

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

Case:- WP(C) No. 3209/2023  
CM No. 7774/2023  
Cav No. 1775/2023

BOCA and others

.....Petitioners

Through: Mr. Rajnish Raina, Advocate

**Vs**

Davinder Kumar Jain and another

..... Respondents

Through: Mr. Sachin Gupta, Advocate with  
Mr. Danish Butt, Advocate for the  
Caveator(s)/respondent no. 1.

**Coram: HON'BLE MR. JUSTICE RAHUL BHARTI, JUDGE**

**ORDER  
27.12.2023**

**Cav No. 1775/2023**

Caveat stands discharged.

**WP(C) No. 3209/2023**

**01.** This is a writ petition under article 226 of the Constitution of India being sought to be maintained in the name of the statutory authority, namely, Building Operation Controlling Authority (BOCA), Jammu Municipal Area, the Secretary, Municipal Corporation Jammu and the Assistant Commissioner Revenue, Municipal Corporation Jammu as the petitioners 1 to 3. Filing of a writ petition by a statutory authority has to be through its executive officer.

**02.** The Commissioner, Jammu Municipal Corporation seeking to represent the petitioner no. 1 for the purpose of calling in question a judgment dated 25.09.2023 of the J&K Special Tribunal, Jammu ("**Tribunal**" in short) whereby the statutory appeal filed by the appellant (respondent no. 1 herein) on file no. STJ/68/2023 came to be dismissed.

**03.** Said appeal was preferred against an order no. JMC/CEO/02/03/23 dated 15.04.2023 purportedly passed by the petitioner no.1 under section 7(3) of the J&K Control of Building Operations Act, 1988 ("**Act of 1988**" in short). Perusal of the said order dated 15.04.2023 reflects that it did not mention as to which is the alleged erection/re-erection in the context of building construction intended to be demolished, which is the *sine-qua-non* for exercise of power under section 7(3) of the Act of 1988. Since the demolition order did not identify as to which portion of the building was unauthorized in terms of its construction or existence, as such, the Tribunal accepted the appeal of the appellant (respondent no. 1 herein) and set aside the order no.JMC/CEO/02/03/23 dated 15.04.2023, as a consequence whereof releasing the building premises of the respondent no. 1 from sealing effected under section 8 of the Act of 1988 and further allowing the respondent no. 1 to carry on with the commercial activity at the premises in question. The building premises against which the order no. JMC/CEO/02/03/23 dated 15.04.2023 was addressed is 20/B, Gandhi Nagar, Jammu.

**04.** The petitioner no. 1 is a statutory authority which is not a one man composed as it is a multi-member authority. The present petition does not disclose as to whether the petitioner no. 1 has deliberated and decided to call in question the judgment dated 25.09.2023 of the Tribunal. A perusal of the writ petition reveals that by using the name of the petitioner no. 1, it is the Commissioner, Jammu Municipal Corporation as being Chairman is self-driving the matter and if that is so then it is none other than the Commissioner, Jammu Municipal Corporation Jammu who has to account for that how the Secretary, Jammu Municipal Corporation came to issue an order no. JMC/CEO/02/03/23 dated 15.04.2023 under section 7(3) of the Act of 1988 against the two persons, namely, Chander Kumar Jain & Davinder Kumar without identifying in the said order, purportedly meant for demolition, the objectionable or unauthorized building portion of the premises of 20-B, Gandhi Nagar, Jammu.

**05.** Said order no. JMC/CEO/02/03/23 dated 15.04.2023 so issued by the Secretary, Jammu Municipal Corporation was destined to meet the fate of getting set aside the day it was put into existence. It seems that the Secretary, Jammu Municipal Corporation by issuance of the order no. JMC/CEO/02/03/23 dated 15.04.2023 created a subterfuge for the addresses namely, Chander Kumar Jain & Davinder Kumar Jain to earn legitimacy to their business activity *qua* the building premises of 20/B Extension Gandhi Nagar, Jammu and that becomes apparent from the manner

in which the matter came to be taken in appeal resulting in setting aside of the order with liberty let to the appellant- Davinder Kumar Jain, who is a respondent no. 1 herein, to carry out with the commercial activity.

**06.** This Court is under no iota of doubt that it is not the statutory authority of Building Operation Controlling Authority (BOCA), Jammu Municipal Area which is carrying out its statutory function but it is the officials of Jammu Municipal Corporation who are usurping the authority of the Building Operation Controlling Authority (BOCA), Jammu Municipal Area and thereby becoming privy in legalizing unauthorized construction activities going on in the Jammu Municipal Corporation area and facilitating its legitimacy by issuance of such like order as has been passed in the present case which end up not only getting set aside but also earning a go ahead for the commercial change over.

**07.** Issue notice to the respondent no.1.

**08.** Mr. Sachin Gupta, learned Advocate accepts notice on behalf of the caveator/respondent no. 1 to file reply/objections within a period of four weeks.

**09.** This Court directs the Commissioner, Jammu Municipal Corporation to exhibit as to on the basis of which meeting and the decision of the petitioner no. 1- the Commissioner Jammu Municipal Corporation has been authorized to maintain the present writ petition before this Court, as there is no provision cited in the

writ petition that the Commissioner, Jammu Municipal Corporation, as being the Chairman of the Building Operation Controlling Authority (BOCA), Jammu Municipal Area, is having the sole authority and discretion at his disposal to act and decide on behalf of the statutory authority of Building Operation Controlling Authority (BOCA), Jammu Municipal Area. Let it be first clarified as about the maintainability of the writ petition in the name of Building Operation Controlling Authority (BOCA), Jammu Municipal Area by the Commissioner, Jammu Municipal Corporation.

**10.** In the meantime, the Commissioner, Jammu Municipal Corporation is directed by this Court to ensure that in case if the building permission earned by the Chander Kumar Jain & Davinder Kumar Jain with respect to the building premises of 20-B, Gandhi Nagar, Jammu is for residential purpose then in case the building has not been so constructed in the manner in which it was permitted to be constructed as per the building permission no. 568/BS/11 dated 08.08.2011 then to seal the building portion which has suffered diversion from being residential to commercial and submit a status report to said effect and compliance.

List this case on 02.02.2024.

**(RAHUL BHARTI)**  
**JUDGE**

**JAMMU**  
**27.12.2023**  
Muneesh