

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

**WP(C) 1499/2024
CM(4032/2024)**

*Reserved on: 10.07.2025
Pronounced on: 12.08.2025*

**Noor Mohammad Dar (Aged about 57 years)
S/O Late Ghulam Ahmad Dar
R/O Hyderpora, Airport Road, District Srinagar.**

...Appellant(s)/Petitioner(s)

*Through: Mr. R.A Jan, Sr. Advocate with
Ms. Humaira Sajad, Advocate.*

Vs.

- 1. Srinagar Municipal Corporation through
Commissioner, Karan Nagar, Srinagar**
- 2. Commissioner, Srinagar Municipal
Corporation, Karan Nagar, Srinagar.**
- 3. Joint Commissioner (Planning) Srinagar
Municipal Corporation, Karan Nagar,
Srinagar.**
- 4. Chief Enforcement Officer, Srinagar
Municipal Corporation, Karan Nagar,
Srinagar.**
- 5. Enforcement Officer (South), Srinagar
Municipal Corporation, Karan Nagar,
Srinagar.**
- 6. Ward Officer, Ward No.32, Srinagar
Municipal Corporation, Hyderpora,
Srinagar.**
- 7. Mohammad Farooq Sarfi,
S/o Mohammad Syed Sarfi
R/o House No.3, Hyderpora, Main Airport
Road, Srinagar, Jammu and Kashmir**

...Respondents

*Through: Mr. Jahangir Iqbal Ganai, Sr. Advocate with
Ms. Mehnaz Rather, Advocate on behalf of respondent No.7
Mr. Bikramdeep Singh, Dy. A.G for respondent No.1 to 6*

CORAM:

HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE.

JUDGMENT

1. The present petition is filed by the petitioner challenging the order dated
29.05.2024 passed by the J&K Special Tribunal in an appeal arising out of

a demolition notice issued by the Srinagar Municipal Corporation, on the ground that the said order is in contravention of the judgment passed by this Court in WP(C) No. 1411/2022, whereby the Tribunal's earlier order was set aside and the matter was remanded for fresh consideration. It is the petitioner's case that the Tribunal, instead of deciding the matter afresh in conformity with the directions of this Court, has repeated the very errors previously annulled and has failed to adjudicate the core issues raised in the demolition notice, particularly the alleged violation of land use norms. The private respondent and official respondents, however, oppose the petition on the grounds of maintainability and locus standi, submitting that the deviation was minor in nature, has been duly compounded under the applicable byelaws, and that the Tribunal's order, based on findings of fact, does not warrant interference in writ jurisdiction.

ARGUMENTS ON BEHALF OF PETITIONER

2. The learned senior counsel appearing on behalf of the petitioner has drawn the attention of the Court to the order dated 19.12.2023 passed by this Court in WP(C) 1411/2022 preferred by Dr. Rubina Hakak, a perusal whereof reveals that the order dated 24.05.2022, which was impugned in the aforesaid writ petition, was set aside and the matter was remanded to the learned Tribunal to decide the appeal expeditiously and till such time, the appeal is decided, status quo was ordered to be maintained.
3. The writ petition preferred by Dr. Rubina Hakak, was allowed and the order dated 24.05.2022 passed by the learned Tribunal was set aside on the ground that the order has been passed by the Tribunal despite the demolition notice issued by the respondents 1 to 4 specifically stating that

the respondent No.5 (therein) has violated the building permission by raising construction over an area of 1881 sqft thus deviating by 118 sqft and also not maintaining the real set back. Besides the respondents 1 to 4 in their objections have stated that the respondent No. 5 (private respondent therein) has committed deviation by exceeding the permissible construction area by 118 sqft. The learned writ court was of the view that the setback in rear side which was to be maintained was 10'-3"/13'-11"' and pursuant thereto, the deviations mentioned in the aforesaid order resulted in issuance of the demolition notice dated 12.05.2022 to respondent No 5.

4. The court while quashing the aforesaid order was of the view that the learned Tribunal while deciding the appeal of the petitioner therein against the demolition notice dated 12.05.2022 ought to have first considered whether respondent No.5 had committed any violation of the building permission if so, whether such violations were minor or major in nature. The Court was also of the view that the direction passed to respondent No 5 to apply for revised building permission and considering such application should not have been done without first determining whether the violations were of a nature which could have been regularised.
5. Since, the Tribunal has adjudicated the nature of the violations merely on the statement of respondent No 5 therein, the learned writ Court was of the view that the learned Tribunal could not have directed the filing of an application or its consideration under revised permission.
6. In the aforesaid backdrop, the order impugned dated 24.05.2022 was set aside and the learned Tribunal was directed to decide the appeal expeditiously.

