

THE JAMMU AND KASHMIR CONTROL OF BUILDING OPERATIONS ACT, 1988

[Act No. XV of 1988]

[Received the assent of the Governor on 31st August, 1998 and published in the Government Gazette dated 1st September, 1988].

An Act to amend and consolidate the law relating to control of building operations in the State.

Be it enacted by the Jammu and Kashmir State Legislature in the Thirty-ninth Year of the Republic of India as follows:

NOTES

Amicable settlement — Construction raised in vicinity of mosque at Rajbagh

Amicable settlement — Construction raised in vicinity of mosque at Rajbagh — Writ court instead discussed merits of the case and returned findings on Petitioner's "locus standi" to invoke jurisdiction of the court and cause of action for the writ petition filed by him — Course followed by the writ court was not permissible for the reason that the parties were taken unawares and conclusion drawn on merits of the petition, without allowing the parties to put forth their stand — Once the parties to writ petition or for that matter a suit or other proceeding enter into a compromise they expect the petition or such proceedings to be disposed of in terms of compromise and the Court is not to embark on an exercise to deal with the matter on the merits or determine rights on the parties — Letters Patent Appeal on hand is allowed and writ court order set aside to the extent it comments upon and determines petitioner's locus standi to file petition on behalf of Masjid Noor, existence of cause of action to maintain the petition, and the motive behind filing of the petition, highlighted in the memo of appeal — LPA allowed.—*Masjid Noor v. State of J&K & Ors.* 2017 (9) JKLRJ 537[HC] : 2015 (1) JKJ 722[HC] : JKJ Soft JKJ/29245

Compounding of minor violation

Compounding of minor violation — Writ petition against order of compounding minor violation of sanction by fixing aluminum doors and frames in house — During construction Chief Khilafwarzi Officer reported that respondent had made some violation by fixing aluminum doors and frames in order to convert the building into commercial use — After considering reply of respondent Building Operation Authority ordered demolition — On appeal Tribunal held that violation made was of minor nature and compounded the same, respondent having assured that the building is only for residential purpose and not for commercial purpose — Held, Tribunal had made a reasoned judgment which does not need interference — Writ dismissed.—*Building Operation Controlling Authority v. Jatinder Kumar Mittal & Ors.* 2017 (8) JKLRJ 734[HC] : 2013 (1) JKJ 520[HC] : JKJ Soft JKJ/27081

Master Plan 2021 — Enactments

Master Plan 2021 — Enactments — Held, prospective — Control of Building Operation Act and Master Plan 2021 held not retrospective in nature not applicable to buildings which have come into existence prior to these enactments.—*Parkasho Devi v. Building Operation Controlling Authority & Anr.* 2017 (7) JKLRJ 749[Tri] : 2010 (3) JKJ 9[Tri] : JKJ Soft JKJ/27913

Permission — Abeyance order — Construction of plinth of proposed three storeyed residential house

Permission — Abeyance order — Construction of plinth of proposed three storeyed residential house — Security purpose or threat perception — Having one's own residential house to live in is definitely one of the important facets of living a hassle free life — It is an essential component of right to life guaranteed under Article 21 of the Constitution of India — When a citizen satisfies the prescribed legal requirements for raising construction of residential house or for construction of any other nature, it becomes duty of the concerned statutory Authority to consider claim for grant of permission for raising such construction — Permission for raising of plinth has been granted and, as submitted at the bar, same has been constructed — Impugned abeyance order set aside — Petition disposed of.—*Bashir Ahmad Shahdhar v. Srinagar Municipal Corp.* 2017 (9) JKLRJ 440[HC] : 2014 (4) JKJ 533[HC] : JKJ Soft JKJ/29019

Powers of Special Tribunal

Powers of Special Tribunal — There is no provision in the Act which makes the J&K Special Tribunal a Civil Court empowered to adjudicate upon the civil rights of any of the parties before it. O.W.P 431/2007 Followed.—*Subedar Kartar Singh v. Jammu Municipality* 2017 (6) JKLRJ 656[Tri] : 2007 (3) JKJ 11 [Tri] : JKJ Soft JKJ/27502

Professional establishment — Compounding of

Professional establishment — Compounding of — Since the professional establishment and Nursing Home is allowed in residential area, the tribunal was right in compounding the violation not being the major one under law.—*Building Operation v. Jyoti Singh & Anr.* 2017 (6) JKLRJ 332[HC] : 2006 (3) JKJ 526[HC] : JKJ Soft JKJ/21606

Regulations and Master Plan bye-laws

Regulations and Master Plan bye-laws — Violation in shape of excess construction than permitted — Building permission for construction of first floor of residential house with built up area of 937 sft. with set backs in front and back of land over an area of 2023 sft. — Instead construction made over 1664 sft. — Notice for demolition of violation after completion of excess construction — Appeal against demolition notice before Special Tribunal — Held, construction having been completed and respondents having taken no action when construction was in process, if excess construction raised by appellant was demolished, appellant shall suffer irreparable loss — Violation allowed to be compounded by paying compounding fee assessed @ Rs. 30 per sft.—*Parikshat Singh v. Building Operation Controlling Authority & Anr.* 2017 (8) JKLRJ 287[Tri] : 2012 (1) JKJ 67[Tri] : JKJ Soft JKJ/28046

1. Short title, extent and commencement

(1) This Act may be called the Jammu and Kashmir Control of Building Operations Act, 1988.

(2) It extends to the whole of the State of Jammu and Kashmir.

¹[(3) It shall come into force on such date as the Government may, by notification in the Government Gazette appoint.]

2. Definitions

In this Act, unless the context otherwise requires,—

¹ Enforce by SRO-164 dated 28th May, 1998 with effect from 28-5-1998.

- (1) "Authority" means the Building Operations Controlling Authority constituted under section 3 of this Act;
- (2) "boat" includes any vessel used or capable of being used on water as a means of conveyance or habitation or for commercial purposes and shall include also steam and motor launches;
- (3) "building" means any shop, house, hut, out-house, shed, super-structure, boat, house-boat and stable whether used for the purpose of human habitation or otherwise and whether of masonry, bricks, wood, mud, thatch, metal or any other material whatever and includes a wall and a well;
- (4) "building line" means a line which is on either of the street alignment and to which the main external wall of a building abutting a street may lawfully extend and beyond which no portion of the building shall extend as prescribed in the building bye-laws;
- (5) "building operation" includes re-building operations, structural alterations of or additions to buildings and other operations, normally undertaken in connection with the construction of building;
- (6) "Chief Executive Officer" means Chief Executive Officer appointed under provisions of this Act and includes an officer empowered under this Act, to exercise, perform or discharge any of the powers, duties or functions of Chief Executive Officer;
- (7) "development" with grammatical variations means the carrying out of building, engineering, quarrying or extraction of manufacture of building materials or other operations in, on, over or under the land, or erecting or re-erecting of any building on land or over water making any physical change in or on land and includes redevelopment;
- (8) "engineering operation" includes the formation or laying out of means of access to a road or the laying out of main water supply out of a drain or electric supply;
- (9) "erect or re-erect" any building includes—
 - (a) any material alteration or enlargement of any building;
 - (b) mooring or installing of any boat or house-boat in the river or lake falling within the jurisdiction of any Authority;
 - (c) the conversion by structural alteration into a place for human habitation of any building not originally constructed for human habitation;

- (d) the conversion into more than one place for human habitation of a building originally constructed as on such place;
 - (e) the conversion of two or more places of human habitation into a greater number of such places;
 - (f) such alteration of a building as affects an alteration in its drainage or sanitary arrangements or affects its stability;
 - (g) the addition of any room, building, out-house or other structure to any building;
 - (h) the construction of a wall adjoining any street or land not belonging to the owner of the wall, of a door opening on to such street; and
 - (i) reconstruction of a building or a portion thereof, by means of props, commonly known as "PAND-PAND" in Kashmir Valley;
- (10) "Gazette" means the Government Gazette published under the authority of the Jammu and Kashmir Government;
 - (11) "land" shall include land which is built upon or covered with water;
 - (12) "local area" means any area declared to be a local area under sub-section (1) of section 3 of the Jammu and Kashmir Development Act, 1970¹[x x x];
 - (13) "Minister" means the Minister Incharge, Housing and Urban Development Department or any other Minister notified by the Government for purposes of this Act;
 - (14) "occupier" means any person who for the time being pays or is liable to pay to the owner the rent or any portion of the rent and includes an owner living in or otherwise using his own land or building and also a rent free tenant;
 - (15) "owner" when used in reference to any land or building, includes the person for the time being receiving the rent of the land or building or of any part of the land or building whether on his own account or as agent or trustee for any person or society or/for any religious or charitable purpose, or as receiver who would so receive such rent after the land, building or part thereof, as the case may be, is let to a tenant;
 - (16) "Plan" means master plan and includes zonal plan prepared under the Jammu and Kashmir Development Act, 1970; and

¹ Words omitted by Act VI of 1997, s. 2, w. e. f. 28-5-1998.

- (17) "regulation" means a regulation made under this Act, by the Authority constituted under section 3.

NOTES

Building — Green houses

Building — Whether green houses for nurturing plants falls within definition of 'building' — Held, prima facie a green house is not a structure which has permanency.—*Mohd. Tariq Reshi & Ors. v. State & Ors. 2017 (8) JKLJRJ 51[HC] : 2011 (1) JKJ 101[HC] : 2011 SLJ 296 : AIR 2011 J&K 97 : JKJ Soft JKJ/25632*

Demolition — Demolition of green houses

Demolition — Demolition of green houses set up by petitioners for nurturing plants without notice to petitioners — Plea of petitioner that these structures do not fall within definition of building under the Act — Respondents' case that the structure is a building and violative of High Court order prohibiting any constructional activity within prescribed area — Held, petitioners required to be heard and after receiving reply matter to be referred to some expert which was not done — A unilateral decision causing loss to property of petitioner — Held further, even if any construction raised violating directions of court, even then the defaulting party required to be informed before demolition process undertaken.—*Mohd. Tariq Reshi & Ors. v. State & Ors. 2017 (8) JKLJRJ 51[HC] : 2011 (1) JKJ 101[HC] : 2011 SLJ 296 : AIR 2011 J&K 97 : JKJ Soft JKJ/25632*

Demolition — Plea of renovation and not new construction

Demolition — Plea of renovation and not new construction — Erection or re-erection of a building, as must be clear from "definition" does not only include construction of a new building on a vacant piece of land but any material alteration or enlargement of a building, addition of any space/room to the existing building or reconstruction of building or of a portion thereon. The renovation of the building thus would fall within the meaning of erection or re-erection as defined under Section 2 (9), and such renovation cannot be undertaken without permission of the Authority in terms of Section 4 — Petitioner in the present case admittedly raised construction without permission of the Authority — Though the petitioner claims to have raised a construction way back in the year 1985 and only embarked on renovation of the structure in the year 2010 yet the assertion does not sound convincing, inasmuch as the petitioner was not in a position to produce any permission, if any, granted in 1985 authorising him to raise the construction — In face of admission made by the appellant that the construction was undertaken without permission from the Authority under the Act, the petitioner could not be heard saying that the demolition notice was arbitrary, unjust and not called for — Petition dismissed.—*Mohd. Qasim Dar v. State & Ors. 2017 (8) JKLJRJ 228[HC] : 2011 (4) JKJ 558[HC] : JKJ Soft JKJ/26235*

Demolition order — Erection and re-erection

Demolition order — Erection and re-erection — Renovation of building not an offence since long — Due to efflux of time, the vagaries of weather it suffered damages — Bricks came trembling down even because of slightest movement of the vehicles in the area — Appellant was constrained to affect necessary repairs of the shop which includes plastering and face lifting without any material change — Notice under sec. 7(1) and sec 7(3) duly served by respondent — Renovation of building would fall within the meaning of erection and re-erection as defined under sec. 2(9) of the Act — Appellant have not got due permission — Appeal dismissed.—*Habibullah Ganai v. Building Operations Controlling Authority & Ors. 2017 (8) JKLJRJ 671[Tri] : 2014 (3) JKJ 22[Tri] : JKJ Soft JKJ/28904*

Renovation of building — No permission

Renovation of building — No permission — Appellant constructed two shops after obtaining sanction — Started repairs plastering etc. without permission — Renovation of building falls within measuring of "erection" or "re-erection" as defined under sec 2(9) of the Act — Renovation cannot be taken without permission — Appeal dismissed.—*Gh. Qadir Lone v. Building Operations Controlling Authority & Ors. 2017 (8) JKLJRJ 746[Tri] : 2014 (3) JKJ 37[Tri] : JKJ Soft JKJ/28908*

3. Constitution of the Authority

(1) With the commencement of this Act, the authorities for the propose of this Act in any Local area, Municipal area, Town area, Notified area or area notified under the Jammu and Kashmir State Town Planning Act, 1963 shall be as under:—

(2) The Authority in respect of—

- ¹[(a) 'Municipal area' notified under the Jammu and Kashmir Municipal Act, Samvat 2008;
- (b) 'Local area' not included in the Municipal area;
- (c) 'Town area' notified under the J&K Town Area Act, Samvat 2011;
- (d) 'Notified area' specified under section 283 of the Jammu and Kashmir Municipal Act, Samvat 2008;
- (e) Area notified under the Jammu and Kashmir Town Planning Act, 1963 which is not a 'Local area' 'Town area' or 'Notified area';

shall be appointed by the Government from time to time by notifying in the Government Gazette.]

NOTES

Show Cause Notice — Appeal against order

Show Cause Notice — Appeal against order dated 26.6.2012 appearing as a show cause notice, alleged by petitioner never to have been served upon him and he had no knowledge of the impugned order — Held, no action can be initiated by any authority constituted under Section 3 read with Section 7(1) and (2) unless an opportunity of being heard is afforded to person against whom action is proposed to be initiated — Impugned order smacks of arbitrariness and mechanical exercise of powers on apart of authorities in order to harass and humiliate appellant.—*Sunil Dutt v. Joint Commissioner (A) Jammu Municipal Corporation 2017 (9) JKLJRJ 239[Tri] : 2014 (1) JKJ 28[Tri] : JKJ Soft JKJ/28578*

Violation of permission granted

Violation of permission granted — As against the permission, appellant has covered whole of plot though there is no encroachment on private land or public land — As per observations of Supreme Court that it is not the question of construction which intends to

¹ Clauses (a) to (e) substituted by Act VI of 1997, s. 3, w. e. f. 28.5.1998.

² Now Municipal Act, 2000.

decide whether it falls within the ambit of minor or major violation; it is the violation of permissible land use, height and set back which the appellant has maintained — Allegation against appellant is that he has covered whole plot as against the permission — Violation of 505.5 sqft. — Violation compounded @ Rs. 40 per sft, totaling Rs. 20,100.00 to be deposited in the Treasury within two months.—*Sunil Dutt v. Joint Commissioner (A) Jammu Municipal Corporation 2017 (9) JKLRJ 239[Tri] : 2014 (1) JKJ 28[Tri] : JKJ Soft JKJ/28578*

4. Control of development and building operation

No person shall undertake or carry out the development of any site in any Municipal area, Local area, Town Area, Notified area or Area Notified under the Jammu and Kashmir State Town Planning Act, 1963, or erect or re-erect any building or make or extend any excavation or lay out any means of access to a road in such area except with the previous permission of the Authority concerned in writing.

