

Serial No.01
Supp. List 2

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C). No. 420 of 2023

Date of Order :20.12.2023

Shri. Abhishek Choudhary & Anr. Vs. The Shillong Cantonment Board
2 Ors.

Coram:

Hon'ble Mr. Justice H.S.Thangkhiew, Chief Justice (Acting)

Appearance:

For the Petitioner/Applicant(s) : Mr. S.Sen, Adv.
Mr. S.K.Roy, Adv.
Ms. S.Shallam, Adv.

For the Respondent(s) : Mr. S.P.Mahanta, Sr. Adv. with
Mr. D. Dkhar, Adv. for R 1 & 2.

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| i) | Whether approved for reporting in Law journals etc: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |

ORAL

1. Heard Mr. S.Sen, learned counsel for the petitioners, as also Mr. S.P.Mahanta, learned Sr. counsel assisted by Mr. D.Dkhar, learned counsel on behalf of the respondent Nos. 1 & 2.

2. This writ petition has been filed challenging the impugned notices dated 22-05-2023 and 13-12-2023, under Sections 248(1) and 320 of the Cantonments Act, 2006 respectively.

3. Mr. S.Sen, learned counsel for the petitioners submits that by the first impugned notice under Section 248(1), the respondents have already reached a predetermined finding with regard to the purported unauthorized construction by the petitioner in Holding No. 31 CB, Sy. No. 15/75, Cantonment Bazar, Shillong Cantonment. He further submits that the respondent Nos. 1 & 2 have now served the petitioners with a notice under Section 320 of the Cantonments Act, 2006, directing for demolition of the unauthorized construction within a period of 30 days from the date of the notice. It is further submitted that the entire process has been concluded behind the back of the petitioners without affording due opportunity to present their case. He therefore prays that the notices being prima facie illegal and in violation of the principles of natural justice, the same are liable to be interfered with by this Court in exercise of powers under 226 of the Constitution, notwithstanding the availability of alternate remedy by way of an appeal.

4. Mr. S.P.Mahanta, learned Sr. counsel on behalf of the respondent Nos. 1 & 2 has strongly refuted the submission of learned counsel for the petitioners, and submits that the petitioners had been issued the notice

under Section 248(1) as far back as 22-05-2023, and have not bothered to either prefer an appeal and have slept over their rights. This being the case, he submits, no relief would be permissible, inasmuch as, they have come at the 11th hour and no interference is called for, inasmuch as, provision for appeal is clearly mentioned under Section 340 of the Act, for which the petitioners can very well avail of.

5. I have heard learned counsel for the parties. It is a fact that the notice under Section 248(1) of the Cantonments Act, 2006, had been issued as far back as 22-05-2023, whereby as per the notice, the RCC construction of the petitioners was found to be unauthorized and illegal. It is noted that from the date of the notice i.e., 22-05-2023, the petitioners did not pursue the matter and had slept over their rights till they were served with the second impugned notice dated 13-12-2023 under Section 320 of the Cantonments Act, 2006, for demolition of the said unauthorized structure.

6. The provisions as provided in the Cantonments Act, 2006 is very clear, inasmuch as, Section 340 provides for appeals to be preferred against any executive orders. The Act further provides that on the admission of an appeal, further action pursuant to the impugned notices is usually kept in abeyance. The petitioners therefore, having ample recourse

to alternative remedy are infact guilty, and waited till the 11th hour to approach this Court under 226.

7. Be that as it may, however, in the interest of justice, this petition is disposed of with a direction allowing the writ petitioners to prefer a statutory appeal, and the same should be filed immediately before 15th January, 2024. It is further directed that till the appeal is preferred and taken for consideration, there should be no coercive action taken against the petitioners.

8. Matter stands disposed of.

Meghalaya
20.12.2023
"Samantha PS"



Chief Justice (Acting)