

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKHAT SRINAGAR**

Reserved on: 06.03.2024
Pronounced on: 15.03.2024

WP(C) No.1711/2022

ABDUL REHMAN AHANGER **...PETITIONER(S)**

Through: - Ms. Asma Rashid, Advocate.

Vs.

UT OF J&K & OTHERS **...RESPONDENT(S)**

Through: - Mr. Raies-ud-din Ganai, Dy. AG.

CORAM:HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE

JUDGMENT

1) The petitioner along with his two brothers had approached the respondents for grant of building permission for construction of a commercial complex at Batabagh Narapora Road Sopore. After the requisite No Objection Certificates were issued by the concerned departments, the respondent-Municipal Council, Sopore, granted permission in favour of the petitioner and his two brothers for raising the construction vide order dated 28.01.2016. The petitioner further claims to have deposited the building permission fee on 31.12.2015 for an amount of Rs.1,60,600/-. The petitioner further states that when the building permission was granted, he was not in a position to raise construction of three storeyed building like his other two brothers due to financial constraints and he raised construction of only single storey building. The petitioner further claims to have obtained loan from the financial institution and his friends and relatives for the purpose of raising further construction of two more stories but could not raise the

construction due to Covid-19 Pandemic. The petitioner, as such, submitted an application in the month of April, 2021 before the respondent-Municipal Council which was forwarded to the concerned departments for their No Objection certificates. The petitioner was also directed to deposit the building permission fee and the same was deposited in the Municipal Council Office, Sopore, through a cheque amounting to Rs.1,14,050/-. The concerned departments also granted No Objection Certificates for raising the construction. It is further stated that the petitioner has acquired a right of deemed permission as his building permission case was not decided by the respondents. The petitioner, accordingly, started the construction as a matter of right but the respondents started interference in the completion of construction of the building. The petitioner claims to have made applications with the respondents for grant of revised permission for raising two more floors but the same were not considered, as such, the petitioner through the medium of present writ petition has sought directions upon the respondents thereby restraining them from causing any sort of interference with the construction being raised over the ground floor of the building situated at Batabagh Narapora Road, Sopore.

2) The respondents have filed their response stating therein that the petitioner had filed an application seeking building permission in his favour for three storied commercial building at site Neharpura, Damna, Sopore in the year 2016, which was accorded by the respondent-Council vide order dated 28.01.2016. After sometime, the petitioner again approached the respondents for accord of building permission for

construction of further two stories over the already existing ground floor on the ground that he could not construct the building as per the earlier site plan due to financial stringency. The case of the petitioner was again referred to the concerned departments for their No Objection Certificates. R&B Department Division Sopore submitted its report vide communication dated 24.06.2021 with the remarks that the ground floor of the shop line is at a distance of only 17 feet instead of 25 feet from the centre of Neharpora main road, as such, is violating the prevailing Ribbon Development Act, therefore, the case of the petitioner was not accorded approval. The petitioner again approached the respondents for approval and his case was again referred to the concerned departments, however, the R&B Department Division again raised the same objection that the building has been constructed at the distance of 17 feet from the centre of the road instead of 25 feet.

3) Learned counsel for the petitioner submitted that once the construction on the ground floor has been raised by the petitioner, the respondents cannot deny permission to him for raising construction of 2nd and 3rd floors on the ground that the structure at ground floor is at a distance of 17 feet from the centre of the road instead of 25 feet. She further submitted that the petitioner is ready to furnish an undertaking that if at any time the building comes under road widening process, he will not claim any compensation for the said structure.

4) *Per contra*, Mr. Raies-ud-din Ganai, Dy. AG, submitted that the petitioner cannot raise the construction in violation of Ribbon Development Act. He further submitted that the respondents are not

possessing the whole of the record in respect of the building permission granted in favour of the petitioner.

5) Heard and perused the record.

6) This is an admitted fact that the petitioner was permitted to raise construction by the respondents and also that the petitioner has raised the construction on ground floor only. It is admitted by the respondents that the petitioner had applied before them for raising construction of 2nd and 3rd floors but due to the report submitted by the Executive Engineer, R&B Division, Sopore, the application of the petitioner for raising construction of 2nd and 3rd floors could not be accepted. The petitioner has placed on record the building permission granted to him and his brother for raising construction of two three storeyed commercial buildings and one single storeyed commercial building vide order dated 28.01.2016. The respondents have not been able to produce the record in respect of the building permission granted in favour of the petitioner and his brother, so as to ascertain as to whether there was any stipulation for keeping a particular distance from the centre of the road or not.

7) Be that as it may, the petitioner has already raised construction of the ground floor and no one ever raised any objection to the same. The petitioner has also placed on record the photographs demonstrating the building line existing on spot. The communication of Executive Engineer dated 24.06.2021 bears the mention of the fact that the petitioner has furnished an undertaking that he will not claim any

compensation for the said structure, if the structure comes under the road widening programme. The petitioner has placed on record the application dated 20.06.2022 for grant of revised building permission whereas the present writ petition has been filed on 04.08.2022. In view of above, as the petitioner has already raised the construction of the ground floor and objection in respect of violation of Ribbon Development Act was never raised, this court deems it proper to direct the respondents to consider the application of the petitioner for grant of revised building permission as per rules notwithstanding the objection raised by the Executive Engineer, R&B Division, Sopore, in respect of the distance of the ground floor from the centre of the road. The petitioner shall also file an undertaking with the respondents that in the event the structure sought to be raised by him comes under road widening, he will not claim any compensation for the same. The application submitted by the petitioner shall be decided within the period of 30 days from the date, the copy of this order is made available to the concerned respondents.

8) **Disposed** of as above.

(Rajnish Oswal)
Judge

SRINAGAR

15.03.2024

"Bhat Altaf-Secy"

Whether the order is reportable: **YES/NO**