

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.08.2018

PRONOUNCED ON :10.08.2018

CORAM

THE HON'BLE Mr. JUSTICE M.VENUGOPAL

And

THE HON'BLE Mr. JUSTICE M.NIRMAL KUMAR

W.P.No.19392 of 2018 and

W.M.P.No.22804 of 2018

V.Krishnamurthy

... Petitioner

Vs.

1.The Chief Executive Officer,
Office of the Cantonment Board,
St. Thomas Mount cum Pallavaram,
Chennai - 600 016.

2.The General Officer,
Commanding in Chief
Ministry of Defence,
Southern Command,
Manekji Mehta Road, Pune - 411 001.

3.The Union of India,
Represented by its Secretary,
Ministry of Defence,
South Block, Central Secretariat, Rajpat,
New Delhi 110 011.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus forbearing the 1st Respondent from demolishing the structure belonging to the petitioner at GLRS No.388/109, 388/116 in Door No.2/52 & 2/53, Veteran Lines, Cantonment, Pallavaram, pending disposal of the review application filed under Section 57 of the Cantonments Act 2006 before the 3rd Respondent.

For Petitioner : Mr.Raghul Balaji
For M/s.G.R. Associates

For 1st Respondent : Mr.Chevanan Mohan
For M/s.King and Patridge

For 3rd Respondent : Mr.K.Srinivasa Moorthy
Central Government Counsel

O R D E R

M.VENUGOPAL, J.

The Petitioner has preferred the instant Writ Petition praying for passing of an order by this Court in forbearing the 1st Respondent/Chief Executive Officer, Office of the Cantonment Board, St. Thomas Mount cum Pallavaram, Chennai - 600 016 from demolishing the structure belonging to him at GLRS No.388/109, 388/116 in Door No.2/52 & 2/53, Veteran Lines, Cantonment, Pallavaram, Chennai, pending disposal of the Review Application filed under Section 57 of the Cantonments Act, 2006 before the 3rd Respondent.

2.Heard both sides.

3.Facts of the Case:

3.1.According to the Petitioner, he is the Proprietor of Aviation Express, which is a 24 Hour Cab Service running at Chennai Airport, pursuant to Airport Authority of India's Tender both at Domestic and International Terminals for the last 30 years. Earlier, the parking for the cars was provided in the Airport itself, but the Petitioner was recently required to vacate as the 'Airport Authority of India' required the space for its use. In order to fulfil the contract, a nearby place was sought and on 23.01.2017 a Rental Agreement was entered into between one C.Suresh, Director of M/s.Chelliah Chandar Buildings (Landlord) and the Petitioner in respect of the premises under reference to specify the requirements of car maintenance shed, fuel storage tank with dispensing pump, toilet bathrooms etc. for its employees, which is a basic amenity to be provided. Also that, Temporary structures were put up for car maintenance sheds.

3.2.In so far as the permission for fuel storage tank is concerned, appropriate permissions under Petroleum and Explosive

Acts were applied for from the Concerned Authorities. Letter of communications seeking appropriate permissions and no objection given by the Central Government, Fire Department and the Indian Oil Corporations willingness to supply was enclosed in the typed set of papers filed along with the Appeal.

3.3.Although the Petitioner was under the impression that being temporary structures, approval from Cantonment need not be required, on advice and by way of abundant caution on 12.05.2017, a letter seeking for an approval in regard to the erection of Asbestos shed in the Land comprising at New No.2/53 Cantonment Pallavaram in RS.No.894 & 896 was sent by him to the 2nd Respondent together with a detailed site plan indicating the area with definitions. In the meanwhile, on 15.05.2017 show cause notices were received calling upon the Landowner to show, why action cannot be taken under the relevant provisions of the Cantonments Act, 2006 alleging unauthorised construction.

3.4.The Petitioner, on receipt of the five notices dated 05.05.2017 and 15.05.2017, sent a reply to the 1st Respondent stating that the constructions related to the subject matter falls under the Petroleum Act, 1934 and the Explosives Act, 1884. Further, the constructions put up in the premises are temporary in nature and are subject to numerous applications projected before the concerned authorities. By way of abundant caution, he had applied for permission before the Respondent Cantonment through letter dated 12.05.2017 for regularising the temporary asbestos shed and toilets constructed. Hence, there is no violation, since the Petitioner had complied with all the requirements.

