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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 24.11.2015

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Pronounced on: 18.02.2016

+ LPA 1051/2011

UNION OF INDIA & ORS

..... Appellants

Through

Mr.Sanjay Jain, ASG with Mrs.Rekha
Pandey, Mr. Shiv Prakash Pandey &
Mr. Raghav Pandey, Advocates

versus

RAJESH AGGARWAL

..... Respondent

Through

Mr. Sunil Gupta, Sr. Advocate with
Mr. R. Sudhinder & Ms. Prerana
Amitabh, Advocates

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE JAYANT NATH

JUDGMENT

JAYANT NATH, J.

1. The present appeal is filed seeking to impugn the order of the learned Single Judge dated 26.7.2011. By the said order the learned Single Judge has allowed the Writ Petition filed by the respondent and quashed the order dated 7.2.2011 issued by the appellant No.2/Joint Secretary, Ministry of Defence. The impugned order also restores the order of the Cantonment Board, Meerut/appellant No.3 (hereinafter referred to as 'The CB') dated 4.1.2008 sanctioning the building plans of the respondent.

2. The brief facts as urged in the Writ Petition are that the respondent is the successor to the title of the property in question, namely, 167, Chappel

Street, Meerut Cantt, which is a building called “Pooranchand Building” comprising of a Cinema Hall and shops. It is urged that the plot and buildings are located in the bazaar area of Meerut Cantonment and were used for commercial purposes. It is stated that the property has been granted under the Old Grant Terms. It is urged that in the GLR, i.e. General Land Register prepared under Rule 3 of the Cantonment Land Administration Rules, 1937 the property was wrongly shown as a bungalow. It is further urged that in the early 1930’s a Cinema Hall which was also known as Palace Theatre and the shops in the property came up with appropriate sanction of the Cantonment authorities. A firm by the name and style of M/s Pooran Chand and Sons was formed. Business of the firm comprised *inter alia* cinema exhibition. The firm carried on the business in Palace Theatre, Meerut and Picture Palace, Jublee Theatre at Mussorie. Reliance is placed upon various documents to support the case of the petitioners including resolution dated 31.12.1953 of ‘The CB’ approving additions/alterations in the said building and a second resolution of ‘The CB’ dated 14.6.1957 which also records and recognises the earlier change of purpose to contend that right since 1930’s the cinema hall and shops have been in existence.

3. It is urged that the cinema hall and shops being more than 70 years old had become dilapidated and it became necessary to demolish the whole structure and erect a new building. The respondent, it is stated submitted a notice alongwith the completion plan to erect/re-erect and alter the building on 15.2.2003 under section 179 of the Cantonments Act, 1924 (Hereinafter referred to as ‘The 1924 Act’) to ‘The CB’. The building plans were returned by ‘The CB’ on 26.2.2003 with the requirement that the respondent may get

mutation done in his favour before the plan could be sanctioned. The respondent duly complied with the said requirement. Mutation was effected in favour of the respondent on 9.8.2005. The respondent also on 22.2.2006 applied for correction of the entries in the General Land Register i.e. 'GLR' to show the property as commercial. The respondent applied for the correction so that the GLR reflects the situation which has existed at site for the last 70 years.

4. In the meantime, the 1924 Act was repealed and was replaced by The Cantonments Act, 2006 (Hereinafter referred to as 'The 2006 Act').

5. On the application of the respondent for change of GLR, 'The CB' recognising the commercial nature of the property sent a recommendation to the concerned authority DGDE, Lucknow to amend the GLR. The Principal Director, Defence Estate of Lucknow on 27.2.2006 is said to have written to appellant No.1 that a change of purpose has already been approved by 'The CB' for a shop and a cinema hall way back in 1952. Further, correspondence took place between the appellant authorities in this regard when the respondent on 1.8.2007 sent a communication pointing out that as per legal advise received by him, it was not necessary to record any amendment in the GLR as the cinema hall and shops were sanctioned as far back as in 1935, which fact is also duly reflected in the resolution of 'The CB' of 1952 and 1957. Hence, the respondent requested that his application for amendment of GLR be treated as withdrawn and his request for sanction of the building plan only be considered.