NOTES

Appeal — Order/notice

Appeal — Order/notice — Notice alleging change of land use from residential to commercial besides being inconvenient to residents of locality — Impugned order passed without recording any reasons, petitioner having filed detailed reply to show cause notice — Petitioner's plea that respondents not competent to issue show cause and final notice since he was not raising a new construction and that like petitioner many others were running Coaching Centre in Gandhi Nagar Area — What was prohibited under 1988 Regulations was violation of approved land-use of area as notified in Master Plan or Town Planning Scheme, and that the competent authority can exercise powers only in event of erection or re-erection of any building which has been commenced or is being carried or has been completed without permission referred to in Section 4 or in contravention of any condition subject to which any permission has been granted — No allegation of any violation of building permission, issuance of impugned notice was without jurisdiction — Under SRO 263 dt. 9.8.2004 a professional establishment, Nursing home can be established in residential area under clause 8.2 of Master Plan — Respondents cannot initiate alleged action by pick and choose method against appellant simpliciter when admittedly neither any show cause notice nor any final notice has been issued against any other institute, owners of various originations etc. who are already running these activities in vicinity since long — No violation of Sec. 4 of BOCA and respondents have wrongly invoked provisions of Section 7 of the Act. Impugned notice not sustainable in eye of law and is thus aside.—*Navneet Gupta v. Building Operation Controlling Authority & Anr. 2017 (9) JKLRJ 218[Tri] : 2014 (1) JKJ 3[Tri] : JKJ Soft JKJ/28571*

Construction raised without permission — Revision against order of demolition

Construction raised without permission — Revision against order of demolition — Held, construction having already been completed, respondent having maintained complete silence till completion of construction, offence committed is a minor offence in terms of Regulation 11 of COBO Regulations and is compoundable — Held further law of equity demands that construction should not be demolished. AIR 2005 SC 2578, Rel.—*Daya Shankar v. Jammu Municipal Corporation, Jammu & Ors. 2017 (8) JKLRJ 499[Tri] : 2012 (3) JKJ 53[Tri] : JKJ Soft JKJ/27879*

Demolition — Construction of porch and room

Demolition — Construction of porch and room over it, height whereof within prescribed bye-laws — Violation of Section — Construction raised not more than permissible ground coverage but side set back not kept — Demolition order — Appeal — Held, though a major

violation yet since construction completed a decade back, no steps taken by respondent at completion stage, conduct of respondent not fair and honest — Violation allowed to be compounded.—*S.L. Nagpal v. Building Operation Controlling Authority Jammu 2017 (8) JKLRJ 350[Tri] : 2012 (2) JKJ 19[Tri] : JKJ Soft JKJ/27907*

Demolition — Plea of renovation and not new construction

Demolition — Plea of renovation and not new construction — Erection or re-erection of a building, as must be clear from "definition" does not only include construction of a new building on a vacant piece of land but any material alteration or enlargement of a building, addition of any space/room to the existing building or reconstruction of building or of a portion thereon. The renovation of the building thus would fall within the meaning of erection or re-erection as defined under Section 2 (9), and such renovation cannot be undertaken without permission of the Authority in terms of Section 4 — Petitioner in the present case admittedly raised construction without permission of the Authority — Though the petitioner claims to have raised a construction way back in the year 1985 and only embarked on renovation of the structure in the year 2010 yet the assertion does not sound convincing, inasmuch as the petitioner was not in a position to produce any permission, if any, granted in 1985 authorising him to raise the construction — In face of admission made by the appellant that the construction was undertaken without permission from the Authority under the Act, the petitioner could not be heard saying that the demolition notice was arbitrary, unjust and not called for — Petition dismissed.—*Mohd. Qasim Dar v. State & Ors. 2017 (8) JKLRJ 228[HC] : 2011 (4) JKJ 558[HC] : JKJ Soft JKJ/26235*

Demolition order — Reconstruction

Demolition order — Reconstruction — Appellant raised construction of first floor without proper permission from competent authority — Demolished — Appellant after lapse of sometime restarted the same construction — Competent authority after following due procedure issued and served notice u/s 4 & 8 — Demolition order by competent authority held proper and justified — Appeal dismissed.—*Syed Muhammad Ashraf Chest v. Building Operations Controlling Authority & Ors. 2017 (8) JKLRJ 702[Tri] : 2014 (3) JKJ 60[Tri] : JKJ Soft JKJ/28913*

Notice to demolish construction within 5 days

Notice to demolish construction within 5 days — Building in question was an old building under the tenancy of NHPC who left the building — Building has been damaged extensively by NHPC limited i.e. damaged electric wiring and the water/sanitary fittings and same was required to be repaired — Appellant has not placed even a single new brick — Question of erection and re-erection does not arise at all — Building not used for commercial purposes — Order impugned is contrary to provisions of section 4 — Order set aside — Appeal allowed.—*Jagdish Kumar Nargotra & Ors. v. Joint Commissioner (A) Jammu Municipal Corporation & Anr. 2017 (9) JKLRJ 182[Tri] : 2014 (2) JKJ 15[Tri] : JKJ Soft JKJ/28733*

Scope of Section 7

Scope of Section 7 — Section applicable only in cases of erection or re-erection and not in other types of cases like development of site or making or extending any excavation or laying out any means of access to road as mentioned in section 4 of Act.—*Ajay Kumar Chanda v. Joint Commissioner(A), Municipal Corporation Jammu 2017 (8) JKLRJ 241[Tri] : 2012 (1) JKJ 1[Tri] : JKJ Soft JKJ/28023*

Upgradation of over-head bridge connecting two buildings

Upgradation of over-head bridge connecting two buildings — Appeal before Tribunal against order of respondent disposed of by Tribunal on 13-10-2007 directing respondent to reconsider the application for upgradation of over-head bridge connecting two buildings of the appellant — Application rejected on 12.3.2007 — Application for re-admission of the original appeal — There is no merit in the present application not falling within purview of

Regulating 4, as the applicant is not the owner of the property on which he wants to raise construction over lane which is public property — Application dismissed.—*Ravi Mahajan v. Executive Officer, Jammu Municipality & Anr.* 2017 (9) JKLRJ 110[Tri] : 2014 (1) JKJ 18[Tri] : JKJ Soft JKJ/28575

5. Application for permission

(1) Every person desiring to obtain the permission, referred to in section 4 shall make an application in writing to the authority or through any agency authorised, in such form and containing such information as may be prescribed by regulations made under this Act.

(2) The Authority shall, within a period of 7 days of the receipt of application under sub-section (1) decline to accept a plan as sufficient for purposes of granting sanction under this Act if it does not bear the signature and seal of a Registered Architect or a Draftsman registered with the Authority.

(3) On receipt of such application the Authority, after making such enquiry as it considers necessary, keeping in view the area and the laws, rules and regulations applicable therein, shall by an order in writing, either grant the permission, subject to such conditions, if any, as may be specified in the order or refuse to grant such permission, under the State Town Planning Act, 1963 or any Master Plan.

(4) Where the permission is refused, the grounds of such refusal shall be communicated to the applicant in writing within a period of 30 days.

NOTES

Exercise of writ jurisdiction

Exercise of writ jurisdiction — Building permission under process after earlier permission had outlived its life — So long grant or refusal is not conveyed/ communicated in writing, no cause for petitioner to come to Court — Petition dismissed.—*Mohd. Afzal Khan (Dr.) v. State of J&K & Ors.* 2017 (5) JKLRJ 199[HC] : 2001 SLJ 472: 2002 AIR J&K 36: JKJ Soft JKJ/12932

Permission — Reconstruct three storied residential house

Permission — The appellant filed the appeal against the permission granted to private respondent whereby he has been permitted to reconstruct three storied residential house on the ground that the permission accorded is not in accordance with law and it is alleged that the appellant made representation to Building Permission Controlling Authority which was not considered before granting permission to private respondent — The tribunal dismissed the appeal by holding that the Building Permission Controlling Authority have adhered to all the formalities before the grant of permission to private respondent.—*Bashir Ahmad Diyargaroo & Anr. v. Chairman Building Operations Controlling Authority, Srinagar & Ors.* 2017 (6) JKLRJ 323[Tri] : 2007 (1) JKJ 25 [Tri] : JKJ Soft JKJ/27506

Power of keeping the order of re-construction in abeyance

Power of keeping the order of re-construction in abeyance — The appellant applied for building permission for reconstruction of three storied residential building and the same was granted and he was permitted to reconstruct after dismantling the existed single storey kitchen — Appellant commenced re-erection of building and raised three storied structure—During

reconstruction neighbours of appellant filed suit in civil court for restraining him from raising construction which was subsequently settled amicably during the pendency of civil suit Secy., BOCA kept the building permission in abeyance alleging violation of sanctioned plan-Order challenged before Tribunal — During the pendency of appeal order of demolition of structure which is also challenged — The Tribunal while allowing the appeals held that there is no provision in the Act-giving power to the Authority either to revoke the building permission order granted under Section 5 of the Act or to keep the same in abeyance hence set aside both the orders as void ab-initio.—*Mohd. Iqbal Bhat v. Chairman BOCA Srinagar & Ors.* 2017 (6) JKLRJ 76[Tri] : 2005 (2) JKJ 5 [Tri] : JKJ Soft JKJ/27598

Refusal of permission

Refusal of permission — Mandatory duty upon authority to communicate to petitioner refusal of permission in writing within period of 30 days — Failure to communicate refusal, causes prejudice to applicant because of violation of his legal right.—*Maheshwar Sharma v. Building Operation Controlling Authority* 2017 (8) JKLRJ 329[Tri] : 2012 (2) JKJ 13[Tri] : JKJ Soft JKJ/27902

Violation of principles of natural justice

Violation of principles of natural justice — Withdrawal of earlier permission to raise construction without affording opportunity of hearing — Once permission to raise construction is granted by competent authority, an indefeasible right accrues in favour of person granted permission for construction — Before withdrawing permission, at least an opportunity of being heard should be given to him — Appeal against order of demolition allowed, impugned order set aside with observation that respondent may pass fresh order with regard to withdrawal of permission, if necessary, after providing opportunity of hearing to appellant.—*Janak Singh v. Building Operation Controlling Authority, Municipal Area, Jammu* 2017 (8) JKLRJ 362[Tri] : 2012 (2) JKJ 71[Tri] : JKJ Soft JKJ/28009

6. Power of entry on building or land

The Authority may authorise any person to enter into or upon any site or building with or without assistants or workmen for the purpose of:—

- making any enquiry, inspection, measurement or survey or taking levels or such site of building or both;
- examining works under construction or ascertaining the course of sewers of drains;
- ascertaining whether any site is being or has been developed or any building is being or has been erected without the permission referred to in section 4 or in contravention of any condition subject to which such permission has been granted:

Provided that:—

- no entry shall be made except between the hours of sunrise and sun-set and without giving not less than twenty-four hours written notice to the occupier, or if there is no occupier to the owner of the building or land;
- sufficient opportunity shall in every instance be given to enable women, if any, to withdraw from such land or building.

7. Order of demolition of building in certain areas

(1) Where the erection or re-erection of any building has survey or commenced or is being carried on or has been completed without the permission referred to in section 4 or in contravention of any condition subject to which any permission has been granted, the Authority shall issue a notice in writing calling upon the person to show cause within a period of 48 hours, why the building should not be altered or demolished as may be deemed necessary to remove the contravention.

(2) The Authority shall cause the notice to be affixed on the outer door of some conspicuous part of the building whereupon the notice shall be deemed to have been duly served upon the owner or the occupier of the building.

(3) If the person to whom the notice has been given refuses or fails to show cause within a period specified under sub-section (1) or if after hearing that person, the Authority is satisfied that the erection or re-erection of the building is in contravention of the provisions of this section, the Authority shall by order direct the person to demolish, alter or pull down the building or part thereof so far as is necessary to remove the contravention within a period not exceeding five days as may be specified in the order and if the person fails to comply with the direction, the Authority may itself cause the erection or re-erection to be demolished after the expiry of the said period and may for that purpose use such Police Force as may be necessary which shall be made available to him by the Police Department on requisition.

(4) All expenses incurred for such demolition shall be recoverable from the owner and/or the occupier in the same manner as arrears of land revenue.

NOTES

Appeal — Order/notice

Appeal — Order/notice — Notice alleging change of land use from residential to commercial besides being inconvenient to residents of locality — Impugned order passed without recording any reasons, petitioner having filed detailed reply to show cause notice — Petitioner's plea that respondents not competent to issue show cause and final notice since he was not raising a new construction and that like petitioner many others were running Coaching Centre in Gandhi Nagar Area — What was prohibited under 1988 Regulations was violation of approved land-use of area as notified in Master Plan or Town Planning Scheme, and that the competent authority can exercise powers only in event of erection or re-erection of any building which has been commenced or is being carried or has been completed without permission referred to in Section 4 or in contravention of any condition subject to which any permission has been granted — No allegation of any violation of building permission, issuance of impugned notice was without jurisdiction — Under SRO 263 dt. 9.8.2004 a professional establishment, Nursing home can be established in residential area under clause

8.2 of Master Plan — Respondents cannot initiate alleged action by pick and choose method against appellant simpliciter when admittedly neither any show cause notice nor any final notice has been issued against any other institute, owners of various originations etc. who are already running these activities in vicinity since long — No violation of Sec. 4 of BOCA and respondents have wrongly invoked provisions of Section 7 of the Act. Impugned notice not sustainable in eye of law and is thus aside.—*Navneet Gupta v. Building Operation Controlling Authority & Anr.* 2017 (9) JKLRJ 218[Tri]: 2014 (1) JKJ 3[Tri]: JKJ Soft JKJ/28571

Appeal against notice

Appeal against notice directing appellant to demolish construction raised on the first floor in violation of provisions of COBO Act, Control of Building Operation Regulations and Master plan and the prescribed building bye-laws — Ground floor already existing and impugned show cause notice not mentioning about construction of ground floor — Violation only in respect of ground coverage by 1% excess more as per regulation which can be termed as minor offence in terms of Regulation 11 — Construction having been completed and respondents having taken no action in stopping construction at very initial level, held equity demands that construction should not be demolished — Violation in facts and circumstances held as minor and allowed to be compounded.—*Surinder Singh Charak v. Chairman, Building Operation Controlling authority, Municipal Corporation, Jammu & Ors.* 2017 (8) JKLRJ 513[Tri]: 2012 (3) JKJ 18[Tri]: JKJ Soft JKJ/27869

Appeal against notice for demolition — Successive applications or permission, last filed on 18.2.2010 — Appellant raised construction after lapse of stipulated period for issue of rejection order — Impugned final notice issued on 5.1.2012 — Held, no evidence on record showing refusal of permission ever conveyed to appellant, thus causing him prejudice because his legal right under statute has been violated — Appeal disposed of with direction to respondent to consider representation of appellant with regard to refusal/non-consideration of his application for permission to raise construction.—*Maheshwar Sharma v. Building Operation Controlling Authority* 2017 (8) JKLRJ 329[Tri]: 2012 (2) JKJ 13[Tri]: JKJ Soft JKJ/27902

Notices under Section 7(1) and 7(3) issued in the name of a dead person — Notices held issued in most casual manner, a dead person cannot be expected to reply to the show cause notices — Impugned notices quashed.—*Kulbir Singh v. Building Operations Controlling Authority, Municipal Area, Jammu* 2012 (3) JKJ 79[Tri]

Appeal against the order of demolition — Two storied residential house

Appeal against the order of demolition — Two storied residential house — Ground that the appellant in order to raise a two storied residential house on his land approached the respondents for the issuance of necessary building permission and respondent-authority accorded permission to raise the construction of two storied residential house with attic subject to fulfillment of certain terms and conditions, he assailed the order of demolition on the ground that he has not committed any deviation in respect of the permission granted in his favour and has submitted that if any illegal or unauthorized construction may have been raised by the appellant the same can be lawfully compounded by the tribunal — The tribunal dismissed the appeal by upholding the demolition order by holding that the appellant has violated Condition No. (ii) to (iv) of the Rule 11 of the Regulations while raising the construction — Violations in question cannot be termed as minor in nature and accordingly, the offence committed by the appellant cannot be compounded by the tribunal.—*Gh. Ahmad Najar v. Building Operations Controlling Authority* 2017 (6) JKLRJ 298[Tri.]: 2007 (1) JKJ 45[Tri]: JKJ Soft JKJ/27513

Challenge to construction of building — Assumption of approval of site plan

Challenge to construction of building — Assumption of approval of site plan — Construction of the building was initiated by the plaintiff immediately after the permission was granted to him for raising two storied building in terms of the permission granted by the

authorities — Construction was still at the infancy stage when a revised site plan was submitted by the plaintiff — Municipality did not react to the site plan and the plaintiff assumed that they had no objection for the said revised site plan. Regulation 7(iii) provides in case no permission is granted within the stipulated period; it shall be deemed that permission has been granted — Construction raised by the plaintiff was in connivance with the officials of the Municipal Authorities — Right from 2002 till 2004 no steps were taken by the Municipal Authorities to serve a notice on the plaintiff and woke up only in November, 2004 when they issued first notice on 08-11-2004 — Trial court to frame a preliminary issue with regard to the maintainability of the suit and dispose of the same within a period of three months.—*Building Operation Controlling Authority & Ors. v. Habla Begum (Mst.) 2017 (7) JKLRJ 265[HC] : 2008 (3) JKJ 399[HC] : 2009 SLJ 45 : JKJ Soft JKJ/23496*

Change of use of land for commercial purposes in B. C. Road Area

Change of use of land for commercial purposes in B. C. Road Area — Demand of security by Municipality — Held, illegal — Security deposited directed to be refunded to applicants.—*Darshan Singh & Anr. v. Commissioner, Jammu Municipal Corporation 2017 (7) JKLRJ 669[Tri] : 2010 (2) JKJ 9[Tri] : JKJ Soft JKJ/27940*

Completion of construction as per sanction — Issuance of Notice

Completion of construction as per sanction — Issuance of Notice — Area which is to be developed as mixed used zone having residential, commercial, light industry, institutional and other uses — The phase of rapid growth of industrial development must be kept in mind by the concerned authorities — Impugned notices issued after completion of construction work as per sanction accorded — Violations alleged are minor in nature are directed to be compounded — Appeal disposed of.—*Rajinder Gupta v. Building Operation Controlling Authority 2017 (9) JKLRJ 272[Tri] : 2014 (3) JKJ 1[Tri] : JKJ Soft JKJ/28899*

Compounding of structure raised — Stipulations

Compounding of structure raised — Stipulations — The tribunal while compounding of the impugned structure laid down the following stipulations (a) Out of the total built up area of the impugned structure, the appellant shall pay only building permission fee at the rates applicable for commercial buildings and residential building as per regulations of the JMC for the commercial area equivalent to the old shop (15.3 X 10.6") and the residential area equivalent to the old structure of 3 marlas and 20 sft. less by the area of the shop. For this purpose the clinic intended to be opened by the appellant as per the undertaking filed by him along with waiting room, dispensary, examination room etc shall be treated as commercial. The remaining area shall be treated as residential. (b) For the commercial area in excess of the area of the old shop (15.3 X 10.6"), compounding fee shall be paid @ Rs.100 per sft. by the appellant. Similarly for the remaining area to be treated as residential in excess of the residential area, compounding fee shall be calculated @ Rs. 12.50 per sft. (c) In terms of the undertaking filed by the appellant, the impugned structure shall be used for clinic and for residential purposes and not for any other commercial activity. (d) For all the balcony projections hanging over the lane and road compounding fee shall be @ Rs. 30 per sft.—*Anice Choudhary (Dr.) v. Building Operation Controlling Authority, Jammu 2017 (5) JKLRJ 567[Tri] : 2007 (1) JKJ 40[Tri] : JKJ Soft JKJ/27511*

