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IN THE HIGH COURT OF DELHI AT NEW DELHI

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**W.P.(C) Nos.6643/2013, 6644/2013, 6646/2013,
6647/2013, 6648/2013, 6649/2013, 6655/2013
and 6584/2013.**

Decided on : 26.05.2014

IN THE MATTERS OF

SANJEEV BHATIANI

..... Petitioner

Through: Mr. Shekhar Nanavaty, Advocate

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Himanshu Bajaj, Advocate for
Respondent No.1/UOI.

Mr. Sunil Satyarthi, Advocate for R-2/DCB.

CORAM

HON'BLE MS.JUSTICE HIMA KOHLI

HIMA KOHLI, J. (ORAL)

1. By this common order, the Court proposes to dispose of eight petitions filed by the same petitioner against the respondent No.1/Union of India (UOI) and the respondent No.2/Delhi Cantonment Board (DCB), in respect of the same property, seeking the same relief.

2. The present petitions have been filed by the petitioner in respect of premises bearing No.III/1/2E, Shastri Bazar, situated in the Delhi Cantonment area praying *inter alia* that the orders passed by the respondent No.2/DCB on different dates in respect of the subject premises under Sections 340, 248 and 320 of the Cantonments Act,

2006 (hereinafter referred to as '**the Act**'), be quashed.

3. Briefly stated the facts of the case are that the petitioner is the occupant of the subject premises that is governed by the Act. Vide communication dated 13.7.2012, described as a "Notice", the Chief Executive Officer of the respondent No.2/DCB, in exercise of the powers conferred upon him under Section 248 (1) of the Act, had directed the petitioner to stop any erection/re-erection at the subject property and further, in case the erection had been completed by him, it was directed that the same should be demolished within thirty days from the date of receipt of the said notice.

4. The aforesaid notice issued to the petitioner was followed up by similar notices subsequently issued to him at different stages of the construction, including notices dated 13.07.2012, 16.07.2012, 23.07.2012, 08.08.2012, 22.08.2012, 27.08.2013, 03.09.2012 and 14.09.2012. Each notice refers to the nature of the construction being undertaken by the petitioner in the subject premises. From a perusal of the above mentioned notices, it is apparent that between 13.7.2012 and 14.9.2012, the petitioner had cast the RCC columns at the subject premises, followed by raising of brick walls, undertaking excavation in the column footings, then erecting RCC slabs over the columns and raising brick walls, providing the RCC roof on the first floor, undertaking brick work on the first floor and further, casting a RCC

roof on the first floor, for purposes of constructing a second floor.

5. Aggrieved by the aforesaid notice issued by the CEO of the respondent No.2/DCB under Section 248 (1) of the Act, the petitioner had preferred separate appeals under Section 340 of the Act before the appellate authority, namely, the Principle Director, Defence Estate, Western Command, Chandigarh.

6. Contemporaneously, the petitioner had filed a writ petition in this Court, registered as WP(C)No.3104/2013, seeking quashing of the notices issued by the CEO of the respondent No.2/DCB under Section 248 (1) of the Act. After taking note of the facts of the case and having regard to the fact that the petitioner had already preferred statutory appeals before the appellate authority well before filing the writ petition, the Court was of the opinion that it was not open for him to challenge the notices issued to him by the CEO of the respondent No.2/DCB in writ proceedings. It was also observed that only in the event the petitioner fails in the appeals filed by him, could he seek his legal remedies in a writ petition. As a result, vide order dated 13.5.2013, the writ petition was dismissed.

7. Thereafter, the petitioner continued to pursue the eight appeals that had been filed by him against the eight separate notices issued to him under Section 248(1) of the Act. The said appeals were decided by the appellate authority, namely, the Principle Director, Defence

Estate, Western Command, Chandigarh, by passing eight separate orders, the first one dated 22.7.2013. Four of the appeals filed by the petitioner were disposed of by passing four orders, all dated 23.7.2013. Two appeals were disposed of by passing two orders, both dated 24.7.2013 and the last appeal was disposed of, vide order dated 6.8.2013 (Annexure P-5 colly).

