

HIGH COURT OF JAMMU AND KASHMIR
AT SRINAGAR

WP(C) no.3324/2019

Abdul Qayoom Dar

...Petitioner

Through:

Mr. Shuja-ul-Haq, Advocate.

v.

UT of J&K & ors.

...Respondent(s)

Through:

Mr. M. A Chashoo, AAG for no.1;

Mr. Moomin Khan, Advocate, for 2 & 3; and

Mr. Aijaz Chisti, Advocate, for 4 & 5.

Coram:

Hon'ble Mr. Justice Ali Mohammad Magrey, Judge

Whether approved for reporting:

No / Yes

JUDGMENT

DATE OF DECISION: 29.05.2020

1. The petitioner is aggrieved of the order no.85 of 2019 dated 02.07.2019 issued by the Joint Commissioner (Planning), Srinagar Municipal Corporation, according sanction to build in favour of respondents 4 and 5 herein in terms of Section 243, 244 of the J&K Municipal Corporation Act, 2000 read with J&K Municipal Corporation Building Bye Laws, 2011, for modification of previous Building Permission order no.104 of 2018 dated 24.09.2018 for construction of G+Four storeyed building with stilt parking in ground floor and surface parking with first floor, second and third floor for mix use / commercial building and fourth floor for residential purposes on a plot of land comprising survey no.2726 situated in Estate Natipora. site at Naik Bagh-Nowgam, Srinagar.

2. The petitioner is seeking the following reliefs:

- “a. By issuance of writ, order or direction, in the nature of Certiorari, the building permission vide order No.85 of 2009 (should be 2019) dated 2.7.2019 issued by respondent corporation in favour of private respondents be quashed.
- b. By issuance of writ, order or direction, in the nature of Mandamus, the respondents be commanded to demolish the illegal construction of commercial complex which is being raised by the respondent no. 5 & 6 (should be 4 & 5) on spot.
- c. By issuance of writ, order or direction, in the nature of mandamus, the respondent no.1 be commanded to conduct impartial enquiry in the matter with regard to grant of three number of building permission by Srinagar Municipal Corporation in favour of private respondents.
- d. Any other writ, order or direction which this Hon’ble Court may deem fit in the circumstances of the case may be issued against the respondents and in favour of the petitioner as same shall be in the interest of justice and equity.”

3. The case of the petitioner is this: that he owns a plot of land measuring 1 Kanal with a two storeyed residential house, built by him thereon more than twenty years back. Few months back respondents 5 and 6 (should read 4 and 5) started raising an illegal construction of a 02 storeyed commercial building adjacent to his aforesaid residential house. Against the said illegal construction, he filed a civil suit before the court of 1st Civil Subordinate Judge, Municipal Magistrate, Srinagar. During the pendency of the aforesaid civil suit, he came to know that the Municipal Corporation, at his back, had, at first, granted a building permission under order no.3156 of 2018 dated 07.08.2018 in favour of the private respondents for raising construction of 02 single storeyed buildings. Thereafter, vide building permission order no.104 of 2018 dated 24.09.2018 the said order was modified for raising construction of residential house semi-detached. The private respondent made a major deviation to the said building permission modified vide Order no.104. Consequent upon which, the Municipal Corporation in exercise of

powers under Section 253 issued notice no.SMC/Enf/3439-45 dated 27.11.2018 for demolition against the private respondents. The private respondents filed an appeal against the demolition notice before the J&K Special Tribunal. The Special Tribunal disposed of the said appeal vide order dated 23.09.2019 directing the appellant therein, i.e., the private respondents herein, to approach the Srinagar Municipal Corporation and put forth their contentions, if any, before them in the form of a representation. The Municipal Corporation was directed to examine the case in its background strictly in accordance with the law/regulations governing the subject. According to the petitioner, it is pursuant to such direction of the Special Tribunal that the Srinagar Municipal Corporation issued the impugned order dated 02.07.2019.