7. According to Mr. R. A. Jan, learned senior counsel appearing on behalf of the petitioner submits that the learned Tribunal was under an obligation to have acted in conformity with the order passed by this Court in the earlier round of litigation preferred by Dr. Rubina Hakak, but the learned Tribunal acted in derogation to the mandate and spirit of the aforesaid order and again committed the same irregularity/illegality which was annulled by this Court in the earlier round of litigation by virtue of the aforesaid Order/Judgment.
8. Although the petitioner was not a party in the earlier round of litigation, yet Learned counsel submits that the Order/Judgment which was passed by this Court was a judgment in *rem* and the violation of the same gives a right to the petitioner to agitate the said cause before this Court.
9. The petitioner through the medium of the instant petition is aggrieved of an order passed by the learned Tribunal dated 29.05.2024, which has been passed in an appeal against the demolition notice dated 12.05.2022.
10. With a view to advance his arguments, the learned senior counsel for the petitioner has drawn the attention of this Court to the order of demolition issued by the respondent with particular reference to ground “A” of the aforesaid order, a perusal whereof reveals that the concerned enforcement officer of the Srinagar Municipal Corporation while issuing the aforesaid demolition notice dated 12.05.2022 under Section 253(1) of the Jammu and Kashmir Municipal Corporation Act, 2000 has noted that the construction so raised by the private respondent is contrary to the land use and the site is earmarked for residential purpose and the aforesaid objection raised by the

Srinagar Municipal Corporation has not been considered by the learned Tribunal while passing the order in the second round of litigation.

11. The Learnd counsel has vehemently argued that the learned Tribunal was under a legal obligation to have acted in conformity with the direction passed by this Court in the earlier round of litigation, whereby the matter was remanded back to the learned Tribunal to decide the matter afresh. What to talk of deciding the matter afresh, even the learned Tribunal has not referred to the aforesaid order while passing the order impugned and instead, without due application of mind, has passed the order in a hush hush manner, without addressing the core issues which were required to be gone into while deciding the matter, afresh. Even, the directions passed by this Court have not been complied with in its letter and spirit and have been flouted with impunity and the core issues which have been raised in the order of demolition have also not been addressed. Thus, according to the learned senior counsel, the order impugned cannot sustain the test of law and is liable to be set aside and quashed.

12. With a view to fortify his claim, the learned senior counsel has also drawn the attention of the court to the order passed by the learned Tribunal dated 29.05.2024 which is impugned in the present petition, a perusal whereof, vindicates the stand of the petitioner that there is no whisper with regard to the direction passed by the learned writ court by virtue of which the matter was remanded by this Court to the learned Tribunal to decide the appeal afresh. From the record of the learned Tribunal, it appears that the learned Tribunal has decided a routine appeal and not an appeal pursuant to the matter being remanded by this Court by way of remand. Thus, the learned

Tribunal was under a legal obligation to have redressed the core issues and also to have acted in conformity with the direction passed by this Court. However, the learned Tribunal has again committed the same error, which was set aside in the earlier round of litigation and hence the instant writ petition.

ARGUMENTS ON BEHALF OF RESPONDENTS.

13.*Per contra*, reply filed by learned senior counsel Mr. Jahangir Iqbal Ganai on behalf of the respondent No 7 i.e., the contesting respondent, has raised the issue of maintainability of the instant petition and also the locus standi of the petitioner to file the instant petition. It has been urged that the present petition seems to have been preferred by way of a proxy litigation at the instance of a person who has already approached this Court in the earlier round of litigation by way of filing a writ petition which was registered as WP(C) 1411/2022, challenging the order of the learned Tribunal dated 24.05.2022.

14.It is further submitted that the petitioner has been watching from the fence all along and has filed the instant petition after passing of the order by the learned Tribunal, which is impugned in the present petition pursuant to the order passed by this Court. It has also been urged by the learned senior counsel appearing on behalf of the private respondent that the petitioner has raised his grievance only on 3rd June 2024 by way of filing a representation and prior to the filing of the said representation, no grievance was ever raised by the petitioner *qua* the construction being raised by the said respondent. Even the learned senior counsel appearing on behalf of the private respondent submitted that the documents which have

been placed by the petitioner with the instant petition would indicate that the source of the documents is the same petition, previously preferred by Dr. Rubina Hakak in the earlier round of litigation of which the reference has been made in the instant petition and thus the petitioner has not approached this Court with clean hands and has failed to act bonafide. Furthermore the petitioner lacks the necessary locus standi to file the instant petition. According to the learned senior counsel, this is an abuse of process of law and the writ petition accordingly is liable to be dismissed.

