

\$~14

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

+ W.P.(C) 11878/2015 & CM APPL. 31580/2015

RAJBIR SINGH Petitioner

Through Mr. S.S. Dahiya, Adv.

versus

DELHI CANTONMENT BOARD & ORS Respondents

Through Mr. Anchit Sharma and M. Diksha
Lal, Advs. for R-1.

CORAM:

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% **18.09.2017**

CM No. 26212/2017 (impleadment)

This is an application filed by the petitioner/applicant under Order 1 Rule 10 CPC. Writ petition was filed by the petitioner alleging acts of omission and commission in the unauthorized constructions carried out by respondent no.2 with the prayer, as follows :

“Issue a writ in the nature of mandamus or any other writ/writs, order/orders by directing the respondents to demolish the unauthorized construction carried out by constructed stair case in portion 4.00 x 1.10 mt. At G.F., Room constructing at first floor of size 11’0” x 9’0”, Bricks used in cement mortar. RCC columns erected at F.F, Brick Walls constructed upto 7’ at first floor by respondent no.2 in premises no. C-32 in front of Guru Dawara, Village Old Nangal, Delhi Cantt.”

By the application, which runs into 26 pages, the applicant/petitioner has now, made prayer to implead the following persons :

(a) Union of India, through – Defence Secretary,

- Ministry of Defence, Department of Defence;
- (b) General Officer Commanding-in-Chief, Western Command, Chandigarh-134107, Chandigarh;
 - (c) Principal Director, Directorate of Defence Estates, Ministry of Defence, Western Command, 5th Floor, Kendriya Sadan, Sector-9A, Chandigarh 160009;
 - (d) Directorate General Defence Estates, Raksha Sampada Bhawan, Ulaanbaatar Marg, Delhi -10; and.
 - (e) District Magistrate, South West, Government of NCT of Delhi, Old Tax Terminal Building, Kapashera, New Delhi -110 0033.

The above-said persons are sought to be impleaded on the premise that the respondent no.1-Delhi Cantonment Board has taken a plea in the counter affidavit that the Model Building Bye-Laws 2013 have not yet come to be notified. In the event, the respondent no.1-Delhi Cantonment Board has passed any resolution to withhold any further action awaiting notification of Model Building Bye-Laws 2013 and the petitioner is aggrieved thereof, the applicant/petitioner would have an independent remedy by way of a writ or other, as may be available under law. Any grievance in that regard cannot be allowed to be agitated in the instant writ petition. The application is therefore, dismissed being misconceived.

W.P.(C) 11878/2015

The petitioner has approached this court on the allegations of the acts of omission and commission attributable to respondent no.1 for the alleged unauthorized constructions having been raised by respondent no.2. In paras 6, 7 and 8 of the counter affidavit filed on behalf of respondent no.1, it is stated, as follows :

“6. Thereafter, vide CBR No.24 dated 30.11.2011, it was resolved to issued a Notice to the Respondent No.2 under Section 248 of the Cantonments Act, 2006. Accordingly, the Notice under Section 248 dated 13.12.2011, was issued by the Respondent No.1 to the Respondent No.2 thereby directing him to stop the erection/re-erection of the subject premises and for demolition of the erection/re-erection. The copy of the CBR No. 24 dated 30.11.2011 is marked and annexed herewith as ANNEXURE C-2.

7. Thereafter, the Respondent No.2, filed an appeal under Section 340 of the Cantonments Act, 2006 before the General Office Commanding in Chief impugning the Notice dated 13.12.2011 under Section 248. The said appeal is pending adjudication. The copy of the appeal is marked and annexed herewith as ANNEXURE C-3.

8. In the meanwhile, the Respondent No.2 pleaded guilty in the Complaint Case No. 1093/1/11 titled as, ‘DCB Vs. Om Prakash’ and the Hon’ble Court of Sh. Sonu Agnihotri, MM, Dwarka Courts sentenced the Respondent No.2 and imposed a fine to the tune of Rs.10,000/- and cost of Rs.15,000/- for the offence under Section 247 of the Cantonments Act, 2006.”

What is stated in paras 6, 7 and 8 of the above-said counter affidavit of respondent no.1, the factual conspectus thereof, is not disputed to on behalf of the petitioner. Of course, it cannot be, inasmuch as, it is a matter of record.

In view of the above-said action that have come to be initiated by respondent no.1, nothing survives in the instant petition. Same is therefore, disposed off accordingly. Pending application, if any, also stand disposed off.

A. K. CHAWLA, J

SEPTEMBER 18, 2017

rc