4. The Municipal Corporation in its objections has raised a preliminary objection to the maintainability of this writ petition in view of the fact that the petitioner has, admittedly, already approached the Civil Court of Municipal Magistrate, Srinagar, on the very same cause which suit is stated to be pending adjudication before that Court. On facts, it is averred that the order impugned by the petitioner in the writ petition viz. order no.85 of 2019 dated 02.07.2019, issued by the Joint Commissioner (Planning), Srinagar Municipal Corporation, has been subsequently modified in terms of order no.364 of 2019 dated 29.10.2019 whereby the private respondents' building permission has been slashed from G+4 to G+3 by providing of slab at third floor level with roofing over the existing ground plus three storeyed mix use/commercial building alongwith regularization of deviations after deposition of construction fee to the tune of Rs.9,90,200/-. A photocopy of the said permission order has been placed on record as annexure-I to the said objections. In that context, it is submitted that the writ petition has become infructuous. It is further stated in the objections that the Municipal Corporation has legally and validly granted the aforesaid permission in favour of the private respondents in exercise of the powers which are vested in it under the Jammu and Kashmir Municipal Corporation Act, 2000 and the Building Byelaws, 2011 framed thereunder.

5. The private respondents in their objections, apart from taking the preliminary objections to the maintainability of the writ petition on account of pendency of the civil suit, have, among other things, stated that the revised Master Plan of Srinagar City was issued vide SRO 160 on 07.03.2019 whereby the area where the respondents' land in question is located, i.e., the road from Nowgam Chowk to Natipora Crossing, has been brought under Composite Mixed Land Use Policy. Therefore, it is averred, by granting a mixed use building permission in favour of the private respondents no illegality has been committed by the Corporation.

6. I have heard learned counsel for the parties and have gone through the pleadings.

7. Mr. Moomin Khan, learned counsel for the Municipal Corporation took two preliminary objections: first, that the writ petition is not maintainable on account of the fact that, admittedly, the petitioner has filed a civil suit on the same cause; second, that the order which the petitioner has challenged in the writ petition is no more in existence and it stands modified by a subsequent order, being order no.364 of 2019 dated 29.10.2019, whereby the private respondents' building permission has been slashed from G+4 to G+3 etc. To buttress his preliminary objection, Mr. Moomin Khan cited certain judgments of the Supreme Court which shall be referred to hereinafter. Similar preliminary objection was taken by Mr. Aijaz Chisti, learned counsel for the private respondents.

8. In the event this Court comes to the conclusion that this writ petition is not entertainable, then the merits of the case would not need to be gone into.

9. In para 3 of the writ petition, the petitioner has averred that he has not instituted any writ petition or suit of like nature before either wing of this Hon'ble Court or before any civil court, except the present petition. This is a clear and unambiguous averment of the petitioner made in the beginning of the writ petition, seemingly in compliance of the requirement mandated by sub-rule (c) of Rule 2 of the Jammu and

Kashmir Writ Proceedings Rules, 1997 framed by the High Court. However, on the very same page of the petition, in para 6, figuratively in the same breath, the following averment is made:

“6. That few months back, the respondent No. 5 & 6 (should read as 4 and 5) started raising of illegal construction of a 02 single storeyed commercial building adjacent to the petitioner’s house illegally that too in a residential area without getting any valid permission from the concerned authorities. Against the said illegal construction, the petitioner filed a civil suit before the Hon’ble court 1st Civil Subordinate Judge Municipal Magistrate Srinagar. In the civil suit, the Hon’ble Munsiff Magistrate directed the respondent No.4 (should read 3) to visit the spot and submit detailed report vis-à-vis violation if any in respect of the building bylaws/permission order and injury if any to the legal right of aggrieved party. Copy of the order passed by the trial court dated 10.7.2019 is annexed herewith as Annexure II.”