Construction without permission — Notice

Construction without permission — Notice under Section 7(1) issued in May 2011 for raising construction without permission not followed by final notice — Final notice issued in October 2011 despite request by appellant to respondent for checking the site — Appeal against final notice — Record shows Khilafwarzi of minor nature — Held, conduct of respondents unfair and not honest — Appeal allowed and violation of minor nature compounded on payment of fee @ Rs. 60 per sft.—*Sanjeev Bhasin v. Building Operation Controlling Authority & Ors. 2017 (8) JKLRJ 304[Tri] : 2012 (1) JKJ 77[Tri] : JKJ Soft JKJ/28049*

De-sealing of premises — Challenge

De-sealing of premises — Challenge — Maintainability of appeal against sealing order — Conversion of residential building into commercial one by opening the "SPA" (Beauty Parlour) on first floor without the permission of Jammu Municipal Corporation — Appeal is creature of statute and can be filed only when authorized by the statute — No appeal is authorized to be filed against order passed under Section 8(1) — Power of sealing of premises in terms of Section 8(1) is to ensure that the illegal construction which is commenced is halted in its tracks — Purpose underlying conferring power of sealing is to ensure that there is no violation of the civic law and no person is permitted to reap the benefits of illegal action — Order was not appealable, hence Special Tribunal was lacking jurisdiction to entertain such an appeal — Aggrieved person can even invoke the extraordinary writ jurisdiction of this Court and Court in appropriate case can entertain such petition and pass orders in accordance with the law — Respondent would be at liberty to invoke appropriate remedy in case she is still aggrieved of the sealing order.—*Building Operation Controlling Authority v. Tarvinder Kour & Ors. 2017 (9) JKLRJ 7[HC] : 2014 (3) JKJ 717[HC] : JKJ Soft JKJ/28896*

Demolition — Allegation of conversion of part of residential house into two shops

Demolition — Allegation of conversion of part of residential house into two shops — Plea that petitioner has only replaced the wooden shutters by iron shutters due to the fact that the wooden shutters had been damaged by termites — Notice under section 7(3) purported to be served on the appellant is only a stereotype printed proforma — Nothing can be borne out from sentence in notice as to whether the appellant "failed to show cause or he did show cause or his "explanation was not satisfactory" — Appellant has succeeded in establishing that he has only replaced the old and worn out wooden doors by iron shutters in his old building and this fact can be gathered from the report submitted by the Joint Commissioner dated 13.8.2007 — No demolition — Direction to appellant to pay a sum of Rs.7800 as compounding fee for 312 sft. @ of Rs. 25/- per sft. to the Authority — Appeal allowed.—*Yash Paul Verma v. BOCA 2017 (6) JKLRJ 710[Tri] : 2008 (2) JKJ 6[Tri] : JKJ Soft JKJ/27766*

Demolition — Appeal — Deviation of sanctioned plan

Demolition — Appeal — Deviation of sanctioned plan — Conversion of structure into commercial — There is no encroachment of the neighbourers' adjacent land, nor is any other kind of nuisance attributed to the appellant — Appellants have raised the construction after obtaining the proper building permission order No. 471 of 2003 dated 10.09.2003 and there is also no dispute with regard to the land of the appellants, likewise there is no variance regarding the approved land use of the area vis-a-vis said construction — It may not be out of place to mention here that until the appellants have completed the said house, the respondents remained silent as no effective steps were taken to stop the same — The passive conduct of the respondents for the whole period during which the construction has been raised clearly reflects that they had no objection regarding the said construction and now at this stage, the respondents cannot be allowed to demolish the same as the appellants will be subjected to huge losses and if the deviations are not compounded, it will have the effect of bringing down even the construction raised in accordance with the sanctioned plan thereby causing serious prejudice to the rights and interests of the appellants — There are no allegations against the appellants of any encroachment made by him over any other's land/state land/lane or drain and even otherwise, there is no allegation of any traffic hazard or inconvenience to the public in general due to construction of this house — Deviation and land use violation should be compounded on payment of compounding fee as the same will be in the interests of justice — Appellants shall pay a compounding fee of Rs 60/- per sqft. for three stories as commercial which calculates to Rs. 595 x 60 x 3 = 107100 — Disposed of.—*Snober Shah & Ors. v. Chairman, BOCA, SMC, Srinagar & Ors. 2017 (5) JKJ 74[Tri]*

Demolition — Building plan for the residential house

Demolition — The appellant filed appeal against the order issued under the Act for the demolition on the ground that his building plan for the residential house were approved for the ground and the first floor although he had applied for building permission for the ground, the first and second floor — The tribunal held that the balcony projection 2' in width are violation of a minor nature — Regarding the construction of one hall in the ground floor, as per petitioner there is no intention of using the structure for any commercial purposes hence the circumstances stated the case is fit for compounding which is ordered subject to the conditions.—*Anil Sharma v. Jammu Municipality and Ors.* 2017 (5) JKLRJ 494[Tri] : 2007 (1) JKJ 27[Tri] : JKJ Soft JKJ/27507

Demolition — Non-service of Notice

Demolition — Non-service of Notice — Notice was issued on 8th August, 2007 and Advocate took notice on behalf of respondents and sought four weeks' time to file objections — Case was adjourned from time to time, no objections have been filed — Again on 2nd April, 2010, Advocate sought time for filing objections which again was not filed — On 22nd August, 2012, the court directed the Registry to verify whether the objections have been filed, as stated by Advocate, but the report of the Registry revealed that no such objections have been filed — On 25th April, 2014, right to file reply has been closed — No justification to keep the writ petition pending on a small issue of this nature — Impugned notice set aside — Department concerned to properly serve a fresh notice on the petitioner, if cause still survives and the petitioner may be at liberty to prosecute the same in accordance with the law — Petition disposed of.—*Mohd. Hanief Sofi v. State of J&K & Ors.* 2017 (10) JKLRJ 399[HC] : 2017 (2) JKJ 398[HC] : JKJ Soft JKJ/31544

Demolition — Notice — Encroachment of public land

Notice served on son of owner who were residing together — Final notice of demolition and removal of encroachment upon public lane was passed by Executive Officer, Municipal Committee, Samba but no reply was given — Illegal construction and encroachment has been removed and thus order has been implemented — No principal of natural justice has been violated — Revision petition dismissed.—*Bimla Sharma(Smt.) v. Samba Municipal Committee & Ors.* 2011 (4) JKJ 9[Tri.]

Demolition — Plea of renovation and not new construction

Demolition — Plea of renovation and not new construction — Erection or re-erection of a building, as must be clear from "definition" does not only include construction of a new building on a vacant piece of land but any material alteration or enlargement of a building, addition of any space/room to the existing building or reconstruction of building or of a portion thereon. The renovation of the building thus would fall within the meaning of erection or re-erection as defined under Section 2 (9), and such renovation cannot be undertaken without permission of the Authority in terms of Section 4 — Petitioner in the present case admittedly raised construction without permission of the Authority — Though the petitioner claims to have raised a construction way back in the year 1985 and only embarked on renovation of the structure in the year 2010 yet the assertion does not sound convincing, inasmuch as the petitioner was not in a position to produce any permission, if any, granted in 1985 authorising him to raise the construction — In face of admission made by the appellant that the construction was undertaken without permission from the Authority under the Act, the petitioner could not be heard saying that the demolition notice was arbitrary, unjust and not called for — Petition dismissed.—*Mohd. Qasim Dar v. State & Ors.* 2017 (8) JKLRJ 228[HC] : 2011 (4) JKJ 558[HC] : JKJ Soft JKJ/26235

Demolition — Reconstruction

Demolition — The appellant filed appeal against the order of demolition of impugned structure issued by the respondents under section 7(3) of the Act on the ground that once

the appellant started reconstruction, the respondent JMC has mechanically taken note of the re-erection undertaken without obtaining building permission as required under the Act and issued the notices/demolition orders accordingly — The tribunal held that reconstruction of the house on the balance land was a necessity as far as the appellant is concerned and his right to re-erect his partially or wholly demolished structure cannot be taken away the application of norms of distance from the central line of the road or floor coverage as contended by the JMC keeping in view the facts that earlier also the space as prescribed under the Ribbon Development Act was not available at site nor the same lay vacant — It is further held that re-erection of a partly or wholly demolished structure for road widening on the portion of land not acquired should not be stopped, as it would be irrational, harsh, as well as the spirit of the law.—*Anice Choudhary, Dr. v. Building Operation Controlling Authority, Jammu* 2017 (5) JKLRJ 567[Tri] : 2007 (1) JKJ 40[Tri] : JKJ Soft JKJ/27511

Demolition notice — Appeal — Compounding of offence

Demolition notice — Appeal — Compounding of offence — There is a vacant plot as claimed by respondent No.1, over which he maintained setbacks to some extent keeping in view the dimension of the plot — Respondent No.1 had committed violations, though minor in nature and has, thus, compounded the same — Order passed by the learned Tribunal is well founded and needs no interference — Petition dismissed.—*Building Operation Controlling Authority v. Chain Singh & Anr.* 2017 (10) JKLRJ 113[HC] : 2016 (3) JKJ 788[HC] : JKJ Soft JKJ/30182

Demolition notice — Before operation of the Act

Demolition notice — Before operation of the Act — Notice of demolition issued by Patnitop Development Authority before coming into force the Control of Building Operations Act, 1988 is not maintainable — Construction in issue was raised by the appellant somewhere in 1994-95, that is before the coming into force of Control of Building Operations Act, 1988 — Action is incompetent — Appeal allowed.—*R.P. Shastri v. Building Operation Controlling Authority* 2017 (5) JKLRJ 249[Tri] : 2003 (1) JKJ 152[Tri] : JKJ Soft JKJ/30669

Demolition notice — Before operation of the Act — Action under prevailing law

Demolition notice — Before operation of the Act — Action under prevailing law — In case the notice of demolition issued is without jurisdiction, the competent authority is not debarred from initiating action under the prevailing law — Construction in issue was raised by the appellant somewhere in 1994-95, that is before the coming into force of Control of Building Operations Act, 1988 — Action is incompetent — Appeal allowed.—*R.P. Shastri v. Building Operation Controlling Authority* 2017 (5) JKLRJ 249[Tri] : 2003 (1) JKJ 152[Tri] : JKJ Soft JKJ/30669

Demolition notice — Commercial premises

Demolition notice — Commercial premises — Number of constructions in the locality which exist around the construction in question and the area is mixed and both commercial and residential construction have been raised and these serve double purpose — Other shops and commercial establishments are also running business and are open — It cannot be said that there is gross violation of the master plan by the appellant alone — Excess construction of 2821 sft. is compounded @ Rs. 100/- per for an amount of Rs. 282100 the appellant shall deposit the total penalty amount aforementioned in the relevant Account Head respondents within 2 months who shall also furnish an undertaking that no new construction shall be raised nor any modification of the existing construction shall be done by him without seeking proper permission of JMC and the rules and regulations of the development of master plan be observed — Appeal disposed of.—*Karan Chopra v. Joint Commissioner (A) Municipal Corporation, Jammu Building Operation Controlling Authority, Jammu & Ors.* 2017 (10) JKLRJ 353[Tri] : 2016 (4) JKJ 1[Tri] : JKJ Soft JKJ/31237

Demolition notice — Construction of shop — Non-issuance of notice

Demolition notice — Construction of shop — Non-issuance of notice — Specifically reported that appellant covered 100% of the plot area on all the three floors whereas the permissible coverage limit is 65% — Also mentioned in the report that appellant has covered the front and rear set back with construction on all the floors which is a major violation — After the appellant preferred appeal the respondents still carried out the inspection of the house in question without the permission of this Tribunal — Once the matter was sub-judice respondents should have kept their hands off — In the absence of the show cause notice and demolition notice referred above, the appellant has been prevented from challenging the same before this Tribunal and in this background this Tribunal cannot look into the violations mentioned in the report — Whenever the respondents or any other agency feel necessity of widening of road or lane, the appellant will not claim any compensation — Appellant is also permitted to reduce the balcony projections to the permissible width of 2'-6" within a period of 2 months — When the house was in existence on 1800 sft. in the year 1976 and on the remaining portion the construction was compounded, the respondents are not justified in leveling allegation against the appellant for not keeping front or rear set backs — Similarly the appellant cannot be blamed in this regard for covering the cent percent area on the ground floor — Master Plan permits the mixed use of the area — If it is so then appellant cannot be said to have committed any major violation by constructing halls for use of commercial activities — Once the Master Plan allows the mix use of the area then the construction of two halls on 1st and 2nd floor for running commercial activities can be termed as infringement of the terms of building permission which is compoundable as per Regulation 11 — Compounded fee imposed.—*Vinod Amla (Smt.) v. Chief Executive Officer & Anr.* 2017 (7) JKLRJ 587[Tri] : 2009 (Supp.) JKJ 34[Tri] : JKJ Soft JKJ/27961

Demolition Notice — Issuance by competent person

Demolition Notice — Issuance by competent person — Served by the Chief Khilafwarzi Officer under Section 7(1) and as such it cannot be said that the notice under Section 7(1) has been served on the appellant by a person who was not competent to serve such notice — In view of the delegation of power by the Authority, as published in the Government Gazette issue dated 3.2.2002, Chief Khilafwarzi Officer was certainly competent to issue said show cause notice — Final Notice under section 7(3) of the Act has been served by BOCA, Municipal Area Jammu, whose competency cannot also be questioned.—*Rajeev Gupta v. Jammu Municipal Corpn. & Ors.* 2017 (7) JKLRJ 50[Tri] : 2008 (2) JKJ 41[Tri] : JKJ Soft JKJ/27795

Demolition notice — No new construction raised

Demolition notice — No new construction raised — Minor repairs of old structure carried out — Notice to demolish whole building — After a gap of 3 months from the date of first notice under section 12(1) & 7(1) COBO Act amounts to mala fide exercise of power — Violation is compounded — Appeal allowed.—*Raman Pandoh v. Building Operation Controlling Authority & Anr.* 2017 (9) JKLRJ 586[Tri] : 2014 (3) JKJ 4[Tri] : JKJ Soft JKJ/28900

Demolition notice — Regularized by imposing compounding fee

Demolition notice — Appellant has covered the area of 8890 sft. instead of the permissible area of 8684 sft. — Excess area covered comes to 206 sft. — As per Regulation 11, 10% increase of the permissible ground coverage is minor offence. 10% of 8890 sft. comes to 889 sft. — It is only 206 sft., which is less than 10%. — As such appellant has only committed a minor offence to the extent of 206 sft., which can be compounded — As the violation is in respect of commercial building so the same is regularized by imposing a compounding fee of Rs. 45/-sft. for 206 sft., which shall be deposited with respondents within a period of sixty days — Appeal disposed of.—*Suman Daluja v. Jammu Municipal Corporation & Ors.* 2017 (7) JKLRJ 611[Tri] : 2009 (Supp.) JKJ 50[Tri] : JKJ Soft JKJ/27964

Demolition notice — Renovating the construction without permission

Demolition notice — Appellant has renovated the building which was started to have develop cracks and there are likelihood that the same might fall — Though the appellant is not shown to have sought any permission but merely be renovating the construction without permission — Construction cannot be said to have become illegal and unauthorised if the same does not reflect major violations of zonal or master plan — Appellant could not have been refused permission in view of the construction proved to have been old and existing and purchased by the appellant in 2004 which was sought to be renovated — Area is shown to be only 3 and 4 marlas and the same being too scarce taking into account the location of the area there does not seem to be any scope of sparing land for set backs particularly when the structure was already existing as reflected in the sale deed and hence there is not any major violation of zonal or master plan as no change of land use is alleged in the notice issued on the respondents — Minor violation of construction are decided to be compounded at the rate of Rs. 50/- per sft. and the amount be calculated by JMC after proper assessment which be deposited afterwards by the appellant within and relevant A/C Head of respondents within three months — Appeal disposed of.—*Sudhir Sethi v. Jt. Commissioner, Jammu Municipal Corporation, Jammu & Ors.* 2017 (10) JKLRJ 303[Tri] : 2016 (4) JKJ 29[Tri] : JKJ Soft JKJ/31236

Demolition of construction

Demolition of construction — Plea that construction of pillars for replacement of the roofs of the ground floor and first floor was in violation of the sanction order dated 27-8-2003 — Permission was granted — Respondent No.1 was permitted to replace the old existing roofs of the ground floor and first floor — Replacement of the said roofs by RCC slabs without safety measures would have resulted in the violation of the sanction order — Construction of the pillars from ground level on which the roofs have been replaced by RCC slabs are squarely covered by the condition no.8 of the sanction order — Thus, the construction of pillars on which roofs have been replaced, cannot be said to be in violation of sanction order — Unless the foundation of the case is made out in the show cause notice, the Revenue cannot in court argue the case not made out in its show cause notice — No infirmity in judgment — Petition dismissed.—*Building Operation Controlling Authority v. Joginder Prakash Gandotra & Anr.* 2017 (5) JKJ 194[HC]

