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

Judgment pronounced on 7th September, 2017

+ W.P.(C) 517/2017

DELHI CANTONMENT BOARD

..... Petitioner

Through Mr. Tarveer Singh Nanda and Rahul
Singhal, Advs.

versus

THE STATION HOUSE OFFICER P S DELHI CANTT AND ANR

..... Respondents

Through Mr. Naushad Ahmed Khan, ASC and
Ms. Divyani Sehgal, Adv. with SI
Ram Pratap and SI Deepak Kumar.

CORAM:

HON'BLE MR. JUSTICE A. K. CHAWLA

JUDGMENT

A. K. CHAWLA, J. (ORAL)

Interestingly, a classic case, where one statutory Body/Authority accuses the other for the acts of omission and commission in discharge of its statutory obligations and the duties. By the instant petition, the Delhi Cantonment Board accuses the SHOs of PS Delhi Cantt and Narayana for their acts of omission in not stopping unauthorized constructions getting raised in the territorial jurisdiction of 'the Board' as contemplated under the Cantonments Act, 2006 (in short 'the subject Act').

2. It is the case of the petitioner that 'the Board' in due discharge of its duty to regulate construction activities within the area falling under its jurisdiction, had duly ordered stoppage of various building works being erected and/or removed, which were being carried or already carried, as contemplated under Section 239 of 'the subject Act', but, the respondents failed to perform their statutory obligations and the duties cast upon them. For the duty cast upon the local police, which the respondents failed or neglected to perform, the specific attention is drawn to Sub-Sections (2) & (4) of Sec. 239, and, the prayer made in the petition is, as follows :

“Issue a Writ in the nature of Mandamus or any other writ(s), Order(s) thereby directing the Respondents to forthwith discharge their statutory duty as prescribed under the Cantonments Act, 2006, with respect to the unauthorized constructions taking place at areas falling within the territorial jurisdiction of the Petitioner being reported to them by the Petitioner.”

3. During the course of hearing, ld. counsel for the petitioner strenuously contends that the petitioner or its CEO had repeatedly required the respondents to remove the persons from the site, who were carrying out unauthorized construction and seize the construction material, tools etc. as contemplated under sub-Section (2) of Section 239 and also depute a police officer under Sub-Section (4) of Section 239 of 'the subject Act' to keep a watch on the premises so that no unauthorized construction takes place, but, both the respondents failed to discharge their statutory obligations provided under 'the subject Act'. On being queried, it comes to be pointed out that the petitioner had made such various communications

to the respondents during the period from August, 2016 to December, 2016, but, the respondents miserably failed and it resulted into large unauthorized constructions within the area of the Cantonment. It is said, rampant unauthorized constructions continued unabated inspite of the fact that the copies of such communications were also marked to the concerned DCP and the petitioner had even launched prosecutions. According to the petitioner Board, the enforcement mechanism lies with the respondents, who are powerful and have the means to stop. Thus, according to the petitioner, it was forced to come to this Court by way of instant writ petition seeking the prayer above-said. Provisions relevant to the subject contained under Section 239 of 'the subject Act', are, as follows :

“(1) Where the erection of any building or execution of any work has been commenced or is being carried on without or contrary to the sanction, but has not been completed, referred to in section 238 or in contravention of any condition subject to which such sanction has been accorded or in contravention of any provision of this Act or bye-laws made thereunder, the Chief Executive Officer may in addition to any other action that may be taken under this Act, by order require the person at whose instance the building or the work has been commenced or is being carried on to stop the same forthwith.

(2) If an order made by the Chief Executive Officer under sub-section (1) directing any person to stop the erection of any building or execution of any work is not complied with, the Chief Executive Officer may require any police officer to remove such person and all his assistants and workmen from the premises or to seize any construction material, tool, machinery, scaffolding or other things used in the erection of any building or execution of any work within such time as may be specified in the requisition and such police officer shall comply with the requisition accordingly.

(3)

(4) After the requisition under sub-section (2) has been complied with the Chief Executive Officer may, if he thinks fit, depute by a written order a police officer or an officer or an employee of the Board to watch the premises in order to ensure that the erection of the building or the execution of work is not continued.”

