

# **POLICY DOCUMENT FOR UNAUTHORIZED CONSTRUCTIONS IN JAMMU, SRINAGAR AND KATRA**

**SRO 391 of 2017, dated 20.09.2017, Housing & Urban Development  
Department**

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Whereas, the Hon'ble High Court in PIL No. 5/2013, titled Mujeeb Andrabi Vs. State of J&K, directed the State Government to come up with a policy in view of a very large number of Master Plan/Building Byelaws violations in the major cities of Srinagar, Jammu and Katra; and

Whereas, a High Level Committee was constituted by the Government of Jammu and Kashmir and subsequently on its recommendations, the Jammu and Kashmir Civic Laws (Special Provisions) Act, 2014 was enacted so that a comprehensive uniform policy can be formulated to tackle the issue of these violations; and

Whereas, Section 3 of the said Act provides that the State Government shall formulate a policy before 30th September, 2017 to deal with/regulate unauthorized construction of buildings/structures in the areas covered by the Act; and

Whereas, vide Govt. Order No. 230-HUD of 2014, dated 05-08-2014 the Expert Committees were constituted to scrutinize all Master Plan violations/Buildings Bye-Laws violations and come up with a policy so that these violations, as far as possible, are addressed in the revised Master Plans of these areas; and

Whereas, the Government after having examined the policy submitted by the Committee approved the same vide Cabinet Decision No. 53/4/2017, dated 28-04-2017.

Now, therefore in exercise of the powers conferred by Section 3 of the Jammu and Kashmir Civic Laws (Special Provisions) Act, 2014, the Government hereby notifies the policy forming Annexure of this notification which shall come into operation from the date of issuance of this notification.

## **ANNEXURE-A**

### **POLICY DOCUMENT FOR UNAUTHORIZED CONSTRUCTIONS IN JAMMU, SRINAGAR AND KATRA**

#### **1. Background:**

The Hon'ble High Court in the PIL No. 5/2013, titled Majeed Andrabi Vs. State of J&K, directed the State to come up with a policy in view of

a very large number of Master Plan/building Byelaws violations in the major cities of Srinagar, Jammu and Katra. A high Level Committee was constituted by the Government and subsequently on its recommendations, the J&K Civic Laws (Special Provisions) Act, 2014 was enacted so that a comprehensive uniform policy can be formulated to tackle the issue of these violations by the end of March, 2015.

1.1 The J&K Civic Laws (Special Provisions) Act, 2014 came into force on 5th March, 2014. Section 3 of the Act provides that the State Government shall formulate a policy before 31st March, 2015 to deal with/regulate unauthorized construction of buildings/structures in the areas covered by the Act. In this regard, the Hon'ble Governor had discussions with the Advocate General and the Secretary Law and directed to immediately commence work for finalizing the policy referred to in the Act. Side by side, it was also essential for a time bound action being taken to list all Master Plan violations category wise so that no time is lost in deciding the nature of offences.

1.2 Consequently upon passing of the Act, a meeting was held under the Chairmanship of Secretary to Government, Housing and Urban Dev. Department on 21.3.2014. The Minutes of meeting were issued under endorsement No. UD-04/2014-JDA, dated 28.03.2014. A detailed discussion on the issues was held and the following major decisions were taken:

- i. The Chief Town Planner, Jammu/Kashmir, Vice Chairman SDA/JDA were asked to examine the existing Master Plans to clearly understand the gaps in the existing Master Plans so that these could be addressed adequately and effectively during the revision process.
- ii. It was felt that the first and foremost step in evolving a comprehensive policy would be to know the extent and types of Master Plans violation. For this several survey teams were constituted to visit specified areas and submit their reports within two months.
- iii. All the concerned Departments/Organizations were directed to carry out videography of all the structures etc., which had come up in violation of Master Plans before the enactment of the Act so that no further violation takes place after the cutoff date.
- iv. All the concerned Departments/Organisations were directed to constitute zones and nominate an officer who shall be incharge of each zone and personally responsible for any violation in the zone in future.

- v. All Departments/Organizations were directed to conduct awareness programme for their officers/officials to make them well versed with the Master Plans and to seek suggestions for revision wherever required.
- vi. The Chief Town Planners were also asked to study the progress made by other states with regard to the revision of Master Plan and remedial measures against the violations.
- vii. All concerned Organizations were asked to prepare a comprehensive action plan for time bound action to be taken for checking the violation of Master Plan.

1.3 In pursuance to the aforementioned decisions, Govt. Order No. 157-HUD of 2014, dated 15.04.2014 was issued constituting committees to check the action being taken against new/incomplete illegal constructions which were being raised in Srinagar, Jammu and Katra after enactment of the J&K Civic Laws (Special Provision) Act, 2014. Another Govt. Order No. 167-HUD of 2014, dated 25.04.2014 was issued constituting teams to identify, locate and categorize the violations under the Master Plans of Jammu and Katra/Building Bye-laws of relevant Authorities/Corporations, that had come up before the enactment of J&K Civic Laws (Special Provisions) Act, 2014. In case of Srinagar the survey teams were constituted by the VC SDA vide his Order No. SDA/DLM/252, dated 06.05.2014.

