notice of intent of the applicant within a maximum period of 90 days from the date of application, the permission shall be deemed to have been accorded, provided the proposed construction does not-
  - (a) violate the planned development of Srinagar City as envisaged by various departments and departmental agencies such as PDD, PHE, SDA, UEED, LWDA, SMC etc;
  - (b) violate zoning regulations under Srinagar Master Plan;
  - (c) violate the land use of the area;
  - (d) violate the floor space index and set backs etc;
  - (e) come in alignment of green belt;
  - (f) come in the widening of road by R&B Department;
  - (g) prevention of Ribbon Development Act;
  - (h) effect the easement rights of the adjacent plot holder and the title of the land is not subject-matter of dispute before any forum;
  - (i) violate the prescribed building line and right of way;
  - (j) violate Rules 77, 70 and 80 of the J&K Electricity Rules, 1978 made under J&K Electricity Act, 1997 (1040 AD).”

**20.** The regulations, not only fix the maximum period of 90 days for grant of permission but also provides that in case the application for permission is not decided within the stipulated period, the same shall be deemed to have been accorded provided the proposed construction does not violate *inter alia* floor space, index and setbacks. So far as erection or re-erection of building without or in violation of the permission granted by the Authority is concerned, the same is taken care of by Section 7 and 8 of the Act of 1988. Section 7 is germane to the controversy in hand and is, therefore, set out below:-

**“7. Order of demolition of building in certain areas.—**(1) Where the erection or re-erection of any building has been commenced or is being carried on or has been completed without the permission referred to in section 4 or in contravention of any condition subject to which any permission has been granted, the Authority shall issue a notice in writing calling upon the person to show cause within a period of 48 hours, why the building should not be altered or demolished as may be deemed necessary to remove the contravention.

(2) The Authority shall cause the notice to be affixed on the outer door of some conspicuous part of the building whereupon the notice shall be deemed to have been duly served upon the owner or the occupier of the building.

(3) If the person to whom the notice has been given refuses or fails to show cause within a period specified under sub-section (1) or if after hearing that person, the Authority is satisfied that the erection or re-erection of the building is in contravention of the provisions of this section, the Authority shall by order direct the person to demolish, alter or pull down the building or part thereof so far as is necessary to remove the contravention within a period not exceeding five days as may be specified in the order and if the person fails to comply with the direction, the Authority may itself cause the erection or reerection to be demolished after the expiry of the said period and may for that purpose use such Police Force as may be necessary which shall be made available to him by the Police Department on requisition.

(4) All expenses incurred for such demolition shall be recoverable from the owner and/or the occupier in the same manner as arrears of land revenue.

**8. Power to seal unauthorised construction.—**(1) It shall be lawful for the Authority concerned, at any time, before or after making an order of demolition under section 7 to make an order directing the sealing of such erection, re-erection or work or of premises in which such erection, re-erection or work is being carried on or has been completed for the purpose of carrying out the provisions of this Act, or for preventing any dispute as to the nature and extent of such erection or work.

(2) Where any erection, re-erection or work or any premises in which any erection, re-erection or work is being carried out, has or, have been sealed, the Authority concerned may for the purpose of demolishing such erection or work in accordance with the provisions of this Act, order such seal to be removed.

(3) No person shall remove such seal except:—

- (a) under an order made by the Authority concerned under subsection (2) ;
- or
- (b) under an order made in an appeal under this Act.”

**21.** As is evident from the reading of Section 7 in its entirety, if any person is found carrying out construction or has completed the same without the permission referred in Section 4 or in contravention of any condition subject to which any permission has been granted, the Authority constituted under Section 3 is under an obligation to issue a notice in writing calling upon the

person to show cause within a period of 48 hours as to why the building should not be altered or demolished as may be deemed necessary to remove the contravention. Sub-Section 3 of Section 7 provides further that if a person carrying on development/erection or re-erection to whom a notice has been given, refuses or fails to show cause within a stipulated period or if after hearing the said person, the authority is satisfied that the erection or re-erection of the building is in contravention of the provisions of Section 7, the Authority shall direct such violator to demolish or alter or pull down the building or part thereof within five days, as may be necessary to remove the contravention. It is only if the defaulter/ violator fails to remove the contravention, the Authority shall be well within its rights to carry out the demolition itself and may, for that purpose, seek the help of Police. Additionally, the Authority in terms of Section 8 is conferred with the power to seal the unauthorized construction.