But for making the complaints or sending communications to the respondents or their superior, as comes to be stated in the writ petition, nothing has come to be pointed out as to what pro-active steps came to be taken by the petitioner, if, the respondents failed to discharge their part of the duties or the obligations. It would be seen that under Sub-Sec. (4) of Section 239 of 'the subject Act', while C.E.O. of the petitioner is empowered to order a police officer to watch a premises in order to ensure that erection of building or execution of work is not continued, he is equally empowered to order so to an officer or employee of Board. In the petition there is not even an iota of averment, for any such step having been taken but, for merely writing letters to the police. Section 320 of 'the subject Act' reads, as follows :

“320. Powers of Board in case of non-compliance with notice, etc.—In the event of non-compliance with the terms of any notice, order or requisition issued to any person under this Act or any rule or bye-law made thereunder, requiring such person to execute any work or to do any act, it shall be lawful for the Board, or the civil area committee or the Chief Executive Officer at whose instance the notice, order or requisition has been issued whether or not the person in default is liable to punishment for such default or has been prosecuted or sentenced to any punishment therefor, after giving notice in writing to such person, to take such action or such steps as may be necessary for the completion of the act or work required to be done or executed by him, and all the expenses incurred on such account shall be recoverable by the Chief Executive Officer on demand, and if not paid within ten

days after such demand, shall be recoverable in the same manner as moneys recoverable by the Board under section 324:

Provided that where the action or step relates to the demolition of any erection or re-erection under section 248 or the removal of any projection or encroachment under section 252, the Board or the civil area committee or the Chief Executive Officer may request any police officer to render such assistance as considered necessary for the lawful exercise of any power in this regard and it shall be the duty of such police officer to render forthwith such assistance on such requisition.”

In the counter affidavit, the stand of the respondents in para 14 of the counter affidavit is, as follows :

“The contents of Paragraph 14 of the petition are wrong, false and therefore denied. It is denied that no action has been taken by the Respondents. In reply it is submitted that notices as alleged to have been sent by the petitioner board upon the Respondents at a very advanced stage when the unauthorized construction already stood completed as opposed to serving the Respondents at a stage when they would have been in a position to halt the illegal construction activity. It is submitted that the petitioner board has acted with gross impropriety by sending multiple requests to have FIR’s registered under Section 247 of the Cantonment Act rather than sending the same individually such that the same can be made actionable by the respondents in a proper manner. It is further submitted that the petitioner has more often not been a mute spectator to the unauthorized construction activities taking place within the cantonment limits and is guilty of dereliction of duty by not acting against the same in a timely manner. It is further submitted that the petitioner has only issued notices to the Respondents at a stage when the unauthorised illegal construction was already complete.”

It would thus be seen, while the petitioner board accuses the police officers, who are arrayed as respondents by their designation and not in their individual capacity for any act of omission(s)/ commission(s) attributable to an individual, vast and vague

accusations of neglect of duty are writ large. Mr. Khan, ld. counsel for the respondents on his part strenuously contends that by the time the respondents received the notices/communications from the petitioner, the illegal/unauthorized constructions used to be already erected.

4. What ultimately emerges is, while, the petitioner Board and the respondents go on accusing each other having done the exercises of paper tigers, unauthorized constructions continue unabatedly. This only reflects that the concerned authority(ies) actually had no 'will' to deter the unscrupulous persons, carrying out the illegal activities. Filing of the instant petition in this background, is, apparently, a misconceived attempt to shift one's one lapse(s), inaction(s) and omission(s) to the others. Directions of Mandamus, as sought, in the given conspectus, would be meaningless, unless, the concerned authorities rise to the cause and take stern action(s) against the officers/officials, who fail to discharge their duties with diligence. A stern message would be required to be sent to all across the Board. Petition is therefore, disposed off with the directions to the petitioner Board, as also, the Commissioner of Police, Delhi, to look into the allegations made in the instant petition and take the requisite necessary and corrective measures at the earliest, preferably, within two months from today.

A. K. CHAWLA, J

SEPTEMBER 07, 2017

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