Demolition of stairs constructed without permission

Demolition of stairs constructed without permission — Total-area of plot 1193 sq. ft. — Total violation 73 sq. ft. — Held, that the building cannot be properly looked after and managed without stairs raised by owner which does not cause nuisance for anybody, violation ordered to be compounded @ Rs.25 per sft.—*Raksha Sharma v. Building Operations Controlling Authority & Ors.* 2017 (9) JKLRJ 203[Tri] : 2014 (1) JKJ 17[Tri] : JKJ Soft JKJ/28574

Demolition of unauthorised construction

Demolition of unauthorised construction — The appellant filed appeal against the order of Executive officer. Municipal Corporation Jammu whereby it is ordered to demolish the unauthorized construction raised by the appellant within 5 days from the date of service of notice on the ground that the show cause notice is illegal, unconstitutional, bad in the eyes of law, no prior notice was served upon the appellant by the respondent, the impugned notice does not specify the description of the property — The tribunal allowed the appeal and set aside the order impugned on the ground that the final order of demolition passed on the basis of defective notice which was being not duly served.—*Sunil Kumar v. Commissioner Municipal Corpn. Jammu & Anr.* 2017 (6) JKLRJ 268[Tri] : 2007 (2) JKJ 11 [Tri] : JKJ Soft JKJ/27623

Demolition of unauthorized construction

Demolition of unauthorized construction — It would not be a defence to any person alleged to have raised unauthorized construction in violation of the Municipal Rules, Regulations and Bye Laws etc. that some other violators are not taken to task and no action has been initiated against them — If the 1st floor building of the appellant is directed to be demolished on the basis of allegation made against him, without taking any action against his next door neighbour he will have to take this decision with a pinch of salt only but the faith of common man in the judicial system is sure to receive a jolt and people are sure to make mockery of the law — Allegation against the appellant is that he had constructed two rooms and staircase at the 1st floor without obtaining prior permission from the BOCA and the violation is up to 351 sft. — Appellant shall pay the compounding fee of the built up area of 351 sft. @ Rs.12.50/- per sft. which is equivalent to Rs.4387.50/- — BOCA to take action against neighbour (Kulvinder Singh) and make out a case of the violation made by him.—*S. Lakhbir Singh v. Jammu Municipal Corporation & Ors. 2017 (7) JKLRJ 9[Tri] : 2008 (1) JKJ 9[Tri.] : JKJ Soft JKJ/27843*

Demolition of unauthorized construction of shop at first floor — Compounding of violation

Demolition of unauthorized construction of shop at first floor — Compounding of violation — Ownership of property i.e. one room at ground, which later on converted into shop, has been proved by appellant by placing on record sale deed executed in favour of his late father — So there existed a shop already at ground floor, over which another shop has been constructed by appellant now. Authority remained mum till construction reached at final stage — Had authority so honest and prompt, construction would have been stopped at initial stage. Photographs produced by appellant reveals that, towards both sides there are shops in the vicinity — Since the construction has reached the final stage and it has been raised for commercial purpose. So disallowing the appeal at this stage will deprive the appellant and his family from livelihood and will also put the appellant to irreparable loss and injury as he has spent money on the construction of one shop to earn his bread and butter — Appeal of appellant is allowed and the violation committed by the appellant is compounded and the appellant is directed to pay Rs. 70/- per sft. as compounding fees for the violation of 244 sft. with the respondent within a period of two months — Appeal allowed.—*Gian Praksh Arora v. Building Operation Controlling Authority 2017 (8) JKLRJ 173[Tri] : 2011 (4) JKJ 16[Tri] : JKJ Soft JKJ/28076*

Demolition of unauthorized construction within five days

Demolition of unauthorized construction within five days — Opportunity of hearing not given — Building Operation Regulations, 1998 — Appeal against Notice regarding demolition of unauthorized construction within five days without affording opportunity of being heard — Permission granted: ground floor area to tune of 990 sft. first floor 1100 sft. and second floor 990 sft. but appellant committed violation totaling 1090 sft. — Appellant's prayer that the violation be compounded in view of the fact that appellant has not been stopped by respondent while know the fact he was constructing the building for commercial relying on Supreme Court judgment AIR 2005 SC 2578 as also SRO 263 dated 9.8.2004 — Respondents have not stated any violation of provisions of Town Plan or Master plan — Appeal allowed and construction raised in contravention of approved plan compounded @ Rs. 75 x 1090 = Rs. 81,750 as the construction raised on site is of commercial nature.—*Vikas Gupta v. Joint Commissioner (A) Jammu Municipal Corporation 2017 (9) JKLRJ 156[Tri] : 2014 (1) JKJ 37[Tri] : JKJ Soft JKJ/28580*

Demolition order — Compounding

Demolition order — Compounding — Structure has been compounded if the area underneath at all belongs to the State at the time of road widening or restoration of possession the same can be taken back in the event of any requirement by them — But neither JMC nor

Board ever challenged the compounding order of construction before any forum — As regards other violations, since the construction was old and after renovation there was no scope of set backs as the construction having been raised at the old site — violations are therefore not effecting the master plan or zoning Regulations in any manner and the same being minor are therefore also ordered to be compounded at the same rate of Rs. 50 per square ft. at which the respondents construction in the appeal filed by him was compounded. The compounding fees therefore will be equal to the amount of 3030 x 50 = Rs. 151500 — Appeal disposed of.—*Surinder Kumar Sharma v. Authority Under Control of Building Operations Act Jammu & Ors. 2017 (10) JKLRJ 335[Tri] : 2016 (4) JKJ 54[Tri] : JKJ Soft JKJ/31217*

Demolition order — Construction after earthquake of structure in dilapidated condition

Demolition order — Construction after earthquake of structure in dilapidated condition — After major earthquake same was about to collapse, obtained due permission to raise construction on plinth area of 649 Sq. ft. while construction areas plinth area found 825 Sq. ft. — Deviation of 176 sq. ft. each storey — Respondent failed to point out in time — Deviation being minor offence as such compoundable — Appeal allowed accordingly.—*Sajad Ahmad Khan & Ors. v. Building Operations Controlling Authority & Ors. 2017 (8) JKLRJ 772[Tri] : 2014 (3) JKJ 27[Tri] : JKJ Soft JKJ/28906*

Demolition order — Conversion of residential building into commercial building

Demolition order — Conversion of residential building into commercial building — Appellant was granted permission by respondents for construction of 3 storied building and attic floor hostel building after dismantling the existing 2 storied building — Appellant exceeded plinth area and constructed building in square shape instead of L-Shape as sanctioned — Converted residential building into commercial building without sanction in a residential colony, hence violated master plan — Offence being major cannot be compounded — Appeal dismissed.—*John Muhammad Bhat v. Building Operations Controlling Authority & Ors. 2017 (8) JKLRJ 766[Tri] : 2014 (3) JKJ 40[Tri] : JKJ Soft JKJ/28909*

Demolition order — Erection and re-erection

Demolition order — Erection and re-erection — Renovation of building not an offence — Appellant is owner in possession of a plot over which double storied shop constructed since long — Due to efflux of time, the vagaries of weather it suffered damages — Bricks came trembling down even because of slightest movement of the shop which includes plastering Appellant was constrained to affect necessary repairs of the shop which includes plastering and face lifting without any material change — Notice under sec. 7(1) and sec 7(3) duly served by respondent — Renovation of building would fall within the meaning of erection and re-erection as defined under sec. 2(9) of the Act — Appellant have not got due permission — Appeal dismissed.—*Habibullah Ganai v. Building Operations Controlling Authority & Ors. 2017 (8) JKLRJ 671[Tri] : 2014 (3) JKJ 22[Tri] : JKJ Soft JKJ/28904*

Demolition order — Minor violations

Demolition order — Appellant is stated to have committed minor violations but his brother filed a writ before the honourable High Court against the appellant and the JMC wherein a surveyor was appointed who was ordered to file status report which is shown to have been filed in the said a writ petition wherein it has been mentioned in detail that the appellant has applied as ordered in the Writ petition to respondents for allowing him to carry out the construction as per the permission granted by them — Mere filing of the petition before the Hon'ble High in absence of any order on this score to proceed further, there is no legal obstacle to the court in disposing of the appeal on its own merits — After considering the case of the appellant in toto there seems to be only 4% violation of the permission grant in his favour, the same does not violates the Master Plan or Zonal Regulations and do not come in the category of major violation — Appellant to deposit the compounding fee of Rs.50/- per sqft. for 745. sqft. — Petition disposed of.—*Vinod Kumar Sharma & Anr. v. Commissioner,*

Building Operation Controlling Authority, Jammu & Ors. 2017 (10) JKLRJ 341[Tri]: 2017 (1) JKJ 74[Tri]: JKJ Soft JKJ/31215

Demolition order — Renovation

Demolition order — Renovation — Appellant has constructed five shops on his land at Gol Gujral and these shops were earlier with kachha roof which was repeated by the appellant but when the respondent issued notice of demolition despite the fact that he committed no violation of zonal and master plan of the city — Construction is on less than 40' wide spared road with projection and without permission — So far as the construction of the appellant is concerned, the construction is old one, there is nothing on the part of the JMC officials to show that when the construction was substantially raised by the appellant they restrained them. It is only in response to the notice issued at penultimate stage of construction that JMC authorities have moved and have sought assistance of law enforcing agencies in stopping the construction — Width of the road in front of the appellants shops is 22ft. where as the road within front of the other shops is less than 22 ft. i.e. ranging from 15ft. to 18 ft. — The existing width of the road as per devised master plan to be maintained is the bounden duty of every citizens and also the appellant whose duty is to keep the same at his own risk and cost — Municipal authorities are at liberty to keep road as per the ground situation on spot in pursuance of the master plan for which the appellant will be also bound with other such similarly situated cases to restore the land not belonging to him and as such the mulba of construction be compounded @ Rs. 100/- per Sft. for 1134 sft. for amount of Rs. 113400/- which shall be deposited by the appellant in the respondent A/C Head — Appeal provisionally accepted.—*Ram Pal v. Building Operations Controlling Authority Jammu Municipal Corporation, Jammu 2017 (10) JKLRJ 393[Tri]: 2017 (1) JKJ 17[Tri]: JKJ Soft JKJ/31223*

Demolition order — Repair of house through ex gratia relief

Demolition order — Repair of house through ex gratia relief — Appellant owner in possession of three storied residential house — Purchased from migrant — living with his family for the last 15 years — Due to strong mine blast house damaged and unfit for habitation — Ex-gratia relief granted in favour Appellant — Appellant repaired house for his use — Respondent served notice under Sec. 7(3) of Control of Building Operation Act for demolition — Respondents remained a mute spectators till completion of repairs etc — smacks connivance of respondent authorities — Report of ward officer mention three rooms constructed without due sanction — offence being compoundable — Appeal allowed accordingly.—*Jameel Ahmad Lone v. Commissioner, BOCA, SMC, Srinagar & Ors. 2017 (8) JKLRJ 750[Tri]: 2014 (3) JKJ 19[Tri]: JKJ Soft JKJ/28903*

Demolition order — Service of Notice

Demolition order — Service of Notice — The tribunal held that the very purpose of the preliminary notice under section 7(1) of the Act is to enable the affected person to put forth his case with regard to the violation made by him so that he may not be put to the agony and wrath of facing the final order of demolition under Section 7(3) of the Act required to be passed after the satisfaction of the authority that notice has been duly served.—*Sunil Kumar v. Commissioner Municipal Corpn. Jammu & Anr. 2017 (6) JKLRJ 268[Tri]: 2007 (2) JKJ 11[Tri]: JKJ Soft JKJ/27623*

Demolition order — Violation of plan

Demolition order — Violation of plan — Permission has been granted for 2194 sft. for basement, ground, first and second floors for commercial purposes while as the appellant raised the construction on 4400 sfts. on each floor with violations of 41.7% — Permission is for the plot area of 5286.1 sft. which is more than the area over which the construction has been raised. Though the setbacks violations are ordinarily not compoundable but in the instant case the construction has been raised for commercial purposes and till the same was almost complete, no restrictions or objections were raised by the respondents over the same — Appellant has been able to show the plot belonging to him behind his construction and as

such the object of the rear setback cannot be said to have been defeated by him through there is side set back violation but the same is not going to affect the neighborhood, the construction being raised for commercial purposes — Violation is not going to affect the master plan or zoning regulations materially — Total violations of 8824 sfts. is ordered to be compounded at the rate of 100/- per sft. which amounts to Rs. 8,82,400 — Appeal disposed of.—*Sushil Kumar Gupta v. Building Operation Controlling Authority, Jammu & Ors. 2017 (10) JKLRJ 313[Tri]: 2017 (1) JKJ 11[Tri]: JKJ Soft JKJ/31230*

Effect of Act of Municipal Corporation Act, 2000

Effect of Act of Municipal Corporation Act, 2000 — Vis-a-vis Section 7, 3, 12, 16 r/w SRO 391 dated 20th September 2017, Section 3, 4 of Civic Laws (Special Provisions) Act, 2014 — No action to be taken pending formulation of Policy — Even if any law, rule, regulation, bye-law or order, or even any judgment, decree or order passed by any court or tribunal, no building or structure shall be demolished or sealed and even no penalty shall be imposed in respect of such building or structure that has been erected or constructed in violation of master plan till policy in terms of Section 3 of Act of 2014 is finalised — Alleged violation/deviations had taken place in the year 2011 and present case comes and falls within ambit of Act of 2014 — Petition dismissed.—*Building Operation Controlling Authority v. Suman Bhagat & Anr. 2018 (2) JKJ 314[HC]*

Final notice of demolition

Final notice of demolition — Appeal against order of final notice of demolition of construction issued with reference to previous show cause notices dated 8.9.2006 and 19.9.2006 wherein khilafwarzi was compounded by the Special Tribunal in appeal against these notices — Appeal allowed holding that respondent has not applied its mind properly while issuing impugned final notice by only giving reference to previous show cause notice — Held further, a show cause notice thereby informing defaulter about detail of violation committed is sine qua for issuing final notice of demolition of illegal construction.—*Mangal Verma v. Building Operation Controlling Authority, Municipal Corporation, Jammu 2017 (8) JKLRJ 506[Tri]: 2012 (3) JKJ 83[Tri]: JKJ Soft JKJ/27888*

Investigation of case of demolition — Protection of action taken in good faith

Investigation of case of demolition — Protection of action taken in good faith — Respondent is not denying the fact that he had no permission, so had unauthorizedly raised the construction — When the authorities have resorted to action, they have discharged their official duty, their good faith cannot be doubted, they have done what they were expected to do — Their action is totally protected by Section 17 — Magistrate without looking into the protection as available to the petitioners under Section 17 of the Act of 1988 and without looking into the position of the petitioners having raised the construction unauthorizedly and then without looking into the other aspects in absence of resort to Section 154(1) and 154(3) Cr.P.C. has entertained the application for action under Section 156(3) — Impugned order quashed — Petition allowed.—*Building Operation Control Authority & Ors. v. Incharge Police Station, Domana & Anr. 2017 (10) JKLRJ 349[HC]: 2017 (1) JKJ 55[HC]: JKJ Soft JKJ/31142*

Master Plan 2021 — Prohibition of building line from centre of road is applicable to new building

Master Plan 2021 — Prohibition of building line from centre of road is applicable to new building — It shall not be application to construction of additional building without change of alignment of old building. Further under schedule at page 119 of the Master Plan 2021, this is a proposed ways and building line and has not made applicable specifically.—*Vivek Kohli v. BOCA 2017 (7) JKLRJ 295[Tri]: 2008 (3) JKJ 19[Tri]: JKJ Soft JKJ/27830*

Mode of service of notice

Mode of service of notice — the mode of service laid down in clause 2 of Section 7 of the Act is by affixation of a notice on the outer door of some conspicuous part of the building

where upon the notice shall be deemed to have been duly served upon the owner or occupier of the building.—*Sunil Kumar v. Commissioner Municipal Corpn. Jammu & Anr. 2017 (6) JKLRJ 268[Tri] : 2007 (2) JKJ 11 [Tri] : JKJ Soft JKJ/27623*

Notice — Delay

Notice — Delay — Notice after delay of more than 20 days asking to demolish the unauthorized construction — Notice required within 5 days — Action of unlawful construction cannot be inordinately delayed or delayed sine die.—*Rajeev Gabgotra v. Building Operation Controlling Authority, M.C. Jammu 2017 (6) JKLRJ 652[Tri] : 2007 (3) JKJ 35[Tri] : JKJ Soft JKJ/27522*

Notice — Delay

Notice — Delay — Notice under Section 7(3) was served after 21 days of show cause notice under section 7(1) without any explanation — The manner of working of BOCA Castes Aspersions in the manner of working of the authority concern.—*Rajeev Gabgotra v. Building Operation Controlling Authority, M.C. Jammu 2017 (6) JKLRJ 652[Tri] : 2007 (3) JKJ 35[Tri] : JKJ Soft JKJ/27522*

Notice for stopping construction of Hotel — Alleged violation of norms/approved plan — Protection wall in basement

Notice for stopping construction of Hotel — Alleged violation of norms/approved plan — Protection wall in basement — Without adopting the course as provided under Section 7(3) authority informed the appellant that despite many letters he has not submitted the revised plan and as such he shall stop the work immediately, failing which action under law will be initiated — Once building permission had been granted to appellant, Vice-Chairman JDA, had no business to intermeddle with the construction work of Hotel, and keep the subordinate staff posted in the premises of Hotel as of appellant had been allotted the contract of construction of Hotel by JDA, which was being constructed by appellant after purchasing land from JDA — Appellant was not allowed to carry out the construction of basements, which he was permitted to do even as per admission made by Vice-Chairman in his letter — Harassment of petitioner who suffered already lot for last 20 years not on account of his fault but the illegal orders passed from time to time by different officers of the JDA — Notice not sustainable — Appeal allowed.—*Vinay Kumar Mahajan v. Jammu Development Authority & Ors. 2017 (7) JKLRJ 434[Tri] : 2009 (3) JKJ 30[Tri] : JKJ Soft JKJ/27999*