**22.** From an overall survey of the relevant provisions of the two Legislations referred to above, in particular, the Act of 1988 and the Regulations framed there under, following salient features emerge:

- i) That with the coming into operation of the Act of 1988, the development in the Local Area, which includes erection or re-erection of any building, is regulated only by the Act of 1988 and the Regulations framed thereunder. A similar provision in the Development Act shall be deemed to have been impliedly superseded;

ii) That the power to grant permission for undertaking building operations etc. and to regulate the constructions within the local area under the SDA rests with the Authority constituted under Section 3 of the Act of 1988. For the Local Area falling under the jurisdiction of SDA, the Government has vide notification SRO 152 dated 31.05.2005, constituted an authority headed by the Vice-Chairman of the Srinagar Development Authority.

**23.** Section 16 of the Act of 1988 provides for delegation of powers exercisable by the Authority under the Act, which reads as under:

**“16. Delegation.—**The Authority may, by notification in the Government Gazette, direct that any power exercisable by it under this Act except the power to make regulations, may also be exercised in such cases and subject to such condition, if any, as may be specified in the notification, by such officer or local authority as may be mentioned therein.”

**23.** It is not in dispute before us that the SDA has delegated the powers exercisable by it under Sections 7 and 8 of the Act of 1988 to the Deputy Director Enforcement, SDA, Srinagar.

**24.** Keeping in view the relevant provisions of the twin legislations referred to above, we have examined and analysed the arguments made by learned counsel appearing on both sides.

**25.** The impugned notice was issued by the authorized officer of the SDA, terming it as ‘final show cause notice’ and a perusal whereof indicates that prior to the issuance of notice styled as ‘Final show cause notice’ the appellants were served with several notices through newspapers and were also given verbal directions to remove the offending/deviated portion of the

structure. It is only when all those notices were not responded to by the appellants, the final notice dated 08-08-2016 was issued. The notice dated 08-08-2016 seems to be over and above the notice of show cause/ notice of demolition envisaged under Section 7 of the Act of 1988. It is this notice which was called in question by the appellants before the Tribunal by way of an appeal, purportedly filed under Section 13 of the Act of 1988 on various grounds. The appellants in their appeal before the Tribunal did not deny having raised construction over the eastern setbacks. They have also admitted that though the building permissions were granted for three different buildings, yet being brothers, they raised a single unit without leaving any gap/setback in between the three buildings. They, however, termed the violations committed by them as minor violations compoundable under the Act of 1988 and the Regulations framed thereunder. The final show cause notice/demolition notice was also challenged on the ground that, since there were three permissions for three buildings and, therefore, the joint notice was not permissible. The appellants also raised the plea that prior to the issuance of the final notice of demolition, they were not afforded an opportunity of being heard.

**26.** During the pendency of the appeal, the Tribunal also visited the site of building operations and found that the appellants had raised a single unit though they had been granted three separate permissions to raise three different units separated from each other by a gap of 30 feet. The Tribunal has also, at page 11 of its judgment, reproduced the permissible

plinth/construction area per floor and the actual construction raised. The details shown in the tabulated form clearly indicate that as against the total permissible plinth area i.e. 36636 Sft. the appellants have raised the construction to the extent of 79600 Sft., i.e. 19900 Sft. per floor. This will bring the total deviation to approximately 10741 Sft. per floor and 42964 Sft. violation in total.

**27.** As is rightly noticed by the Tribunal, most of the violations have taken place because of combining of three buildings into a single unit by raising the constructions on the setbacks between the buildings. The Tribunal has excluded the deviations to the extent of 16359 Sft. on the ground that there was a joint application made by the appellants seeking permission for revised plan and since the permission was not accorded by the Authority within 90 days, as such, the revised plan submitted on 09-12-2015 shall be deemed to have been accorded sanction. The rest of the construction has been treated by the Tribunal as minor violation, not affecting the planned development of the area in any manner and, thus, directed to be compounded by payment of fee. The appellants accepted the judgment of the Tribunal in its entirety and in compliance thereof deposited the compounding fee on their own in the account of the Authority. The respondent Authority was, however, aggrieved and challenged the order of the Tribunal dated 23-01-2017 in OWP 203/2017. The Writ Court has overturned the order of the Tribunal and directed the respondent-Authority to proceed in the matter in accordance with law.