6. Meerut Cantonment Board vide resolution dated 27.8.2007 resolved that sanction of fresh building plans for cinema hall, shops and other similar

ventures will not amount to change of purpose as cinema hall and shops were sanctioned even before 1957. It hence allowed the respondent to withdraw its application for amendment of GLR.

7. Respondent thereafter again applied for sanction of building plans on 7.12.2007. 'The CB' approved the plans vide its resolution dated 4.1.2008. The building plans to the extent of 57,283 sq.ft. were approved. The respondent is said to have deposited the requisite fees and the building plans were released on 16.1.2008.

8. The respondent is said to have thereafter in good faith carried out demolition of the existing structure in October/November 2008. On 21.11.2008 appellant No.1 in exercise of its powers of review issued a show cause notice under section 57 of the '2006 Act' to 'The CB' with regard to the plans that have been sanctioned by The CB (Board) in favour of the respondent. This notice was issued pursuant to an anonymous complaint. It was purportedly issued as 'The CB' had sanctioned plans without permission of appellant No.1, which permission was required as per instructions issued, where change of purpose was involved. Appellants No.1 and 2 thereafter passed an order dated 20.2.2009 setting aside the resolution dated 4.1.2008 of 'The CB' sanctioning the plans of the respondent. 'The CB' thereafter passed a fresh resolution dated 12.3.2009 which confirmed the order of suspension of the plans and further decided to keep a watch on the site to prevent illegal construction. The respondent was informed about the same on 16.3.2009.

9. The respondent filed Writ Petition being CWP 10156/2009 challenging the action of the appellants. This Court on 16.02.2010 set aside

the order dated 20.02.2009 of appellant No.1 and remanded the matter back to appellant No.1 with a specific direction to pass a reasoned order after granting the respondent opportunity of personal hearing. On remand the order dated 4.5.2010 was passed by appellant No.1 whereby the earlier order dated 20.2.2009 was upheld. The respondent once again filed Writ Petition being WP(C) 3971/2010. On 19.10.2010, the learned ASG who had appeared for the government had submitted that the government would have a relook of the matter. The matter was again remanded back to the appellants.

10. On the second remand the earlier order dated 20.2.2009 was again confirmed vide order dated 7.2.2011 passed by the appellants. In these facts the present Writ was filed by the respondent seeking quashing of order dated 7.2.2011 passed by appellant No.2 in exercise of its power of review under section 57 of the 2006 Act and other consequential reliefs.

11. In the counter-affidavit the appellants took the stand that the said property is held on “Old Grant Terms” and is situated inside the civil area of Meerut Cantt. The nature of right of the respondent/predecessors-in-interest is merely possessory in nature without conferment of any right or title in the land. The purpose of the grant was that the super structure be used for residential purpose only and the same is shown in the GLR. In the GLR the permitted use of the property is shown as residential. It is stated that at no point of time any sanction was sought for the purpose of making a cinema hall. Subsequent actions of the appellant were made on the wrong assumption that there existed an alleged change of purpose and that the plan for construction of a cinema hall was validly sanctioned. It was a mistake of

fact which is the basis of the subsequent sanctions of the Board i.e. resolutions dated 31.12.1953 and 14.6.1957. There is nothing on record to show that any application was made for change of purpose by the predecessor-in-interest of the respondent. Hence, it was urged that the writ petition be dismissed.

