

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU
(THROUGH VIRTUAL MODE)**

**Reserved on 01.05.2025
Pronounced on 06.06.2025**

CJ Court

PIL No. 27/2017

Court of its own motion

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

Through: Mr. Ajay Sharma, Adv. (Amicus Curiae)

v/s

State of J&K and others

.... Respondent(s)

Through: Mr. S. S. Nanda, Sr. AAG
Mr. Sunil Sethi, Sr. Adv. with
Mr. Parimoksh Seth, Adv.
Mr. A. K. Sawhney, Adv.
Mr. Harshwardhan Gupta, Adv.
Mr. Sachin Dogra, Adv.
Mr. Atul Verma, Adv.

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

JUDGMENT

Per Oswal-J

1. Initially, this petition in public interest was filed by Sh. Jagdish Raj (now deceased) in respect of the illegal encroachment made by the shopkeepers and other unknown persons in JDA Shopping Complex, near City Chowk, Jammu and after his demise, this petition is being continued by this Court on its own motion. The petition primarily focused on two issues:
 - A. Number of Rehries are operating illegally in the different parts of the Jammu City including the area of City Chowk Jammu, to Central Basic

High School, Purani Mandi, Jammu, leading to obstruction of free movement of pedestrians and impeding the smooth flow of traffic.

B. That there have been large scale encroachments on the roads/streets/pathways by several persons including shopkeepers which also impede and obstruct free flow of pedestrians and vehicles.

2. This Court vide order 28.03.2018, had issued the following directions:

“.....5. While we appreciate the action initiated by the JMC for removing the illegal encroachments by the shop owners as also the street vendors, yet we feel that much more is required to be done. As earlier directed, efforts should be taken by the JMC to relocate street vendors in notified vending zones and illegal vending on public roads, streets and pathways etc. shall not be permitted.

6. Regarding errant shopkeepers, who despite being challaned and fined, repeat their action over and over again and display their merchandise by extending their shops on the public roads/streets/pathways, the JMC, in addition to invoking penal provisions, shall also proceed against the encroachers in terms of Section 232 of the Municipal Corporation Act.

7. However, in case of repeated violations, the JMC shall proceed against such defaulters/encroachers in terms of Section 371 of the Municipal Corporation Act.

8. Section 371 reads as under:

“371. Power in case of non compliance with notice, etc.— In the event of a non-compliance with the terms of any notice, order or requisition issued to any person under this Act or any rule, regulation or bye-laws made there-under, requiring such person to execute any work or to do any act, it shall be lawful for the authority or officer at whose instance the notice, order or requisition has been issued, whether or not the person in default is liable to punishment for such default or has been prosecuted or sentenced any punishment therefor, after giving notice in writing to such person, to take such action or such steps as may be necessary for the completion of the act or the work required to be done or executed by such person and all the expenses incurred on such account shall be payable to the Commissioner on demand and if not paid within ten days after such demand, shall be recoverable as an arrear of tax under this Act.”

9. As is apparent from perusal of the Section reproduced above, the Jammu Municipal Corporation is empowered to take such steps or action as may be required to enforce the compliance of its orders/notices. Inherent in such power is the power to seal the premises so as to deter the defaulters from repeating violations.

10. In these circumstances, it is directed that in case a shop owner or owners are found to be repeating the violation despite notice to refrain the Jammu Municipal Corporation shall immediately and forthwith seal the shop after giving him a notice specifying a time limit of 10 days from date of receipt of correct its violations.

11. Further ordered that with regard to sealing orders no court subordinate to this Court shall interfere or order de-sealing of the premises. All applications will be filed before the First Division Bench of this Court only.

12. Mr. S. S. Nanda, Sr. AAG assisted by Mr. Sachin Gupta, Advocate assures that the Commissioner, Jammu Municipal Corporation will take positive steps to ensure that the violations in the nature of encroachments by the shop owners on footpaths and streets will be promptly removed and action under law as directed by this Court will be taken. Statement of the learned counsel appearing for JMC is taken on record.

13. List for compliance on 25.04.2018.

14. Meanwhile, Jammu Development Authority will also ensure that the encroachments in and around JDA shopping complex situated at Purani Mandi, Jammu is also removed by following the procedure prescribed by Law. Copy of this order shall be given to all the counsel appearing for the parties including Mr. Adarsh Sharma, counsel for the JDA for compliance.”

3. Pursuant to the order dated 28.03.2018, the Jammu Municipal Corporation filed its compliance report stating therein that the Jammu Municipal Corporation has carried out special anti-encroachment drives with the assistance of Police on 20.04.2018 and 21.04.2018 wherein material displayed by the shop owners by extending their shops causing hindrance in the public pathways/streets were confiscated and in this regard shop owners were informed that those found to be repeating the violations despite notice to refrain, their shops shall be sealed after giving notice, specifying a time limit of ten days to remove the violations. In respect of Rehries being operated illegally in the area, it was stated that the Jammu Municipal Corporation has identified nine sites for establishment of street vending zone(s)/rehri zone(s) within the limits of Jammu Municipal Corporation.