3.5.The stand of the Petitioner is that on 31.07.2017 he sent a letter to the 2nd Respondent/General Officer, Commanding in Chief Ministry of Defence, Southern Command, Pune making a request for regularising the temporary asbestos shed constructed in both premises Door No.2/53 in Survey No.894 and No.2/52 in Survey No.896 and further stated that the diesel tank installed in Door No.2/52 is not in operating stage, since license from the explosives department is waited. When the Petitioner's request was still pending, on 20.09.2017 a show cause notice under Section 248(1) of the Cantonments Act, 2006 was issued by the 2nd Respondent directing him to demolish the constructions made in the premises. He filed an Appeal against the said notice, before the 1st Respondent's office, which in turn will forward the documents to the Appellate Authority.

3.6.As a matter of fact, the 1st Respondent returned the Appeal in contravention of the provisions of the Cantonments Act, 2006 and therefore, the Petitioner filed W.P.No.27720 of 2017 assailing the order passed by the 1st Respondent dated

20.10.2017 and to consequentially direct the Appellate Authority to take up the Appeal. On 15.11.2017, in W.P.No.27720 2017, this Court had observed the following:

"20. In the light of the stand taken by the petitioner in his additional affidavit dated 15.11.2017, the petitioner is at liberty to represent the appeal papers to the 2nd Respondent within a period of one week from the date of receipt of copy of this order and the 2nd Respondent on receipt of the same, shall process the appeal papers and if the papers are otherwise in order, forward the same to the Appellate Authority within a further time of one week thereafter and the Appellate Authority on forwarding of the papers by the 2nd Respondent, shall entertain the appeal and is at option to take up the interim petition or the main appeal itself and give a disposal on merits and in accordance with law within a further period of eight weeks thereafter and communicate the decision/ result of the order to the petitioner. It is also made clear that the Appellate Authority shall decide the interim relief as well as the main appeal on his own merits without being influenced by any observations made in this writ petition."

3.7. The Petitioner represented the 'Appeal' on 27.11.2017 pursuant to the order passed by this Court in W.P.No.27720 of 2017 dated 15.11.2017, which was forwarded to the 2nd Respondent. As the Appeal was not taken up immediately, a representation dated 19.12.2017 praying for early hearing of the interim application, as per order of this Court, was sought for.

3.8. In fact, the Petitioner filed S.L.P. (C) No. 32156 to 32158 of 2017 as against the Division Bench Order of this Court dated 15.11.2017 in W.P.No.27720 of 2017, the Hon'ble Supreme Court was pleased to pass an order on 08.12.2017 which reads as under:

"Since the impugned order is in the nature of interim order whereby interim arrangement is made during the pendency of appeal, there is no reason to interfere with the same. We also find in paragraph 19, the High Court has permitted the petitioner to use the premises in question for providing basic amenities such as bathroom and wash room for their employees. Accordingly, the Cantonment Board shall allow the aforesaid use during the pendency of the appeal. We also expect the

Appellate Authority to dispose of the appeal as soon as possible and preferably within two months. The special leave petitions are disposed of with the aforesaid observations."

3.9.The 2nd Respondent took up the Appeal for hearing on 28.03.2018 and after hearing the parties, passed an order on 26.06.2018 in dismissing the Petitioner's Appeal. The grievance of the Petitioner is that the order of the Appellate Authority does not contain reasons supporting the conclusion and in short, there were no discussions of the issues involved before coming into any conclusions. In reality, in the Appellate Order, the contentions of the Appellants were not referred to and discussed.

3.10.The Plea of the Petitioner is that in the 'Appeal', it was contended that the constructions can be divided into various categories and except the one which is the 'Toilet', the rest of the structures are transitory in character and do not require any permission. Also that, a plan for Regularisation before the Concerned Authority is pending for consideration. Further that, the area is fully a Residential Area is false one and that sufficient materials are available with the Cantonment Board, which were not submitted to an Appellate Authority.

3.11.In any event, the Petitioner/Appellant had specifically contended that there are other commercial establishments in the locality and in the same street and that the commercial activity cannot be permitted in the same area is an incorrect one. Furthermore, it is the version of the Petitioner/Appellant that the same area is only used for maintenance of vehicles and that there is no direct commercial activity happening. However, these submissions of the Petitioner/Appellant were not considered and the Appeal was dismissed.