**28.** The Show cause notice which was subject matter of challenge in appeal before the Tribunal, is though styled as 'final show cause notice' by the respondents, is, in essence, a notice calling upon the appellants to demolish the construction raised in contravention of the building permission within a period of 24 hours. The notice is final in the sense that it is the last notice issued to the appellants. As is noticed by the Tribunal by reference to the record produced by the respondent-Authority, the first show cause notice was issued on 20-07-2016 followed by similar notice issued on 27-07-2016. The notice dated 27-07-2016 has been endorsed to the prominent dailies for publication also. The last notice dated 08-08-2016 was, however, published in a prime daily newspaper. It is, thus, not the case of the appellants that notice of demolition dated 08-08-2016 was issued without there being any show cause notice issued under Section 7(1) of the Act of 1988. The two notices already stood issued in compliance with Section 7(1) and 7(2) of the Act. The notice dated 08-08-2016 was a notice over and above the statutory notices already issued by the competent Authority under Sections 7(1) and 7(2) of the Act of 1988. Both these notices were not subject matter of challenge before the Tribunal.

**29.** That apart, we are of the considered opinion that the appellants having accepted the judgment of the Tribunal in its entirety and having deposited the compounding fee with the respondent-Authority, have admitted the violations committed by them and it is only on their request that the Tribunal directed the compounding of the violations. It is a different matter whether

the violation committed by the appellants were minor or major violations and whether the Tribunal in the exercise of its appellate jurisdiction had the authority to compound such deviations. Suffices it to say that the appellants by their conduct and acquiescence cannot be permitted to turn around and find fault with the notice of demolition issued to them. We, therefore, can not permit the appellants to blow hot and cold in the same breath. The legal position with regard to the doctrine of ‘approbate and reprobate’ is well recognized and need not to be debated at length here.

**30.** The argument of Mr. Haqani, learned senior counsel appearing for the appellants, is that the writ petition could not have been maintained by the respondents to challenge the order of the Tribunal after having accepted the compounding fee in terms of the judgment of the Tribunal is without any substance.

**31.** There is no dispute, with regard to the fact that immediately after passing of the judgment by the Tribunal, the appellants deposited the entire compounding fee with the respondent-Authority. It is equally true that this fee was deposited by the appellants on their own in the Bank Account of the Authority. On being pointedly asked, Mr. Haqani could not demonstrate by reference to any record that the appellants had approached the respondent-Authority with any application for accepting of the compounding fee and the same was formally accepted by the competent authority. Mere deposit of the compounding fee by the appellants in the account of the respondent-Authority, even without its knowledge and acknowledgment, cannot take

away the right of the respondent-Authority to call in question the order passed by the Tribunal by filing the writ petition before this Court.

**32.** Another argument was raised by Mr. Haqani that the offending structure was regulated by the Regulations of 1998 and not the Regulations of 2001, as has been held by the Writ Court in the impugned judgment.

**33.** Before we deliberate on the issue and give our findings, we deem it appropriate to observe that whether the Regulations of 1998 are applicable or the Regulations of 2001 are applicable, the position with regard to the nature of violation would not change.

**34.** In terms of Regulation 11(2) of the Regulations of 1998, only an offence of minor nature is compoundable and the offence of minor nature would mean any erection or re-erection of the building which has taken place in violation of permission referred to in Section 4 of the Act or deemed permission as referred to in sub-clause (2) of Clause (7) of the Regulations. However, the proviso appended to Regulation 11(2) clearly indicates that the violation of permissible front, rear or side setbacks prescribed in the bye-laws shall not be compoundable. Similarly, in the Revised Regulations of 2001 the power given to the Appellate Officer, i.e. the Tribunal herein, to compound an offence of minor nature does not include the violation of permissible front, rear or side setbacks prescribed in the permission. To remove any confusion we deem it appropriate to set out Regulation 11 of the Regulations of 1998 and Regulation 9 of the Revised Regulations of 2001 herein below:-

**“Regulation 11 of the J&K Control of Building Operations Regulations, 1988**

11. (1) The Appellate Authority may compound an offence of a minor nature specified in Sub-clause (2) of these Regulations: Provided that the compounding fee shall be worked out on the basis of rates to be notified by the Government.

(2) For the purpose of these Regulations an offence of a minor nature shall include any erection or re-erection of the building which has taken place in violation of permission referred in Section 4 of the Act or deemed permission as referred in sub-clause (2) of clause (7) of these Regulations provided that such erection or re-erection:

(i) does not violate the approved land use of area as notified in the Master Plan or Town Planning scheme;

(ii) does not violate the permissible front, rear or side set backs prescribed in the bye-laws;

(iii) does not violate by more than 10% the permissible grounds coverage as prescribed in the bye-laws ; and

(iv) does not violate the permissible height of the building as prescribed in the bye-laws.