10. It is thus clearly stated in para 6 of the writ petition that the petitioner had filed a civil suit before the learned Municipal Magistrate. The petitioner has not appended a copy of the plaint with the writ petition, but from Annexure-II to the writ petition, which is an order dated 10.07.2019 in the nature of docket, addressed by the trial court to the Ward Officer, Ward no.31, it becomes axiomatic that the civil suit is with respect to the same cause as has been raised in the present writ petition. The aforesaid order/docket of the trial court is quoted as under:

“ORDER

To

Ward Officer-Ward no.31

By way of this docket, in the above titled case, you are directed to visit spot and submit detail status report viz-a-viz construction raised and violation if any observed of the building bylaws / permission order and injury if any to the legal right of aggrieved party.

You are further directed to submit compliance report by or before 16/8/19. A copy of order alongwith application is annexed herewith.

Date: 10/7/19.”

11. I am not going to analyze the contents of the aforesaid docket and to pin point what does this document bring to light. It would suffice to say that it is established that the civil suit has been filed concerning the same cause and, that too, after the building permission order impugned in the writ petition was passed. There is a reference to building bylaws / permission order made in the aforesaid order of the trial court. It is noteworthy that this petition is shown to have been presented before the Registry of this Court on 13.11.2019. The order impugned in the petition is dated 02.07.2019. As becomes axiomatic from the aforesaid docket, three days prior to the filing of this writ petition, i.e., on 10.07.2019, the petitioner has filed the civil suit for the same cause before the civil court. If such be the case, as it appears to be, the question is whether two parallel proceedings can run on the same cause and whether this petition would be maintainable. The merits of the case can be delved into only when the petition is found to be maintainable. The law on the point is not *res integra*.

12. It was way back in 1977 that the Supreme Court in *Jai Singh v. UOI*, (1977) 1 SCC 1, held that two parallel remedies in respect of the same matter at the same time cannot be pursued. Then in *K. K. Shrivastava v Bhupendra Kumar Jain*, (1977) 2 SCC 494, it was held that High Court should not ordinarily interfere where there is an appropriate and equally efficacious remedy. Herein, the petitioner has already chosen the remedy of civil suit and it is not the case of the petitioner that the civil suit is not an efficacious remedy. Again, in *Ram Sumer Puri Mahant v State of UP*, (1985) 1 SCC 427, though in a different context, it was held that initiation of a parallel proceeding is not justified. In *BMRDA v Gokar Patel Volkart*, (1995) 1 SCC 642, the contention of the appellant before the Supreme Court was that the respondent-writ-petitioner had an adequate alternative statutory remedy, and that the writ petitioner had, in fact, already taken advantage of alternative remedy. While those proceedings were pending, the writ petitioner invoked the writ jurisdiction of the Bombay High Court. The Supreme Court held that since the petitioner's appeal before the statutory

authority was pending, the writ petition should not have been entertained. In *Arunima Baruah v Union of India*, (2007) 6 SCC 120, relying on *Jai Singh* 's case (supra), it was observed that there is another doctrine which cannot also be lost sight of: the court would not ordinarily permit a party to pursue two parallel remedies in respect of the same subject matter.

13. Above is the position of law which has been persistently laid down by the Supreme Court. Since the writ petitioner herein has already chosen a remedy for the same cause, this writ petition would not be maintainable in this Court, especially so when the civil suit of the petitioner as on the date of this writ petition was pending adjudication. It is not known what happened to the suit subsequently and this Court is not concerned about that, but what is relevant is that this petition was a parallel proceeding initiated by the petitioner. It cannot be entertained. It is another thing that the order challenged in the petition, as submitted by Mr. Moomin Khan, was modified vide Order no.364 of 2019 dated 29.10.2019, i.e., after filing of the writ petition, which order has not been challenged in the writ petition, rendering this writ petition infructuous.

14. In light of the above, this petition is held to be not entertainable, being a parallel proceeding in presence of pendency of the civil suit filed by the writ petitioner. It is, therefore, dismissed as such.

15. No order as to costs.

16. Interim direction, if any, subsisting shall stand vacated.

(Ali Mohammad Magrey)
Judge

Srinagar,
29.05.2020
Syed Ayaz, Secretary.

- i) Whether the judgment is speaking: Yes/No.
- ii) Whether the judgment is non-speaking: Yes/No