

CANTONMENT BOARD, MEERUT & ANR.

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v.

AFZAL

(Civil Appeal No. 3814 of 2019)

APRIL 23, 2019

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[R. BANUMATHI AND R. SUBHASH REDDY, JJ.]

Cantonments Act, 1924: ss. 184 and 185 – Illegal erection or re-erection – Allegation that respondents carried out unauthorized constructions without prior permission within the area of cantonment – Issuance of notices by Cantonment Executive Officer u/ss. 184 and 185 to respondents for stopping the unauthorized constructions raised by them as well as for demolition of constructions so raised – Writ petitions by respondents seeking quashing of the notices as also order passed by the appellate authority – High Court quashed the notices – On appeal, held: Valid and cogent reasons recorded by the High Court for quashing the notices issued u/s. 185 and orders by the appellate authority – Notices were issued mechanically and in a casual manner – Having issued the show cause notice, the primary authority ought to have referred to such notice and objections, while issuing the final notice but the same was not done – Survey/inspection report to the effect that the respondent raised unauthorised constructions in the area not furnished to the respondents at any point of time though such report was relied on for rejecting the appeals preferred by the respondents – Having regard to reasons recorded in the impugned order passed by the High Court, no error in the order passed by the High Court so as to interfere with the same – Appellants at liberty to initiate fresh proceedings by issuing fresh show cause notices on the allegations made against the respondents – Cantonments Act, 2006.

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Dismissing the appeal, the Court

HELD: 1.1 The jurisdiction questioned by the respondents and the authority of the appellants in issuing notice under Section 185 of the Cantonments Act, 1924, is rejected by the High Court. Similarly further plea of not taking action within a period of 12 months from the date of construction is also rejected by recording

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- A reasons. There is no error on such findings recorded by the High Court, more particularly in absence of any appeals preferred by the respondents-original petitioners. At the same time, valid and cogent reasons are recorded by the High Court for quashing the notices issued under Section 185 of the 1924 Act and orders by the appellate authority. Apart from the reasons assigned in the
- B impugned order the other material placed on record have been verified. So far as the respondent in Civil Appeal No. 3814 of 2019 is concerned, show cause notice dated 22.08.2006 is issued alleging that he carried out unauthorised construction but same is not even referred to in the final notice issued on 02.09.2006. It
- C is the case of the respondents that objections were filed, and their objections were also not considered. Having issued the show cause notice, the primary authority ought to have referred to such notice and objections, if any, to such notice, while issuing the final notice. It is clear that notices are issued mechanically and in
- D a casual manner. Even the appellate authority, relying on the survey report has held that the respondent in the aforesaid has raised unauthorised constructions on the first floor of the shop without taking any permission of the competent authority. Further, it is stated that such survey/inspection report is not furnished to the respondents at any point of time though such report is relied
- E on for rejecting the appeals preferred by the respondents. [Para 11][280-G-H; 281-A-D]

- 1.2 While quashing the notices in the impugned order in the writ petitions filed before the High Court, the High Court left it open to the appellants to initiate fresh proceedings by
- F issuing fresh show cause notices on the allegations made against the respondents, but at the same time having regard to reasons recorded in the impugned order passed by the High Court, there is no error in the order passed by the High Court so as to interfere with the same. As the Cantonment Act, 2006 has come into force from 18.12.2006, appellants to take fresh action only in accordance
- G with the provisions of the 2006 Act. [Paras 12, 13][281-E-H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3814 of 2019.

- H From the Judgment and Order dated 19.12.2013 of the High Court of Judicature at Allahabad in Writ Civil No. 54929 of 2012.

With

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Civil Appeal Nos. 3815, 3816, 3817, 3818, 3819, 3820, 3821, 3822, 3823, 3824, 3825, 3826, 3827, 3828, 3829, 3830, 3831, 3832, 3833, 3834, 3835, 3836, 3837, 3838, 3839, 3840, 3841, 3842, 3843, 3844, 3845, 3846, 3847, 3848, 3849, 3850, 3851, 3852, 3853, 3854, 3855, 3856, 3857, 3858, 3859, 3860, 3861, 3862, 3863, 3864, 3865, 3866, 3867, 3868, 3869, 3870 and 3871 of 2019.

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Mrs. Rekha Pandey, Hemant Arya, Ms. Smriti Kumari, Advs. for the Appellants.