3.12.Being dissatisfied against the Appellate Authority's order, since all statutory remedies were exhausted, a Review Petition came to be filed on 19.07.2018 as per Section 57 of the Cantonments Act, 2006 before the 3rd Respondent and that a Petition for interim stay was filed seeking to stay the order of the 2nd Respondent dated 26.06.2018. The review of the Petitioner is yet to be taken up for hearing by the 3rd Respondent. The Petitioner gave notice on 20.07.2018 informing the filing of Review Petition to the 1st Respondent. When the Petitioner's Review Petition as well as the Application for interim stay are pending, the issuance of demolition notice is a mala fide one. Apart from that, the Respondent had permitted other commercial entities in the same area as per proceedings dated 26.06.2018 and that the Petitioner alone is being discriminated.

4. Petitioner's Contentions:

4.1. The Learned Counsel for the Petitioner contends that the action of the 1st Respondent in issuing notice of demolition on 23.07.2018 immediately on putting it on notice of the review application being filed is an arbitrary one, besides the same being in violation of Article 14 of the Constitution of India. Further, the action of the 1st Respondent to issue a notice of demolition in the present circumstances is only with an intent to defeat the review proceedings and the same is a mala fide one.

4.2. The Learned Counsel for the Petitioner takes a plea that the deprivation of the Petitioner of his right to use the premises and issuance of notice to demolish the same, while 'Review Petition' is pending consideration along with stay application, is an arbitrary exercise of power and imposing unreasonable restriction on his 'Occupation'.

4.3. The Learned Counsel for the Petitioner submits that the Cantonments Act, 2006 applies for executive orders and even though the 2nd Respondent/Appellate Authority in Appeal No.807 of 2017 had passed orders on 20.06.2018, yet, the 'Appeal Petition' is an 'Original Petition' for adjudication.

4.4. The Learned Counsel for the Petitioner refers to Section 57 of the Cantonments Act, 2006 which speaks of 'Power of Central Government to Review'. Also, the Learned Counsel for the Petitioner adverts to Section 340 of the Cantonments Act, 2006, which relates to 'Filing of Appeals from execution orders'.

4.5. Added further, the Learned Counsel for the Petitioner refers to the definition Section 2(d) which runs as under:

"2. (d) "building" means a house, outhouse, stable, latrine, shed, hut or other roofed structure whether of masonry, brick, wood, mud, metal or other material, and any part thereof, and includes a well and a wall other than a boundary wall but does not include a tent or other portable and temporary shelter."

4.6. The Learned Counsel for the Petitioner emphatically projects an argument that the ingredients of Section 57 'Power of Central Government to review' unerringly point out that the wide power is given to the Central Government, at any time to review any decision or order of the Board or General Officer, Commanding-in-Chief, Southern Command Pune and pass such other orders as it may deem fit.

4.7.The Learned Counsel for the Petitioner refers to the Order dated 16.02.2010 in W.P.(C).No.10156 of 2009 [between Rajesh Agarwal V. Union of India and others] wherein at paragraphs 1 & 15, it is observed as under:

"1.The challenge in this petition is to an order dated 25th February 2009 passed by the Central Government in exercise of its power to review under Section 57 of the Cantonments Act, 2006 („Act") whereby the decision dated 4th January 2008 of the Cantonment Board („Board") sanctioning the plans submitted by the Petitioner in respect of the Bungalow No. 167, Chappel Street, Meerut Cantonment (hereinafter „the property") was set aside.

15.The second objection is about the availability of a remedy by way of an appeal under Section 238 read with Section 340 of the Cantonments Act, 2006. Section 340 in turn refers to Schedule V under which an appeal against the decision of the Board lies to the Principal Director. In the instant case, the decision of the Board itself is merely consequential upon the decision dated 20th February 2009 of Respondent No.1. The Board has not independently applied its mind to arrive at the decision to withdraw the sanction granted to the Petitioner's building plan. The Principal Director, in fact, is an officer who himself wrote to the Respondent No.1 seeking its prior approval for change of use. There can be no doubt that the Principal Director acts under the control and authority of Respondent No.1. Where the decision dated 20th February 2009 of Respondent No.1 is sought to be challenged, an appeal to the Principal Director in terms of Section 340 of the Cantonments Act, 2006 would be futile. Therefore, there is no merit in this objection of the Respondents either."