15. The Learned counsel appearing for the respondents further submits that that the order passed by the learned Tribunal which is the subject matter of the instant petition is perfectly legal and in accordance with law and he specifically denies that the order is not the replica of the earlier order of the Tribunal as has been alleged by the petitioner. The construction being raised by the respondent does not affect any prevailing law or has infringed the right of the petitioner which would have been a justifiable cause to the petitioner to knock the doors of the justice through the medium of the instant petition.

16. It is further contended that the allegations levelled in the demolition notice have been redressed and this was the precise reason that the learned Tribunal accordingly by way of the order impugned dated 29.05.2024 has remanded the case to respondent- Srinagar Municipal Corporation under Rule 20 of the JK Special Tribunal Rules, 1986 with a direction to allow the said respondent to construct the building strictly only on his proprietary land in conformity with the building permission issued and subsequently directions have been issued to compound/regularize the deviations as per

the appendix D of the Unified Building Byelaws, 2021, which deals with the compounding of the compoundable items within the framework of JK Unified Building Byelaws and Srinagar Master Plan 2035 and in the aforesaid backdrop, the matter was disposed of by holding that the deviation was minor in nature.

17.Mr. Ganai, further submits that the aforesaid order passed by the learned Tribunal dated 29.05.2024 which is impugned in the present petition was gladly and voluntarily accepted by Dr. Rubina Hakak and no grievance was raised by her and instead, the instant petition has been preferred by the petitioner who has no locus standi.

18.Further, the argument raised by Mr. Jan, learned senior counsel appearing on behalf of the petitioner that the judgment passed by this Court and subsequent order passed by the Tribunal, are the orders/judgments in *rem* and has been repelled by Mr. Jahangir Iqbal Ganai, learned senior counsel appearing on behalf of the private respondent by placing reliance upon the judgment passed by the Apex Court in case titled ***“Satrucharla Vijaya Rama Raju Versus Nimmaka Jaya Raju and Others”*** reported as ***“(2006) 1 Supreme Court Cases 212”***, with particular reference to Para 10 of the aforesaid judgment, which is reproduced as under:

“10. The contention that the judgment in E.P. 13 of 1983 is a judgment in rem also cannot be accepted. Under the Indian Evidence Act Section 41 is said to incorporate the law on the subject. A judgment in rem is defined in English Law as "an adjudication pronounced (as its name indeed denotes) by the status, some particular subject matter by a tribunal having competent authority for that purpose". Spencer Bower on Res Judicata defines the term as one which "declares, defines or otherwise determines the status of a person or of a thing, that is to say, the jural relation of the person or thing to the world generally". An

election petition under Section 80 of the Representation of the People Act, 1951 cannot be held to lead to an adjudication which declares, defines or otherwise determines the status of a person or a jural relation of that person to the world generally. It is merely an adjudication of a statutory challenge on the question whether the election of the successful candidate is liable to be voided on any of the grounds available under Section 100 of the Representation of the People Act, 1951. It is not an action for establishing the status of a person. It is not an action initiated by a person to have his status established or his jural relationship to the world generally established, to borrow the language of Spencer Bower. No doubt in E.P. 13 of 1983, the question was whether the election petitioner therein who alleged that the appellant before us was not qualified to contest as a candidate belonging to a Scheduled Tribe, in a constituency reserved for that tribe and to that extent, having relationship to the status of the appellant. In such an action under the Representation of the People Act, 1951 what is decided is whether the election petitioner had succeeded in establishing that the successful candidate belonged to a caste or community, that was not included in the Scheduled Tribes Order. In a case where the election petitioner failed to establish his claim, it could not be said that it amounted to a declaration of the status of the respondent in that election petition, the successful candidate and that such a finding on status would operate as a judgment in rem so as to bind the whole world. It is also not one of the judgments specifically recognized by Section 41 of the Evidence Act. It has been held that the challenge to an election is only a statutory right. An election petition is not a suit of a general nature or a representative action for adjudication of the status of a person. Even if we take it that the earlier judgment is admissible in the evidence, on that, no objection was raised even at the trial, it could be brought in under Section 42 of the Evidence Act on the basis that it relates to a matter of a public nature or under Section 43 of the Evidence Act. In either case, not being inter-parties, the best status that can be assigned to it is to say that it is of high evidentiary value, while considering the case of the parties in the present election petition.”

