

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

Case: OWP No.522/2013 C/W
CPOWP No. 185/2013
OWP No. 1067/2014

Reserved on: 08.05.2025.
Pronounced on : 09.05.2025

Ravinder Singh and ors
Om Parkash

....Petitioner/Appellant(s)

Through :- Mr. S.K.Anand Advocate.

V/s

Om Parkash
State and others

Through :- Mr Sunil Sethi Sr. Advocate with
Mr. Nayeem Sheikh Advocate
Mr. S.S.Nanda Sr. AAG

CORAM:

HON'BLE MS. JUSTICE MOKSHA KHAJURIA KAZMI, JUDGE

JUDGMENT

1 Since the cause of action and subject matter of these petitions are closely related, as such, I propose to decide these petitions together by this judgment.

OWP No.522/2013

2 Through the medium of instant writ petition, the petitioners have challenged order dated 14.03.2013, passed by respondent No.4, whereby he has set aside his earlier order dated 11.02.2013, thereby reviewing the same, which was passed after hearing the appeal on merits. The petitioner also seeks a direction upon the Municipal Authorities to demolish the unauthorized construction raised

by respondent No.5, in violation of the approved plan and the rules of the J&K Control of Building Operation Act, 1988 (hereinafter referred to as the “Act of 1988”). It is further prayed that an inquiry be initiated against respondent No.4 for gross abuse and misuse of powers for extraneous considerations.

Factual Matrix:

3 The petitioners are residents of Karan Nagar, Jammu, and have been residing there from the last more than 40 years. Respondent No.5 is stated to be the owner in possession of land measuring 08 marlas and 24 sq. ft falling under khasra No. 95, Khata No. 442 min, and Khewat No. 119 min situated at Karan Nagar, Tehsil and District Jammu. Respondent No.5 applied to the Jammu Municipal Corporation for permission to raise construction on the aforesaid land . The Corporation accorded permission to construct a ground, first, and second floor vide its order dated 26.11.2010. The permission was granted for following construction(s) :

- (i) 1150 sq. ft. for residential purposes at the ground floor,
- (ii) 649 sq. ft. residential and 501 sq. ft. commercial at the first floor, and
- (iii) 1150 sq. ft. residential at the second floor.

4 The permission so granted stipulated that a front setback of 40 ft. and a rear setback of 20 ft. was to be maintained. Respondent No.5 had categorically stated in his application that he intended to construct two shops on the first floor and the rest for residential purposes, in keeping with the area’s zoning regulations, which predominantly allowed residential use. Although the Municipal Authorities permitted a mixed residential-commercial construction as per the approved plan, respondent No.5 raised construction in violation of the sanctioned plan. He constructed the building using RCC columns in the shape of large halls, evidently

for commercial use. Respondent No.5 had a total plot area of 2200 sq. ft. As per the sanctioned plan, he was allowed to cover 1150 sq. ft. for residential use on the ground floor. However, with the apparent connivance of Municipal Authorities, he managed to construct 1856 sq. ft. for commercial use on the ground floor. This serious violation could not have occurred without the negligence or collusion of the concerned Authorities, who are duty bound to monitor such activities. Moreover, while respondent No.5 was allowed 649 sq. ft. for residential use and 501 sq. ft. for commercial use on the first floor, however, he ended up covering 1856 sq. ft. for commercial purposes. He also constructed a 410 sq. ft. projection slab that was not permitted in the sanctioned plan and not in accordance with the master plan. For these violations, respondent No.5 was served with a notice dated 12.11.2011 under Section 7(1) and under Section 12(1) of J&K Control of Building Operation Act, 1988 . He was subsequently served another notice dated 31.07.2012 under Section 7(3) of the said Act. It was stated in the said notice that his reply to the earlier notice was factually incorrect and unsatisfactory. It was highlighted in the said notice that the construction adversely affected the planned development of Jammu city and violated zoning regulations. Consequently, in exercise of powers under Section 7(3) of the Act of 1988, respondent No.5 was directed to demolish the unauthorized construction within five days, failing which the Municipal Authorities would proceed with demolition at his risk and cost.

