

Serial No.22, 23, 24,27
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

RSA. No. 1 of 2016

Date of Decision :16.04.2024

Md. Taiyab,
Son of Late Md. Yakub,
Resident of Holding No. 71 J.B,
Jhalupara Bazar, Shillong-793002,
District East Khasi Hills, Meghalaya.

...Appellant

-Vs-

Cantonment Board, Shillong
Represented by its Executive Officer
Shillong Cantonment Board,
Shillong-793001,
East Khasi Hills District, Meghalaya.

...Respondent

AND

RSA.No. 2 of 2016

Md. Abrar,
Son of Late Md. Ayub,
Resident of Holding No. 70 J.B,
Jhalupara Bazar, Shillong-793002.
District East Khasi Hills, Meghalaya.

...Appellant

-Vs-

Cantonment Board, Shillong
Represented by its Executive Officer
Shillong Cantonment Board,
Shillong-793001,
East Khasi Hills District, Meghalaya.

...Respondent

AND

RSA.No. 3 of 2016

Md. Abid,
Son of Late Ali Ahmed,
Resident of Holding No. 7 J.B,
Jhalupara Bazar, Shillong-793002.
District East Khasi Hills, Meghalaya.

...Appellant

-Vs-

Cantonment Board, Shillong
Represented by its Executive Officer
Shillong Cantonment Board,
Shillong-793001,
East Khasi Hills District, Meghalaya.

...Respondent

AND

RSA. No. 7 of 2016

Sohail Ahmed,
Son of Late Md. Yakub,
Resident of Holding No. 71 J.B,
Jhalupara Bazar, Shillong-793002.
District East Khasi Hills, Meghalaya.

...Appellant

-Vs-

Cantonment Board, Shillong
Represented by its Executive Officer
Shillong Cantonment Board,
Shillong-793001,
East Khasi Hills District, Meghalaya.

...Respondent.

Coram:

Hon'ble Mr. Justice H.S.Thangkhiew, Judge.

Appearance:

For the Petitioner/Appellant(s) : Mr. M.F.Qureshi, Adv.
Ms. K.Chisa, Adv.
Mr. L.Koch, Adv.
Mr. N.Basumatary, Adv.

For the Respondent(s) : Mr. S.P.Mahanta, Sr. Adv. with
Ms. L.D.N.Thangkhiew, Adv.

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| i) | Whether approved for reporting in
Law journals etc: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |
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JUDGMENT AND ORDER (ORAL)

1. These bunch of Second Appeals namely, RSA. No. 1 of 2016, RSA. No. 2 of 2016, RSA. No. 3 of 2016 and RSA. No. 7 of 2016, with similar issues and facts directed against the orders of the lower Appellate Court,

whereby the order of the Trial Court was upheld are before this Court are being disposed of by this common judgment and order.

2. On admission of the appeals, this Court by the order dated 06-04-2016, had framed the following 2 substantial questions of law.

(i) Whether the learned subordinate Courts have erred in holding that the plaintiff/appellant is not entitled to seek composition in respect of the building in question under Section 185 of the Cantonments Act, 1924?

(ii) Whether the learned Appellate Court has erred in holding that the suit filed by the plaintiff/appellant was not maintainable for his having not exhausted the remedy provided under Section 274 of the Cantonments Act, 1924?

3. The brief facts are that the appellants lease holders within the Shillong Cantonment had applied for permissions for reconstruction of their dwellings and the same were rejected as they were not in conformity with the bye laws. The appellants who had made unauthorized constructions, thereafter, filed for regularization of the same, which was rejected by the Cantonment Board which resulted in notices under Section 185 and Section 256 thereafter, being issued to them.

4. The appellants against the said executive orders, then filed respective Title Suits in February, 2006, which came to be dismissed by

judgment and order dated 05-05-2015, passed by the Court of Assistant District Judge, Shillong. Thereafter, the appellants preferred First Appeals before the District Judge, East Khasi Hills, Shillong, which also came to be dismissed by the judgment and order dated 06-11-2015.

5. Mr. M.F.Qureshi, learned counsel for the appellants with regard to the question of law No.1 framed by this Court, has drawn the attention of the Court to Issue No. 12 framed by the Trial Court which is as follows:

“Whether the representation dated 30-08-2005, submitted by the plaintiff against the notice issued under Section 185 of Sub-Section (1) of the Cantonment Act were disposed of or any reason assigned thereof.”

It is submitted by the learned counsel that while returning a finding on this issue, there was no conclusive finding, inasmuch as, the resolution rejecting the permission by the defendants therein, was never produced before the Trial Court, and as such, the evidence was not accepted. This issue he submits, has been left open ended, though the issue was decided in the negative, by the Trial Court.

6. On the second question of law framed by this Court, the learned counsel has submitted that it is not the Trial Court that had held that the suit filed by the plaintiff was not maintainable for not having exhausted the remedy provided under Section 274 of the Cantonments Act, 1974, but rather was a question of law, that had been framed by the lower Appellate

Court, which had then rendered a finding therein that the suit was not maintainable. At this juncture, he submits that the first question having not been answered conclusively by the Trial Court, and also the second question having found that the appellants have not exhausted the remedy provided under Section 274 of the Cantonments Act, 1924, the appellants may be allowed to pursue the remedy as provided by statute, notwithstanding the dismissal of the suit and the First Appeal.

7. Mr. S.P.Mahanta, learned Sr. counsel assisted by Ms. L.D.N.Thangkhiew, learned counsel appearing for the respondents has submitted that the prayer made at this late stage by the appellants is unsustainable, for the reason that the entire adjudicatory process had been gone into by the Civil Courts and evidence had been tendered in the suit to come to the findings. He submits that it has been clearly established that the unauthorized construction has been done by the appellants and therefore, by the operation of the statute itself, the said unauthorized constructions are liable to be demolished. He therefore submits that, there being no illegality in the findings of both the Trial Court and the Appellate Court, these Second Appeals are liable to be dismissed.

8. Heard learned counsel for the parties. The substantial questions of law as quoted above will limit the consideration of this Court only on the said 2 issues. With regard to the substantial question No. 1, whether the

appellants are not entitled to seek composition in respect to the buildings in question, it is noted by this Court, that the Trial Court had come to a clear finding that with regard to this prayer made in the plaint, the plaintiffs/appellants had failed to establish that they had applied for sanction of the constructions which were sought to be demolished by the defendants in their notice under Section 185 of the Cantonments Act, 1924. Further, as the plaintiffs had not preferred any appeal against the Section 185 order under the Act, were thus bound and not entitled to any relief. The said finding on the basis of the evidence tendered, cannot be faulted with, inasmuch as, the appellant had sought remedy before the Civil Courts by abandoning recourse to a statutory appeal under Section 274. On the second point, on the finding of the Appellate Court in holding that the suit filed by the plaintiffs/appellants was not maintainable for not having exhausted remedy under Section 274 of the Cantonments Act, 1924, a perusal of the said Section itself fortifies this finding. Section 274 it is noted, has provided for appeals from executive orders, and the orders have been described in Schedule V of the Act itself, which the appellants could have resorted to, by filing a statutory appeal before the Cantonment Board within 30 days of service of notice. The finding therefore, that the suit is not maintainable for availability of alternate relief is also correct and is upheld by this Court.

9. For the aforementioned reasons, there being no error in the concurrent findings of the Courts below, no substantial question of law remains to be decided and the Second Appeals are answered accordingly and dismissed.

10. Lower court case record to be transmitted back.

Judge

Meghalaya
16.04.2024
"Samantha PS"