19.Mr. Ganai has also drawn the attention of the Court to the compliance report filed by the official respondents, in pursuant to the order passed by

this Court on the very first day of hearing i.e on 12.07.2024, whereby the respondent-Commissioner Srinagar Municipal Corporation was directed to file status report with respect to the outcome of the application filed by respondent No 7, seeking revised building permission for 118 sft of the deviation portion as reflected in the Order/Judgment dated 19.12.2023 passed by this Court in WP(C) 1411/2022. The concerned Commissioner was also directed by virtue of the order dated 12.07.2024 to apprise this Court with regard to the steps taken in furtherance of the directions passed by this Court mentioned *supra*, pursuant to the application, if any, preferred by the respondents 5 and 7, seeking revised building permission for 118 sft of the deviation portion and the Commissioner was also directed to place on record the outcome of the representation alleged to have been filed by the petitioner on 3rd June, 2024.

20. The Srinagar Municipal Corporation, in its status report supported by an affidavit, has affirmed that the application of respondent No. 7 for regularization, was duly examined and approved in accordance with applicable statutory norms. It is further submitted that the demolition notice dated 12.05.2022 preceded the petitioner's representation dated 03.06.2024 by more than two years, and that construction at the site had already been stopped in 2022. The Corporation submits that once the Tribunal found the deviation to be minor and compoundable under law, and the same was thereafter regularized by the competent authority, the petitioner's belated representation did not merit further consideration. It is also pointed out that neither the revised permission dated 19.11.2024 nor the communication

rejecting the petitioner's representation has been called in question by the petitioner.

21.The learned counsel for the private respondent has drawn attention of the compliance report filed by the official respondents dated 10th February 2025, a perusal whereof reveals that the representation preferred by the petitioner was rejected by virtue of communication dated 04.02.2025 which has been placed on record as annexure II with the compliance report, a perusal whereof reveals that the case of the petitioner was examined and it was observed that the structure which has been raised by the private respondent with a deviation of 118 sft in plinth area and in respect of the other parameters, it has been observed by the Joint Commissioner, Planning, Srinagar Municipal Corporation that the under construction structure does not contravene the said building permission order.

22.Thus, the averments which have been projected in the representation preferred by the petitioner about the nature of the building use according to the official respondents, was speculated and the genuineness of the same cannot be ascertained at that point of time and in the aforesaid backdrop, whatever deviations have been carried out by the private respondent in the plinth area, according to the official respondents have been examined and have been found compoundable under the Provisions of the JK Unified Building Byelaws 2021.

23.Thus, the issue raised by the petitioner stands redressed by the official respondents by virtue of the aforesaid communication dated 04.02.2025, a copy of the same was conveyed to the petitioner, which has been gladly

and voluntarily accepted by the petitioner and till date has not been called in question.

24. It has been further submitted that even the revised building permission which is subject matter of the instant petition has not been called in question by the petitioner as on date and thus, the challenge thrown by the petitioner to the order of the learned Tribunal is ill founded and the writ petition, as such, is utterly mis-conceived and liable to be dismissed.

25. The Learned Counsel has further argued that the petitioner has no locus standi to raise any objection with regard to the construction raised, more particularly, when the learned Tribunal has already compounded the minor violation and has not raised the issue thereafter. Once the issue stands clinched by the learned Tribunal being the final adjudicating authority or on such like matters, then the petitioner is estopped under law to re-agitate an issue before this court which has already been clinched by the competent authority. Since no grievance has been raised by the official respondents and the issue stands clinched, the petitioner who has no locus cannot re-agitate the cause through the medium of the instant petition, more particularly when the petitioner all along was watching from the fence and has not raised the issue even at a stage when initially the building permission was accorded or for that matter when show cause notice was issued followed by the demolition notice or the order passed by the learned Tribunal in the first instance which was called in question by Dr Rubina Hakak by way of writ petition, pursuant to which the order was passed by the learned Tribunal which is subject matter of the instant petition. According to the learned counsel for private respondent, the petitioner all

along was watching from fence and did not raise the issue during this intervening period and it was only in June, 2024 pursuant to the passing of the order by the learned Tribunal, the petitioner preferred representation for the first time, which ultimately was decided by the official respondents and the outcome of the same was accepted by the petitioner gladly and voluntarily and has not been called in question before any forum.

26. Lastly, the learned counsel submits that the custodian of civil rights of the parties vests with the authorities concerned and since the authority concerned has not raised the issue and the same cannot be raised by a party who has no locus standi or has acquiesced his right when alleged cause of action accrued. Once, the issue stands clinched by the competent authority, pursuant to order passed by the learned Tribunal, which has been accepted and implemented, then the petitioner by no stretch of imagination can re-agitate the cause through the medium of the instant petition having no locus.