8. By the aforesaid orders, the notices issued by the CEO of the respondent No.2/DCB under Section 248 (1) of the Act were held to be valid and as a result, the appeals filed by the petitioner were dismissed as being devoid of merits. Aggrieved by the aforesaid dismissal orders passed by the appellate authority, the petitioner has filed the present petitions.

9. The corner stone of the arguments urged by the counsel for the petitioner is that before the CEO of the respondent No.2/DCB could have passed an order directing demolition of the construction undertaken by him on the subject premises, the petitioner was entitled to an opportunity of hearing. However, no notice to show cause was issued to the petitioner, which is in gross violation of the principles of natural justice. Counsel for the petitioner also states that Section 237 of the Act specifies the provisions under which the powers, duties and functions of the Board can be exercised or discharged in a civil area by the CEO, DCB but it stipulates that those powers that are

vested in the Board under sub-section (1) and the proviso to sub-section (2) of Section 248 of the Act cannot be delegated to the CEO. It is contended that in such circumstances, the notices issued by the CEO to the petitioner under sub-section (1) of Section 248 of the Act are void and liable to be quashed and as a consequence thereof, the subsequent orders passed by the appellate authority are also liable to be set aside.

10. Counsel for the petitioner states that the aforesaid grounds were specifically taken by the petitioner in the appeals filed by him before the appellate authority, wherein he had claimed violation of the principles of natural justice and had stated that the notices issued to him did not meet the requirements of Section 248 of the Act, but the said pleas were neither considered, nor discussed by the appellate authority while passing the impugned order.

11. It is settled law that even though a provision is silent about the issuance of a show cause notice, if the order to be passed by an authority is likely to have an adverse civil consequence for the party so affected, then before passing such an order, the principles of natural justice have to be followed and a reasonable opportunity of hearing must be given to the concerned party. In fact, the observance of principles of natural justice is held to be nothing but the pragmatic requirement of fair play in action.

12. In the case of Canara Bank vs. V.K. Awasthy reported as **AIR 2005 SC 2090**, the concept, scope, history of development and the significance of the principles of natural justice were extensively discussed with reference to the earlier case law on the subject and the Supreme Court had observed as below :-

"14. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the frame-work of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. **Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. Expression 'civil consequences' encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations, and non- pecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.**" (emphasis supplied)

13. There are a catena of decisions wherein it has been held that before an order is passed against a person that entails civil consequences, a notice to show cause is necessarily envisaged under Article 14 of the Constitution of India. In other words, a person against whom an action is proposed to be taken to his detriment, ought to be provided an opportunity of hearing so that he can defend himself before any action is taken against him. [Refer : Cantonment Board,

Dinapore & Ors. Vs. Taramani Devi, AIR 1992 SC 61; Arcot Textile Mills Ltd. Vs. The Regional Provident Fund Commissioner & Ors., AIR 2014 SC 295]

14. Thus, it is trite that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the Court would not ignore the legislative mandate, the requirement of giving a reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences for the party affected. This principle will hold good irrespective of whether the power conferred on a statutory body or a tribunal is administrative or quasi-judicial in nature.

15. In the opinion of this Court, the requirement of an opportunity of hearing being given to the petitioner before an order of demolition was passed by the respondent No.2/Board under Section 248 of the Delhi Cantonment Act, 2006 was a prerequisite. There is nothing in the language of Section 248 or any other provision in the said Statute that would negate such an opportunity being given to the petitioner. If such a requirement is not read into the provision, it would be open to challenge on the ground of violation of Article 14 of the Constitution of India for non-compliance of the principles of natural justice that flow from the Rule of Law.