Notice of demolition — Clinic of doctor and underground water-tank

Notice of demolition — Clinic of doctor and underground water-tank — Permission has been granted to the appellant to construct a house on the ground floor and the construction has been made in conformity with the site plan submitted by the appellant — There is no allegation from the respondent that the construction on the ground floor has not been made in accordance with permission granted to the appellant — Thus there is no violation of set backs on the ground floor — If it is so violation by not keeping front set back on the 1st floor is irrelevant — No major offence has been committed by the appellant while constructing the room to be used as clinic over the existing shops — He has not kept any balcony over the road. He has not violated the criteria of the height of the building — Similarly, tank has been constructed in his own land by the appellant which does not violate any conditions laid down in the Master Plan — Minor offence is compoundable by the fees prescribed by law — Room although being used for running a clinic cannot be declared commercial activities — Construction in question raised by the appellant is regularized by imposing compounding fee @ of Rs. 15/- per sft. which shall be deposited by the appellant with the respondent within a period of one month.—*Mohd. Anwar Chowdhary(Dr.) v. Building Operation Controlling Authority 2017 (7) JKLRJ 531[Tri] : 2009 (Supp.) JKJ 8[Tri] : JKJ Soft JKJ/27955*

Notice of demolition of shop — Authority of BOCA

Notice of demolition of shop — Authority of BOCA — As the land belonging to appellant has not been included in JMC, so apparently JMC has no jurisdiction or authority to initiate action for demolition of the shop of appellant — Similarly appellant was not legally bound to seek any permission for construction of shop from BOCA — Appeal allowed.—*Tulsi Dass Bhagat v. Controlling Authority Building Operation Municipal Area, Jammu & Anr. 2017 (7) JKLRJ 454[Tri] : 2009 (3) JKJ 28[Tri] : JKJ Soft JKJ/27998*

Notice to demolish construction within 5 days

Notice to demolish construction within 5 days — Building in question was an old building under the tenancy of NHPC who left the building — Building has been damaged extensively by NHPC limited i.e. damaged electric wiring and the water/sanitary fittings and same was required to be repaired — Appellant has not placed even a single new brick — Question of erection and re-erection does not arise at all — Building not used for commercial purposes — Order impugned is contrary to provisions of section 4 — Order set aside — Appeal allowed.—*Jagdish Kumar Nargotra & Ors. v. Joint Commissioner (A) Jammu Municipal Corporation & Anr. 2017 (9) JKLRJ 182[Tri] : 2014 (2) JKJ 15[Tri] : JKJ Soft JKJ/28733*

Order of demolition

Order of demolition — Respondent issued order of demolition on 17-10-2002 for the Construction raised by the appellant- The appellant filed appeal against the order and got status quo order issued by the Tribunal — It is alleged that the JMC demolished the part of the impugned structure and thus violated the order of status quo.—*Anice Chowdhary (Dr.) v. Building Operation Controlling Authority & Jeet Lal Gupta 2017 (5) JKLRJ 572[Tri] : 2005 (2) JKJ 14 [Tri] : JKJ Soft JKJ/27601*

Patnitop Development Authority directed the Appellant to demolish the construction raised by him without obtaining permission from the authority

Patnitop Development Authority directed the Appellant to demolish the construction raised by him without obtaining permission from the authority. The order so passed was challenged before the Tribunal on the ground that the construction was made much earlier than the coming into force of the Act. The question thus arose whether the Control of Building Operations Act, 1988 is retrospective — Held, "No". — Appeal allowed.—*Dharminder Singh v. Building Operations Controlling Authority & Ors. 2017 (5) JKLRJ 328[Tri] : 2003 (2) JKJ 810[Tri] : JKJ Soft JKJ/27672*

Quashing notices of sealing of business premises — Renovation for Spa and beauty salon — No opportunity of hearing

Quashing notices of sealing of business premises — Renovation for Spa and beauty salon — No opportunity of hearing — Notices (orders) for sealing of the respective portions in which the commercial activities have been set up have been issued without hearing the owner(s) of the buildings or the persons who have set up the activities — Prototype orders issued in all the three cases would show that neither the petitioners were heard nor the Authority took a considered view that none of the activities was permitted in a residential area — While taking action against one defaulter it is important also to take note of other similar activities running in the area and their permissibility so that discrimination is avoided — Applicability of the sections 7 and 8 of the Act and power of the Authority under the Act to take action including issue of order of demolition in a case where unauthorized change of user in violation of Master Plan is made even without effecting structural change in the building is upheld — Notices (orders) under section 8(1) of the Act in all the cases are quashed and respondent- Authority is directed to de-seal the premises — Authority is directed to issue fresh show cause notices within two weeks' time hereafter to the owner(s) of the buildings as also to the persons running the commercial activities, that is, all the petitioners and take

appropriate action — Writ petitions disposed of.—*Kanav Khajuria & Anr. v. State of J&K & Ors. 2017 (9) JKLRJ 683[HC] : 2015 (3) JKJ 420[HC] : JKJ Soft JKJ/29791*

Reconstruction of house

Reconstruction of house — Appellant had an old house and it was in dilapidated condition and in order to construct new house the appellant and his brothers applied for reconstruction of house of a two storied house and permission granted by the Chairman BOCA for reconstruction from existing plinth. He raised construction as per permission on the plinth area — Authority under the Act issued notice for demolition of constructed building—He challenged the notice in appeal before Tribunal—During pendency of appeal neighbour filed application for being added party in appeal who alleged that major deviations have been committed by appellant in raising construction—Petition allowed and permitted to array as respondent in appeal — Plea that violation in maintaining of set backs—Tribunal while allowing the appeal observed that the appellant is not bound to maintain the set backs as the building permission is to raise construction on the existing plinth area only and further set aside the notice of demolition issued under Sec. 7(1) of the Act based on the deviation report of the Ward Officer as not justified.—*Ab. Karim Makroo v. Chairman Building Operation Controlling Authority 2017 (6) JKLRJ 21[Tri] : 2005 (1) JKJ 1 [Tri] : JKJ Soft JKJ/27738*

Regularisation — Challenge

Regularisation — Challenge — if any construction is raised in violation of the Master Plan, Town Planning Scheme or if it violates the permissible front, rear or side set backs prescribed in the bye-laws, or the construction violates by more than 10% the permissible ground coverage or it violates the permissible height of the building as prescribed in the bye-laws, the same are considered to be major violations and cannot be compounded — Respondent No. 1 has raised construction over an area of 900 sq. ft. against the sanctioned limit of 845 sq. ft. at ground floor — Quantum of actual violation at ground floor is $55/845 \times 100 = 6.5\%$, which certainly is much below 10% of the permissible ground coverage — For extraneous reasons the Khilafwarzi Officer had tried to magnify the things beyond the limits of truth. It speaks volumes about the working of petitioner-Authority and how casually the things are being dealt with by it — Respondent No. 1 may not be the lone person who, as alleged, has raised unauthorized construction in the area, but the others may have been left free by the concerned Khilafwarzi Officer for obvious reasons — This pick and choose policy needs to be curbed strictly — Besides taking action against the persons raising the unauthorized construction, the concerned officials/officers of the petitioner-Authority who promote these illegal and unauthorized constructions are also required to be dealt with by iron hands — However, Tribunal while setting aside the notices has not given any reasoning that how could the Jammu Municipal Corporation compound the major violation, if raised by respondent No. 1 — Case remitted to Tribunal for deciding afresh — Jammu Municipal Corporation is directed to seek explanation of the concerned Khilafwarzi Officer how he had reported that the quantum of violation is 14% at ground floor and 46% at first floor, and what method he had adopted while calculating the quantum of violation — Petition disposed of.—*Building Operation Controlling Authority v. Shashi Gotam & Anr. . 2017 (9) JKLRJ 482[HC] : 2015 (1) JKJ 526[HC] : JKJ Soft JKJ/29271*

Renovation of building — No permission

Renovation of building — No permission — Appellant constructed two shops after obtaining sanction — Started repairs plastering etc. without permission — Renovation of building falls within measuring of "erection" or "re-erection" as defined under sec 2(9) of the Act — Renovation cannot be taken without permission — Appeal dismissed.—*Gh. Qadir Lone v. Building Operations Controlling Authority & Ors. 2017 (8) JKLRJ 746[Tri] : 2014 (3) JKJ 37[Tri] : JKJ Soft JKJ/28908*

Revocation of sanction for building permission — Non-issuance of show cause notice

Revocation of sanction for building permission — Non-issuance of show cause notice — Since the impugned order issued by respondent no.2 does not comply with the statutory requirement of issuing show cause notice to petitioner before revoking of the sanction for building permission and non-compliance of principles of natural justice is writ large on the face of the impugned order, the impugned order cannot be sustained — But, respondents shall not be precluded from initiating process and passing fresh orders after affording the petitioner an opportunity of being heard — Petition allowed.—*Mohinder Pal v. State of J&K & Ors. 2017 (9) JKLRJ 88[HC] : 2013 (3) JKJ 726[HC] : JKJ Soft JKJ/28218*

Scope of Section 7

Scope of Section 7 — Section applicable only in cases of erection or re-erection and not in other types of cases like development of site or making or extending any excavation or laying out any means of access to road as mentioned in section 4 of Act.—*Ajay Kumar Chanda v. Joint Commissioner(A), Municipal Corporation Jammu 2017.(8) JKLRJ 241[Tri] : 2012 (1) JKJ 1[Tri] : JKJ Soft JKJ/28023*

Sealing of ground floor — Commercial activities

Sealing of ground floor — Commercial activities — Two things are necessary before passing an order of sealing under section 8, firstly an order of demolition under section 7 and secondly there should be erection or re-erection — change of occupancy or use of building does not come in erection or re erection definition and violation of land use don't come under the COBO Act — Even no final notice of demolition has been given till today — Appellant has been condemned unheard before passing of order of sealing of building — Mixed Zone Use Gandhi Nagar Area — Order of sealing of premise of ground floor is set aside — Appeal allowed.—*Munish Gupta v. Building Operation Controlling Authority 2017 (8) JKLRJ 199[Tri] : 2011 (4) JKJ 33[Tri] : JKJ Soft JKJ/28082*

Sealing of six storied building

Sealing of six storied building — Section 7 is the condition precedent to draw proceeding under Section 8 — Power under Section 8 cannot be exercised in vacuum — No such proceeding has been conducted/drawn under Section 7 and tribunal has directed initiation of proceedings under Section 7 — Order was passed because of some misunderstanding — Order passed under section 8 is not tenable — Order in so far as it relates to direct the respondents to initiate proceedings under Section 7 are quashed.—*Parvaiz Majid Baba v. Commissioner, SMC, Srinagar & Ors. 2017 (9) JKLRJ 138[HC] : 2013 (4) JKJ 168[HC] : JKJ Soft JKJ/28280*

Show cause notice

Show cause notice — Show cause notice informing defaulter about detail of violation committed by him sine qua for issuance of final notice of demolition of illegal construction — Show cause notice simply mentioning that appellants raised construction at village Kundrorian without giving its Khasra number nor any detail of construction — Held, non compliance of Section 7 — Appeal against order of demolition set aside.—*Vijay Laxmi & Anr. v. Building Operation Controlling Authority 2017 (8) JKLRJ 539[Tri] : 2012 (3) JKJ 26[Tri] : JKJ Soft JKJ/27871*

Show cause notice

Show cause notice — Show cause notice under Section 7(1) to discontinue use of building for commercial purpose as building rented out to open a Bank without providing any parking space has caused traffic hazards and other environmental problems in the vicinity — Consequently notice issued under S. 8(1) directing sealing of premises on ground that construction has been raised without seeking permission from competent authority and intention to convert building for commercial use — Writ petition challenging notices — Held, notice under Section 7(1) not alleging any of the contingencies referred to in said Section,

illegal and unauthorized and consequently sealing order also rendered illegal.—*Krishan Chander Bandral v. State of J&K & Ors. 2017 (8) JKLRJ 664[HC] : 2013 SLJ 326 : 2012 (4) JKJ 432 [HC] : JKJ Soft JKJ/26859*

Show Cause Notice — Appeal against order

Show Cause Notice — Appeal against order dated 26.6.2012 appearing as a show cause notice, alleged by petitioner never to have been served upon him and he had no knowledge of the impugned order — Held, no action can be initiated by any authority constituted under Section 3 read with Section 7(1) and (2) unless an opportunity of being heard is afforded to person against whom action is proposed to be initiated — Impugned order smacks of arbitrariness and mechanical exercise of powers on part of authorities in order to harass and humiliate appellant.—*Sunil Dutt v. Joint Commissioner (A) Jammu Municipal Corporation 2017 (9) JKLRJ 239[Tri] : 2014 (1) JKJ 28[Tri] : JKJ Soft JKJ/28578*

Time barred appeal

Time barred appeal — Notice of demolition under Section 7(3) issued on 29.3.2010 and appeal filed on 16.4.2010 — No provision in Act for extension of time for filing statutory appeal — Held, COBO Act being a special Act overrides provisions of Limitation Act — Appeal having been filed after seven days, is time barred — Appeal dismissed. 2006 (2) SLJ 443, Rel.—*Saleema Shah (Bano) v. Jammu Municipal Corporation & Anr. 2017 (8) JKLRJ 454[Tri] : 2012 (2) JKJ 84[Tri] : JKJ Soft JKJ/28013*

Unauthorised construction — Demolition

Unauthorised construction — Demolition — Notice under Section 7(3) is silent about any violation asked to be removed by the appellant within five days — Although the appellant did not represent his case before the Authority regarding alleged laying of slab on the basement yet he cannot be penalized for a totally different violation for which he was never asked to show cause, which is an indispensable right of the aggrieved — Any show cause notice bereft of reasons and which does not specify any violation allegedly made by a citizen cannot be treated to be a notice issued under any provision of law and hence cannot be acted upon — Shops were constructed over the said land way back some ten years ago and he had replaced the wooden batons' roof by a RCC lintel and appellant's son has been running a shop M/s Sharp Vision, and deals in Electrical goods over there — Appellant not even disturbed the building line as other shops are also shown to exist in the same line in which the appellant shop is situated — Appellant is directed to pay the compounding fee for the unauthorized construction of 278 sft. for which he was required to obtain permission/sanction under Section 5 of the COBO Act, @ of Rs.12.50/- per sft. (i.e. Rs.3475.00).—*Banarsi Dass v. Executive Officer 2017 (7) JKLRJ 30[Tri] : 2008 (2) JKJ 17[Tri] : JKJ Soft JKJ/27768*

Unauthorised construction — Demolition Notice

Unauthorised construction — Demolition Notice — Commercial construction on residential premises — Plea of "mix-zone area" — Report of Chief Town Planner issued at the time of sanctioning the proposed site which says 'due caution must be taken by the Municipality to ensure that the proposed construction is not misused under commercial use. The applicant should be asked to give an affidavit in this regard' — Simply because the clever appellant deposited a sum of Rs. 80,340/-, which is equivalent to the fee required for building permission of commercial nature, would not by itself be a proof of the fact that the Municipality/respondent permitted him to erect constructions of shops.—*Rajeev Gupta v. Jammu Municipal Corpn. & Ors. 2017 (7) JKLRJ 50[Tri] : 2008 (2) JKJ 41[Tri] : JKJ Soft JKJ/27795*

Unauthorised construction — Demolition Notice — Expiry of sanctioning period — Deemed permission

Unauthorised construction — Demolition Notice — Expiry of sanctioning period — Deemed permission — incumbent upon the Authority to convey the decision of refusal to grant permission for erecting or re-erecting a building and the legislature has fixed a period

of maximum seven days for such an action after the Authority takes the decision to deny permission to an applicant — Authority neither approved the plan submitted by the appellant nor rejected and not communicated him any ground of refusal of sanctioning his plan, within 60 days — appellant can be presumed to have commenced construction of his residential house after sixty days of his application for permission, obviously under bona fide exercise of his right of deemed permission — Major part of the alleged construction is compoundable.—*Des Raj Sharma v. Jammu Municipality 2017 (7) JKLRJ 114[Tri] : 2008 (2) JKJ 52[Tri] : JKJ Soft JKJ/27796*

Unauthorised construction — Demolition Notice — Disputed title

Unauthorised construction — Demolition Notice — Disputed title — Original occupier who sold the land had no right or title in him to alienate or transfer this piece of land to anyone including the appellants, therefore, the so-called transfer of this land made by him is void ab initio — Land is a State land and the appellants have failed to establish ownership in their favour qua the same, therefore, they could not be granted permission to construct any building on this piece of land, nor can they take the advantage of 'deemed permission' for want of ownership/title of the land in their favour — Moreover, once the original occupier had sold the land by a deed of agreement to sell attested on 22.3.2006 what made him to apply for sanctioning the proposed site plan on 06.07.2006 i.e. after more than THREE MONTHS he parted with this land, as a self-styled owner, as per the appellants' version — Municipal authorities (Authority) of M.C. Katra shall make suitable arrangements within one month & demolish the entire building of Himani Guest House Katra, if the appellants do not themselves do the same within this period.—*Sat Pal v. Building Control Authority 2017 (7) JKLRJ 12[Tri] : 2008 (2) JKJ 29[Tri] : JKJ Soft JKJ/27770*

