

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

**Case No. :-** WP(C) No. 1168/2024

Rakesh Aggarwal

.....Petitioner (s)

Through: Mr. Aseem Kumar Sawhney, Advocate.

**Vs**

Building Controlling Authority &  
Ors.

..... Respondent(s)

Through: Ms. Ishika Gupta, Advocate vice  
Mr. Mayank Gupta, Advocate.

**Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE**

**ORDER**

**03.06.2024**

**01.** Learned counsel appearing on behalf of the petitioner has vehemently argued that the impugned notice of sealing of the premises/building of the petitioner, namely, Rakesh Aggarwal has been issued against the petitioner at plot No. 283-A, Gole Market, Apsara Road, Jammu for converting the residential building into commercial purpose allegedly without permission from the Jammu Municipal Corporation.

**02.** The instant case has a chequered history. The order impugned reveals that the learned tribunal vide judgment dated 13.03.2022 allowed the appeal filed by the petitioner on the ground that the notice issued under Section 7(1) was served on the wrong address i.e. 283-A instead of 283-B Gandhi Nagar, Jammu and, accordingly, order issued under Section 7(3) of the COBO Act was set aside. The said mistake which has already been set aside by the Tribunal has again been repeated by the respondents through the medium of the instant notice, by virtue of which the building of the petitioner has been sealed by showing the address as 283-A when infact the correct address is at 283-B.

**03.** The specific case of the petitioner is that the official website of the Jammu Smart City Project headed by the Divisional Commissioner, Jammu and whose CEO is the respondent No. 1-Commissioner, JMC, Jammu, has in its official website uploaded the Apsara Road Project as a major project of Jammu with cost value, face lift and market area, with gate etc. The market was developed by the respondent No. 1 by investing Rs. 49.13 crores. So much so that the Housing Board under the respondent No. 5 is contemplating to built twin towers in Apsara road with market, shops, office area, parking spaces etc. The further case of the petitioner is that for all practical purposes, Apsara Road is a commercial market and the smart City Project itself ratifies and endorses the said fact.

**04.** Learned counsel for the petitioner submits that since the premises of the petitioner remained sealed for about two years, therefore, it caused immense losses to the petitioner while the rest of the shops in the entire vicinity and neighbourhood of the petitioner are functioning without any hassles or impediments. Therefore, the respondents have adopted a discriminatory, arbitrary and unequal treatment.

**05.** Learned counsel for the petitioner further submits that the respondents have not issued any show cause notice or provided any opportunity to the petitioner to put forth his case and instead, directly opted to seal the premises of the petitioner in a hasty manner, that too, the notice has been sent on a different property and sealing of another property has taken place. The further stand of the petitioner is that the respondents herein, without following due procedure, as stipulated under Control of Building Operation Act, 1988, have issued the impugned order under Section 8(1) of the COBO Act, 1988, by virtue of which the premises of the petitioner has been sealed, which has caused grave prejudice

to the rights of the petitioner. He further submits that the impugned notice is in blatant violation of Jammu and Kashmir Unified Building Bye-laws 2021 and Jammu Master Plan-2032.

**06.** The further fact of the matter is that the respondents themselves are barred by principle of waiver and estoppels and once the Jammu Municipal Corporation through its Smart City Project has accepted, endorsed and rectified the Apsara Road to be commercial market and spent crores of rupees on the renovation of the market, then how the area remains residential, is a mystery that needs to be unfolded and, therefore, the said impugned order may be quashed.

**07.** Learned counsel for the petitioner further submits that the irregularity which has been annulled by the tribunal has again been repeated with a motive to harass the petitioner with malafide intention and the same is without application of mind by resorting to pick and choose policy.

**08.** The second limb of argument, which has been advanced by the learned counsel for the petitioner is that pursuant to the undertaking filed by the petitioner in consonance with the order passed by the learned tribunal dated 02.12.2022, the petitioner has already applied for using the said premises for commercial purposes in consonance with the Master Plan/Building Byelaws and guidelines and yet, no decision has been taken in this regard and respondents are adopting dilly dally tactics when, on the other hand, the entire Apsara Road at Gandhi Nagar has been turned into a modern commercial market of Jammu and is a commercial hub.

**09.** With a view to fortify his claim, learned counsel for the petitioner submits that it is a well known fact that the Apsara Road is one of the most modern commercial markets of Jammu and the entire Apsara Road has been converted into a commercial hub and lately the Jammu Smart City, which is also

under the aegis and control of the respondents, has developed Apsara Road as a modern market by investing and spending lacs of rupees for the development of pathways, footpaths, street lamps and gates of the market.

**10.** The specific case of the petitioner is that the respondents are adopting pick and choose policy and harassing the petitioner for one reason or the other, allegedly on the ground of carrying the commercial activity when, in fact, the entire Apsara road has been declared as a commercial hub, which has also been ratified by the Smart City project itself. Without going into the merits of the case, at this stage, since the notice has been issued without application of mind and on the wrong address over the premises, which does not belong to the petitioner, which action of the respondents has already been set aside by the tribunal in the earlier round of litigation.

**11.** Heard learned counsel for the petitioner at length and perused the record.

**12.** Issue notice in the main petition, as also in CM.

**13.** Ms. Ishika Gupta, Advocate appearing vice Mr. Mayank Gupta waives notice on behalf of the respondents.

**14.** Prima facie case for indulgence is made out.

**15.** List on 29.07.2024.

**16.** Meanwhile, subject to objections from other side and till next date of hearing before the Bench, the order impugned dated 11.12.2023 vide No. JMC/CEO/1042-45 shall remain stayed.

**17.** Respondents are also directed to produce the original record, which led to the passing of the order impugned. The respondents are further directed to place on record, at the first instance, the details of the residential buildings/premises/establishments, which are being used for commercial purpose

without seeking permission from Jammu Municipal Corporation, pertaining to Gole Market, Gandhi Nagar Apsara Road, Jammu and also specify the details with respect to the action taken against said violators for converting the residential building into the commercial or carrying on commercial activity in violation of the Master Plan or rules in vogue.

**18.** Respondents are further directed to place on record the details and action taken by way of filing a separate affidavit of all such violators of the said area, who have changed the land use from residential to commercial in violation of existing rules/bye-laws and the master plan within two weeks positively with copy in advance to the learned counsel for the petitioner, who may file response within two weeks thereafter.

**19.** Alteration/Modification/Vacation on motion.

**JAMMU**  
**03.06.2024**  
**Mihul**