Ms. Aishwarya Bhati, Sr. Adv., P. N. Ramalingam, Ms. Anjali Dubey, Ms. Aastha Mehta, Ms. Biswabara Dash, Sanchit Garga, Ashutosh Garga, Pahlad Singh Sharma, Ardhendumauli Kumar Prasad, Vaibhav Shrivastava, Dr. (Mrs.) Vipin Gupta, Amit Wadhwa, Amit Kumar Srivastava, Raunak Parekh, Sanjay Kumar Hadala, Vivek Tewari, Dr. Vinod Kumar Tewari, Dinesh Kumar Garg, Dhananjay Garg, Dipak Mishra, Abhishek Garg, Rudreshwar Singh, Gautam Singh, Ms. Isha Singh, Ms. Snehil Sonam, Kaushik Poddar, H. K. Naik, Bhuwan Raj, Chander Shekhar Ashri, S. S. Dahiya, Ms. Sangeeta Gaur, R. C. Kaushik, Ms. Arushi Bhatnagar, Ankur Mittal, Advs. for the Respondents.

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The Judgment of the Court was delivered by

R. SUBHASH REDDY, J.

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1. This batch of appeals, is filed by the Cantonment Board, Meerut and others, aggrieved by the common order dated 19.12.2013 passed by the High Court of Allahabad in Civil Misc. Writ Petition No.54929 of 2012 and batch. All the appeals shall stand disposed of by this common judgment.

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2. In the writ petitions filed before the High Court, respondents – original petitioners have prayed for quashing of notices issued by the appellants under Section 185 of the Cantonments Act, 1924 (for short, ‘the 1924 Act’) for stopping the alleged constructions raised unauthorisedly by the respondents – original petitioners as well as for quashing of the notices issued for demolition of constructions so raised. The respondents – writ petitioners have also prayed for quashing of the appellate order passed by the appellate authority dismissing the appeals preferred by them.

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A 3. The law relating to administration of cantonments was originally governed by the 1924 Act. The said Act is repealed by virtue of Section 360 of the Cantonments Act, 2006 (for short, 'the 2006 Act'). The 2006 Act came into force w.e.f. 18.12.2006.

B 4. Before the new Act has come into force, Cantonment Executive Officer has initiated proceedings under Sections 184 and 185 of the 1924 Act, on the ground that respondents have carried out unauthorised constructions without prior permission within the area of cantonment and has issued show cause notices to show cause why legal action should not be taken against the respondents. For the purpose of disposal, we would refer to the notice issued to one Afzal who is the respondent in
C Civil appeal No.3814 of 2019. The notice issued to the said respondent reads as under :

“ Office of the Cantonment Board
Meerut, dated 22nd Aug, 2006

D To Afzal Ahmad S/o Faqrudhin,
55/pt Ghosi Mohalla,
B.I. Bazar,
E Meerut Cantt.

Subject : SHOW CAUSE NOTICE

It has been reported to me that you have carried out the following unauthorised constructions without prior permission in the Shop No.53-54 Ghosi Mohalla, B.I. Bazar, Meerut Cantt.
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FIRST FLOOR

Room Measuring 12'-11" x 15'-7" is being constructed in Shop No.53-54, Ghosi Mohalla B.I. Bazar, Meerut Cantt.

G As this is an offence punishable under Section 184/185 of the Cantonments Act, 1924 (amended), please show cause within 3 days from the receipt hereof, why legal action should not be taken against you under the provisions of the said Section of the Cantonments Act, 1924 (Amended).”

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5. In continuation of the show cause notice, further notice is issued on 02.09.2006 under Section 185 of the 1924 Act to stop further construction and for demolition of the unauthorised construction. Aggrieved by the notice dated 02.09.2006 he has filed statutory appeal as contemplated under Section 274 of the 1924 Act. Appeal also ended in dismissal. In all the cases covered in this group, identical and stereo type orders are passed by the primary authority and appellate authority.

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6. Challenging the notice issued under Section 185 of the 1924 Act and order of the appellate authority, respondents – original petitioners have filed writ petitions before the High Court. The orders impugned in the writ petitions before the High Court were challenged mainly on the ground that there is no authority to the Executive Officer to issue such a notice and the notice is without jurisdiction. The second ground is that the notice for demolition has to be issued within a period of 12 months from the date of the alleged constructions. It was pleaded that date of construction was not mentioned in the notice, as such, notice was barred by limitation. Another ground before the High Court was that notices were issued in a casual manner and inspite of submitting the reply to the show cause notices, the primary authority has not considered the replies and passed order, and even appellate authority has passed stereo type orders without giving any opportunity and fixing the date for hearing. First two grounds raised by the respondents – writ petitioners were not accepted but however High Court has held that reply filed by the respondents – original petitioners was not considered and no reasons were assigned for rejecting objections. Further, it is also held that the appellate authority has passed orders, which are more or less identical, and passed in a pre-determined manner without giving any opportunity of hearing. While quashing the impugned orders, High Court by impugned order dated 19.12.2013 left open to the appellants to proceed afresh in the light of observations made in the judgment.

