

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No.4577 OF 2017
(Arising out of SLP(C)No.731 OF 2014)

CHANDER SHEKHAR

.....APPELLANT

VERSUS

STATE OF J & K & ORS.

.....RESPONDENTS

O R D E R

1. Heard learned counsel for the rival parties.
2. Leave granted.
3. The High Court, while declining the prayer of the appellant before this Court, for renovation/repair of his building, recorded as under:

"Having heard learned counsel for the parties, we are of the considered view that building, one in hand, which is in such a dilapidated condition has to be permitted to be repaired, it is virtually reconstructed. The report submitted by learned Principal District Judge disclosed the conditions of the building. It is spirit of Section 15 that any building which is not in conformity with the master plan may continue to be used, but no new construction or reconstruction is provided by Section 15 of the Act of 1970.

Accordingly, we are of the view that such an extensive repair of the building which is virtually reconstruction of the building is not within the meaning of Section 15. Accordingly, the application fails and same is dismissed. However, it is left open to the applicant to avail any other remedy in accordance with law."

4. It is apparent, that the High Court placed reliance on Section 15 of the Jammu and Kashmir Development Act, 1970 (hereinafter referred to as 'the Act'), and overlooked Section 49

of the said Act, which is reproduced below:

"49. Savings :- Nothing in this Act shall apply to :-

(a) the carrying out by any local authority or by any department of Government of any works for the purpose of inspecting, repairing, or renewing any drains, sewers, main pipes, cables or other apparatus including the breaking open of any street or other land for that purpose;

(b) the erection of a building, not being a dwelling house if such building is required for the purposes subservient to agriculture;

(c) the construction of a canal, water course, and drainage work as defined in the Jammu and Kashmir State Canal and Drainage Act Svt, 1963, by any local authority or the department of the Government;

(d) the excavation (including wells) made in the ordinary course of agricultural operation;

(e) the construction of unmetalled road intended to give access to land solely for agricultural purposes; and

(f) the carrying out of works for the maintenance of any building which effect only the interior of the building and which do not materially effect the external appearance of the building."

5. Section 49(f), undoubtedly, allows the carrying out of works for maintenance, as has been prayed for by the appellant. Since Section 49 of the Act was not taken into consideration, while considering the claim of the appellant for renovation/repair, we consider it just and appropriate to set aside the impugned order, and remand the matter for re-consideration at the hands of the High Court. The reason for us not to take up on ourselves the simple task, which emerges from the claim raised by the appellant is, that the High Court is examining the issue in a holistic manner, and in this behalf, reference may be made to an order dated 16.09.2015, passed in the same proceedings, out of which the impugned order has

emerged wherein, the High Court in its order dated 16.09.2015 had observed as under:

"5. The master Plan does not reveal respondents stand as regards construction already raised in the area on either sides of Lidder river, Aru Nalla and Chandanwari Nalla, now declared as no construction zone. It remains to be known whether such constructions are to be demolished and owners of buildings rehabilitated and allotted alternative site. It is also not disclosed, whether in case such buildings are not demolished, owners thereof, would be permitted to repair/renovate the buildings and mechanism, involved for grant of permission to make such repairs/renovations."

6. Since the matter is pending before the High Court for quite some time, we consider it just and appropriate, to request the High Court, to deal with the issue, as expeditiously as possible, for the simple reason, that the persons similarly situated as the appellant before us, are not in a position to fruitfully use their buildings for use and occupation.

7. With the above observations, the instant appeal is disposed of.

8. As a sequel to the above, pending interlocutory application also stands disposed of.

9. The parties are directed to appear before the High Court as and when PIL No.484 of 2010 comes up for consideration.

.....CJI.
(JAGDISH SINGH KHEHAR)

.....J.
(SANJAY KISHAN KAUL)

NEW DELHI;
MARCH 28, 2017.

REVISED

ITEM NO.1

COURT NO.1

SECTION XVIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGSI.A.2/2016 in Petition(s) for Special Leave to Appeal (C) No(s).
731/2014(Arising out of impugned final judgment and order dated 01/08/2013
in IA No.861/2012 arising PIL No.484/2010 passed by the High Court
of J & K at Jammu)

CHANDER SHEKHAR

appellant(s)

VERSUS

STATE OF J & K & ORS.

Respondent(s)

(For directions and interim relief and office report)

Date : 28/03/2017 This application/petition was called on for
hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SANJAY KISHAN KAULFor appellant(s) Mr.Z.A.Shah, Sr.Adv.
Ms. Purnima Bhat, Adv.For Respondent(s) Mr.G.M.Kawoosa, Adv.
Mr. M. Shoeb Alam, Adv.Upon hearing the counsel the Court made the following
O R D E R

Leave granted.

The instant appeal is disposed of, in terms of the signed
order.As a sequel to the above, pending interlocutory
application also stands disposed of.The parties are directed to appear before the High Court
as and when PIL No.484 of 2010 comes up for consideration.(SATISH KUMAR YADAV)
AR-CUM-PS(RENUKA SADANA)
ASSISTANT REGISTRAR

(Signed order is placed on the file)