5 Respondent No.5 challenged the aforesaid notices before the J&K Special Tribunal, Jammu, (“Tribunal” for short”) by filing an appeal in terms of Section 13 of the Act of 1988. The Tribunal dismissed the appeal on 11.02.2013, holding that the violations were major and non-condonable under applicable regulations. Relevant paragraph of the said order is reproduced herein below:

“Regulation 11 of the Control of Building Operation Regulations, 1998 gives the Tribunal, as the Appellate Authority, the discretion to compound minor offences. However, as clearly specified in regulation 11(2)(ii) no violation of the prescribed setbacks can be condoned that too when there are major ones. Regulation 11(2)(iii) says that any violation of the permissible ground coverage by more than 10 per cent cannot be condoned. It can, therefore, be seen that the violations which have taken place in this case are of a kind which cannot be condoned under law. It can, therefore, be seen that the appellant has violated the conditions in the Building Permission granted to him with respect to the permissible ground coverage and the setbacks at the rear and on one side and that these violations are not condonable in terms of the Regulations. This being the case, the appeal fails and is hereby dismissed”.

6 Subsequently, respondent No.05 filed an application for rehearing the appeal. It is stated that, as there is no provision in law for rehearing a dismissed appeal, the Tribunal, for extraneous reasons, proceeded to rehear the matter and passed a fresh order dated 14.03.2013. Relevant paragraph of the said order is reproduced herein below:

“With the consent of learned counsels for both sides, the order dated 11.02.2013 is modified to the extent that the respondents shall reassess the violation vis-à-vis norms and not as per what had been recorded in the permission. Building line in existence may also be kept in view. The respondents shall finalize the reassessment within a period of one month from today and shall be free to take fresh action against any construction not covered under rules, including against those in the neighbourhood as the photographs produced by the learned counsel for the appellant indicate existing as well as under construction buildings towards centre line of the road, whereas impugned construction has been claimed to be way behind and within norms of set backs for a plot size of up to 2200 sq. ft.”

7 The order dated 14.03.2013 has been challenged on the ground that it is violative of the principles of natural justice; is contrary to law and facts, and hence not sustainable in the eyes of law. The act of respondent No.4, the Tribunal in rehearing the appeal, despite its prior adjudication and in the absence of any legal provision, is arbitrary and unconstitutional.

8 This Court, while entertaining the writ petition on 17.04.2013, issued notice to the respondents. On 05.06.2013 when the matter was again taken up this Court directed the parties to maintain status quo in respect of the construction which was the subject matter of the writ petition. However, on the alleged violation of the status quo order dated 05.06.2013, petitioner No.1 filed a contempt petition bearing No. CPOWP No. 185/2013.

OWP No. 1067/2014

9 It is pertinent to mention here that during the pendency of the writ petition, the respondent No.5 also filed a writ petition against the present petitioners, bearing OWP No. 1067/2014. In that petition, he alleged that the petitioners in OWP No. 522/2013 and private respondents in OWP No. 1067/2014 have raised construction of their respective houses without obtaining formal building permission under the applicable Municipal laws, particularly the Act of 1988. It was specifically alleged that respondent No.7 (petitioner No.4 in OWP No. 522/2013) had raised construction in violation of building permission. Respondent No.5 in OWP No. 522/2013 and petitioner in OWP No. 1067/2013 sought directions upon the official respondents to initiate appropriate action, including demolition, against respondents No.4, 5, and 6 for raising construction without proper permissions, and against respondent No.7 for violating the approved building permission.

10 Heard learned counsel for the parties and perused the record.

11 Mr. Sunil Sethi, learned Senior Counsel, assisted by Mr. Nayeem Sheikh, learned counsel appearing for respondent No.5 in OWP No. 522/2013, has raised a preliminary objection regarding maintainability of the writ

petition. He has contended that the petitioners have no *locus standi* to file the present writ petition, as none of their fundamental, legal, or statutory rights have been infringed. Therefore, they are not entitled to invoke the extraordinary writ jurisdiction of this Court. He further submits that the writ petition is otherwise not maintainable, as the petitioners have no cause of action to challenge the order dated 14.03.2013, which was passed by the Tribunal after rehearing the appeal of respondent No.5. The petitioners have no concern with the said appeal or its disposal as they were not party to the proceedings before the Tribunal. It is further submitted that the petitioners have filed the present writ petition without disclosing any reason or justification as to how and why they are aggrieved by the impugned order.