27. Mr. Bikramdeep Singh, learned Deputy Advocate General appearing on behalf of the official respondents has reiterated the stand and the arguments advanced by Mr. Ganai, learned Senior counsel for the private respondent. However, in addition, he submits that the petitioner, as on date has neither called in question the revised building permission nor the order of the rejection which has been placed on record with the compliance report and having accepted both the orders, it would not lie in the mouth of the petitioner to re-agitate that the orders passed by the learned Tribunal are palpably bad in the eyes of law. He further submits that since the deviations were minor in nature and the same stands compounded in terms

of rules in vogue and the writ petition challenging the same is devoid of any merit.

28. By way of a rejoinder affidavit, the learned senior counsel for the petitioner has again reiterated his stand with particular reference to the objection raised through the medium of the demolition notice with particular reference to clause A of the said demolition notice, wherein a specific objection has been raised that the said construction is contrary to the land use and the site is earmarked for residential purpose. He further submits that there is no finding on the aforesaid objection raised through the medium of the demolition notice and has not been addressed in the earlier round of litigation when the order of the Tribunal was set aside and the matter was remanded back by this court to the learned Tribunal for hearing the appeal afresh. Thus, according to Mr. Jan , a duty was cast upon the learned Tribunal to have recorded a finding on the aforesaid objection raised in the demolition notice but the order is silent in that respect and thus, the same is nullity in the eyes of law. According to Mr. Jan, all the consequential orders which have been issued pursuant to the said order are also nullity in the eyes of law and cannot be relied upon. He further submits that this specific averment and the objection raised by the petitioner has not been specifically replied by the official respondents.

LEGAL ANALYSIS

29. Heard Learned counsel for parties at length and perused the material on record. Following issues arise for determination in the instant petition.

Issue 1. Whether the learned Special Tribunal, Srinagar, committed an error by failing to adjudicate afresh the legality of the construction raised by Respondent No. 7, as mandated by

this Hon'ble Court in its remand order dated 19.12.2023 in WP(C) No. 1411/2022?

Issue 2. Whether the Tribunal acted within its jurisdiction in directing regularization of the construction without independently determining whether the deviation was major or minor, as required by the remand order of this Court?

Issue 3. Whether the petitioner, though not a party in the earlier writ petition, has the locus standi to challenge the impugned order on the ground that it violates binding judicial directions and affects matters of public interest and statutory compliance?

30. With a view to decide issue No.1, this court deems it proper to examine whether the impugned order dated 29.05.2024 passed by the learned Special Tribunal, Srinagar, whereby it remanded the matter to the Srinagar Municipal Corporation (SMC) for action under Rule 20 of the J&K Special Tribunal Rules, 1986, suffers from any legal infirmity or jurisdictional error.

31. The core grievance of the petitioner is that the Tribunal, despite being directed by this Court in WP(C) No. 1411/2022 to adjudicate the matter afresh, committed the same error which was annulled in the earlier round of litigation and has failed to adjudicate the validity of the demolition notice and mechanically endorsing the regularization of deviations without proper appreciation of the statutory framework governing land use and building regulations.

32. This Court, vide order dated 19.12.2023 passed in WP(C) No. 1411/2022, had remanded the matter back to the learned Special Tribunal, Srinagar, for fresh adjudication on the issue of legality of the construction raised by Respondent No. 7. The direction was explicitly clear, whereby the Learned Tribunal was directed to re-examine the matter in the light of the demolition notice dated 12.05.2022, and address the legality of the construction independently and in accordance with law.

33. Upon perusal of the impugned order dated 29.05.2024 passed by the Tribunal, it is evident that the Tribunal has taken cognizance of the extent of deviation, i.e., 118 sq. ft. over and above the sanctioned area of 1763 sq. ft., constituting approximately 7% deviation. It was further found that such deviation was compoundable under the Jammu & Kashmir Unified Building Bye-laws, 2021, and the same had been regularized by the competent authority, i.e., the Srinagar Municipal Corporation, vide Order No. SMC/2024/2893 dated 19.11.2024.

34. The submission of the petitioner that the Tribunal failed to comply with the remand order and merely relied upon the regularization by the Municipal Corporation is not supported by the record. The Tribunal, in its order, has independently evaluated the facts, nature of deviation, the applicable legal framework under the 2021 Bye-laws, and the authority of the Corporation to regularize minor deviations.

35. The Tribunal's approach cannot be termed as perfunctory or mechanical. In ***Basudev Dutta Versus State of West Bengal and Others reported as 2024 SCC OnLine SC 3616*** The Hon'ble Supreme Court held that:

“12.2. It is settled law that every administrative or quasi-judicial order must contain the reasons. Such reasons go a

long way in not only ensuring that the authority has applied his mind to the facts and the law, but also provide the grounds for the aggrieved party to assail the order in the manner known to law. In the absence of any reasons, it also possesses a difficulty for the judicial authorities to test the correctness of the order or in other words, exercise its power of judicial review”.