Unauthorised construction — Sealing

Unauthorised construction — Sealing — Petitioner provided time to respond to the notice under Section 7(1) dated 10.02.2016 by or before 26.04.2016 — Respondent authorities shall then proceed in accordance with the provisions of the Act — It could not be allowed but since notice had been affixed at the place of violation when in the memo of petition, petitioner has claimed that he was not residing at the place of alleged violation — Notice issued under Section 8(1) dated 13.02.2016 is set aside — Responsible officer of the respondent authorities will go on spot and will note down the present position of the structure as it is — Petitioner will file an undertaking to the satisfaction of the Registrar Judicial by or before 25.04.2016 to the effect that he will not use the premises for any commercial activity nor will effect any type of change in the premises till the matter is settled by the authorities — Petition disposed of.—*Mahesh Kumar Raina v. State & Ors. 2017 (10) JKLRJ 263[HC] : 2016 (3) JKJ 669[HC] : JKJ Soft JKJ/30817*

Violation of permission granted

Violation of permission granted — As against the permission, appellant has covered whole of plot though there is no encroachment on private land or public land — As per observations of Supreme Court that it is not the question of construction which intends to decide whether it falls within the ambit of minor or major violation; it is the violation of permissible land use, height and set back which the appellant has maintained — Allegation against appellant is that he has covered whole plot as against the permission - Violation of 505.5 sqft. — Violation compounded @ Rs. 40 per sft, totaling Rs. 20,100.00 to be deposited in the Treasury within two months.—*Sunil Dutt v. Joint Commissioner (A) Jammu Municipal Corporation 2017 (9) JKLRJ 239[Tri] : 2014 (1) JKJ 28[Tri] : JKJ Soft JKJ/28578*

Violation of principles of natural justice

Violation of principles of natural justice — Withdrawal of earlier permission to raise construction without affording opportunity of hearing — Once permission to raise construction is granted by competent authority, an indefeasible right accrues in favour of person granted permission for construction — Before withdrawing permission, at least an opportunity of being

heard should be given to him — Appeal against order of demolition allowed, impugned order set aside with observation that respondent may pass fresh order with regard to withdrawal of permission, if necessary, after providing opportunity of hearing to appellant.—*Janak Singh v. Building Operation Controlling Authority, Municipal Area, Jammu 2017 (8) JKLRJ 362[Tri] : 2012 (2) JKJ 71[Tri] : JKJ Soft JKJ/28009*

8. Power to seal unauthorised construction

(1) It shall be lawful for the Authority concerned, at any time, before or after making an order of demolition under section 7 to make an order directing the sealing of such erection, re-erection or work or of premises in which such erection, re-erection or work is being carried on or has been completed for the purpose of carrying out the provisions of this Act, or for preventing any dispute as the nature and extent of such erection or work.

(2) Where any erection, re-erection or work on any premises in which any erection, re-erection or work is being carried out, has or, have been sealed, the authority concerned may for the purpose of demolishing such erection or work in accordance with the provisions of this Act, order such seal to be removed.

(3) No person shall remove such seal except,—

- (a) under an order made by the Authority concerned under sub-section (2); or
- (b) under an order made in an appeal under this Act.

NOTES

Completion of construction — Tutorial in residential area

Completion of construction — Tutorial in residential area — Obtaining due sanction opening of tutorial in residential area — Building sealed by respondent under section 8(1) illegal — Order impugned set aside — Petition allowed.—*Navneet Mahajan & Anr. v. Municipal Corporation & Ors. 2017 (9) JKLRJ 400[HC] : 2014 (2) JKJ 453[HC] : AIR 2014 J&K 76 : JKJ Soft JKJ/28673*

De-sealing of premises — Challenge

De-sealing of premises — Challenge — Maintainability of appeal against sealing order — Conversion of residential building into commercial one by opening the "SPA" (Beauty Parlour) on first floor without the permission of Jammu Municipal Corporation — Appeal is creature of statute and can be filed only when authorized by the statute — No appeal is authorized to be filed against order passed under Section 8(1) — Power of sealing of premises in terms of Section 8(1) is to ensure that the illegal construction which is commenced is halted in its tracks — Purpose underlying conferring power of sealing is to ensure that there is no violation of the civic law and no person is permitted to reap the benefits of illegal action — Order was not appealable, hence Special Tribunal was lacking jurisdiction to entertain such an appeal — Aggrieved person can even invoke the extraordinary writ jurisdiction of this Court and Court in appropriate case can entertain such petition and pass orders in accordance with the law — Respondent would be at liberty to invoke appropriate remedy in case she is still aggrieved of the sealing order.—*Building Operation Controlling Authority v. Tarvinder Kour & Ors. 2017 (9) JKLRJ 7[HC] : 2014 (3) JKJ 717[HC] : JKJ Soft JKJ/28896*

Demolition order — Reconstruction

Demolition order — Reconstruction — Appellant raised construction of first floor without proper permission from competent authority — Demolished — Appellant after lapse of sometime restarted the same construction — Competent authority after following due procedure issued and served notice u/s 4 & 8 — Demolition order by competent authority held proper and justified — Appeal dismissed.—*Syed Muhammad Ashraf Chest v. Building Operations Controlling Authority 2017 (8) JKLRJ 702[Tri] : 2014 (3) JKJ 60[Tri] : JKJ Soft JKJ/28913*

Quashing notices of sealing of business premises — Renovation for Spa and beauty salon — No opportunity of hearing

Quashing notices of sealing of business premises — Renovation for Spa and beauty salon — No opportunity of hearing — Notices (orders) for sealing of the respective portions in which the commercial activities have been set up have been issued without hearing the owner(s) of the buildings or the persons who have set up the activities — Prototype orders issued in all the three cases would show that neither the petitioners were heard nor the Authority took a considered view that none of the activities was permitted in a residential area — While taking action against one defaulter it is important also to take note of other similar activities running in the area and their permissibility so that discrimination is avoided — Applicability of the sections 7 and 8 of the Act and power of the Authority under the Act to take action including issue of order of demolition in a case where unauthorized change of user in violation of Master Plan is made even without effecting structural change in the building is upheld — Notices (orders) under section 8(1) of the Act in all the cases are quashed and respondent- Authority is directed to de-seal the premises — Authority is directed to issue fresh show cause notices within two weeks' time hereafter to the owner(s) of the buildings as also to the persons running the commercial activities, that is, all the petitioners and take appropriate action — Writ petitions disposed of.—*Kanav Khajuria & Anr. v. State of J&K & Ors. 2017 (9) JKLRJ 683[HC] : 2015 (3) JKJ 420[HC] : JKJ Soft JKJ/29791*

Sealing of ground floor — Commercial activities

Sealing of ground floor — Commercial activities — Two things are necessary before passing an order of sealing under section 8, firstly an order of demolition under section 7 and secondly there should be erection or re-erection — change of occupancy or use of building does not come in erection or re erection definition and violation of land use don't come under the COBO Act — Even no final notice of demolition has been given till today — Appellant has been condemned unheard before passing of order of sealing of building — Mixed Zone Use Gandhi Nagar Area — Order of sealing of premise of ground floor is set aside — Appeal allowed.—*Munish Gupta v. Building Operation Controlling Authority 2017 (8) JKLRJ 199[Tri] : 2011 (4) JKJ 33[Tri] : JKJ Soft JKJ/28082*

Sealing of six storied building

Sealing of six storied building — Section 7 is the condition precedent to draw proceeding under Section 8 — Power under Section 8 cannot be exercised in vacuum — No such proceeding has been conducted/drawn under Section 7 and tribunal has directed initiation of proceedings under Section 7 — Order was passed because of some misunderstanding — Order passed under section 8 is not tenable — Order in so far as it relates to direct the respondents to initiate proceedings under Section 7 are quashed.—*Parvaiz Majid Baba v. Commissioner, SMC, Srinagar & Ors. 2017 (9) JKLRJ 138[HC] : 2013 (4) JKJ 168[HC] : JKJ Soft JKJ/28280*

Sealing of unauthorized construction

Sealing of unauthorized construction — Two condition necessary before passing an order under Section 8 — Firstly an order of demolition under 7 and secondly there should be erection or re-erection.—*Ajay Kumar Chanda v. Joint Commissioner(A), Municipal Corporation Jammu 2017 (8) JKLRJ 241[Tri] : 2012 (1) JKJ 1[Tri] : JKJ Soft JKJ/28023*

Sealing of unauthorized construction

Sealing of unauthorized construction — Before issue of notice under Section 8(1), no notice of hearing given — Held, by act of sealing by respondent without hearing him, amounts to violation of fundamental rights.—*Ajay Kumar Chanda v. Joint Commissioner(A), Municipal Corporation Jammu 2017 (8) JKLRJ 241[Tri] : 2012 (1) JKJ 1[Tri] : JKJ Soft JKJ/28023*

Show cause notice

Show cause notice — Show cause notice under Section 7(1) to discontinue use of building for commercial purpose as building rented out to open a Bank without providing any parking space has caused traffic hazards and other environmental problems in the vicinity — Consequently notice issued under S. 8(1) directing sealing of premises on ground that construction has been raised without seeking permission from competent authority and intention to convert building for commercial use — Writ petition challenging notices — Held, notice under Section 7(1) not alleging any of the contingencies referred to in said Section, illegal and unauthorized and consequently sealing order also rendered illegal.—*Krishan Chander Bandral v. State of J&K & Ors. 2017 (8) JKLRJ 664[HC] : 2013 SLJ 326 : 2012 (4) JKJ 432 [HC] : JKJ Soft JKJ/26859*

Unauthorised construction — Sealing

Unauthorised construction — Sealing — Petitioner provided time to respond to the notice under Section 7(1) dated 10.02.2016 by or before 26.04.2016 — Respondent authorities shall then proceed in accordance with the provisions of the Act — It could not be allowed but since notice had been affixed at the place of violation when in the memo of petition, petitioner has claimed that he was not residing at the place of alleged violation — Notice issued under Section 8(1) dated 13.02.2016 is set aside — Responsible officer of the respondent authorities will go on spot and will note down the present position of the structure as it is — Petitioner will file an undertaking to the satisfaction of the Registrar Judicial by or before 25.04.2016 to the effect that he will not use the premises for any commercial activity nor will effect any type of change in the premises till the matter is settled by the authorities — Petition disposed of.—*Mahesh Kumar Raina v. State & Ors. 2017 (10) JKLRJ 263[HC] : 2016 (3) JKJ 669[HC] : JKJ Soft JKJ/30817*

9. Penalties

(1) Any person who undertakes or carries out the development of any site or erect or re-erects any building or makes or extends any excavation or lays out any means of access to a road without the permission referred to in section 4 or in contravention of any condition subject to which such permission has been granted, ¹[or obstructs the Authority under Section 8] shall be punishable with fine which may extend to ten thousand rupees and in the case of continuing offence, with a further fine which may extend to five hundred rupees for every day during which such offence continues after conviction for the first commission of the offence.

(2) Any person who obstructs the entry of a person authorised under section 6 to enter into or upon any building or land or molests such person after such entry shall be punishable with fine which may extend to one thousand rupees.

¹ Inserted by Act VI of 1997 w. e. f. 28-5-1998.

(3) If the person committing an offence under this Act, is a company, every person who at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(4) Notwithstanding anything contained in sub-section (3) where an offence under this Act, has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purpose of this section—

- (a) "company" means a body corporate and includes a firm or other association of individuals;
- (b) "director" in relation to a firm means a partner in the firm.

10. Offence to be cognizable

The Code of Criminal Procedure, Samvat 1989 shall apply to an offence punishable under section 9 as if it were a cognizable offence—

- (i) for the purpose of investigation of such offences; and
- (ii) for the purpose of all matters other than—
 - (a) matters referred to in section 57 of the Code; and
 - (b) arrest of a person except on the complaint of, or upon information received from the Authority concerned:

Provided that no offence of the contravention of any condition subject to which sanction was accorded for the erection or re-erection of any building shall be cognizable, if such contravention relates any deviation from any plan of such erection or re-erection sanctioned by the Authority concerned.

NOTES

Deemed permission — Appeal against order of demolition of unauthorized construction on second floor of appellant's School

Appellant applied for permission after completing formalities of producing NOC and deposit of fee on 12.2.2002 but no communication regarding rejection of permission communicated to appellant — Appellant raised construction thereafter — Held, appellant case based on deemed permission and even in that case, it is required to be seen whether construction

was as per master plan and the regulations.—*Kusam Bhatia v. Building Operation Controlling Authority, Jammu 2012 (2) JKJ 74[Tri.]*

11. Lapse of sanction after three years

(1) Every sanction for the erection or re-erection of any buildings issued by the Authority shall remain in force for three years from the date of such sanction, but such lapse shall not bar for any subsequent application for fresh sanction under the foregoing provisions of this Act:

Provided the Minister shall always have power to revoke any sanction for erection or re-erection of any building at any time before the commencement of erection or re-erection of any building.

(2) Every order made by the Minister concerned under this section shall be final and shall not be called in question in any original suit, application or proceeding and no injunction shall be granted by any court in respect of any action under this Act.

(3) The provisions of this section shall have effect notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force.

NOTES

Power of keeping the order of re-construction in abeyance

Power of keeping the order of re-construction in abeyance — The appellant applied for building permission for reconstruction of three storied residential building and the same was granted and he was permitted to reconstruct after dismantling the existed single storey kitchen — Appellant commenced re-erection of building and raised three storied structure. During reconstruction neighbours of appellant filed suit in civil court for restraining him from raising construction which was subsequently settled amicably during the pendency of civil suit. Secy., BOCA kept the building permission in abeyance alleging violation of sanctioned plan. Order challenged before Tribunal — During the pendency of appeal order of demolition of structure which is also challenged — The Tribunal while allowing the appeals held that there is no provision in the Act-giving power to the Authority either to revoke the building permission order granted under Section 5 of the Act or to keep the same in abeyance hence set aside both the orders as void ab-initio.—*Mohd. Iqbal Bhat v. Chairman BOCA Srinagar & Ors. 2017 (6) JKLRJ 76[Tri] : 2005 (2) JKJ 5 [Tri] : JKJ Soft JKJ/27598*

Powers of Minister

Powers of Minister — Powers of Minister concerned only-the minister concerned has the power to revoke any building permission granted for erection or re-erection of building that too before the commencement of erection or re-erection of the said building.—*Mohd. Iqbal Bhat v. Chairman BOCA Srinagar & Ors. 2017 (6) JKLRJ 76[Tri] : 2005 (2) JKJ 5 [Tri] : JKJ Soft JKJ/27598*

Sanction plan — Validation of approval — Three years — Effective date

Sanction plan — Validation of approval — Three years — Effective date — Approval was subject to the title verification from the Assistant Commissioner (Revenue) — Since the said approval was not absolute, rather the same was conditional by the Municipal Corporation, Jammu, i.e., subject to title verification from Assistant Commissioner, (Revenue), the same, therefore, would be construed and deemed to have been accorded from the date when Assistant Commissioner (Revenue) verifies the title of the land — Approval for revalidation becomes absolute only on 02.01.2015 when the AC(R) issued the Certificate of Land Title,

to which learned counsel for respondents have not disputed this position — Further, it is not the case of respondents that during this period any new policy has been introduced by the concerned authority regarding raising construction within the municipal area or there is any amendment in the Act with regard to the subject matter nor any such thing was raised by the respondents neither in the objections nor during the course of hearing of this matter — Respondents are directed not to create any sort of hurdles in the way of petitioners in undertaking the construction work for completion of the building — Petition allowed.—*Rajesh & Ors. v. Municipal Corporation & Anr. 2017 (5) JKJ 20[HC]*

12. Powers to stop building operations and removal of persons thereof

(1) Where any building operation has been commenced or is being carried on in contravention of the provisions of this Act or any rule, or regulation, laws made thereunder, or without the permission referred to in section 4 but such erection has not been completed, the Authority may by a written notice require that such building operations be discontinued on and from the date of the service of the notice.

(2) Where such building operations are not discontinued the Authority may direct all persons engaged in any capacity in the work of erecting or re-erecting building in question or part thereof to remove themselves and shall take such measures as will prevent such persons from again entering into or remaining upon such building or part thereof with a proper permission which may be issued by the Authority.

(3) Where such building operations are not discontinued even after issuance of directions under sub-section (2) the Authority may require any Police Officer to remove the persons by whom the erection of the building has been commenced and all his assistants and workmen from the place of the building, within such time as may be specified in the requisition and, such Police Officer shall comply with requisition accordingly.

(4) No person shall be entitled to any compensation for any damage, which he may sustain in consequence of the discontinuance of the erection or re-erection of any building.

(5) All expenditure incurred in the enforcement of the provisions of this section shall be recoverable from the person concerned.

Explanation.— For the purpose of this section, the building operation shall include erection or re-erection of any building or any development or the engineering operation in any area.