1.4 The survey teams so constituted for identifying, locating and categorizing the Land Use/Building Bye-laws violations submitted their reports to the Administrative Department. The survey conducted by the teams constituted vide Government Order No. 167-HUD of 2014, dated 25.04.2014 have reported 4131, 5500 and 58 number of violations of various types in the cities of Jammu, Srinagar and Katra respectively. The reported violations by the Survey Teams are mainly of the following types:

- i. Existing residential structures have been converted into non-residential use predominantly commercial use violating the Master Plan land use/approved layout plans.
- ii. In some cases permissions have been obtained for construction and reconstruction of residential use and in the process structures have been raised much in violation of the sanctioned permission and use other than permitted by the Competent Authorities.
- iii. In certain cases permission has been deviated and violated by constructing additional built up area in violation of ground

coverage or Floor Area Ratio (FAR)/Floor Space Index (FSI) and prescribed setbacks and height.

- iv. Building lines as prescribed in the Master Plans/colony layout plans have also been violated by opening/constructing road side shopping abutting the right of way and at some places encroaching the prescribe Right of Way (ROW).

1.5 The reports of the Survey Teams were discussed in a meeting held in the office chamber of Secretary to Government, Housing and Urban Dev. Department in Srinagar. In pursuance of the decisions taken in the meeting another Govt. Order No. 230-HUD of 2014, dated 05.08.2014 was issued whereby Expert Committees were constituted to scrutinize all Master Plan violations/Building Bye-laws violations and come up with a policy so that these violations, as far as possible, are addressed in the revised Master Plans of these areas. Further the committees were asked to keep standards of Town Planning in view while framing the policy for violations. The committees were to furnish their recommendations within a period of 15 days. However, the Department received final draft of recommendations of these committees only in the month of February, 2015. In the meanwhile, the Department also constituted another committee vide Govt. Order No. 279-HUD of 2014, dated 18th October, 2014 for determining right of way/Building lines of all roads within Master Plans of Srinagar/Jammu besides notification of designated roads. The recommendations of these committees shall be considered at the time of Revision of the Master Plan.

## 2. Policy Framework

The Expert Committees constituted vide Government Order No. 230-HUD of 2014, dated 05.08.2014 have submitted their reports and based on the reports of these committees the policy is laid hereunder:

### 2.1 Definition:

- i. "Building Use Change" means any change in the actual use of a building for which permission was sought from the Competent Authority.
- ii. "Competent Authority" means authority responsible for granting building permissions under relevant laws/rules.
- iii. "Empowered Committee" means the committee of officers to be designated by the Government which shall be responsible for the scrutiny of the applications and recommend regularization of unauthorized constructions under this policy to the Competent Authority.

- iv. "Draft Comprehensive Mobility Plan" means the Mobility Plans of Srinagar and Jammu cities prepared by the Planning and Development Department, J&K.
- v. "Un-authorized structure" means any building raised without seeking proper permission from a Competent Authority or in contravention of the sanctioned plan.
- vi. "Land use Conversion" means change in the use of land as prescribed in the concerned Master Plan from one use to another.
- vii. Words and expression used but not defined shall have the same meaning as assigned to them under the Jammu and Kashmir Development Act, 1970, the Jammu and Kashmir Municipal Act, 2000, the Jammu and Kashmir Municipal Corporation Act, 2000 and the Jammu and Kashmir Control of Building Operations Act, 1988.

### 2.2 Applicability of Policy

This policy shall be applicable for a period of one year i.e. from 01.04.2017 to 31.03.2018 for the local areas of Srinagar, Jammu and Katra excluding the area coming under J&K Lakes and Waterways Development Authority.

### 2.3 Objectives

The basic objectives of the policy are:

- i. To bring the illegal and un-authorized buildings/constructions and land use or building use conversions into planning framework to the extent possible.
- ii. To facilitate the implementation of the Master Plans under revision.

### 2.4 Cut-off date for Regularization of illegal Unauthorized Constructions and Land use Conversions / Building use Change

Only those illegal/unauthorized/unapproved buildings which have been constructed and completed before 31.12.2016 shall be considered under this policy.

### 2.5 Types of violations:

The Expert Committees have categorized the violations mainly into the following types:

- a. F.A.R/Built up area violation.
- b. Set backs/Building line violations
- c. Ground coverage violations
- d. Land-use violations

- e. Parking norms violations
- f. Constructions within the norms of the Building Byelaws/Master Plan but for which no permission has been obtained.