**Regulation 9 of the J&K Control of Building Operations (Revised) Regulations, 2001:**

9. An appeal against the order of the authority made under Sections 5 and 7 of the Act shall lie before the Chairman of Jammu and Kashmir Special tribunal or such other Member of the said Tribunal, as may be decided by the Chairman of the Jammu and Kashmir Special Tribunal.

The Appellate Officer may compound an offence of minor nature provided the appellant holds the proprietary rights over the land brought under unauthorized construction subject to payment of building permission fees at following rates:-

1. Residential: Rs. 12.50 to Rs. 25.00 per Sft.

2. Walling : Rs. 25.00 per running feet.

3. Commercial : Rs. 25.00 to Rs. 50.00 per Sft.

The Composition fee imposed by the Tribunal shall be credited into the Municipal Chest for the purposes of Section 65 of the Municipal Act.”

**35.** We are, therefore, of the opinion that whether the offending structure is governed by the Regulations of 1998 or the Revised Regulations of 2001, the construction raised on the prescribed setbacks, whether it is front, rear or side, is not an offence of minor nature and, therefore, not compoundable under either of the Regulations. That apart, the Revised Regulations of 2001

have been framed by the Authority in the exercise of powers conferred under Section 19 of the Act of 1988 which are applicable to the municipal areas of Srinagar and the local areas of Srinagar not included in the Municipal area of Srinagar Municipal Corporation. These Regulations are in supersession of SRO 165 dated 28-05-1998 whereby the Regulations of 1998 came to be framed. The only objection that was taken to the applicability of the Revised Regulations of 2001 by Mr. Haqani is that in terms of Section 19 of the Act of 1988, the Regulations can only be framed with the previous approval of the Government. From reading of the Notification dated 24-12-2001 whereby Revised Regulations of 2001 were brought into operation, it clearly transpires that the same have been framed after having received the clarification from the Government vide No. LSG.J/94/147 dated 08-08-2001. Though the aforesaid Notification was not brought to our notice by either of the parties, yet we find that the Revised Regulations of 2001 have been issued on 24-12-2001 only after seeking the approval from the Government, though the terms 'clarification' instead of 'approval' exists in the Statute Book. Section 19(1), which for facility of reference is set out below, thus, provides for approval and not for clarification from the Government. It is, thus, fair to assume that the term 'clarification' has been used in place of 'approval' and the same is apparently a printing/typographical error. Section 19 reads thus:

**19. Power to make regulations.**—(1) The Authority, with the previous approval of the Government, may, by notification in the Government Gazette, make regulations to carry out the purposes of this Act :

Provided that the Government may make the first regulations under this section and any regulation so made may be altered or rescinded by the Authority concerned in exercise of the powers conferred by this section. “

**36.** This brings us to another aspect of the matter which pertains to submission of the revised plan and the provisions in the Regulations in respect of deemed permission. The Act of 1988 only provides for undertaking or carrying out development of a site including erection or re-erection of a building etc. after obtaining a prior building permission from the authority concerned. It does not provide anywhere for submission of a revised plan to alter the dimensions and the structure of existing building raised in violation of the permission granted by the authority. In any case, we could not find any provision which would permit a party, raising a construction in contravention of the building permission granted by the competent authority, to submit a revised plan for regularisation of such violations. In our curiosity, we also went through the Regulations of 1998 and the Revised Regulations of 2001 to find out as to whether there is any such provision. Despite having gone through each and every Regulation, we could not find any provision providing for submitting Revised Building Plan so as to cover up the violations committed while raising the construction as per the sanctioned plan. The finding of the Tribunal that since the Revised Plan submitted by the appellants seeking permission to raise the construction on the setbacks of the existing buildings, that too after raising the construction, shall be deemed to have been granted sanction after the expiry of sixty/ninety days of its submission is, therefore, totally unwarranted.

**37.** It is true that in the Regulations of 1998 there is a provision for deemed provision and such deemed permission is without any conditions. However, the Revised Regulations of 2001 make the deemed permission also subject to certain conditions and one of such conditions is that, if the proposed construction does not offend the setbacks prescribed in the building permission. There is, however, no warrant for making an application seeking building permission on a revised plan if the construction proposed in the plan has already been accomplished. In the absence of any provision for submitting the revised plan to effect alteration and changes in the ongoing structure being raised as per the building permission granted by the Competent Authority, and, that too, to cover up the violations committed, is not traceable in the Act of 1988 or either of the Regulations framed there under. We, therefore, find no merit in the submissions of Mr. Haqani and the same are out rightly rejected.