4. Further, the Jammu Municipal Corporation filed another status report on 02.07.2018 stating therein that 242 notices were served upon the shopkeepers/shop owners who had encroached the footpaths in the area. In its status report dated 24.07.2018, the Jammu Development Authority has stated that 38 shopkeepers in number are habitual offenders and whenever Jammu Development Authority initiate anti-encroachment drive, they keep the pathways/corridors clean/encroachment free for 7 to 10 days and thereafter they again re-encroach these pathways/corridors.
5. The record depicts that couple of shops were also sealed by the Municipal Authorities and thereafter pursuant to the motions by the violators, their shops were de-sealed on furnishing of an undertaking that they would not indulge in any encroachment in future.
6. This Court vide order dated 26.07.2019 directed the Divisional Commissioner Jammu and the Commissioner, Jammu Municipal Corporation to provide the following information:
 - 1) Whether the Municipal Corporation or the authority under the Food Safety and Standards Authority of India (FSSAI) has permitted the food-joints to run their establishments from the foot-path in question, if yes, the details of such permission so granted.
 - 2) Whether aforementioned two departments have permitted the sale and or consumption of cooked non-vegetarian items, which invariably lead to traffic congestion on the road and whether the requisite permission was preceded by ensuring compliance of the provisions of the Municipal Corporation Act and the FSSAI Act and the rules framed there-under.
 - 3) Whether the requisite licenses and permissions have been granted in favour of the Dhabas & Shops, who are engaged in the trade of mainly selling or the consumption from their premises non-vegetarian items like Kabab, Chicken, Mutton etc near Jambulochan Complex and at Amphalla.
 - 4) Whether the eating joints/dhabas at Amphalla either selling or permitting for consumption from their premises are running their premises next to a urinal, thereby making consumption of such items a health hazard.
 - 5) Whether the aforesaid activity in the aforementioned two locations causes permanent and perpetual traffic nuisance considering the fact that none of them have any independent parking places attached to their

locations. In this regard, a detailed report shall also be submitted by the Inspector General of Police (Traffic), J&K.

7. The Jammu Municipal Corporation in compliance to the order dated 26.07.2019 submitted the status report on 19.08.2019 stating therein that they are maintaining constant vigil in order to ensure that the Rehries are stationed in Rehri zone and not stationed at road side and in this regard, they have identified as many as eight Rehries zones throughout the municipal area.
8. After taking note of the submissions made by Mr. Ajay Sharma, learned Amicus and taking into consideration the judgment of the Hon'ble Supreme Court in **Gainda Ram and others v Municipal Corporation of Delhi and others, (2010) 10 SCC 715**, that the hawkers, squatters or vendors have fundamental rights under Article 19(1)(g) of the Constitution to carry out hawking and at the same time, the commuters have a right to move freely upon the roads without any impediment and these competing rights have to be harmonized, the Jammu Municipal Corporation and Jammu Development Authority as well as Government of Union Territory of J&K were directed to inform the Court if the Municipal Corporation or the Jammu Development Authority has any scheme or proposal for enacting bye laws in regard to hawking and vending in public streets.
9. Thereafter, the respondents filed affidavit stating therein that the rules under the Street Vendors (Protection of Livelihood and Regulation Street Vending) Act, 2014 have been notified to be implemented from 29.01.2021 and so is the model scheme framed there-under. Thereafter, the learned Amicus continued to inform this Court that despite the repeated directions

issued by this Court, encroachments are still being made by the violators. Vide order dated 08.02.2023, the Divisional Commissioner, Jammu was directed to act as a Nodal Officer in the matter and file compliance report in respect of implementation of all the directions issued by this Court from time to time.

10. The Divisional Commissioner, Jammu filed a status report on 13.03.2023 and stated that no license has been issued/granted to any food joint running their establishment from the footpath under section 31(2) of the Food Safety and Standards Act, 2006 and in this regard 60 numbers of inspections were conducted, and 36 eating joints/rehries/dhaba/street vendors were inspected. Three eating joints were carrying their business from footpath without registration and license from the Municipal Corporation. They were served notices for closure and fines were also imposed. Thereafter, vide order dated 02.08.2023, this Court appreciated the steps taken by the Administration to address the issues but simultaneously observed that as an ongoing exercise, certain steps are yet to be taken.
11. Accordingly, Divisional Commissioner Jammu, who is also the Chairman of the Jammu Smart City Project, was directed to submit a detailed report in addition to the report already submitted, taking into account the provisions of scheme of the Jammu Smart City so that appropriate orders could be passed on the next date. Thereafter a detailed status report was filed by the Divisional Commissioner Jammu on 26.11.2024 stating therein that the concerned departments have been directed to furnish information/action taken in compliance with order dated 08.02.2023.