12 Mr. Sethi, learned Senior Counsel, referring to a judgment of the Supreme Court in the case of **State of West Bengal vs Kamal Sengupta** (Civil Appeal No. 1694/2006, decided on 16.06.2008) argued that the Tribunal did not commit any illegality in reviewing its order dated 11.02.2013. It is submitted that the said order was based on misrepresentation made by respondent No.2 and 3, who claimed that the setbacks left on site were within norms and consistent with the prevailing building line for the plot size involved. Based on his misrepresentation, the appeal filed by respondent No.5, was initially dismissed. He, therefore, filed an application seeking rehearing of his appeal, which was duly considered by respondent No.4. Consequently, vide order dated 14.03.2013, the earlier order was modified to the extent that respondents No.2 and 3 i.e the Municipal Authorities, were directed to reassess the alleged violations with reference to applicable norms, and not merely on the basis of what had been recorded in the original permission. The Tribunal further directed that the Municipal Authorities should also consider the existing building line and finalize

the reassessment within one month from the date of the order. Additionally, the Tribunal allowed the Municipal Authorities to take fresh action against any construction not covered under rules, including those in the neighborhood of respondent No.5. The said direction was based on photographs produced by learned counsel for respondent No.5, which showed existing and under construction buildings extending towards the centerline of the road, whereas the construction raised by respondent No.5 was claimed to be located behind this line and within setback norms for plots up to 2200 sq. ft.. According to the learned Senior Counsel, respondent No. 5 in OWP No. 522/2013 and the petitioner in OWP No. 1067/2014 had filed an RTI application before the Municipal Authorities. In response, the Municipal Authorities, vide communication dated 16.06.2014, replied to the said RTI application. It is stated in the said communication that, as per the available records, no building permission has been granted in favour of respondents No. 4, 5, and 6 in OWP No. 1067/2014.

13 Based on the aforesaid pleadings and the submissions made, two questions arise for determination:

(i) Whether the present writ petition is maintainable ?

(ii) Whether a Tribunal constituted under the provisions of the Administrative Tribunals Act can review its own decision ?

14 Regarding the first issue, it is indeed true that the petitioners were not parties to the *lis* before the Tribunal. However, it is evident from the proceedings that while modifying its earlier order dated 11.02.2013, the Tribunal vide its order dated 14.03.2013, directed the Municipal Authorities to reassess the alleged violations in accordance with the applicable norms and the prevailing building line. The Municipal Authorities were further granted liberty to initiate fresh action against any unauthorized construction, including those in the surrounding area.

15 In light of these directions, the demolition notice which had been impugned in the appeal before the Tribunal was held to be no longer necessary and was accordingly set aside.

16 From the perusal of the aforesaid proceedings, it is observed by this Court that the writ petition is not maintainable, as it has been filed merely on the basis of apprehension. No action has been initiated against the petitioners in OWP No. 522/2013 pursuant to order dated 14.03.2013, which was passed by the Tribunal. In that order, the Tribunal directed the Municipal Authorities to reassess the violations and permitted them to take fresh action against any construction not covered under the applicable norms, including constructions in the vicinity of respondent No.5. From a perusal of order dated 14.03.2013, it is revealed that it has been passed by the Tribunal in relation to unauthorized constructions in the locality. As of now, no action has been taken against the petitioners. In the event that any such action is initiated, the petitioners would obviously be given an opportunity of hearing through a notice issued by the Municipal Authority, in accordance with law.