### 2.5 Restriction on approval

2.5.1 No illegal/unauthorized building shall be regularized in the following situations:-

- i. Buildings coming in the proposals of widening of roads in the Master Plan or in the comprehensive Mobility Plan.
- ii. Over flood absorption basins/vulnerable slopes i.e. slopes with more than 30 percent grade to be demarcated by the local authorities.
- iii. Over lands belonging to State or Central Government/Public undertakings/Panchayat/Waqf Board/local commons etc.
- iv. The precincts/sites coming under the Ancient Monuments and Archaeological Sites and Remains Act, 1958, or any other Act prohibiting the development in a particular area.
- v. In case the use is obnoxious or hazardous as per the Master Plan, the J&K Municipal Act, 2000, J&K Municipal Corporation Act, 2000, J&K Development Act, 1970, or any other Act in vogue etc.
- vi. In the graveyards/burial grounds and crematoria.
- vii. Areas/sites falling within the ambit of Jammu and Kashmir Water Resources (Regularization and Management) Act, 2010.
- viii. Group Housing projects.
- ix. In restricted development zones as specified in the Master Plans like Green areas, open spaces etc.

### 2.5.2 Land use Violations/Bulk Violations

In the case of conversions from actual use to some other use, no approved/illegal/unauthorized building be regularized under following use:-

- i. Heavy/Large/Extensive Industries, Obnoxious And Hazardous Industries, Warehousing, Storage Godowns of Perishables/Inflammable Goods, Workshop of Buses, Slaughter Houses, Wholesale Mandis, Sewerage Treatment Plant/Disposal Works, Water Treatment Plant, Solid Waste Dumping Yards, Outdoor/Indoor Stadiums, Shooting Ranges, Zoological Gardens, Botanical Gardens, Bird Sanctuary, International Conference Centre, Courts, Sports Training

Centre, District Battalion office, Forensic Science Laboratories, Cinema Halls, Hotels, Shopping Malls, Auditoriums, Printing Presses, Storage for LPG Gas Cylinders and Transit Visitor Camps.

- ii. If the conversion is from residential to hospital excluding primary health centres and from residential to educational institutions beyond Senior Secondary Schools(10th Standard).
- iii. If bulk violation exceeds 50% in FAR/FSI for any use.
- iv. If the offender does not agree to pay or provide the required parking facility.

### 2.6 Compulsory Application for Regularization

It shall be compulsory for all developers of buildings in such areas to file an application in the prescribed format for compounding/regularization of layout/plots/buildings before the Empowered Committee within 60 days from the date of notification of invitation of applications for regularization under this policy by the concerned Municipal Bodies/development authorities.

### 2.7 General Conditions

- i. Notwithstanding other provisions, this policy shall provide one time settlement to unauthorized constructions for the Local Area of Srinagar, Jammu and Katra. No unauthorized construction having come up after 31st December, 2016 shall be regularized.
- ii. The existing buildings shall be regularized on "as is where is basis" subject to the condition that these do not fall within exclusionary zones and also do not violate the conditions as mentioned in this policy. However, new construction in a vacant plot or any addition to the existing building shall be approved as per the building byelaws and Master Plan regularization in vogue.
- iii. The policy per se shall not constitute a part of any Master Plan but is onetime exception.
- iv. The regularization charges shall be used only for the development of the local areas by way of improved water supply, sewerage, drainage, widening of roads, development of public amenities and other facilities.
- v. In case of public buildings, public safety, security and public conveniences and parking shall not be compromised for regularizing such buildings and National Building Code shall

be strictly adhered to. The owner shall have to make such structural changes in the building, if required, before approval and also submit mandatory clearances from other departments, if required, before approval. In case he fails to fulfil any of the conditions, the approval shall not be granted and the owner of the building shall be proceeded against as per provisions of the law.

- vi. In case of un-authorized buildings/plots for which the owner does not submit the application to the competent authority within the prescribed period, the appropriate action/proceedings under Law shall be initiated after the expiry of the prescribed period, which may include but not limited to, sealing demolition, levying penalties etc., as warranted under law.

### *2.8 Procedure for compounding an illegal/unauthorized Constructions and Land use building use Conversions*

#### *2.8.1 Submission of application:*

The applicant will apply for compounding of the offences in the format as prescribed by the competent authority, to the competent authority along with the following documents:

#### *2.8.2 List of documents:*

- i. Proof of ownership/title in the name of applicant.
- ii. Location Plan/Key Plan/Site Plan/Building plans as required under rules for building permission cases.
- iii. Undertaking by way of affidavit duly sworn before 1st Class Magistrate by the applicant stating that the site of the construction does not violate any of the clauses of this policy.
- iv. Undertaking by way of affidavit the applicant to pay penalty or any other charges levied under this policy.
- v. Any other document if required and as may be prescribed by the Competent Authority.