Further the Jammu Development Authority also filed the status report dated 29.04.2025 stating therein that the show cause notices have been served to the shopkeepers who have encroached the pathways/corridors in the JDA Complex, Jammu City.

12. An affidavit has also been filed by the Assistant Commissioner Jammu stating therein that the Jammu Municipal Corporation has submitted the requisite information that the regular anti-encroachment drives are being conducted in the area. The details of the drive conducted within the limits of Jammu Municipal Corporation have also been mentioned. It is further stated that the inspection has also been conducted by the Food Safety Officers and a notice under the Food Safety and Standards Act, 2006 has also been issued in this behalf. Besides, no fresh license/registration has been issued to any street vendor/hawker, in compliance to the Circular issued by the FDA dated 09.09.2022, without NOC from the Jammu Municipal Corporation.
13. Learned Amicus has requested that the instant petition be disposed of by issuing appropriate directions so as to ensure that no public pathway/street/road is encroached by any shopkeepers/street vender.
14. As the Divisional Commissioner, Jammu has already been nominated as Nodal Officer for enforcement of the directions issued by this Court from time to time, accordingly we dispose of this Public Interest Litigation with the following directions:
 - (i) The Jammu Municipal Corporation shall ensure that no public pathway/road/street/nullah is encroached by any one and shall conduct anti-encroachment drive in the whole City of Jammu every

fortnight and during drive, the encroachments temporary or permanent made by the shopkeepers or any commercial establishment on the pathways/streets/roads/nullahs be removed. No commercial establishment be permitted to place their gadgets on the street/pathway/road/nullah.

- (ii) The Jammu Municipal Corporation shall educate the shopkeepers or owners of commercial establishments against encroaching any street/road/pathway/nullah for the purpose of displaying/selling their goods/ keeping their gadgets and consequences of the violations thereof
- (iii) The errant shopkeepers/owners of commercial establishments, who despite being challaned and fined, repeat their actions again and display their merchandise by extending their shops or placing their gadgets on the public road/street/pathways, the Jammu Municipal Corporation in addition to penal provisions, shall also proceed against the encroachers in terms of section 232 of the Municipal Corporation Act. The Jammu Municipal Corporation shall also proceed against such violators in terms of section 371 of the Municipal Corporation Act.
- (iv) If despite repeated fines and action under section 232 of the Municipal Corporation Act, the violator(s) still continue(s) with his/their illegal activities, the Jammu Municipal Corporation, shall seal the shop/commercial establishment after the failure on the part of violator to remove the violation within 10 days of the notice to remove the violation(s).

- (v) The Jammu Development Authority shall ensure that the shopkeepers in the JDA Complex situated at City Chowk, Jammu do not encroach the pathways in front of their shops and in case of repeated violations may issue notice for cancellation of their lease deeds and thereafter proceed in accordance with law.
 - (vi) The Jammu Municipal Corporation shall ensure that no food joint is operated on the roadside/pathway/street without permission from the Jammu Municipal Corporation and competent authority under Food Safety and Standards Act, 2006.
 - (vii) The Jammu Municipal Corporation shall also ensure that rehries operate only at the designated places and no obstruction is caused in smooth flow of traffic due to illegal operation of rehries.
 - (viii) The authority concerned shall ensure the implementation of Street Vendors (Protection of Livelihood and Regulation Street Vending) Act, 2014 and Rules of 2021 framed there-under, in its letter and spirit.
15. The Senior Superintendent of Police, Jammu is directed to provide the necessary protection to the officers of Jammu Municipal Corporation and Jammu Development Authority whenever required. As the Divisional Commissioner, Jammu has already nominated as Nodal Officer, he shall hold the meeting with the Commissioner, Jammu Municipal Corporation and Vice Chancellor, Jammu Development Authority regularly, so that the directions issued as mentioned above, are complied with in its letter and spirit. While removing the encroachments, the officials concerned shall use minimal force, so that no unnecessary harassment is caused to anyone.

16. While appreciating the sincere efforts made by Mr. Ajay Sharma, the learned Amicus curiae, we close the proceedings in this PIL with liberty to Mr. Ajay Sharma, the learned Amicus and any other public-spirited person to bring to the notice of this Court non-compliance of the directions of this court by the officers/authorities as mentioned above.
17. Disposed of.

(RAJNESH OSWAL)
JUDGE

(ARUN PALLI)
CHIEF JUSTICE

Srinagar
06.06.2025
Rakesh

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No