17 The present writ petition challenges the action which the petitioners apprehends may be taken on the basis of impugned order passed by the Tribunal. I am of the opinion that mere permitting the Municipal Authorities to take action against any construction not covered under the applicable rules does not give them any cause of action to approach this Court. I find the present writ petition is premature at this stage as no formal action adversely affecting the rights of the petitioners is either initiated or taken. The writ, on mere apprehension, is not maintainable, unless there is material on record to indicate that the adverse action

is imminent or there is real threat of invasion of rights of the petitioners.. In the instant case, nothing of this sort has been placed on record.

18 For the foregoing reasons, the writ petition is not maintainable. However, this Court deems it necessary to address the second issue: whether the Tribunal has the power to review its own order.

19 The Supreme Court, in the case of ***Kapra Mazdoor Ekta Union v. Management of Birla Cotton Spinning and Weaving Mills Ltd.***, (2005) 13 SCC 777 addressed the issue of whether a Tribunal can review its own order, and held as under:

“Applying these principles it is apparent that where a Court or quasi judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only if the Court or the quasi judicial authority is vested with power of review by express provision or by necessary implication. The procedural review belongs to a different category. In such a review, the Court or quasi judicial authority having jurisdiction to adjudicate proceeds to do so, but in doing so commits a procedural illegality which goes to the root of the matter and invalidates the proceeding itself, and consequently the order passed therein. Cases where a decision is rendered by the Court or quasi judicial authority without notice to the opposite party or under a mistaken impression that the notice had been served upon the opposite party, or where a matter is taken up for hearing and decision on a date other than the date fixed for its hearing, are some illustrative cases in which the power of procedural review may be invoked. In such a case the party seeking review or recall of the order does not have to substantiate the ground that the order passed suffers from an error apparent on the face of the record or any other ground which may justify a review. He has to establish that the procedure followed by the Court or the quasi judicial authority suffered from such illegality that it vitiated the proceeding and invalidated the order made therein, inasmuch the opposite party concerned was not heard for no fault of his, or that the matter was heard and decided on a date other than the one fixed for hearing of the matter which he could not attend for no fault of his. In such cases, therefore, the matter has to be re-heard in accordance with law without going into

the merit of the order passed. The order passed is liable to be recalled and reviewed not because it is found to be erroneous, but because it was passed in a proceeding which was itself vitiated by an error of procedure or mistake which went to the root of the matter and invalidated the entire proceeding”

20 The Supreme Court in **Grindlays Bank Ltd. vs. Central Government Industrial Tribunal and others**, AIR 1981 SC 606 has held as under:

"Furthermore, different considerations arise on review. The expression 'review' is used in the two distinct senses, namely:

- (1) A procedural review which is either inherent or implied in a court or Tribunal to set aside a palpably erroneous order passed under a misapprehension by it, and*
- (2) A review on merits when the error sought to be corrected is one of law and is apparent on the face of the record.*

21 Applying the aforesaid principles, it is apparent that where a Court or quasi judicial authority having jurisdiction to adjudicate on merit proceeds to do so, its judgment or order can be reviewed on merit only. The party seeking recall of order need not demonstrate that the order suffers from an error apparent on the face of the record. It suffices to show that the procedure followed was so flawed that it vitiated the entire proceedings. In such cases, the matter has to be reheard in accordance with law, without delving into the merits of the previous order. The order was recalled not because it was erroneous, but because it was passed in a vitiated proceedings, without looking into the relevant documents.

22 Coming to the present case, from a perusal of the impugned order, it is revealed that the Tribunal has not committed any procedural illegality or mistake of the nature that vitiated the proceeding itself.

23 However, as per the enactment of Article 323A of the Constitution regarding the expeditious adjudication of service disputes/complaints, the Tribunals established under the Act have been freed from the shackles of the procedure enshrined in the Code of Civil Procedure (CPC). At the same time, they have been vested with certain powers of a Civil Court, including the power to review their decisions. This is clearly reflected from the plain language of Section 22 of the Administrative Tribunals Act, which is reproduced below:

“Section 22. Procedure and powers of Tribunals.