12. The learned Single Judge allowed the writ petition. The impugned order noted that there were three reasons given by the appellant for cancelling the sanction accorded by 'The CB' to the respondent's building plan. The first was that 'The CB' had sanctioned the building plan without waiting for the response of appellant/Ministry of Defence to the proposal for amendment of the GLR in respect of the property changing the description from residential to shops/cinema theatre. Secondly, it was noted that as per land policy dated 9.2.1995 the authorised floor space was 37,650 sq.ft. whereas the space approved by the Board was 57,383 sq.ft. comprising of ground floor plus two floors. Thirdly, the regulations concerning cost of construction of the building were not followed. The impugned order notes that the last two objections had not been pressed before the Court and that it was conceded by the learned counsel for the appellant that the plans submitted by the respondent were consistent with the applicable building regulations concerning floor space and cost. Hence, what is being pressed by the appellant was the first objection regarding change of purpose.

13. The impugned order noted that the 1924 Act did not provide for any clear demarcation between residential and commercial areas as is now found in urban development statutes. The said scheme of 1924 Act by and large remains unchanged in the new 2006 Act. 'The CB' and its CEO have been

given wide powers to decide on land use as well as administration of land in a Cantonment area. Reliance was placed on *Maman Singh vs. Emperor, AIR 1935 Lahore 588* for the legal effect of descriptions stated in the GLR, i.e. if the GLR is not properly recorded it is not possible to place reliance on it without corroboratory evidence and from other records of 'The CB'.

14. The impugned order concludes that the stand of the appellant is belied by the documents produced by the respondent. The impugned order notes the various documents including a photograph of the building taken by the officials prior to its demolition on 19.7.2008, copy of a letterhead dated 19.10.1937 of M/s. Pooran Chand and Sons showing that the firm was the owner of property Palace Theatre, Meerut, documents showing that the respondent's firm had advertised in 1945 in Thacker's Indian Directory stating about the cinema, resolutions of 'The CB' dated 31.12.1953 and 14.6.1957 etc.

15. The impugned order also noted the following facts:-

- (i) The appellants have not denied that there did exist a cinema hall and shops and that additions and alterations were sought earlier from 'The CB'.
- (ii) That it is inconceivable that a cinema hall and shops, existing since 1930 or so would have been permitted without any sanction. Assuming there was no sanction, the fact is that no action was taken to prosecute the predecessor-in-interest of the respondent for violation of the sanctioned plan. Hence there is a deemed approval of the change of purpose of the property in question.

(iii) The stand of 'The CB' in its letter dated 5.3.2008, i.e. its response to the Show Cause Notice issued by appellant No.1 where it is stated that the change for commercial purpose was allowed more than 50 years back and that the sanction accorded by the Board was only a reiteration of the old sanction and there is no irregularity in this regard.

16. The learned Single Judge based on the said documents and facts placed on record as described above, concluded that the stand of The CB Meerut was correct and legally valid. The appellant No.1 had no basis to come to the conclusion that the change of purpose, which already existed in the property in question, was without authority of law. The said conclusion was held not borne from the record.

17. The impugned order also notes that the Central Government has limited powers of under section 57 of the 2006 Act. It is not sitting in appeal over the determination of the 'The CB' on facts. In the present case the suo moto exercise of power by appellant No.1 was held to be uncalled for and its conclusions contrary to the records of the case. Relying upon judgment of the Supreme Court in ***Mohinder Singh Gill vs. Chief Election Commissioner, (1978) 1 SCC 405*** it was held that the appellant cannot be permitted to support the impugned order by reasons other than what was contained in the impugned order. Hence, the writ petition was allowed.

18. We have heard learned counsel for the parties and gone through the record. The learned Additional Solicitor General has submitted that there is nothing on record to show that when the building was constructed in 1935 or there about a sanction was taken for a commercial building. The building