NOTES

Appeal against the order of demolition — Two storied residential house

Appeal against the order of demolition — Two storied residential house — Ground that the appellant in order to raise a two storied residential house on his land approached the respondents for the issuance of necessary building permission and respondent-authority accorded permission to raise the construction of two storied residential house with attic

subject to fulfillment of certain terms and conditions, he assailed the order of demolition on the ground that he has not committed any deviation in respect of the permission granted in his favour and has submitted that if any illegal or unauthorized construction may have been raised by the appellant the same can be lawfully compounded by the tribunal — The tribunal dismissed the appeal by upholding the demolition order by holding that the appellant has violated Condition No. (ii) to (iv) of the Rule 11 of the Regulations while raising the construction — Violations in question cannot be termed as minor in nature and accordingly, the offence committed by the appellant cannot be compounded by the tribunal.—*Gh. Ahmad Najar v. Building Operations Controlling Authority 2017 (6) JKLRFJ 298[Tri.] : 2007 (1) JKJ 45[Tri.] : JKJ Soft JKJ/27513*

Compounding of structure raised — Stipulations

Compounding of structure raised — Stipulations — The tribunal while compounding of the impugned structure laid down the following stipulations (a) Out of the total built up area of the impugned structure, the appellant shall pay only building permission fee at the rates applicable for commercial buildings and residential building as per regulations of the JMC for the commercial area equivalent to the old shop (15.3 X 10.6") and the residential area equivalent to the old structure of 3 marlas and 20 sft. less by the area of the shop. For this purpose the clinic intended to be opened by the appellant as per the undertaking filed by him along with waiting room, dispensary, examination room etc shall be treated as commercial. The remaining area shall be treated as residential. (b) For the commercial area in excess of the area of the old shop (15.3 X 10.6"), compounding fee shall be paid @ Rs. 100 per sft. by the appellant. Similarly for the remaining area to be treated as residential in excess of the residential area, compounding fee shall be calculated @ Rs. 12.50 per sft. (c) In terms of the undertaking filed by the appellant, the impugned structure shall be used for clinic and for residential purposes and not for any other commercial activity. (d) For all the balcony projections hanging over the lane and road compounding fee shall be @ Rs. 30 per sft.—*Anice Choudhary (Dr.) v. Building Operation Controlling Authority, Jammu 2017 (5) JKLRFJ 567[Tri.] : 2007 (1) JKJ 40[Tri.] : JKJ Soft JKJ/27511*

Demolition — Building plan for the residential house

Demolition — The appellant filed appeal against the order issued under the Act for the demolition on the ground that his building plan for the residential house were approved for the ground and the first floor although he had applied for building permission for the ground, the first and second floor — The tribunal held that the balcony projection 2' in width are violation of a minor nature — Regarding the construction of one hall in the ground floor, as per petitioner there is no intention of using the structure for any commercial purposes hence the circumstances stated the case is fit for compounding which is ordered subject to the conditions.—*Anil Sharma v. Jammu Municipality and Ors. 2017 (5) JKLRFJ 494[Tri.] : 2007 (1) JKJ 27[Tri.] : JKJ Soft JKJ/27507*

Demolition — Reconstruction

Demolition — The appellant filed appeal against the order of demolition of impugned structure issued by the respondents under section 7(3) of the Act on the ground that once the appellant started reconstruction, the respondent JMC has mechanically taken note of the re-erection undertaken without obtaining building permission as required under the Act and issued the notices/demolition orders accordingly — The tribunal held that reconstruction of the house on the balance land was a necessity as far as the appellant is concerned and his right to re-erect his partially or wholly demolished structure cannot be taken away the application of norms of distance from the central line of the road or floor coverage as contended by the JMC keeping in view the facts that earlier also the space as prescribed under the Ribbon Development Act was not available at site nor the same lay vacant — It is further held that re-erection of a partly or wholly demolished structure for road widening on the portion of land not acquired should not be stopped, as it would be irrational, harsh, as

well as the spirit of the law.—*Anice Choudhary, Dr. v. Building Operation Controlling Authority, Jammu 2017 (5) JKLRFJ 567[Tri.] : 2007 (1) JKJ 40[Tri.] : JKJ Soft JKJ/27511*

Demolition notice — Appeal — Compounding of offence

Demolition notice — Appeal — Compounding of offence — There is a vacant plot as claimed by respondent No.1, over which he maintained setbacks to some extent keeping in view the dimension of the plot — Respondent No.1 had committed violations, though minor in nature and has, thus, compounded the same — Order passed by the learned Tribunal is well founded and needs no interference — Petition dismissed.—*Building Operation Controlling Authority v. Chain Singh & Anr. 2017 (10) JKLRFJ 113[HC] : 2016 (3) JKJ 788[HC] : JKJ Soft JKJ/30182*

Demolition notice — No new construction raised

Demolition notice — No new construction raised — Minor repairs of old structure carried out — Notice to demolish whole building — After a gap of 3 months from the date of first notice under section 12(1) & 7(1) COBO Act amounts to mala fide exercise of power — Violation is compounded — Appeal allowed.—*Raman Pandoh v. Building Operation Controlling Authority & Anr. 2017 (9) JKLRFJ 586[Tri.] : 2014 (3) JKJ 4[Tri.] : JKJ Soft JKJ/28900*

Demolition notice — Renovating the construction without permission

Demolition notice — Appellant has renovated the building which was started to have develop cracks and there are likelihood that the same might fall — Though the appellant is not shown to have sought any permission but merely be renovating the construction without permission — Construction cannot be said to have become illegal and unauthorised if the same does not reflect major violations of zonal or master plan — Appellant could not have been refused permission in view of the construction proved to have been old and existing and purchased by the appellant in 2004 which was sought to be renovated — Area is shown to be only 3 and 4 marlas and the same being too scarce taking into account the location of the area there does not seem to be any scope of sparing land for set backs particularly when the structure was already existing as reflected in the sale deed and hence there is not any major violation of zonal or master plan as no change of land use is alleged in the notice issued on the respondents — Minor violation of construction are decided to be compounded at the rate of Rs. 50/- per sft. and the amount be calculated by JMC after proper assessment which be deposited afterwards by the appellant within and relevant A/C Head of respondents within three months — Appeal disposed of.—*Sudhir Sethi v. Jt. Commissioner, Jammu Municipal Corporation, Jammu & Ors. 2017 (10) JKLRFJ 303[Tri.] : 2016 (4) JKJ 29[Tri.] : JKJ Soft JKJ/31236*

Demolition of construction

Demolition of construction — Plea that construction of pillars for replacement of the roofs of the ground floor and first floor was in violation of the sanction order dated 27-8-2003 — Permission was granted — Respondent No.1 was permitted to replace the old existing roofs of the ground floor and first floor — Replacement of the said roofs by RCC slabs without safety measures would have resulted in the violation of the sanction order — Construction of the pillars from ground level on which the roofs have been replaced by RCC slabs are squarely covered by the condition no.8 of the sanction order — Thus, the construction of pillars on which roofs have been replaced, cannot be said to be in violation of sanction order — Unless the foundation of the case is made out in the show cause notice, the Revenue cannot in court argue the case not made out in its show cause notice — No infirmity in judgment — Petition dismissed.—*Building Operation Controlling Authority v. Joginder Prakash Gandotra & Anr. 2017 (5) JKJ 194[HC]*

Demolition of unauthorised construction

Demolition of unauthorised construction — The appellant filed appeal against the order of Executive officer, Municipal Corporation Jammu whereby it is ordered to demolish the

unauthorized construction raised by the appellant within 5 days from the date of service of notice on the ground that the show cause notice is illegal, unconstitutional, bad in the eyes of law, no prior notice was served upon the appellant by the respondent, the impugned notice does not specify the description of the property — The tribunal allowed the appeal and set aside the order impugned on the ground that the final order of demolition passed on the basis of defective notice which was being not duly served.—*Sunil Kumar v. Commissioner Municipal Corpn. Jammu & Anr. 2017 (6) JKLRJ 268[Tri] : 2007 (2) JKJ 11 [Tri] : JKJ Soft JKJ/27623*

Demolition order — Minor violations

Demolition order — Appellant is stated to have committed minor violations but his brother filed a writ before the honourable High Court against the appellant and the JMC wherein a surveyor was appointed who was ordered to file status report which is shown to have been filed in the said a writ petition wherein it has been mentioned in detail that the appellant has applied as ordered in the Writ petition to respondents for allowing him to carry out the construction as per the permission granted by them — Mere filing of the petition before the Hon'ble High in absence of any order on this score to proceed further, there is no legal obstacle to the court in disposing of the appeal on its own merits — After considering the case of the appellant in toto there seems to be only 4% violation of the permission grant in his favour, the same does not violates the Master Plan or Zonal Regulations and do not come in the category of major violation — Appellant to deposit the compounding fee of Rs.50/- per sqft. for 745. sqft. — Petition disposed of.—*Vinod Kumar Sharma & Anr. v. Commissioner, Building Operation Controlling Authority, Jammu & Ors. 2017 (10) JKLRJ 341[Tri] : 2017 (1) JKJ 74[Tri] : JKJ Soft JKJ/31215*

Demolition order — Reconstruction

Demolition order — Reconstruction — Appellant raised construction of first floor without proper permission from competent authority — Demolished — Appellant after lapse of sometime restarted the same construction — Competent authority after following due procedure issued and served notice u/s 4 & 8 — Demolition order by competent authority held proper and justified — Appeal dismissed.—*Syed Muhammad Ashraf Chest v. Building Operations Controlling Authority & Ors. 2017 (8) JKLRJ 702[Tri] : 2014 (3) JKJ 60[Tri] : JKJ Soft JKJ/28913*

Demolition order — Violation of plan

Demolition order — Violation of plan — Permission has been granted for 2194 sft. for basement, ground, first and second floors for commercial purposes while as the appellant raised the construction on 4400 sfts. on each floor with violations of 41.7% — Permission is for the plot area of 5286.1 sft. which is more than the area over which the construction has been raised. Though the setbacks violations are ordinarily not compoundable but in the instant case the construction has been raised for commercial purposes and till the same was almost complete, no restrictions or objections were raised by the respondents over the same — Appellant has been able to show the plot belonging to him behind his construction and as such the object of the rear setback cannot be said to have been defeated by him through there is side set back violation but the same is not going to affect the neighborhood, the construction being raised for commercial purposes — Violation is not going to affect the master plan or zoning regulations materially — Total violations of 8824 sfts. is ordered to be compounded at the rate of 100/- per sft. which amounts to Rs. 8,82,400 — Appeal disposed of.—*Sushil Kumar Gupta v. Building Operation Controlling Authority, Jammu & Ors. 2017 (10) JKLRJ 313[Tri] : 2017 (1) JKJ 11[Tri] : JKJ Soft JKJ/31230*

Effect of Act of Municipal Corporation Act, 2000

Effect of Act of Municipal Corporation Act, 2000 — Vis-a-vis Section 7, 3, 12, 16 r/w SRO 391 dated 20th September 2017, Section 3, 4 of Civic Laws (Special Provisions) Act, 2014 — No action to be taken pending formulation of Policy — Even if any law, rule, regulation,

bye-law or order, or even any judgment, decree or order passed by any court or tribunal, no building or structure shall be demolished or sealed and even no penalty shall be imposed in respect of such building or structure that has been erected or constructed in violation of master plan till policy in terms of Section 3 of Act of 2014 is finalised — Alleged violation/deviations had taken place in the year 2011 and present case comes and falls within ambit of Act of 2014 — Petition dismissed.—*Building Operation Controlling Authority v. Suman Bhagat & Anr. 2018 (2) JKJ 314[HC]*

Investigation of case of demolition — Protection of action taken in good faith

Investigation of case of demolition — Protection of action taken in good faith — Respondent is not denying the fact that he had no permission, so had unauthorizedly raised the construction — When the authorities have resorted to action, they have discharged their official duty, their good faith cannot be doubted, they have done what they were expected to do — Their action is totally protected by Section 17 — Magistrate without looking into the protection as available to the petitioners under Section 17 of the Act of 1988 and without looking into the position of the petitioners having raised the construction unauthorizedly and then without looking into the other aspects in absence of resort to Section 154(1) and 154(3) Cr.P.C. has entertained the application for action under Section 156(3) — Impugned order quashed — Petition allowed.—*Building Operation Control Authority & Ors. v. Incharge Police Station, Domana & Anr. 2017 (10) JKLRJ 349[HC] : 2017 (1) JKJ 55[HC] : JKJ Soft JKJ/31142*

Notice for stopping construction of Hotel — Alleged violation of norms/approved plan — Protection wall in basement

Notice for stopping construction of Hotel — Alleged violation of norms/approved plan — Protection wall in basement — Without adopting the course as provided under Section 7(3) authority informed the appellant that despite many letters he has not submitted the revised plan and as such he shall stop the work immediately, failing which action under law will be initiated — Once building permission had been granted to appellant, Vice-Chairman JDA, had no business to intermeddle with the construction work of Hotel, and keep the subordinate staff posted in the premises of Hotel as of appellant had been allotted the contract of construction of Hotel by JDA, which was being constructed by appellant after purchasing land from JDA — Appellant was not allowed to carry out the construction of basements, which he was permitted to do even as per admission made by Vice-Chairman in his letter — Harassment of petitioner who suffered already lot for last 20 years not on account of his fault but the illegal orders passed from time to time by different officers of the JDA — Notice not sustainable — Appeal allowed.—*Vinay Kumar Mahajan v. Jammu Development Authority & Ors. 2017 (7) JKLRJ 434[Tri] : 2009 (3) JKJ 30[Tri] : JKJ Soft JKJ/27999*

Regularisation — Challenge

Regularisation — Challenge — if any construction is raised in violation of the Master Plan, Town Planning Scheme or if it violates the permissible front, rear or side set backs prescribed in the bye-laws, or the construction violates by more than 10% the permissible ground coverage or it violates the permissible height of the building as prescribed in the bye-laws, the same are considered to be major violations and cannot be compounded — Respondent No. 1 has raised construction over an area of 900 sq. ft. against the sanctioned limit of 845 sq. ft. at ground floor — Quantum of actual violation at ground floor is 55/845 x 100 = 6.5%, which certainly is much below 10% of the permissible ground coverage — For extraneous reasons the Khilafwarzi Officer had tried to magnify the things beyond the limits of truth. It speaks volumes about the working of petitioner-Authority and how casually the things are being dealt with by it — Respondent No. 1 may not be the lone person who, as alleged, has raised unauthorized construction in the area, but the others may have been left free by the concerned Khilafwarzi Officer for obvious reasons — This pick and choose policy needs to be curbed strictly — Besides taking action against the persons raising the unauthorized construction, the concerned officials/officers of the petitioner-Authority who promote

these illegal and unauthorized constructions are also required to be dealt with by iron hands — However, Tribunal while setting aside the notices has not given any reasoning that how could the Jammu Municipal Corporation compound the major violation, if raised by respondent No. 1 — Case remitted to Tribunal for deciding afresh — Jammu Municipal Corporation is directed to seek explanation of the concerned Khilafwarzi Officer how he had reported that the quantum of violation is 14% at ground floor and 46% at first floor, and what method he had adopted while calculating the quantum of violation — Petition disposed of.—*Building Operation Controlling Authority v. Shashi Gotam & Anr.* : 2017 (9) JKLRJ 482[HC] : 2015 (1) JKJ 526[HC] : JKJ Soft JKJ/29271

Sealing of ground floor — Commercial activities

Sealing of ground floor — Commercial activities — Two things are necessary before passing an order of sealing under section 8, firstly an order of demolition under section 7 and secondly there should be erection or re-erection — change of occupancy or use of building does not come in erection or re erection definition and violation of land use don't come under the COBO Act — Even no final notice of demolition has been given till today — Appellant has been condemned unheard before passing of order of sealing of building — Mixed Zone Use Gandhi Nagar Area — Order of sealing of premise of ground floor is set aside — Appeal allowed.—*Munish Gupta v. Building Operation Controlling Authority* 2017 (8) JKLRJ 199[Tri] : 2011 (4) JKJ 33[Tri] : JKJ Soft JKJ/28082

13. Appeals

(1) An appeal against the order of an Authority made under ¹[section 5 or section 7] shall lie to such person as the Government may by notification in the Government Gazette, appoint in this behalf (hereinafter called 'the Appellate Officer') within seven days after the date of the aforesaid order of the Authority. The memorandum of appeal need not be accompanied by copy of order appealed from.

(2) Where any appeal is preferred from an order of an Authority, the appellate officer shall not stay the enforcement of that order unless the Authority concerned is given an opportunity of being heard:

Provided that where the erection or re-erection of any building was not completed on the day on which an order was made under section 7 for the demolition of such building the appellate officer shall not make any order for the stay of enforcement of such order unless such security, as may be sufficient in the opinion of the appellate officer, has been given by the appellant for not proceeding with such construction, erection or work pending the disposal of appeal.

(3) Every appeal under this section shall be disposed of by the appellate officer as expeditiously as possible.

(4) The costs of any appeal under this section shall be in the discretion of the appellate officer.

¹ Substituted by Act VI of 1997 w. e. f. 28-5-1998.