5.Submissions of the 1st Respondent:

5.1.Conversely, it is the submission of the Learned Counsel for the 1st Respondent that the present Writ Petition filed by the Petitioner seeking to forbear the 1st Respondent from demolishing the structures belonging to him at GLRS No.388/109, 388/116 in Door No.2/52 and 2/53 Veteran Lines Cantonment Pallavaram, Chennai pending disposal of Review Petition (filed

under Section 57 of the Cantonments Act, 2006) before the 3rd Respondent is neither maintainable in Law nor on facts.

5.2.The Learned Counsel for the 1st Respondent contends that permission was sought for constructing Working Women's Hostel and the structures that are now put up in the premises for which a relief is sought, is not structures for which planning permission was sought for.

5.3.Continuing further, it is represented on behalf of the 1st Respondent that the Approved Plan for working Women's Hostel too were not received by the Applicant as he failed to pay the charges leviable for the same. Apart from that, the premises was now presently put to use for parking vehicles and such other activities which was evident from the photographs of the premises taken on 01.08.2018, which use was contrary to the directions issued by this Court on 15.11.2017.

5.4.The Learned Counsel for the 1st Respondent proceeds to point out that the two extents of property in GLRS Nos.388/109 and 388/116 (GLRS - General Land Register Survey Number as contained in the Cantonment Land Administration Rules, 1937) was classified as B2 land with private ownership and that the documents produced by the Petitioner shows that the said properties belonged to one C.Suresh. Besides this, this property was outside civil/bazaar area with Floor Space Index (FSI) of 0.5 and upon purchase of the property, the said C.Suresh projected the applications on 24.05.2016 separately for both plots to the Cantonment Board for construction of Working Women's Hostel.

5.5.The Learned Counsel for the 1st Respondent points out that the Cantonment Board was granted permission as per Board's Resolution Nos.17 & 18 dated 26.10.2016. However, the approved plans were not released as the Tax on Transfer of Immovable Property (TTIP) charges were pending to be paid. In this connection, the Learned Counsel for the 1st Respondent informs this Court that the said Suresh had executed a rental agreement dated 23.01.2017 with the present Writ Petitioner and the present Petitioner and the said rental agreement was executed by ChellaiahChander Builders (P) Limited through its Director C.Suresh in favour of Aviation Express through its Proprietor V.Krishnamurthy for a period of 60 months commencing from 20.03.2017.

5.6.Besides these, the Learned Counsel for the 1st Respondent contends that the said rental agreement is an unregistered one and it requires appropriate stamp duty to be paid by the concerned person.

5.7.The Learned Counsel for the 1st Respondent refers to the following relevant dates and events are led to to the filing of the present Writ Petition by the Petitioner and the same are extracted as under:

Sl. No.	Date	Events
1.	24.05.2016	Application submitted by C.Suresh (Owner of the property) for construction of working women's hostel.
2.	12.04.2017, 27.04.2017 and 15.04.2017	Complaints given by the public that the writ petitioner was putting up underground diesel tank and large number of vehicles are occupying the premises.
3.	05.05.2017	Notice issued to C.Suresh under section 247 of the Cantonment Act requiring explanation for GLRS No.388/109.
4.	05.05.2017	Notice issued to C.Suresh under Section 247 of the Cantonments Act requiring explanation for GLRS No.388/116.
5.	05.05.2017	Notice issued to C.Suresh under Section 239(1) of the Cantonments Act for stoppage of commercial activity in GLRS No.388/109.
6.	05.05.2017	Notice issued to C.Suresh under Section 239(1) of the Cantonments Act for stoppage of commercial activity in GLRS No.388/116.
7.	05.05.2017	Notice issued to C.Suresh under Section 293 of the Cantonments Act for stacking/collecting inflammable materials in GLRS No.388/116.
8.	25.07.2017	Notice issued to C.Suresh under Section 249 of the Cantonments Act to seal the unauthorised construction in GLRS Nos.388/109 and 388/116.
9.	20.09.2017	Notice issued to C.Suresh under Section 248(1) of the Cantonments Act in GLRS Nos.388/103 and 388/116.
10.	09.10.2017	Appeal filed by the Petitioner - V. Krishnamurthy under Section 340 of the Cantonments Act.
11.	20.10.2017	Letter issued to the Petitioner rejecting and return the appeal.
12.	15.11.2017	Order passed by Hon'ble High Court in W.P.No.22720 of 2017.