36.The Tribunal has applied its mind to the relevant issue of legality of construction in the context of the deviation being minor and has rightly regularized in accordance with law. There is no error apparent or misapplication of law that would warrant interference by this Court.

37.It is trite law that once a competent authority regularizes construction that is compoundable under applicable building bye-laws, the same cannot be revisited or invalidated unless the regularization is shown to be illegal, mala fide, or ultra vires. No such case has been made out by the petitioner.

38.In *Bikash Kumar Roy Vs. Kolkata Municipal Corporation reported in 2022 SCC Online Cal 1589* the Court has held that:

“9. Regularization is permissible only if the unauthorized erection or work is classified as "minor" by the Municipal Commissioner considering factors such as objections from local inhabitants, infrastructure, safety, environmental aspects and compliance with statutory clearances.”

39.Here, the deviation of 7% was well within the permissible limit for regularization, and the order dated 19.11.2024 regularizing the deviation was passed after due scrutiny, and was not challenged by the petitioner.

40.This Court is also mindful of the principle that in judicial review under Article 226, the scope of interference with a reasoned order passed by a Tribunal is limited to cases of illegality, irrationality, or procedural

impropriety as held by The Hon'ble Supreme Court in **Whirlpool Corporation v. Registrar of Trademarks, (1998) 8 SCC 1**).

“15.....Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field”.

41.The Tribunal's order, though brief, discloses a lawful and reasoned basis for concluding that the deviation was minor, legally regularized, and did not warrant demolition.

42.This Court finds no merit in the contention raised by Mr. Jan, that the learned Special Tribunal failed to comply with the remand directions. The Tribunal has acted in accordance with law and has rightly adjudicated the matter afresh, considered the extent and nature of the deviation, by regularising / compounding the same and referred the matter to Srinagar Municipal Corporation to allow the appellant to construct the building

strictly on his proprietary land as per building permission issued and subsequently compounded the deviation.

43.No perversity, arbitrariness, or illegality has been demonstrated to warrant interference under Article 226 of the Constitution. The contention that the Tribunal committed an error in law is rejected.

Accordingly, Issue No. 1 is answered in favour of the respondents.

44.With a view to decide issue No.2, this court deems it proper to refer to the settled position of law that the judicial review is not permissible against the order passed by the learned Tribunal on the basis of evaluating all the material facts on record and the legal position being the final adjudicator of such disputes which order passed by the learned Tribunal has been accepted by the competent authority by compounding /regularising the minor deviations. This court while exercising writ jurisdiction cannot re-evaluate / re-appreciate the evidence unless it is established beyond any reasonable doubt that the order passed by the learned Tribunal is perverse, irrational or in violation of any statutory provisions. In absence of such legal foundation, this Court will not assume the role of the appellate authority to go into the questions of fact while exercising writ jurisdiction.

45.The finding recorded by the Learned Tribunal is well reasoned and on the basis of evidence lead, this court does not find any perversity in the findings recorded by the Tribunal which could be basis for exercising the extraordinary jurisdiction under Article 226 of the Constitution of India.

There is no legal foundation of any perversity in the pleadings of the writ petitioner and rather the petition raises disputed questions of fact. The Learned Tribunal on the basis of evidence has recorded finding of facts and reached an appropriate conclusion which cannot be faulted on the mere asking of the party without any logical basis or reasoning.

46. The issue whether this court while exercising the power as a writ court can go into the questions of fact is no more *res integra* and can't assume the role of an appellate authority by re-appreciating the evidence to ponder as to what sort of violation has been committed in raising of construction, whether it was minor or major in nature, whether it was pre-sanctioned plan or revised plan. All these things can well be considered and appreciated by the Tribunal which can go into questions of fact after thorough enquiry. In the instant case, the Tribunal, after a thorough enquiry, has drawn the conclusions on a question of fact and recorded the finding about the nature of violation and regularized it under law by compounding the same. The Learned Tribunal finds the 118 sqft i.e the 7% of the total permitted area as a minor deviation and the gap of 9 ft. between two plots or structures as safe enough. Therefore, the Learned Tribunal under Rule 20 of JK Special Tribunal Rules 1986 has rightly remanded the case to the respondent SMC with the directions to allow the appellant to construct the building strictly only on his proprietary land as per the Building Permission issued and subsequently compound/regularize the deviations as per the appendix D of the Unified Building Byelaws 2021 under para (B B) that deals with the compounding of the compoundable

items with the framework of JK Unified Building Byelaws and Srinagar Master Plan 2035.