was being used as a cinema hall contrary to the recorded purpose. The sanctions of 1952 and 1957 did not approve of a cinema hall. At best the sanction was for construction of small shops but no sanction was accorded for the entire property measuring 1.04 acres. Reliance was placed on instructions of the Union of India dated 17.5.2000 and 16.11.2002 stating that the plan cannot be approved without prior approval of the Government of India, Ministry of Defence when change of purpose is involved. It is urged that on 22.2.2006 the respondent had submitted a request for regularisation of change of purpose. Later the respondent withdrew his application. 'The CB' on 27.8.2007 erroneously permitted the respondent to withdraw this application and sanctioned the building plan on 4.1.2008. It is urged that pursuant to a complaint made, Ministry of Defence, rightly issued a show cause notice on 21.11.2008 under section 57 of the 2006 Act. It is urged that the sanction of the Meerut Cantonment Board dated 4.1.2008 being not in order and contrary to the instructions of appellant No.1 was rightly reviewed and the decision was set aside. It is urged that powers have been rightly exercised under section 57 of the 2006 Act and the impugned order has erroneously held otherwise. It is urged that the respondent is only a licensee being a holder of occupancy right having no title rights on the land. Hence, no rights can be claimed by the respondent as are sought.

19. Learned senior counsel appearing for the respondent has reiterated the contentions raised before the learned Single Judge. It has been urged that the word 'Bungalow' as used in the GLR included shops and commercial building. Hence, merely because the GLR has described the property as a Bungalow would not mean that it was a residential property.

Reliance is further placed on various documents placed on record to contend that the cinema hall existed right since 1936 or thereabout. Reliance is placed on the following documents (a) Register for property tax for 1943-1946 which describes the site as cinema. (b) The GLR for 1947 which describes the nature of the building as “shop”. (c) A partition deed dated 25.8.1947 where reference is made to the cinema hall. (d) Applications for alterations made on 21.12.1951 and 11.3.1957 which have all been duly approved by ‘The CB’. These applications show that the admitted position is that the cinema hall existed in the area since long back. (e) Various other documents including letterheads, photos etc. It is urged that erroneously the GLR was showing and describing the area as a Bungalow whereas the cinema hall had existed since 1936. Various correspondence, sanctions and documents show that the authorities have acknowledged the existence of the cinema hall, sanctioned alterations and additions in the shops and cinema halls noting that there is an error in the GLR. Hence, it is urged that as there was no need of/or requirement for making an application for change of user and the respondent had rightly withdrawn the application for change of user. Accordingly, ‘The CB’ being authorised to sanction the building plans has rightly sanctioned the building plans.

It is further urged that the respondent has been rendered helpless for no fault of his own. Pursuant to his plans that were sanctioned on 4.1.2008 the plans were released on 16.1.2008. The respondent thereafter in October/November 2008 demolished the existing structure in preparation of carrying out the fresh construction. Hence, today the plot is an empty vacant land which is lying unused since 2008 as the appellants No.1 and 2 have on

20.02.2009 passed an order setting aside the sanction of the plans passed by the Board 4.1.2008. It is urged that the learned Single Judge rightly quashed the actions of the appellant and the present appeal is misconceived and liable to be dismissed.

20. We may first look at the statutory background. The land is said to have been allotted to the predecessors of the respondent somewhere in 1936. The governing statutory provision at that time was the 1924 Act. The property originally was described as Bunglow No.167, Chappel Street, Meerut Cantonment comprised in GLR Survey No.357/1742 measuring 1.04 acres on “old grant” terms. For the “old grant terms” the conditions of allotment are contained in the general order by the Governor General in Council No.179 dated 12.9.1836. The nature of rights of the allottee are merely possessory in nature without conferment of any right or title in the land. Section 179 of the 1924 Act, states that whoever intends to erect or re-erect any building in a Cantonment shall apply by giving notice. Under Section 282 of the 1924 Act power was given to the Governor General in Council to make rules for the purpose of carrying out the objects of the Act. In exercise of this power, The Cantonment Land Administration Rules, 1937 have been framed. Rule 3 of the said Rules state that the military estate officer shall prepare and maintain a General Land Register of all lands in the Cantonment. No addition or alteration is to be made in the said General Land Register except with the previous sanction of the Central Government or any such other authority as the Central Government may appoint. Rule 4 classifies the land into class A, B and C. The 1924 Act was replaced by the 2006 Act. Section 234 of the said 2006 Act provides that no person shall

errect or re-errect a building on any land in the Cantonment area or any area other than the civil area except with the previous sanction of the Board or the Chief Executive Officer.

