

Cantonment Board, Delhi Vs. Mangey Ram

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Court : Delhi

Decided On : May-06-1986

Reported in : AIR1987Delhi77; 1986(11)DRJ97

Judge : S.S. Chadha, J.

Acts : Cantonment Act, 1924 - Sections 181

Appeal No. : Civil Regular Second Appeal No. 37 of 1973

Appellant : Cantonment Board, Delhi

Respondent : Mangey Ram

Advocate for Pet/Ap. : G.C. Lalwani and; M.S. Vohra, Advs

Judgement :

S.S. Chadha, J.

(1) The question of law raised in this second appeal is whether the Cantonment Board, Delhi Cantt. Delhi has power or jurisdiction to revise or reopen the plans already sanctioned.

(2) Shri Mangey Ram, respondent filed a suit for injunction to restrain the Cantonment Board, Delhi Cantt. permanently by injunction from reconsidering the building plan'- already sanctioned by the Cantonment Board in favor of the plaintiff ;n respect of property premises No. 47/1, 47/2, 48/1 and 48/2. Sadar Bazar, Delhi. The Cantonment Board passed a resolution No. 21 dated December 4, 1968 granting sanction and approval of the building plan and the sanctioned plan along with a copy of the said resolution was given to the plaintiff. The plaintiff was served with a notice dated April 9, 1969 by the Cantonment Board alleging that the building plans have been submitted for an area measuring 62'-4' x 30'-6' while the area leased out under the original lease-deed in 60'-6' x 28' and that the plans were again being referred to the Cantonment Board for reconsideration. The plaintiff was given notice that no construction was to be carried out till the case was decided by the Cantonment Board and that in case, any construction was done, it would be at the risk and costs. of the plaintiff. This notice was challenged, inter alia, on the grounds that there is no jurisdiction in the C

(3) The main submission of the counsel for the appellant is that the power of the Cantonment Board to issue orders of sanction of building plans by virtue of the provisions of Cantonment Act, 1924 include within its ambit power exercisable in a like manner to add to, amend, vary or rescind an order so issued. Reliance is placed in that regard on the provisions of Section 21 of the General Clauses Act, 1897. Reference is also made to Sections 181 and 185(2) of the said Act to contend that there is power to stop erection or re-erection or even to demolish a building which has been constructed and completed in pursuance of the sanction granted by the Cantonment Board. In this case it is contended that the case was only being submitted for reconsideration of the Cantonment Board because it was found that the area leased out to the plaintiff was

different than what was shown in the building plans and in the meantime, the plaintiff was asked not to carry out the construction till the matter is decided by the Cantonment Board. It is urged at the Bar that as and when any action prejudicial to the interest of the plaintiff will be taken, the plaintiff would be given an opportunity of being heard before the proposed action. Arguments have also been addressed on a question that the suit of the plaintiff is barred by the provisions of Cantonment Act, 1924 and that the suit is bad for want of statutory notice under Section 273 of the said Act.

(4) The factual position as emerging on the record has been noticed by the Addl District Judge. The plaintiff had shown some more area of the plot in the building plan on the basis of which construction was sought to be made by him than the area in his original lease. The plaintiff got the plan sanctioned for the area 62'- 4' x 30'-6' whereas the actual area of the plot in original lease in his favor was 60'-6' x 28'. It was the admitted case that the plaintiff has submitted his plans with regard to somewhat larger area than the area of the plot originally leased out to him. To me, it is clear that the plans had been got sanctioned on the basis of a misrepresentation as to the area of which the plaintiff became to be entitled or in any case, the plans were sanctioned by the Cantonment Board on account of mistake as to the actual area of the plot on which constructions were proposed to be made. There is, however, no specific provision in the said Act for revocation or modification of a sanction accorded under misrepresentation, as is contained in Section 338 of the Delhi Municipal Corporation Act, 1957. That section authorises the Commissioner to cancel the sanction of a building or any work, if he is satisfied that the same was obtained by the person in consequence of any material misrepresentation or fraudulent statement made in the notice given or information furnished under Sections 333 to 335 of that Act and any building or work commenced, erected or done is bound to be held without such sanction. However, the Commissioner is required to give reasonable opportunity to the affected person before making order of cancellation of the sanction. Even though there is no power specifically conferred under the statutory provisions on the Cantonment Board, such a power has to be read in Section 181 of the said Act as it would advance the cause of justice. It is not desirable to read a limitation into the provisions of Section 181 that the order of grant or refusal to sanction is not subject to a review or modification. The principle that power to revise is not an inherent power and cannot be exercised unless given by a statute, is limited to judicial or quasi-judicial order only. It cannot be extended to the ministerial acts made by the Cantonment Board.

(5) Power to stop erection or re-erection or to demolish is specifically contained in Section 185(2) of the said Act. It provides that a Board shall by notice in writing direct the owner, lessee or occupier of any land in the cantonment to stop the erection or re-erection of a building in any case in which the order under Section 181 sanctioning the erection or re-erection has been suspended by the Officer Commanding-in-Chief, the Command, under clause (b) of Sub-section (1) of Section 52- The Cantonment Board was only reconsidering the matter in this case and possibly the matter may have been placed before the Officer Commanding-in-Chief. It is clear from the provisions of Section 185(2) that the Board can direct the demolition of a building even when the erection is complete but in such circumstances, the Board has to pay only full compensation to the owner of the building for the loss incurred by him. If there is a power of suspension and cancellation of the order of sanction, then surely the Cantonment Board has a power to reconsider the sanction already granted.

(6) Section 336 of the Municipal Corporation Act, 1957 is the corresponding Section for grant of sanction or refusal of building or work in the area under the Municipal Corporation of Delhi. A question arose before a Division Bench of this Court in 'Raghubir Singh and Others v. Municipal Corporation of Delhi and Anrs.' : AIR1982Delhi550 of the power of review under Section 336. It was held :-

'There are good reasons why an order under Section 336 granting or refusing to sanction should be subject to review if the circumstances so warrant. It would be a grave hardship if it was held that even if the refusal to sanction the plan was based on misappreciation of some relevant fact and the same can be brought to the notice of the Commissioner he would be powerless to correct the obvious mistake. Such a result would inevitably follow if the power to review was denied to the Commissioner. To feel that it will not advance the

case of justice if such a limitation was not read into such a provision as to hold that order of grant or refusal to sanction is not subject to review. There is hardly any lis between the parties which is being adjudicated by the Commissioner. The decision is more or less a ministerial one which requires applicant to meet the requirements laid down in the Statute. Such a decision not being quasi-judicial one the power to review was available to the Commissioner. That is why the refusal accorded in 1971 in this case was revised in 1979 by way of appeal by the same authority, though no such appeal was provided. Since it suits the appellant he would not like to have his argument extended to that situation.'

(7) As a result of the above discussion, I hold that there is a power in the Cantonment Board to review or modify the sanctioned plans. The notice dated April 9, 1969 from the Executive Officer of the Cantonment Board was merely a notice intimating that proceedings for reconsideration of the building plans got sanctioned by the plaintiff were to be initiated as the sanction of the building plans was based on a misstatement of a material fact. It was found as fact by the courts below that there was a misrepresentation. The notice, therefore, was perfectly valid and justified. It is, however, observed that before taking any action on the notice dated April 9, 1969 the plaintiff would be afforded an opportunity of showing cause and of being heard against any proposed action.

(8) With the above observations, the appeal is allowed. The suit of the plaintiff is dismissed. On the peculiar facts and circumstances of the case, I leave the parties to bear their own costs throughout.

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