47.The petitioner has vaguely alleged that the construction raised by Respondent No. 7 violates land use provisions, but has failed to place on record any zoning map, notification, or official document to substantiate this allegation. The burden to establish that the land falls within a non-residential or restricted-use zone, lies on the person alleging such violation. Mere assertions, which are not supported by any cogent material, cannot form the basis for invalidating an administrative decision.

48.It is not disputed that Respondent No. 7 had obtained building permission and only exceeded the permitted area by a margin that was within the limit permissible for compounding under the 2021 Bye-laws. Once such deviation has been duly regularized, the objection to “unauthorized construction” ceases to have any legal basis. The law recognizes the authority of municipal bodies to compound and regularize minor violations. The Tribunal has considered the demolition notice, the objections raised therein, and the response filed by Respondent No. 7.

49.This Court further is of the considered view that the Tribunal acted within its jurisdiction in directing the regularization of the construction after assessing the nature and extent of deviation, as was mandated by the remand order. The Tribunal’s decision is in line with the Jammu and Kashmir Unified Building Bye-Laws, 2021, and is supported by a regularization order issued by the Srinagar Municipal Corporation. Thus the order passed by the Learned Tribunal stands complied with by the competent authority.

50. Reliance is also placed on the judgment passed by this Court in case titled ***“Building Operation Controlling Authority Municipal Area Jammu Versus Nageen Ara (OWP No.90/2019)”*** decided on 29.08.2023, whereby, this Court has already held that once the Tribunal has given a finding by compounding the construction, then this Court while exercising writ jurisdiction under Article 226 of the Constitution of India cannot go into the question and reasoning which led to the passing of the aforesaid order, which is based on appreciation of evidence.

51. This Court while deciding the aforesaid matter, was of the view that the High Court does not have any mechanism or yardstick to go into the question of fact by conducting a roving enquiry with respect to the fact whether there is any minor or major violation. The Court while exercising the powers under the writ jurisdiction, cannot re-appreciate the evidence by exercising the powers by way of an appellate authority to go into the disputed questions of fact, which have been arrived at by the learned Tribunal after appreciating all the material facts on record. The Tribunal being the final arbiter in such like matters and it goes without saying that writ jurisdiction is invoked mainly when fundamental rights are infringed and in violation of legal rights too, such jurisdiction may be invoked only in the eventuality, where the alternate remedy is not available. In the instant case, alternate remedy which has already been availed on a disputed question of fact before the Tribunal which after appreciation of all the material facts and evidence on record has recorded the finding and thus the writ jurisdiction in the peculiar facts and circumstances, cannot be invoked against the said order.

52. This Court is of the view, that the Tribunal is fully competent to compound the violation keeping in view its nature and this court while exercising the writ jurisdiction cannot upset the findings of the Tribunal based on appreciation of evidence. As a matter of fact, strictly speaking, the writ jurisdiction of the court cannot be invoked in such like matters as the dispute in question relates to a question of fact.

53. The law laid down by this Court in the aforesaid case is squarely applicable to the case in hand, as the learned Tribunal by virtue of the order impugned had already recorded a finding that it is a minor violation which has already been compounded and thus there is no occasion for this Court to reopen an issue which has already been clinched by the learned Tribunal and thus, the challenge to same is ill founded, being devoid of any merit and the writ petition to that extent deserves dismissal.

54. No perversity, procedural irregularity, or jurisdictional error has been demonstrated to warrant interference under Article 226 of the Constitution.

Accordingly, this issue is answered in favour of the Respondents.

55. With a view to decide issue No.3, this Court deems it proper to adjudicate the issue of locus standi which is not merely a procedural formality but goes to the root of judicial scrutiny, especially in proceedings under Article 226 of the Constitution. While this Court acknowledges the liberalization of standing in matters involving public interest or systemic illegality, such relaxation cannot be applied in a blanket fashion to permit indirect challenges to concluded litigation by persons who were neither party to the original lis nor directly affected by the outcome thereof.

56. In the present case, the petitioner seeks to assail the order passed by the Tribunal pursuant to a remand made in WP(C) No. 1411/2022. Admittedly, the petitioner was not a party to those proceedings nor has any personal or legal right been pleaded as having been infringed. The petitioner predicates her locus on alleged violation of judicial directions and urban planning laws, asserting public interest.

57. However, such a general assertion of public interest, is not sufficient to invoke the extraordinary writ jurisdiction of this Court, particularly when the matter has finally been adjudicated by the Learned Tribunal by deciding the rights of the contesting parties and the competent authority has already passed a speaking order.

58. In the similar facts and circumstances, the Hon'ble Supreme Court in ***R.K. Jain vs. Union Of India reported as AIR 1993 SUPREME COURT 1769***, has held that:

“Third party has no locus standi it to canvass the legality or correctness of the action. Only public law declaration would be made at the behest of the petitioner, a public spirited person”.