21. Coming to the facts of the case, the genesis of the dispute is the resolution dated 28.7.2007 whereby 'the CB' allowed withdrawal of the application though it allegedly involved change of user and this only appellant No.1 could permit. Thereafter, a fresh plan has also been passed by 'The CB'. The appellants No.1 and 2 have now in exercise of powers under section 57 of the 2006 Act revoked the sanction of plans by the Board.

22. The basis for revocation of the plan sanctioned by appellant No.3 on 4.1.2008, by appellants No.1 and 2 is reflected in the Show Cause Notice that was issued by the appellants on 21.11.2008 which read as follows:-

- (i) The request of the Board for amendment of GLR for the land in question to change the description as shops and cinema theatre was pending when the appellant No.3/Board has without permission of the government sanctioned the building plan.
- (ii) As per letter of appellant No.1 dated 9.2.1995 the reconstruction of a building only upto authorised floor space of 37,650 sq.ft. was allowed whereas the Board has approved 57,283 sq.ft. plus two floors which is more than the authorised floor space.
- (iii) The cost of reconstruction of the building is contrary to the Regulations.

23. It may be noted that the impugned order of the learned Single Judge notes that before the court, the grounds (ii) and (iii) above were dropped and

were not pressed by the appellants. Hence, the only issue that survived for consideration before the learned Single Judge was whether appellant No.3 was justified in permitting the respondent in withdrawing its application for recording change of user and sanctioning the building plan for reconstruction of the cinema hall/shops. Essentially, the objection of the appellants is that the reconstruction plans involve change of user as the GLR does not reflect any commercial usage of the property and this permission for change of user can only be given by appellant No.1.

24. We may now deal with the relevant submissions that have been raised by learned ASG on behalf of the appellant.

25. It has been submitted by the learned ASG that the contention of the respondent that a commercial building existed on the land is not borne out from the official records and the premises are not described as commercial premises in the GLR. Hence in terms of the communication of the Ministry of Defence dated 13.12.1999 and 17.5.2000 no building plan involving change of purpose could be sanctioned by 'The CB' without obtaining orders of Government of India.

26. It is noteworthy that in the Counter-Affidavit filed before the learned Single Judge it is admitted that cinema hall/shops were in existence at the site since long. However, the stand is that at no stage any plan was sanctioned/passed by the Board nor any sanction was sought for making of a cinema hall. The grant to the respondent was for a Bungalow and the predecessor-in-interest of the respondent have instead constructed a cinema hall in its place. All subsequent sanctions were made on the false assumption that there existed a change of purpose and that the plan for

construction of a cinema hall was validly sanctioned. The above stand as taken in the counter-affidavit is also reflected in the speaking order dated 7.2.2011 passed by appellant No.2 in compliance with the orders of this Court dated 16.2.2010 and order dated 09.10.2010.

27. We may see some of the documents placed on record by the respondent to contend that the GLR does not state the correct factual position.

- (i) The respondent has placed on record the GLR for the year 1947-48. One of the entries in the GLR under column “description” reads as “Shop No.167”. Hence, a user other residential is factually recorded in the GLR.
- (ii) The above GLR also notes a partition between the family members which has been registered on 19.9.1947. The said partition deed which is dated 25.8.1947 has been placed on record and shows that the properties partitioned have been described and one of the descriptions used in the deed for the property in question is shops/cinemas. Based on this deed, the appellant has made entries in the GLR.
- (iv) An application was made by the predecessor-in-interest of the respondent on 21.12.1951 for additions and alterations. The resolution of the bazaar committee which is confirmed by the Cantonment Board on 5.2.1952 notes that a change of purpose is already existing in this case.
- (iv) Similarly, another application for additions and alterations by the predecessor in-interest of the respondent was made on 11.3.1957. The scrutiny report of the application states that additions and alterations

are proposed in the cinema building. It also notes that there is a change of purpose but this is old. This application was approved by the Area Committee and subsequently by the Cantonment Board by its resolution dated 14.6.1957. Hence, the 'The CB' here approved additions and alterations in the Cinema Hall itself.