16. In the present cases, a perusal of the impugned notices issued by the CEO of the respondent No.2/DCB under Section 248 (1) of the Act reveals that the said notices are in reality orders directing the petitioner to stop the erection/re-erection on the subject building and in case the erection has been completed by him, to demolish the same within thirty days from the receipt thereof. The court is unable to accept the submission made by learned counsel for the respondent No.2/DCB that the said notices ought to be treated as a communication to the petitioner, calling upon him to explain as to why an adverse view should not be taken against him, more so when no reply had been solicited from the petitioner.

17. Even if the provisions of the Act did not specifically stipulate that a notice to show cause is required to be issued to the petitioner/occupier of the subject premises in respect of the construction undertaken by him, allegedly in violation of the Statute, it was incumbent for the respondent No.2/DCB to have afforded him an opportunity of hearing so that whatever pleas that were available to him, could have been placed before the competent authority for consideration and only after affording a hearing to him, could an order be passed. The tone and tenor of the impugned notices issued by the CEO of the respondent No.2/DCB clearly reveals that a decision of stoppage or erection/re-erection of the building and demolition thereof

had been communicated to the petitioner, thus hardly leaving any scope for treating the same to be notices to show cause and not as orders, as sought to be urged by the learned counsel for the respondent No.2/DCB.

18. At the same time, the Court is conscious of the fact that the provisions of Section 248 of the Act that deals with the power to stop the erection/re-erection or to demolish, prescribes that the Board must give a notice in writing directing the owner, lessee or occupier of the land in the cantonment area to stop the erection/re-erection of a building in case the same is an offence under Section 247 of the Act, within twelve months from the date of completion of such erection/re-erection and then only direct alternation or demolition thereof. In other words, if the Court proceeds to quash the impugned orders passed by the CEO, DCB under Section 248 (1) of the Act, then the respondent would be precluded from dealing with the unauthorized construction stated to have been raised by the petitioner on the subject premises, which would not be in public interest.

19. In the course of arguments, it has been suggested that instead of quashing the impugned orders passed by the CEO, DCB under Section 248(1) of the Act, the said orders may be treated as notices to show cause issued to the petitioner so as to enable him to file his replies thereto. Such a recourse would facilitate an opportunity of

hearing to the petitioner, thus meeting the principles of natural justice as envisaged in Article 14 of the Constitution of India and also preventing the adverse consequences spelt out in Section 248 (1) of the Act, insofar as the timeline stipulated therein for action to be taken by the authority, is concerned.

20. Learned counsel for the petitioner states that if the orders passed by the CEO of the DCB shall be treated as notices to show cause, then he is willing to waive his objection with regard to the limitation stipulated in Section 248 of the Act for directing alteration or demolition of the building.

21. This Court is of the opinion that if the aforesaid course of action is taken, the same will work out the illegality in the impugned orders passed by the CEO, DCB, without issuing notices to show cause to the petitioner and at the same time, it shall afford an opportunity to the petitioner to make his submissions before the competent authority with regard to the unauthorized construction/erection/re-erection stated to have been undertaken by him on the subject premises.

22. Accordingly, without expressing any opinion on the merits of the case and leaving open all the issues raised by the petitioner to be decided by the CEO of the respondent No.2/DCB, it is directed that the impugned orders passed by the CEO under Section 248 (1) of the Act shall be treated as notices to show cause addressed to the petitioner.

The petitioner shall file replies to the aforesaid notices within four weeks. After the replies are submitted by the petitioner, a date of hearing shall be communicated to him by the respondent and immediately after a hearing is afforded to the petitioner, the competent authority shall pass appropriate orders in accordance with law, under written intimation to the petitioner.

23. If the petitioner is aggrieved by the orders that may be passed by the competent authority, he shall be entitled to seek his remedies as may be available to him in the Statute.

24. In view of the orders passed herein above, the orders passed by the appellate authority under Sections 340 and 320 of the Act are quashed.

25. It is further clarified that the above order has been passed in the peculiar facts and circumstances of the present case and the same shall not be treated as a precedent in any other case.

26. The petitions are disposed of.

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(HIMA KOHLI)
JUDGE

MAY 26, 2014
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