

**HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR**

WP (C) PIL No. 13/2020
CM No. 4135/2020
Caveat No. 788/2020
(Through Video Conferencing)

Inhabitants of Gogji Bagh, Srinagar

....Petitioner(s)

Through:-Mr. Farhat Zia Soharwardy, Advocate

v/s

Union Territory of J&K and others

....Respondent(s)

Through:- Mr. M. S. Latief, Advocate for
caveator-respondent Nos. 5 and 6.

**Coram: HON'BLE MR. JUSTICE RAJESH BINDAL, JUDGE
HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE**

ORDER

Caveat No. 788/2020

1. Caveat stands discharged.

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2. Learned counsel for the petitioners submitted that the respondent Nos. 5 and 6 are raising illegal construction in the residential area. Though permission was taken for a Guest House but it was converted into a Hotel with no proper parking or other facilities available. The same will certainly affect the privacy of the residents in the area. He further submitted that against the notice issued for demolition of illegal

construction, the respondent Nos. 5 and 6 approached the Special Tribunal, who vide order dated 12.12.2019 had directed *status quo* to be maintained.

3. Concealing the pendency of the aforesaid proceedings, the respondent Nos. 5 and 6 filed a suit in the Court of District Judge, Srinagar, praying that they should be allowed to raise construction in terms of the sanctioned plan. Interim order was passed therein on the date of filing of the suit itself i.e. January 20, 2020. Construction is going on at full swing. The Tribunal decided the appeal filed by the respondent Nos. 5 and 6 on July 20, 2020, only connecting the counsel for the appellant there through Audio Call. Counsel for the Srinagar Municipal Corporation was not connected. Even the petitioners were not informed of the date of hearing and not connected at the time of hearing though they had filed application for being impleaded as party to the appeal. The officials of the Corporation are conniving with the respondent Nos. 5 and 6 to enable them to violate the provisions of law and raise illegal construction.

4. Notice to respondents for 07.12.2020

5. Mr. M. S. Latief, Advocate accepts notice on behalf of the caveator-respondent Nos. 5 and 6. He raised issue regarding maintainability of the petition as Public Interest Litigation.

6. Let service of respondent Nos. 1 to 4 be effected on taking appropriate steps.

7. Liberty is granted to the petitioners to serve respondent Nos. 1 to 4 on their e-mail ID along with soft copy of the paper book and the order passed by this Court.

8. In the meantime, the respondent Nos. 5 and 6 are restrained from carrying out any further construction in the premises in dispute. The respondent No. 2 shall depute a team of responsible officers to take still photographs and also video of present status of construction in the building. The same shall be done after intimation to the respondent Nos. 5 and 6 without any delay. The exact measurement of the construction and the status thereof in the building shall also be noted.

9. The Court shall be apprised of the names of the Khilafwarzi officers, who remained posted in the area during the period the construction was raised. The report shall be submitted to the Court on or before the next date of hearing regarding violations made in the construction as compared to the sanctioned plan irrespective of compounding allowed by the Tribunal.

10. The Court shall also be apprised of the fact as to whether the Corporation is contemplating to challenge the Order dated July 20, 2020 passed by the Tribunal.

11. The manner in which the Presiding Officer-Abdul Majid Bhat of the Tribunal is passing orders does not inspire confidence. Many orders passed by the same Officer were challenged before Jammu bench of this Court as well. Compounding has been allowed of major violations ignoring the provisions of Rules and Regulations. In the case in hand, even principles of natural of justice has not been followed as neither the counsel for Corporation was heard nor the applicants who had filed application for being impleaded in the appeal were apprised of the date of hearing.

12. In **Surya Dev Rai Vs. Ram Chander Rai and other**(2003) 6 SCC 675,Hon'ble the Supreme Court held that the jurisdiction of High Court to issue writ of certiorari in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India is to keep the subordinate courts within their bounds.It is well-settled that the power of superintendence so conferred on the High Court is administrative as well as judicial. The relevant observations of Hon'ble the Supreme Court are extracted below:-

“21. Article 227 of the Constitution confers on every High Court the power of superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction excepting any court or tribunal constituted by or under any law relating to the armed forces. Without prejudice to the generality of such power the High Court has been conferred with certain specific powers by Sub-Articles (2) and (3) of Article227 with which we are not concerned here at. It is well-settled that the power of superintendence so conferred on the High Court is administrative as well as judicial, and is capable of being invoked at the instance of any person aggrieved or may even be exercised suo motu. The paramount consideration behind vesting such wide power of superintendence in the High Court is paving the path of justice and removing any obstacles therein. The power under Article 227 is wider than the one conferred on the High Court by Article 226 in the sense that the power of superintendence is not subject to those technicalities of procedure or traditional fetters which are to be found in certiorari jurisdiction. Else the parameters invoking the exercise of power are almost similar.”

23. The difference between Articles 226 and 227 of the Constitution was well brought out in **Umaji Keshao Meshram and Ors. v. Smt. Radhikabai and Anr.**, (1986) Supp. SCC401. Proceedings under Article 226 are in exercise of the original jurisdiction of the High Court while proceedings under Article 227 of the Constitution are not original but only supervisory. Article 227 substantially reproduces the provisions of Section 107 of the Government of India Act, 1915 excepting that the power of superintendence has been extended by this Article to tribunals as well. Though the power is akin to that of an ordinary court of appeal, yet the power under Article 227 is intended to be used sparingly and only in appropriate cases for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and not for correcting mere errors. The power may be exercised in cases occasioning grave injustice or failure of justice such as when (i) the court or tribunal has assumed a jurisdiction which it does not have, (ii) has failed to exercise a jurisdiction which it does have, such failure occasioning a failure of justice, and (iii) the jurisdiction though available is being exercised in a manner which tantamounts to overstepping the limits of jurisdiction.”

13. In **Ramesh Chandra Sankla etc. v Vikram Cement etc.** AIR 2009 SC 713, the Hon'ble Supreme Court reiterated the aforesaid view holding that while exercising supervisory jurisdiction, a High Court not only acts as a court of law but also as a court of equity. It is, therefore, power and also the duty of the Court to ensure that power of superintendence must 'advance the ends of justice and uproot injustice'. The relevant observation of Hon'ble the Supreme Court is extracted below:-

“81. The power of superintendence under Article 227 of the Constitution conferred on every High Court over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction is very wide and discretionary in nature. It can be exercised ex debito justitiae, i.e. to meet the ends of justice. It is equitable in nature. While exercising supervisory jurisdiction, a High Court not only acts as a court of law but also as a court of equity. It is, therefore, power and also the duty of the Court to ensure that power of superintendence must advance the ends of justice and uproot injustice.”

14. Keeping in view the aforesaid enunciations of law by Hon'ble the Supreme Court, we deem it appropriate to direct the Tribunal to send soft copies of all the orders passed by it to the Registrar Vigilance of this Court, from the date he joined as Presiding Officer of the Tribunal. At the first instance orders passed under Control of The Jammu & Kashmir Building Operations Act, 1988 be sent. The needful be done within a period of one month from the date of receipt of copy of this order.

(SANJAY DHAR)
JUDGE

(RAJESH BINDAL)
JUDGE

SRINAGAR
05.10.2020
Paramjeet