- (v) On 27.8.2007 the appellant No.3/Board relying upon the earlier sanction dated 14.6.1957 passed the following resolution:-

“Considered from a perusal of the case file, it is clear that building plan showing cinema hall and shops was sanctioned in the year 1957 and that cinema hall and shops was in existence even before that. Therefore, sanction of the fresh building plan for cinema hall, shops or other similar commercial venture will not be amount to change of purpose. Obviously, the application dated 22.02.2006 and 07.05.2007 submitted by the applicant was not required in the office of the Dte. General, DE New Delhi. Therefore, the applicant is allowed to withdraw the application dated 22.02.2006 and 07.05.2007. It is further resolved that the building plan for cinema hall and shops as and when submitted by the applicant be sanctioned in accordance with the provisions of Cantonments Act, 2006 and Building Byelaws.”

- (vi) In response to the Show Cause Notice issued by appellant No.1 dated 21.11.2008 to appellant No.3, the appellant No.3 had sent a reply on 1.1.2009. The said reply notes that the cinema hall and shops were sanctioned more than 50 years ago and have continued to be in existence till date.

28. The respondents have placed on record various other documents to show that the commercial use/cinema existed on the property since 1935. These documents include letterheads of the firm, letters from the Mussorie Municipality, the advertisement issued by the respondent in 1945 in

Thacker's Indian Directory etc.

29. The appellant has not been able to place on record any document pertaining to the period when the land was allotted to the respondent and the cinema hall and shops were constructed. Presumably the record being 80 years old, is not available. Conclusions have to be drawn from the documents placed on record by the respondent. These documents lead to the conclusion which is inevitable. The facts and documents placed on record by the respondents show that the cinema hall and commercial buildings have existed for the last more than 70 years. Further, it is also clear that the shops and cinema hall was impliedly sanctioned in the resolutions passed by the appellant No.3/Board on 5.2.1952 and 14.6.1957. Though it is claimed by appellant No.1 that this was a case of unauthorised user, admittedly no action whatsoever was taken by the concerned authority for the last 70 years or more against owners of the property nor any steps were taken to demolish/seal the property. It is implicit in the conduct of the appellants that there was an implied sanction of the user of the property which has been so for the last more than 70 years. It is clear that there was no change of user by the respondent.

30. The legal effect of entries in the GLR on user of the property may be noted. The Lahore High Court in its judgment titled ***Maman Singh vs. Emperor (supra)*** held as follows:-

“There are no materials on record from which it may be possible to pronounce definitely as to which of these rival contentions is correct. It is clear however that the register has not been carefully prepared, and it is not possible to place implicit reliance upon it without corroborative evidence from other records of the Cantonment Board or other testimony of an

un-impeachable character and such testimony is admittedly wanting in the case. It may also be stated that this register does not appear to have been periodically revised.”

31. It is clear that the GLR did not reflect the correct ground realities. There is an obvious mistake in the said Register. It has not even been argued by the appellant that entries in the GLR are not fallible.

32. We may note another aspect regarding the description of property as ‘Bungalow’ which have been used in the GLR. In the counter-affidavit it has been admitted by the appellant as follows:-

“13. That the contents of para 13 of the petition as stated are not admitted. It is submitted that description of Nishat Cinema in the GLR is Bungalow No.189 Abu Lane Meerut Cantt. The description of Mehtab Cinema in GLR is Cinema Building and shops. The description of Vijay Bar Hotel in the GLR is Eastern half portion of Bungalow No.187 Abu Lane Meerut Cantt. The same sites are situated inside the notified civil area under the management of Cantt. Board Meerut. Rest of the site as stated in para is situated outside the notified civil area under the management of Defence estate Officer, Meerut Circle, Meerut Cantonment.”