**38.** In view of the discussion made above, we find no merit in this appeal and the same is, accordingly, dismissed.

**39.** Before we close, it would not be fair if we do not deal with fervent appeal made by Mr. Haqani at the end of his arguments that the appellants, having invested huge amount in raising the construction, may be penalized by imposing higher fine but the demolition of the building would not help anybody except putting the appellants to a colossal loss. Mr. Haqani would want us to invoke our equitable jurisdiction and show compassion to the appellants.

**40.** For a while, we were moved by the submission of Mr. Haqani, however, keeping in view the broader prospective of the menace of unplanned development of Srinagar City by reckless violations by the citizens with impunity while raising their constructions has impelled us to think otherwise. It needs no emphasis that the maxim, 'he who seeks equity must do equity'. A citizen who approaches the Court of law seeking enforcement of his rights must also be told to perform his duties. To every right there is a corresponding duty. A person guilty of flagrant violation of rule of law cannot approach the Court of law and complain that he is not being fairly treated by the State responsible for ensuring the implementation of rule of law. The appellants, out of design, applied for three different permissions. Two were with respect to construction of Hostels and one was in respect of a Guest House. The building permissions were granted by the Competent Authority indicating clearly the setbacks to be kept on all the sides. Two buildings were required to keep a gap of 30 feet in between, but without going as per the plan and taking the benefit of disturbances during the year 2016, the appellants took law into their hands and raised a single unit, probably with a view to run a Hotel. They knew that different considerations would prevail if they apply for building permission for raising the construction of a Hotel, and, therefore, devised a plan to hoodwink the authorities. Not even for a while we are ruling out the active connivance of the Officers/officials of the SDA. They permitted the appellants to indulge in large scale violations. As against the building permission for total build up

area of 9159 Sft per floor, the appellants succeeded in raising the construction on 19900 Sft per floor thereby making the violation to the extent of more than 200% and these violations were mostly made on the set backs. The violations were not minor either under the Regulations of 1998 or the Revised Regulations of 2001 and, therefore, the appellate authority, i.e. the Tribunal was devoid of any power to compound such violations. The power to compound the offences of minor nature is vested in the appellate authority i.e. the Tribunal herein, both under Regulation 11 of the Regulations of 1998 and the Revised Regulations of 2001 and both the Regulations clearly take out the violations in the permissible front, rear and side setbacks out of the purview and powers of the appellate authority. The Tribunal has not appreciated the entire matter in the correct perspective and appears to have been swayed by the considerations which are antithetic to rendering justice in the matter in accordance with law. The Writ Court has thus committed no error or illegality in overturning the order of the Tribunal and permitting the SDA to deal with the violations in accordance with law.

**41.** We are aware that there are several such buildings raised in the City under the nose of the authorities responsible for planned development of the City and as a result whereof the Srinagar City has lost its charm and beauty. Every day we witness traffic jams, encroachments on public roads, lanes and bye-lanes as also on the banks of river Jehlum. It is said that the encroachments and mushroom constructions un-authorizedly raised on both

sides of River Jehlum were some of the factors which led to the devastating floods of 2014.

**42.** It is high time that the control of building operations authorities woke-up from their slumber and take up their responsibility seriously, lest City of Srinagar and many others would be lost in the chaos. It needs no emphasis that lacs of tourists and pilgrims throng the Valley of Kashmir every year and first stop is in the City of Srinagar. If this is how they are presenting Srinagar City to the outside tourists and pilgrims, we would be doing great disservice to Tourism and Hospitality Sector besides making the life of its citizens miserable by chaotic traffic jams, pollution and haphazard growth of the City.

**43.** It is also right time that the authorities at the helm of affairs fix the responsibilities of the officer/officers under whose nose the violations take place. A fresh look at the Regulations to make provision for penalizing the Officers/officials responsible for allowing the development / construction raised in flagrant violation of building permission, would be worthwhile.

**44.** The argument that there are similar structures with much large violations still existing will not dissuade us to ensure that the beginning is made today and now.

**45.** The Srinagar Development Authority is directed to carry out the demolition of the violation even if it entails demolition of the entire structure and submit a report to this Court within a period of two months. The report

submitted by the SDA shall be placed before an appropriate Bench for consideration and passing further orders.

**46.** Registry to forward a copy of this judgment to the Chief Secretary of the UT of J&K.

**(Sanjay Parihar)**  
Judge

**(Sanjeev Kumar)**  
Judge

**SRINAGAR:**

25.07.2025

Anil Raina, Addl. Registrar/Secy

Whether the order is reportable: Yes