NOTES

Aggrieved party — Appeal granting or refusing building permission

Aggrieved party — Appeal granting or refusing building permission — Right of appeal being a statutory right, a third party cannot be said to be an aggrieved person to maintain an appeal.—*Indira Memorial Public School v. State of J&K & Ors.* 2017 (6) JKLRJ 585[HC] : 2012 KLJ 317 : 2012 (2) JKJ 207[HC] : JKJ Soft JKJ/26520

Appeal — Condonation of delay

Appeal — Condonation of delay — Petitioner filed petition whereby he challenged the Order of Special Tribunal by which the tribunal condoned the delay in filing the appeal on the ground that the delay involved in presentation of the appeal could not be condoned by the tribunal for the reason that it was not permissible under law and as such the tribunal acted without jurisdiction and further that the private respondent has no locus standi to file the appeal before the tribunal — The court allowed the petition and setting aside the Order impugned and directed the tribunal to pass consequential orders in the main appeal and held that the Tribunal appears to have exceeded its jurisdiction by condonation of delay involved in the appeal rendering the Order of condonation of delay impugned herein liable to be set aside.—*Munshi Zulfikar v. State & Ors.* 2017 (6) JKLRJ 438[HC] : 2007 (2) JKJ 20[HC] : 2006 SLJ 443 : JKJ Soft JKJ/17214

Appeal — Impleadment of party — Violation of sanctioned plan

Appeal — Impleadment of party — Violation of sanctioned plan — Aggrieved or interested party — Denial by Tribunal — Though no provision under the Control of Building Operation Act, 1988 provides for impleadment of a private individual as party in the proceedings under the Act, but the courts have in suitable cases, where violation of the building plan issued by the BOCA is alleged, permitted the interested parties to act as interveners — In such matters, the question which would arise for determination is whether the party seeking right of hearing is an interested party in the matter or not — Tribunal should have considered this aspect also and returned a finding on the issue whether the petitioner is an interested party in the matter or not which has not been done as there is no observation of the Tribunal on this issue, in the order impugned — Tribunal to reconsider the matter and pass appropriate order in light of observations — Petition allowed.—*Anil Kumar Dubey v. Special Tribunal, J&K & Ors.* 2017 (7) JKLRJ 571[HC] : 2011 SLJ 109 : 2010 (1) JKJ 881[HC] : JKJ Soft JKJ/25046

Appeal — Limitation

Appeal — Limitation — It is held that when a special Act provides for institution of appeal within a period of time as different from the one provided for such proceedings under the Limitation Act without containing any enabling provision to authorize condonation of delay it would not be proper for the appellate forum to condone the delay involved in institution of appeal. (Reliance 1982 KLJ 278)—*Munshi Zulfikar v. State & Ors.* 2017 (6) JKLRJ 438[HC] : 2007 (2) JKJ 20[HC] : 2006 SLJ 443 : JKJ Soft JKJ/17214

Appeal — Limitation

Appeal — Limitation — The court held that under the appeal provisions, the period of limitation provided for filing the appeal thereunder is 7 days and there is no provision providing for condonation of delay involved in institution of appeal nor has any of the provisions of Limitation Act providing for the same, been made applicable.—*Munshi Zulfikar v. State & Ors.* 2017 (6) JKLRJ 438[HC] : 2007 (2) JKJ 20[HC] : 2006 SLJ 443 : JKJ Soft JKJ/17214

Completion of construction as per sanction — Issuance of Notice

Completion of construction as per sanction — Issuance of Notice — Area which is to be developed as mixed used zone having residential, commercial, light industry, institutional and other uses — The phase of rapid growth of industrial development must be kept in mind

by the concerned authorities — Impugned notices issued after completion of construction work as per sanction accorded — Violations alleged are minor in nature are directed to be compounded — Appeal disposed of.—*Rajinder Gupta v. Building Operation Controlling Authority* 2017 (9) JKLRJ 272[Tri] : 2014 (3) JKJ 1[Tri] : JKJ Soft JKJ/28899

De-sealing of premises — Challenge

De-sealing of premises — Challenge — Maintainability of appeal against sealing order — Conversion of residential building into commercial one by opening the "SPA" (Beauty Parlour) on first floor without the permission of Jammu Municipal Corporation — Appeal is creature of statute and can be filed only when authorized by the statute — No appeal is authorized to be filed against order passed under Section 8(1) — Power of sealing of premises in terms of Section 8(1) is to ensure that the illegal construction which is commenced is halted in its tracks — Purpose underlying conferring power of sealing is to ensure that there is no violation of the civic law and no person is permitted to reap the benefits of illegal action — Order was not appealable, hence Special Tribunal was lacking jurisdiction to entertain such an appeal — Aggrieved person can even invoke the extraordinary writ jurisdiction of this Court and Court in appropriate case can entertain such petition and pass orders in accordance with the law — Respondent would be at liberty to invoke appropriate remedy in case she is still aggrieved of the sealing order.—*Building Operation Controlling Authority v. Tarvinder Kour & Ors.* 2017 (9) JKLRJ 7[HC] : 2014 (3) JKJ 717[HC] : JKJ Soft JKJ/28896

Demolition — Appeal — Deviation of sanctioned plan

Demolition — Appeal — Deviation of sanctioned plan — Conversion of structure into commercial — There is no encroachment of the neighbours' adjacent land, nor is any other kind of nuisance attributed to the appellant — Appellants have raised the construction after obtaining the proper building permission order No. 471 of 2003 dated 10.09.2003 and there is also no dispute with regard to the land of the appellants, likewise there is no variance regarding the approved land use of the area vis-a-vis said construction — It may not be out of place to mention here that until the appellants have completed the said house, the respondents remained silent as no effective steps were taken to stop the same — The passive conduct of the respondents for the whole period during which the construction has been raised clearly reflects that they had no objection regarding the said construction and now at this stage, the respondents cannot be allowed to demolish the same as the appellants will be subjected to huge losses and if the deviations are not compounded, it will have the effect of bringing down even the construction raised in accordance with the sanctioned plan thereby causing serious prejudice to the rights and interests of the appellants — There are no allegations against the appellants of any encroachment made by him over any other's land/state land/lane or drain and even otherwise, there is no allegation of any traffic hazard or inconvenience to the public in general due to construction of this house — Deviation and land use violation should be compounded on payment of compounding fee as the same will be in the interests of justice — Appellants shall pay a compounding fee of Rs 60/- per sqft. for three stories as commercial which calculates to Rs. 595 x 60 x 3 = 107100 — Disposed of.—*Snober Shah & Ors. v. Chairman, BOCA, SMC, Srinagar & Ors.* 2017 (5) JKJ 74[Tri]

Patnitop Development Authority directed the Appellant to demolish the construction raised by him without obtaining permission from the authority

Patnitop Development Authority directed the Appellant to demolish the construction raised by him without obtaining permission from the authority. The order so passed was challenged before the Tribunal on the ground that the construction was made much earlier than the coming into force of the Act. The question thus arose whether the Control of Building Operations Act, 1988 is retrospective — Held, "No". — Appeal allowed.—*Dharminder Singh v. Building Operations Controlling Authority & Ors.* 2017 (5) JKLRJ 328[Tri] : 2003 (2) JKJ 810[Tri] : JKJ Soft JKJ/27672

Power and jurisdiction of Appellate Officer

Power and jurisdiction of Appellate Officer — Very limited and too restrictive — Only to stay the operation of order under appeal and nothing beyond that — Appeal against demolition order — Special Tribunal by interim measure permitted raising of unauthorized construction — Order, held, without jurisdiction and bad in law.—*Building Operations & Ors. v. Shameema (Mst.) & Anr.* 2017 (7) JKLRJ 106[HC] : 2008 (3) JKJ 322[HC] : 2008 SLJ 828 : JKJ Soft JKJ/23479

Scope of appeal

Scope of appeal — Order sanctioning building plan or refusing permission and not any order or proceedings before Authority at an earlier stage while building permission case is being processed.—*Ulfat Jan v. State of J&K & Ors.* 2017 (7) JKLRJ 803[HC] : 2011 SLJ 261 : 2010 (4) JKJ 678[HC] : JKJ Soft JKJ/25544

Time barred appeal

Time barred appeal — Notice of demolition under Section 7(3) issued on 29.3.2010 and appeal filed on 16.4.2010 — No provision in Act for extension of time for filing statutory appeal — Held, COBO Act being a special Act overrides provisions of Limitation Act — Appeal having been filed after seven days, is time barred — Appeal dismissed. 2006 (2) SLJ 443, Rel.—*Saleema Shah (Bano) v. Jammu Municipal Corporation & Anr.* 2017 (8) JKLRJ 454[Tri] : 2012 (2) JKJ 84[Tri] : JKJ Soft JKJ/28013

14. Bar of Jurisdiction

No court shall have jurisdiction to—

- (a) make any interim order whether by way of injunction or stay or in any other manner against the order of the Authority concerned or the appellate officer;
- (b) entertain any suit or proceeding in respect of demolition of any building.

NOTES

Challenge to construction of building — Assumption of approval of site plan

Challenge to construction of building — Assumption of approval of site plan — Construction of the building was initiated by the plaintiff immediately after the permission was granted to him for raising two storied building in terms of the permission granted by the authorities — Construction was still at the infancy stage when a revised site plan was submitted by the plaintiff — Municipality did not react to the site plan and the plaintiff assumed that they had no objection for the said revised site plan. Regulation 7(iii) provides in case no permission is granted within the stipulated period; it shall be deemed that permission has been granted — Construction raised by the plaintiff was in connivance with the officials of the Municipal Authorities — Right from 2002 till 2004 no steps were taken by the Municipal Authorities to serve a notice on the plaintiff and woke up only in November, 2004 when they issued first notice on 08-11-2004 — Trial court to frame a preliminary issue with regard to the maintainability of the suit and dispose of the same within a period of three months.—*Building Operation Controlling Authority & Ors. v. Habla Begum (Mst.)* 2017 (7) JKLRJ 265[HC] : 2008 (3) JKJ 399[HC] : 2009 SLJ 45 : JKJ Soft JKJ/23496

Permission of construction

Permission of construction — Plea that petitioner is not in a position to raise the construction of building on the terms and conditions of the permission issued in favour of petitioner by the competent authority, in as much as the respondents 4 and 5 have raised the structure on spot allegedly in violation of the terms and conditions of the permission granted

in their favour — Prayer that construction of private respondents be ordered to be demolished same having been allegedly raised in violation of the permission granted by the competent authority — Petitioner cannot seek a direction for being permitted to violate law on the plea that other person has allegedly violated it — Court cannot issue any direction on negative parity which is against judicial ethics and legal philosophy — Petition dismissed.—*Nadeem Shepherd v. Commissioner SMC & Ors.* 2017 (8) JKLRJ 55[HC] : 2011 (2) JKJ 54[HC] : JKJ Soft JKJ/25825

15. Finality of orders

Save as otherwise provided in this Act every order made by an Authority or the appellate officer shall be final and shall not be called in question in any suit, application or execution proceeding.

NOTES

Challenge to construction of building — Assumption of approval of site plan

Challenge to construction of building — Assumption of approval of site plan — Construction of the building was initiated by the plaintiff immediately after the permission was granted to him for raising two storied building in terms of the permission granted by the authorities — Construction was still at the infancy stage when a revised site plan was submitted by the plaintiff — Municipality did not react to the site plan and the plaintiff assumed that they had no objection for the said revised site plan. Regulation 7(iii) provides in case no permission is granted within the stipulated period; it shall be deemed that permission has been granted — Construction raised by the plaintiff was in connivance with the officials of the Municipal Authorities — Right from 2002 till 2004 no steps were taken by the Municipal Authorities to serve a notice on the plaintiff and woke up only in November, 2004 when they issued first notice on 08-11-2004 — Trial court to frame a preliminary issue with regard to the maintainability of the suit and dispose of the same within a period of three months.—*Building Operation Controlling Authority & Ors. v. Habla Begum (Mst.)* 2017 (7) JKLRJ 265[HC] : 2008 (3) JKJ 399[HC] : 2009 SLJ 45 : JKJ Soft JKJ/23496

16. Delegation

The Authority may, by notification in the Government Gazette, direct that any power exercisable by it under this Act except the power to make regulations, may also be exercised in such cases and subject to such condition, if any, as may be specified in the notification, by such officer or local authority as may be mentioned therein.

NOTES

Appeal against order of demolition

Notices under Section 7(1) and 7(3) issued in the name of a dead person — Notices held issued in most casual manner, a dead person cannot be expected to reply to the show cause notices — Impugned notices quashed.—*Kulbir Singh v. Building Operations Controlling Authority, Municipal Area, Jammu* 2012 (3) JKJ 79[Tri]

Effect of Act of Municipal Corporation Act, 2000

Effect of Act of Municipal Corporation Act, 2000 — Vis-a-vis Section 7, 3, 12, 16 r/w SRO 391 dated 20th September 2017, Section 3, 4 of Civic Laws (Special Provisions) Act, 2014 — No action to be taken pending formulation of Policy — Even if any law, rule, regulation, bye-law or order, or even any judgment, decree or order passed by any court or tribunal, no building or structure shall be demolished or sealed and even no penalty shall be imposed in

respect of such building or structure that has been erected or constructed in violation of master plan till policy in terms of Section 3 of Act of 2014 is finalised — Alleged violation/deviations had taken place in the year 2011 and present case comes and falls within ambit of Act of 2014 — Petition dismissed.—*Building Operation Controlling Authority v. Suman Bhagat & Anr.* 2018 (2) JKJ 314[HC]

17. Protection of action taken in good faith

No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or the regulations made thereunder.

NOTES

Investigation of case of demolition — Protection of action taken in good faith

Investigation of case of demolition — Protection of action taken in good faith — Respondent is not denying the fact that he had no permission, so had unauthorisedly raised the construction — When the authorities have resorted to action, they have discharged their official duty, their good faith cannot be doubted, they have done what they were expected to do — Their action is totally protected by Section 17 — Magistrate without looking into the protection as available to the petitioners under Section 17 of the Act of 1988 and without looking into the position of the petitioners having raised the construction unauthorisedly and then without looking into the other aspects in absence of resort to Section 154(1) and 154(3) Cr.P.C. has entertained the application for action under Section 156(3) — Impugned order quashed — Petition allowed.—*Building Operation Control Authority & Ors. v. Incharge Police Station, Domana & Anr.* 2017 (10) JKLRJ 349[HC] : 2017 (1) JKJ 55[HC] : JKJ Soft JKJ/31142

18. Effect of provisions of the Act inconsistent with other laws

The provisions of this Act shall apply to the erection or re-erection of buildings alongside public roads regulated under the Prevention of Ribbon Development Act, Samvat 2007.

19. Power to make regulations

(1) The Authority, with the previous approval of the Government may, by notification in the government Gazette, make regulations to carry out the purposes of this Act:

Provided that the Government may make the first regulations under this section and any regulation so made may be altered or rescinded by the Authority concerned in exercise of the powers conferred by this section.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

- (a) the summoning and holding of meeting of the Authority, the time and place where such meetings are to be held, the procedure to be followed by the Authority and the number of members necessary to form a quorum;
- (b) the manner of authentication of orders and other instruments of the Authority;

- (c) the form in which an application under sub-section (1) of section 5 shall be made and the information to be furnished in such application;
- (d) the regulation of the laying out of means of access to road;
- (e) the principles under which applications for permission under this Act may be granted;
- (f) the officers or local authorities to whom powers may be delegated under section 16;
- (g) any other matter which has to be, or may be, prescribed.

20. Repeal and saving

Save as otherwise provided in section 18, if, immediately before the commencement of this Act there is in force any provision of law corresponding to the provisions of the Act that provision of law shall stand repealed on the said date:

Provided that the repeal shall not affect—

- (a) the previous operation of any provision of law so repealed or anything duly done or suffered thereunder; or
- (b) any right, privilege, obligation or liability acquired, accrued or incurred under any provision of law so repealed; or
- (c) any penalty, forfeiture or punishment incurred in respect of any offence committed against any provision of law so repealed; or
- (d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, penalty, forfeiture or punishment as aforesaid;

and any such investigation, legal proceeding or remedy may be instituted, continued, or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed:

Provided further that, subject to the preceding proviso, anything done or any action taken (including any order made, notice issued or permission granted) under any provision of the aforesaid laws shall be deemed to have been done or taken under the corresponding provisions of this Act and shall continue to be in force accordingly unless and until superseded by anything done or any action taken under this Act.

THE JAMMU AND KASHMIR CONTROL OF BUILDING OPERATIONS (REVISED) REGULATIONS, 2001 FOR MUNICIPAL LIMITS OF SRINAGAR AND LOCAL AREAS OF SRINAGAR OUTSIDE THE LIMITS OF SRINAGAR MUNICIPAL

Notification of 2001 dated 24-12-2001, Building Operations
Controlling Authority

In exercise of the powers conferred under section 19 of the Jammu and Kashmir Control of Building Operations Act, 1988 and in supersession of Government Notification SRO-165 dated 28.05.1998, the Building Operations Controlling Authority, appointed vide SRO-289 dated 21-7-1999 hereby frame the Jammu and Kashmir Control of Building Operations Regulations, 2001 in so far as these pertain to the Municipal areas of Srinagar Local Areas of Srinagar not included in Municipal area of Srinagar and make the following Regulations after having received the clarification from the Govt. vide No. LSG-J/94/147 dated 8-8-2001.

1. Short title and commencement

(1) These regulations may be called the Jammu and Kashmir Control of Building Operations (Revised) Regulations, 2001 for Municipal limits of Srinagar and local areas of Srinagar outside the limits of Srinagar Municipal.

(2) These shall come into force with effect from the date of their publication in the Government Gazette.

2. Definition

The words and expressions used in these regulations shall have the same meaning as assigned to them in the J&K Control of Building Operations Act, 1988.

3. Constitution of the Authority

With the commencement of these Regulation, the constitution of the Authority for the Municipal Area of Srinagar and Local area of Srinagar shall be the same as has been notified in Government Notification SRO-289 dated 21-7-1999.