33. Hence, it is the own admission of the appellants that the GLR has been describing cinema hall and restaurants regularly as Bungalows. Nishant Cinema in the same area has been described as a Bungalow in the GLR. On the other hand Mehtab Cinema has been described as cinema buildings and shop. Similarly, Vijay Bar Hotel is described in the GLR as a Bungalow. Clearly, the findings of the learned Single Judge that the phrase Bungalow in the GLR has been used to describe both residential plots as well as plots for residential and commercial use is in order.

34. The conclusion that falls from the above facts is that when the

respondent applied for additions/alternations/sanctions of a fresh plan on 07.12.2007, there was no change of user involved. Hence, the instructions of Union of India dated 13.12.1999 and 17.05.2000 are not applicable. The CB rightly sanctioned the plans of the respondents on 04.01.2008. There was no reason or occasion for appellant No.1 to have exercised its power of review to strike down the approval by the CB dated 04.01.2008. In the facts of this case and in the light of documents which are admitted by the appellants it is clear that there is a mistake in the GLR for which the respondent cannot be penalised.

35. It has been further submitted by the learned ASG that the power that was exercised by the appellants under section 57 of the 2006 Act has been validly exercised and the findings recorded in the impugned order that the *suo moto* exercise of powers of review by appellant No.1 under section 57 was uncalled and is entirely erroneous.

The submission may not be necessary to be gone into inasmuch as we have held above that there was no factual basis or grounds for appellant No.1 to exercise its powers of review inasmuch as there is no change of user involved. The change of user has been much prior to the letters of the UOI dated 13.12.1999 and 17.05.2000 and no prior permission of the government was necessary.

36. However, we may only note the judgment of the Allahabad High Court in this context.

Section 57 of the Act reads as follows:-

“57. Power of Central Government to review.- The Central Government may, at any time, review any decision or order of the Board or the General Officer Commanding- in- Chief,

the Command, and pass such orders thereon as it may deem fit:

Provided that where it is proposed to modify a decision or order of the Board reasonable opportunity shall be given to the Board to show cause why the decision or order in question should not be modified.”

37. The Allahabad High Court in W.P.(C) 32082/2010 titled ‘Pandit Rama Shanker Mishra Trust and Ors. vs. Union of India and Anr.’ held as follows:-

“The power under Section 57 of the Act, 2006 can be utilised sparingly in exceptional circumstances but not in a routine manner when other provisions are available, otherwise it has to be construed as misuse of power. Generally, the process of review stands within narrow compass. So far as Section 57 of the Act, 2006 is concerned, virtually it is an interdepartmental review, where there is no scope of affected person to represent his case. Therefore, in that way, such process of review is further narrower, which will definitely be applicable in the exceptional circumstances and where no other provisions are contemplated.”

38. Based on the above legal proposition it is clear that the exercise of powers being in the nature of review of the decisions taken by the Board/GOC the powers have to be exercised usually only where there are manifest errors in the order sought to be reviewed.

39. We have already held above that there was no change of user involved when the respondent applied for sanction of the plan on 07.12.2007. Hence, the instructions issued by the Ministry of Defence/appellant No.1 dated 13.12.1999 and 17.05.2000 were not applicable. No other procedural or statutory infraction has been pointed out by the appellant. In our opinion, there is no infirmity or illegality in the order of the Board approving the plan submitted by the respondent on 04.01.2008.

40. In the light of the above, we see no reason to differ with the views taken by the learned Single Judge.

41. Appeal is without merits and dismissed.

**(JAYANT NATH)
JUDGE**

(CHIEF JUSTICE)

FEBRUARY 18, 2016

n/v