59. There is no doubt that in certain exceptional cases, persons other than directly affected parties may be allowed to file a writ petition where the issue involves systemic failure or breach of fundamental public obligations. The present petitioner, has neither approached any competent authority or invoked any alternative remedy and has not pleaded any specific statutory prejudice, is not permitted to reopen concluded proceedings.

60. In light of the above discussion and settled legal position, this Court finds that the petitioner has no locus standi to maintain the present petition. The

petition amounts to an abuse of process of law and cannot sustain the test of law. **Accordingly, this issue is answered against the petitioner.**

CONCLUSION

61. Upon a careful examination of the pleadings, documents placed on record, and the contentions advanced by learned counsel for the parties, this Court is of the considered view that the present writ petition lacks merit and does not warrant interference by this court while exercising extraordinary writ jurisdiction.

62. It is not disputed that the private respondent No. 7 had obtained a building permission for a sanctioned area of 1763 sq. ft. and, during construction, committed a deviation of 118 sq. ft., which amounts to approximately 7% of the total permitted area. The record further discloses that the said deviation has been duly regularized by the competent authority the Srinagar Municipal Corporation—upon consideration of the application filed by respondent No. 7 and in terms of the applicable norms and regulations. The revised permission has now enhanced the sanctioned area to 1881 sq. ft., and such regularization has been reflected in Order No. SMC/2024/2893 dated 19.11.2024.

63. The petitioner, who does not appear to be an immediate neighbour or directly affected party, has failed to disclose any specific or substantial legal injury caused to him on account of the deviation or its regularization. While every citizen has a right to ensure lawful construction and compliance with building norms, such right must be

exercised bona fide and supported by cogent material demonstrating illegality or arbitrariness. Mere dissatisfaction with the actions of a statutory authority, in the absence of any demonstrable illegality or infringement of rights, cannot form the basis for invoking the extraordinary writ jurisdiction of this Court.

64.The record reveals that prior to the petitioner's representation dated 03.06.2024, the demolition notice had already been issued by the Corporation on 12.05.2022, and the construction activity had been halted in the year 2022 itself. Thereafter, the entire issue came to be considered by the statutory forum, i.e the Learned Special Tribunal, which, upon hearing all concerned parties, passed a detailed order dated 29.05.2024, holding that the deviation was minor and compoundable. Following this determination, the Corporation, acting within its statutory domain, proceeded to regularize the deviation and the orders stands complied with.

65.It is not the case of the petitioner that the authority has acted without jurisdiction, or that the deviation falls outside the scope of permissible compounding, nor has the petitioner placed on record any proof of procedural impropriety, mala fides, or breach of fundamental norms in the manner in which the regularization has been granted. On the contrary, the status report filed by the Corporation supports the conclusion that due process has been followed and that the construction now stands in conformity with the revised permission.

66.The writ petition, on a plain reading, appears to be an attempt to assail a minor deviation which has since been compounded in accordance with the law and that too by a party who was watching from the fence when the order of the Tribunal was passed. Courts are not expected to sit in appeal over administrative or technical decisions of statutory authorities taken in bona fide exercise of their powers, unless such actions are ex facie arbitrary, perverse, or contrary to law. No such case has been made out in the present matter.

67.Further, this Court does not find any merit in the plea that the Tribunal failed to consider the material objections contained in the demolition notice dated 12.05.2022. The record reflects that relevant aspects, including land use and extent of deviation, were duly examined. Mere non-reproduction of each objection in the impugned order, cannot vitiate the decision, especially when the reasoning is supported by factual material and does not suffer from perversity.

68.On the issue of locus standi, the petitioner, admittedly not a party in the original writ petition or the Tribunal proceedings, has not been able to demonstrate any specific legal injury or direct prejudice caused to him. Public interest cannot be a cloak for personal grievances or speculative apprehensions.

69.In view of the above discussion, this Court finds no ground to interfere with the order passed by the learned Special Tribunal, Srinagar or with the subsequent action of the Srinagar Municipal Corporation in regularizing the minor deviation. The petitioner has not been able to

establish either a procedural infirmity or a violation of any legal right that would warrant the exercise of writ jurisdiction.

70. Accordingly, the writ petition which is devoid of any merit is hereby dismissed alongwith all connected applications.

(WASIM SADIQ NARGAL)
JUDGE

Jammu:
12.08.2025
Gh. Nabi/Secy

<i>Whether the Judgment is Reportable:</i>	<i>Yes/No</i>
<i>Whether the Judgment is Speaking:</i>	<i>Yes/No</i>