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7. We have heard the learned counsel Ms. Rekha Pandey appearing for the appellants and also learned counsels appearing for the respondents in this group of cases.

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8. In these appeals, it is contended by learned counsel for the appellants that when constructions are made unauthorisedly without obtaining permission from the competent authority, it is always open for the authorities to order for demolition of such constructions, which are

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A raised illegally. Further it is submitted that inspite of giving several opportunities, respondents – original petitioners have not appeared before the appellate authority, as such, appellate authority has considered the matter on merits and passed the impugned order. It is further submitted that even the primary authority has issued notice under Section 185 of the 1924 Act after giving an opportunity by way of show cause notice.

B It is submitted that inspite of giving opportunity at the primary stage and the appellate stage, the High Court erroneously recorded the finding that orders are passed without giving opportunity and quashed the impugned orders in the writ petitions.

C 9. On the other hand learned counsel appearing for the respondents have pleaded that either primary authority or appellate authority have not considered the objections raised by the appellants and impugned orders are passed. It is submitted that inspite of filing objections to the show cause notices, the Cantonment Executive Officer has not referred to such objections and issued notices under Section 185 of the 1924 Act

D for demolition. When appeals are preferred by availing the statutory remedy, as contemplated under the Act, even the appellate authority has not given an opportunity by fixing the date of hearing and passed the impugned stereo type orders rejecting the appeals preferred by the respondents. It is further submitted that there is no valid delegation to Cantonment Executive Officer at all and the impugned notices are issued

E without any jurisdiction.

10. Having heard learned counsel for the parties, we have perused the impugned order passed by the High Court and other materials placed on record.

F 11. At the outset, it is to be noticed that aggrieved by the common order passed by the High Court, Cantonment Board and others have filed appeals and there are no appeals filed by the respondents herein aggrieved by any of the findings recorded in the common impugned order. The jurisdiction questioned by the respondents and the authority of the appellants in issuing notice under Section 185 of the 1924 Act is

G rejected by the High Court. Similarly further plea of not taking action within a period of 12 months from the date of construction is also rejected by recording reasons. We do not find any error on such findings recorded by the High Court, more particularly in absence of any appeals preferred by the respondents – original petitioners. At the same time, we are of

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the view, valid and cogent reasons are recorded by the High Court for quashing the notices issued under Section 185 of the 1924 Act and orders by the appellate authority. Apart from the reasons assigned in the impugned order we have also verified the other material placed on record. So far as Afzal who is respondent in Civil Appeal No. 3814 of 2019 is concerned, show cause notice dated 22.08.2006 is issued alleging that he has constructed the shop no.53-54 at Ghosi Mohalla, B.I. Bazar, Meerut Cantt., but same is not even referred to in the final notice issued on 02.09.2006. It is the case of the respondents that objections were filed, and their objections were also not considered. Having issued the show cause notice, the primary authority ought to have referred to such notice and objections, if any, to such notice, while issuing the final notice on 02.09.2006. It is clear that notices are issued mechanically and in a casual manner. Even the appellate authority, relying on the survey report dated 10.08.2006, has held that the respondent in Civil Appeal No.3814 of 2019 has raised unauthorised constructions on the first floor of the shop without taking any permission of the competent authority. Further, it is stated that such survey/inspection report is not furnished to the respondents at any point of time though such report is relied on for rejecting the appeals preferred by the respondents.

12. While quashing the notices in the impugned order in the writ petitions filed before the High Court, High Court has left it open to the appellants to issue fresh notice and to pass appropriate orders by following procedure contemplated under law. In that view of the matter, while it is always open to the appellants to initiate fresh proceedings by issuing fresh show cause notices on the allegations made against the respondents, but at the same time having regard to reasons recorded in the impugned order passed by the High Court, we do not find any error in the order passed by the High Court so as to interfere with the same in these appeals.

13. These appeals are accordingly dismissed. However, we make it clear that the liberty granted by the High Court to initiate fresh proceedings for passing appropriate orders is maintained. As the Cantonment Act, 2006 has come into force from 18.12.2006, appellants to take fresh action only in accordance with the provisions of the 2006 Act. Fresh show cause notice issued shall be in continuation of the earlier show cause notice issued to each of the respondents. While issuing

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- A fresh show cause notice, the appellant shall furnish copy of the Inspection Report to the respondents and afford sufficient opportunity to each of the respondents and pass order in accordance with law. Further the constructions in question are unauthorised or not, such issue is left open to be considered by the authorities.

Nidhi Jain

Appeal dismissed.