#### *2.8.3 Scrutiny by the Empowered Committee:*

The Empowered Committee after scrutinizing all the documents within 45 days will come up with the proposed amendments in the plan, if any and will seek comments/consent of applicant within 20 days. After receiving the consent, the Empowered Committee will approve the building plan and thereafter, recommend to the Competent Authority for regularization of the construction or building use change or otherwise.

### *2.8.4. Regularization by Competent Authority*

The Competent Authority shall raise the demand for payment of charges to the applicant and issue the regularization certificate to the owner/developer after the fulfilment of conditions as laid down in this policy after carrying out such changes as prescribed in the Regularization Order. The cases rejected by the Competent Authority, shall be treated as illegal/un-authorized constructions and shall be dealt with as per the provisions of the J&K Development Act, 1970, the Municipal Corporation Act, 2000, the J&K Municipal Act, 2000 and the J&K Control of Building Operations Act, 1988 and rules made there-under.

### *2.9 Consequences for non-submission of application for regularization of unauthorized Constructions and Land use / Building use conversion etc.*

In case an application is not submitted by the concerned Promoter/Developer/plot holder/building owner as the case may be, within the stipulated time for regularization of unauthorized construction, following consequences shall follow:-

- i. Such construction or building shall remain as unauthorized and offense shall be treated as continuing against the promoter/developer/plot holder/building owner as the case may be and appropriate action under the law shall be initiated.
- ii. No connection for water supply and allied services like sewerage, drainage, electricity etc.; shall be provided or the existing connection to be snapped as the case may be to such building.
- iii. Such unauthorized building shall be reported to the concerned Registration Authority of the Revenue Department and no sale transaction or transfer or disposal of any kind shall be allowed in such unauthorized building.
- iv. Other enforcement action including demolition of the unapproved building shall be initiated.

### **3. The violations have been classified in three categories as given below**

- A. Building built at permissible sites but built without permission.
- B. Building built at permissible sites with permissions but having violated the permission, but without change of the land use.
- C. Buildings having resorted to the conversion of land uses.

**A. VIOLATIONS IN TERMS OF THE BUILDING HAVING ADHERED TO THE USE OF THE MASTER PLAN AND BUILDING BYELAWS BUT BUILT WITHOUT BUILDING PERMIT:-**

**THE REGULARIZATION FEE WILL BE CHARGED AS UNDER:**

| Residential                     | Other uses                        |
|---------------------------------|-----------------------------------|
| @ Rs. 20 Per Sft. of floor Area | @ Rs. 100 per sft. of floor Area. |

**B. BUILDING BUILT AT PERMISSIBLE SITES AS PER LAND USE DEFINED IN THE MASTER PLAN WITH PERMISSIONS BUT HAVING VIOLATED THE PERMISSION, BUT WITHOUT CHANGING THE LAND USE:-**

|   |   |
|---|---|
| <b>i. Residential</b>                           |   |
| Violation above the permitted level             | Penalty   |
| Up to 25% above Max. Permissible FAR/FSI        | Rs. 50 per sft.   |
| Above 25% up to 50% on Max. Permissible FAR/FSI | Rs. 100 per sft.  |
| <b>ii. Commercial</b>                           |   |
| Violation above the permitted level             | Penalty   |
| Up to 25% above Max. Permissible FAR/FSI        | 25% of the Commercial circle rate of land in that area per sft. |
| Above 25% up to 50% on Max. Permissible FAR/FSI | 50% of the Commercial circle rate of land in that area per sft. |

**C. BUILDING HAVING BEEN BUILT VIOLATING THE BUILDING USE AS PER APPROVED MASTER PLAN.**

|                                 |  |
|---------------------------------|--|
| Up to 25% of change in land use | 100% of Commercial circle rate of land in that area per sft. |
|---------------------------------|--|

**Note:-**

1. However, the violations of each mandatory setback as defined in bye-laws should not be more than 50%.
2. Height restrictions should be applicable as per approved Master Plan.

3. Penalties (Regularization fee) have to be paid cumulatively for each category, wherever applicable. However, in no case, violations shall exceed 50% of permissible FAR/FSI/setbacks.
4. Any use other than residential shall be treated as commercial.

**3.3 Parking**

All the commercial establishments will be charged Parking ECS deficiency fee @ 2.00 lacs per ECS.

**4. Constitution of the Committees for Scrutiny of Applications**

The Government shall constitute the Empowered Committees. The committees shall be constituted across departments as proposed below:

- i. One Empowered Committee for SMC
- ii. One Empowered Committee for SDA.
- iii. One Empowered Committee for JMC.
- iv. One Empowered Committee for JDA.
- v. One Empowered Committee for KDA.

[No. HUD-07/2005/JDA-AF-II, dated 20.09.2017]