Sl. No.	Date	Events
13.	08.12.2017	Order passed by the Hon'ble Supreme Court of India in SLP.NO.32516-32518 of 2017.
14.	26.06.2018	Order passed by the GO-C in C Southern Command Pune - Appellate Authority under Cantonment Act 2006.
15.	19.07.2018	Review Petition said to have been filed under Section 57 of the Cantonment Act, 2006 to the Central Government along with application for stay.
16.	23.07.2018	Demolition notice sent by the 1 st Respondent-CEO to the Petitioner.

5.8.The Learned Counsel for the 1st Respondent submits that in respect of the violations in the concerned properties, notices were issued under Sections 247, 248, 239(1), 293 and 249 of the Cantonments Act and when action was initiated under the Cantonments Act, the Writ Petitioner filed an 'Appeal' under Section 340 of the Cantonments Act, 2006 to set aside the notice dated 20.09.2017, which was issued under Section 248(1) of the Act.

5.9.The Learned Counsel for the 1st Respondent takes a stand that the Writ Petitioner filed W.P.No.27720 of 2017 (pending receipt of an Appeal) and this Court suo motu impleaded Respondents 4 to 6 as parties to the Writ Petition as per order dated 01.11.2017 and ultimately, this Court on 15.11.2017 disposes of the Writ Petition by making the following observations at paragraph 19, which runs as under:

"In the light of the stand taken by the writ petitioner in his letter dated 31.07.2017 submitted by the 2nd Respondent till the disposal of the application for interim direction by the Appellate Authority, the Petitioner shall not use the premises for which he had obtained lease from the 3rd Respondent and however, his possession of semi-permanent structure put up by him shall not be demolished and his possession shall not be disturbed ..."

In fact, the Hon'ble Supreme Court had confirmed the findings of paragraph 19 of the order passed in W.P.No.27720 of 2017 dated 15.11.2017, in 'Appeal'.

5.10.The Learned Counsel for the 1st Respondent contends that the 'Appeal' of the Writ Petitioner (filed under Section 340 of the Cantonments Act, 2006) was heard by the Appellate Authority and the same was dismissed on 26.06.2018. The office of the 1st Respondent/Cantonment Board issued a communication dated 23.07.2018 to the Petitioner for removing the unauthorised construction. Apart from this, as on date, even the Planning permission for constructing of working Women's Hostel is not valid in the light of non-payment of the TTIP charges.

5.11.The Learned Counsel for the 1st Respondent strenuously projects an argument that the 'Review Petition' filed by the Petitioner under Section 57 of the Cantonments Act, 2006 is not maintainable in Law because of the fact that the Petitioner has availed his remedy under Section 340 of the Act by filing an Appeal and that the order passed in the Appeal has become final.

5.12.Yet another argument advanced on behalf of the 1st Respondent is that as far as Section 57 of the Cantonments Act, 2006 is concerned, it is virtually an 'Interdepartmental Review' where there is no scope for an affected person to represent his case. In short, it is the plea of the 1st Respondent that the 'Process of Review' is very narrow and the same applies in exceptional circumstances where no other provisions are contemplated.

5.13.The Learned Counsel for the 1st Respondent refers to the Order dated 29.09.2011 in Civil Miscellaneous Writ Petition No.32082 of 2010 connected with Civil Misc. Writ Petition No.68479 of 2009 [between Pt. Rama Shankar Mishra Trust and others V. Union of India and another] [vide MANU/UP/3035/2011] wherein at paragraph 7, it is observed as follows:

"7.Moreover, it is unbelievable state of affairs that all the Defence Authorities inclusive of authority under the Union of India were unaware that the petitioners' private plot of land, if any, was recorded for residential purpose. Had it been so, there was no occasion for putting condition upon the petitioners for sanction of plan on paying requisite charges for change of purpose. As per the Act, 2006, the Government has right to raise objection under Section 238(3) at the threshold before the Board proceeds to consider the sanction of plan, but in the present case at that time the Government did not raise any objection and now after a gap of about two years wanted to

review the order under Section 57 of the Act, 2006 taking advantage of the words 'at any time' therein. Dictionarically it means grant of time without limit but legally period of time is 'limited by circumstances' or it means 'within reasonable time'. Therefore, when the law is silent on that score, principle of law made for the purpose will be applied to fill up the vacuum. In case of review, law of limitation speaks that period of limitation is thirty days from the date of the order. Moreover, Section 238(3) of the Act, 2006 contemplates objection, if any, before sanction of plan regarding erection or re-erection of a building by the Board on land under the management of Defence Estate Officer and the same will be ascertained from the Government within thirty days after receipt. Even to satisfy the test of reasonable time judgement reported in AIR 1977 All. 204 (Jaswant Singh Vs. Cantonment Board, Meerut and others) has been placed, wherein shortly after sanction of the plan i.e. within six weeks the authority concerned interfered with the decision to recall the same unlike the present case where not only earlier order was wanted to be reviewed not only after a period of about two years of sanction but also after partial construction in connection thereto. The power under Section 57 of the Act, 2006 can be utilized sparingly in the 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."

5.14.Also, the Learned Counsel for the 1st Respondent refers to paragraph 10 of the aforesaid order, wherein it is observed as follows:

"10. Section 57 of the Act, 2006 arises to review the decision or order of the Board etc. by the Central Government giving opportunity to the Cantonment Board to give reply to show cause. The Board, instead of giving reply, itself took a resolution and thereby revoked the earlier order sanctioning the plan without affording any opportunity of hearing to the petitioners and communicated to the Central Government, therefore, nothing remained to be reviewed by the Central Government but to put their seal and signature upon such decision of the Board. On the other hand, by such action opportunity of hearing to the petitioners as available under Chapter X read with Chapter XV and Schedule V under Section 340 of the Act, 2006 was also frustrated because after seal and signature of the Central Government, no authority will be able to take a decision contrary thereto. According to us, the entire process, which has been adopted by the authority, is wholly unjustified, arbitrary, malafide and unfair."

5.15. The Learned Counsel for the 1st Respondent relies on the Judgment dated 18.02.2016 in L.P.A.No.1051 of 2011 [between Union of India and others V. Rajesh Aggarwal] reported in MANU/DE/0464/2016 wherein at paragraph 36 to 38, it is observed as under:

"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."

5.16. The Learned Counsel for the 1st Respondent seeks in aid of the decision of the Hon'ble Supreme Court in Priyanka Estates International Private Limited and others V. State of Assam and Others, (2010) 2 Supreme Court Cases 27 at special page 42, wherein at paragraph 55, it is observed as under:

"55. It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi-storeyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat

owners whose flats are to be demolished as compared to the Builder."

5.17. The Learned Counsel for the 1st Respondent cites the Order of this Court dated 29.09.2016 in W.P.No.29985 of 2016 between M/s.Aara Silk represented by its Partner, MAM, Hayath S/o M.A.Mohamed Masthan, C.Pallavaram, Chennai V. The Principal Director, Southern Command, IDES Guest House, Cross Road, Pune, Maharashtra State and another reported in 2016 SCC OnLine Mad 28457, wherein at paragraph 13 to 19, it is held as follows:

"13. Learned counsel for the petitioner submitted that when an appeal is pending, a direction may be issued to the appellate authority to dispose of the appeal within the time frame. This Court suggested that the unauthorised construction of second and third floors should be demolished and only thereafter, the petitioner's request can be considered, provided his plea is in accordance with the provisions of the Act. The petitioner's grievance is that the 2nd respondent has no jurisdiction to return his Appeal, dated 22.08.2016 and it is only for the appellate authority to consider and pass appropriate orders.

14. From a reading of the aforesaid provisions, it is very clear that a time limit has been prescribed for filing an appeal. The appeal filed by the petitioner cannot be treated as an appeal in the eye of law, as it is not filed within time. The purported appeal dated 22.08.2016 is filed only based on the letter dated 08.08.2016 issued by the 2nd respondent and not based on the original notice issued by the 2nd respondent. The limitation for the period of appeal has got to be taken only from the date of the original order.

