

S. No. 20

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

Case No. :-WP(C) No. 3209/2023
Caveat No. 1775/2023

Building Operation Controlling Authority and ors.Petitioner(s)
Through: Mr. Rajnesh Raina, Advocate.

Vs.

Davinder Kumar Jain and Anr. Respondent(s)
Through: Mr. Amit Gupta, Advocate.
Mr. Parvesh Singh Salaria, Advocate.

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

**ORDER
02.01.2025**

Caveat No. 1775/2023

Caveat stands discharged.

WP(C) No. 3209/2023

1. The petitioners have called-in-question the judgment dated 25.09.2023 passed by the Jammu and Kashmir Special Tribunal (*in short, Tribunal*), (whereby the Tribunal has permitted the petitioners to carry on the commercial activity in a residential building), on the ground that the same is illegal and contrary to the provisions of the J&K Control of Building Operations Act, 1988, J&K Control of Building Operations Regulations, 1998 as well as revised and approved Master plan.

2. As per stand of the contesting respondents, Chapter 13 of the Jammu Master Plan 2032 permits the petitioners to carry on

such activity in a residential area and also in terms of the Unified Building Bye-Laws Chapter 5 of the Jammu and Kashmir Unified Building Bye-Laws, 2021, which pertains to the Development Control/Zoning Regulations and a bare perusal of Clause 5.1.2 provides that the Convenience Shop/Single Shop is permissible in a residential building and, thus, the order passed by the Tribunal is perfectly in consonance with the mandate of the permissible activity as per the Master Plan and also as per the Jammu and Kashmir Unified Building Bye-Laws, 2021 and the challenge thrown to it is ill-founded and devoid of any merit.

3. Learned counsel for the respondents submits that it is a known fact that at Gandhi Nagar, Jammu, the petitioners are permitting such commercial activities unabated in residential buildings and the shops are being run without any objection from the petitioners and on the contrary, the respondents have been made as a scapegoat, who were running petty shops to earn their livelihood and on the contrary, the petitioners are permitting the big fishes to carry on the commercial activities in the so called residential area at Gandhi Nagar, Jammu.

4. On the contrary, learned counsel for the petitioner fairly submits that in case, it is found that any commercial activity/shops or business establishments are being run in the residential area of Gandhi Nagar Housing Colony, then he assures the Court that appropriate action will be taken against the defaulters strictly in tune with the judgment passed by the Hon'ble Apex Court in case titled,

“Rajendra Kumar Barjatya and Anr. Vs. U.P Avas Evam Vikas Parishad and ors.” passed in SLP No. 36440/2014

5. In the aforesaid backdrop, this Court with a view to proceed further in the matter deems it proper to direct the learned counsel for the petitioners to file a comprehensive supplementary affidavit, highlighting the details of each and every shop or the commercial establishment being run presently at Gandhi Nagar Housing Colony, which according to the petitioners, is a residential area and the said commercial activity is prohibited in the said residential area as per Master Plan and also as per J&K Unified Building Bye-Laws, 2021. Let the said affidavit be filed within a period of four weeks with an advance copy to the learned counsel for the respondents, who may respond to the same within two weeks thereafter.

6. List for consideration on **13.02.2025**, with liberty to make a mention.

(Wasim Sadiq Nargal)
Judge

JAMMU
02.01.2025
Ram Krishan