

THE CANTONMENT BOARD, JABALPUR AND ORS.

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SRI S.N. AWASTHI AND ORS.

NOVEMBER 2, 1995

[K. RAMASWAMY AND B.L. HANSARIA, JJ.]

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*Jabalpur Cantonment Board Act :*

*S. 181(3)—Permission to construct building granted by the Board—Later on permission was cancelled—Since condition precedent not satisfied viz. sanction of Defence Estates Officer not obtained—Held : Sanction accorded earlier was per se illegal—Since no opportunity was afforded before cancellation party directed to file a fresh application and Board to consider the same and pass order.*

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The appellant-Board had granted permission to the Respondents for construction of a building, but later on cancelled the same. Challenging the cancellation the respondents filed a writ petition in the High Court, which was allowed on three grounds, viz. (i) that sanction having been granted its cancellation without giving an opportunity was in violation of the principles of natural justice; (ii) that the appellants had not specified the distinction between 'Military Estates Officer' and 'Defence Estates Officer' for the latter to get power to cancel the permission; and that since the respondents had started construction, on principles of equity, the cancellation was not justified. Hence this appeal.

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Disposing of the appeal, this Court

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HELD : 1. The land is situated within the Cantonment Area. Therefore, the title in the land stands vested in the Cantonment Board. What a person in lawful possession would be entitled to enjoy is the lease-hold rights thereon subject to the conditions mentioned therein. For the erection or re-erection of a building, a licence from the Cantonment Board is required as a pre-condition under the Act. Section 181 of the Jabalpur Cantonment Board Act in that behalf covers the field. The Act was subsequently amended substituting for the words "Military Estate Officer", 'Defence Estates Officer'. Thus, as on October 1, 1983 the competent officer to be consulted as a condition to grant permission by the Cantonment

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A Board for erection or re-erection of building by the Board was the 'Defence Estates Officer'. Admittedly, prior permission was not obtained from him. It is also on record that G.O.C. in Chief had suspended the Resolution by proceedings dated June 22, 1991 and he passed the order directing the Cantonment Board to reconsider the matter and pursuant thereto, the Board had cancelled the sanction. Since the condition precedent of prior sanction of Defence Estates Officer under sub-section (3) of Section 181 had not been obtained, the sanction for construction of the house granted by the Cantonment Board was *per se* illegal. [741-F, 742-B-C]

2. No prior notice, before cancellation by the Board, was given to the respondents. In view of the fact that statutory condition has not been complied, this Court does not like to have the proceedings delayed by directing the Board to give an opportunity to pass fresh order. The proper course would be to direct the respondents to make an application afresh and the same would be considered by the Board according to law and would be disposed of. The Board would consider the same within one month from the date of the application and should make reference within 15 days thereafter to the 'Defence Estates Officer' for appropriate sanction, who would then take action under Section 181(3) of the Act within one month. On return thereof, final order would be passed by the Cantonment Board within one month from the date of receipt of the order passed by the Defence Estates Officer. [742-D-E]

3. In case the Board or the Defence Estate Officer would be inclined to reject the application for sanction, they should give reasons in support thereof. Along with the application, the respondents would be at liberty to file all their documents in support of their claim for sanction. [742-F]

4. Construction made in contravention of law would not be a premium to extend equity so as to facilitate violation of mandatory requirements of law. The High Court, therefore, was not justified in extending equity for completion of construction. [742-G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 10281 of 1995.

From the Judgment and Order dated 2.3.94 of the Madhya Pradesh High Court in M.P. No. 2233 of 1991.

V.R. Reddy, Additional Solicitor General, P.S. Nair and T.G. N. A  
Nair, for the Appellants.

U.R. Lalit and A.K. Chitale and Niraj Sharma for the Respondents.

The following Order of the Court was delivered :

Leave granted. B

This appeal by special leave arises from the order of the High Court of Madhya Pradesh dated March 2, 1992 passed in Misc. Petition No. 2233 of 1991.

The Cantonment Board through its Resolution No. 10 dated 30th March, 1990 had granted permission for construction of a building which later on was cancelled by another proceedings dated July 5, 1991. Calling in question of the cancellation, the respondents filed the writ petition. The High Court allowed the writ petition on three grounds, viz., that the sanction having been granted in favour of the respondents, cancellation thereof without giving an opportunity would be in violation of the principles of natural justice. It was also held that the appellants had not specified the distinction between the 'Military Estates Officer' and the 'Defence Estates Officer' for the latter to get power to cancel the permission. Further, it was already held that in equity, since the respondents had started construction, the cancellation was not justified. C  
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It is not in dispute and in fact cannot be disputed that the land is situated within the Cantonment Area. Therefore, the title in the land stands vested in the Cantonment Board. What a person in lawful possession would be entitled to enjoy is the lease-hold rights thereon subject to the conditions mentioned therein. For the erection or re-erection of a building, a licence from the Cantonment Board is required as a pre-condition under the Act. Section 181 of the Act in that behalf covers the field. Sub-section (3) thereof reads thus : F

"(3) The Board, before sanction the erection or re-erection of a building on land which is under the management of the Military Estates Officer, shall refer the application to the Military Estates Officer for ascertaining whether there is any objection on the part of the Government to such erection or re-erection; and the Military Estates Officer shall return the application together with G  
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A his report thereon to the Board within 30 days after it has been received by him."

B The Act was subsequently amended by Amendment Act No. 16 of 1983 which came into force w.e.f. October 1, 1983 substituting for the words 'Military Estate Officer', 'Defence Estates Officer'. Thus, as on October 1, 1983 the competent officer to be consulted as a condition to grant permission by the Cantonment Board for erection or re-erection of building by the Board was the 'Defence Estates Officer'. Admittedly, prior permission was not obtained from him. It is also on record that G.O.C.-in-Chief had suspended the Resolution by proceedings dated June 22, 1991 and he passed the order directing the Cantonment Board to reconsider the matter and pursuant thereto, the Board had cancelled the sanction. Since the condition precedent of prior sanction of Defence Estate Officer under sub-section (3) of Section 181 had not been obtained, the sanction for construction of the house granted by the Cantonment Board was *per se* illegal. It is true that no prior notice, before cancellation by the board, was given to the respondents. In view of the fact that statutory condition has not been complied, we do not like to have the proceedings delayed by directing the Board to give an opportunity to pass fresh order. Instead, we think that the proper course would be to direct the respondents to make an application afresh and the same would be considered by the Board according to law and would be disposed of. The Board would consider the same within one month from the date of the application and should make reference within 15 days thereafter to the 'Defence Estates Officer' for appropriate sanction who would then take action under Section 181 (3) of the Act within one month. On return thereof, final order would be passed by the Cantonment Board within one month from the date of receipt of the order passed by the Defence Estates Officer. It is needless to mention that in case the Board or the Defence Estates Officer would be inclined to reject the application for sanction, they should give reasons in support thereof. It is also needless to mention that along with the application, the respondents would be at liberty to file all their documents in support of their claim for sanction. Construction made in contravention of law would not be a premium to extend equity so as to facilitate violation of mandatory requirements of law. The High Court, therefore, was not justified in extending equity for completion of construction.

The appeal is disposed of accordingly. No costs.

G.N.

Appeal disposed of.