(1) A Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice. Subject to the other provisions of this Act and any rules made by the Central Government, the Tribunal shall have power to regulate its own procedure, including the fixing of places and times of its inquiry and deciding whether to sit in public or in private.

(2) A Tribunal shall decide every application made to it as expeditiously as possible, and ordinarily every application shall be decided on a perusal of documents and written representations and after hearing such oral arguments as may be advanced.

(3) A Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or a copy thereof from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) reviewing its decisions;

(g) dismissing a representation for default or deciding it ex parte;

(h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and

(i) any other matter which may be prescribed by the Central Government.

24 A reading of the above Section makes it clear that even though a Tribunal is not bound by the CPC, it can exercise the powers of a Civil Court in relation to the matters listed in clauses (a) to (i), including the power to review its decisions. The power of a Civil Court to review its judgment or decision is traceable to Section 114 of the CPC. The grounds for seeking a review are enumerated in Order 47 Rule 1, which reads as follows:

Order 47 Rule 1: Application for review of judgment

(1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred;

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree or order, may apply for a review to the Court which passed the decree or made the order”.

25 Since the Tribunal's power to review its order/decision is akin to that of a Civil Court, the statutorily enumerated and judicially recognized limitations applicable to a Civil Court's review powers would also apply to the Tribunal under Section 22(3)(f) of the Act. In other words, a Tribunal can review its order/decision only if one of the grounds enumerated in Order 47 Rule 1 CPC is satisfied. This includes:

(i) Discovery of new or important matter or evidence not available despite due diligence,

(ii) Mistake or error apparent on the face of the record,

(iii) Any other sufficient reason.

26 The Supreme Court, in *Kamal Sengupta's case* (supra), which has been relied upon by Mr. Sethi, learned Senior Counsel, laid down the following principles regarding the review of its own order by the Tribunal. The principles are as follows:

(i) The power of the Tribunal to review its order/decision under Section 22(3)(f) of the Act is akin/analogous to the power of a Civil Court under Section 114 read with Order 47 Rule 1 of CPC.

(ii) The Tribunal can review its decision on either of the grounds enumerated in Order 47 Rule 1 and not otherwise.

(iii) The expression "any other sufficient reason" appearing in Order 47 Rule 1 has to be interpreted in the light of other specified grounds.

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as an error apparent on the face of record justifying exercise of power under Section 22(3)(f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22(3)(f) on the basis of subsequent decision/judgment of a coordinate or larger bench of the Tribunal or of a superior Court.

(vii) While considering an application for review, the Tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

(viii) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence, the same could not be produced before the Court/Tribunal earlier.

27 Coming to the present case, admittedly, the Tribunal has passed the impugned order reviewing its earlier decision on the basis of newly discovered evidence, specifically, the production of photographs by Respondent No. 5. Therefore, it can be safely stated that the Tribunal was justified in reviewing its earlier order. As such, the impugned order does not suffer from any illegality.

28 In view of the above discussion, I find that the Tribunal has the authority to review its order on the grounds stated above. However, since the petitioners have no *locus standi* and lack any cause of action to file this petition, I am of the opinion that it is liable to be dismissed as not maintainable. Consequently, the instant writ petition is dismissed.

CPOWP No. 185/2013 in OWP No. 522/2013

29 In view of dismissal of the main writ petition itself, no further adjudication is required in this contempt petition. Accordingly, the proceedings in this contempt petition are closed.

OWP No. 1067/2024

30 In view of the observations made in OWP No. 522/2013, the instant writ petition is disposed of with a direction to the Municipal Authorities to reassess the violations afresh in light of the applicable norms. The authorities shall be at liberty to take action against any violations in raising construction, including the construction raised by the petitioner herein (Respondent No. 5 in OWP No. 522/2013) and in his vicinity, in accordance with Act and rules applicable. Needless to mention that, before initiating any adverse action, the affected parties shall be afforded an opportunity of being heard.

Interim directions, if any, issued in both the petitions shall stand vacated.

(MOKSHA KHAJURIA KAZMI)
JUDGE

Jammu
09 .05.2025
Sanjeev

Whether order is reportable:Yes/No