15. The contention of the petitioner that the appeal has been rejected by the 2nd respondent, who has no jurisdiction does not sound merit, as it is only a consequential order. The petitioner having clandestinely constructed the building and played fraud, cannot be shown any indulgence. Further, the case of the petitioner that he has not been given any opportunity is also totally incorrect and it is a misleading and self-serving statement. Even Section 340(3) of the

Cantonment Act is very clear that no appeal shall be admitted, if it is made after the expiry of the period specified in the V Schedule. Also, Section 340(4) will not support the case of the petitioner as it is clearly stated that the period specified shall be computed in accordance with the provisions of the Limitation Act. It nowhere says that the Limitation Act is made applicable to the appeal or any petition filed under the Act. Hence, this Court cannot extend the period of time, which is not granted/specified in the enactment.

16. Therefore, no purpose is going to be served in asking the appellate authority to decide the appeal, which is going to give only one more round of litigation. Courts are here to give a finality to the litigation. If we ask the appellate authority to decide the matter, it is a relief only to the Advocates, who are going to appear in the subsequent litigations and it is certainly not a relief to the litigants, more particularly to the Government in this case.

17. The conduct of the petitioner in the present case deserves to be noticed. He knew it fully well what was the permissible construction as per the sanctioned building plans and yet he not only constructed additional built-up area on the ground and first floors but also added additional second and third floors on the building apart from the basement, which are totally unauthorised. Probably he was under the impression that he would be able to either escape the clutches of the law or twist the arm of the law by some manipulation. This impression must prove to be wrong.

18. In *Priyanka Estates International Pvt. Ltd. v. State of Assam* (2010) 2 SCC 27, the Supreme Court declined the appellants prayer for directing the respondents to regularize the illegal construction and observed as follows:

It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such

activities are required to be dealt with by firm hands otherwise builders/ colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi-storeyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder.

19. In yet another decision pertaining to buildings construction in violation of rules, in the case of Shanti Sports Club v. Union of India (2009) 15 SCC 705, the Supreme Court has held as under:

"This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasised that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme, etc. on the ground that he has spent substantial amount on construction of the buildings, etc."

5.18. It is the submission of the Learned Counsel for the 1st Respondent that Chapter X of the Cantonments Act, 2006 deals with 'Town Planning Control Over Buildings, etc. Further, it is contended on behalf of the 1st Respondent that the whole action was initiated against the Petitioner for an unauthorised construction and in respect of the items mentioned in Chapter X of the Cantonments Act, 2006, a remedy of Appeal is provided in Section 340 of the Act, 2006 read with Schedule V wherein the order, Appellate Authority and time allowed for 'Appeal' has been clearly mentioned. Indeed, Section 344 of the Cantonments Act, 2006 enjoins 'Finality of the Appellate Orders'. Therefore, the Learned Counsel for the 1st Respondent takes a plea that the Review Petition filed by the Writ Petitioner before the Central Government is not maintainable.

5.19. It is the stand of the 1st Respondent that the Petitioner without establishing his right is not entitled to maintain the present Writ of Mandamus. In any event, it is the

plea of the 1st Respondent that the Writ Petition is not entitled to approach two forums for the same relief and on this score, the present Writ Petition is liable to be dismissed in limini.

6. Pleas of Respondents 2 & 3:

6.1. The Learned Counsel for the Respondents 2 and 3 submits that in Chapter III under the caption 'Cantonment Boards' beginning from Section 10 to Section 61 of the Cantonments Act, 2006, there is no provision for an 'Appeal' and that Section 57 of the Act speaks of 'Power of Central Government to Review' and that Section 51 of the Act, 2006 (41 of 2006) refers to 'Power of Central Government to require production of documents' and that Chapter V under the Head 'Taxes and Fees'. Section 93 of the Act, 2006 relates to filing of 'an Appeal against the assessment or levy of, or against the refusal to refund, any tax under this act shall lie to the District Court' etc.

6.2. Further, the Learned Counsel for the Respondents 2 and 3 points out that Section 340 of the Cantonments Act, 2006 pertains to filing of an Appeals from executive orders before the Appellate Authority. In fact, Section 340(3) of the Act, 2006 clearly mentions that 'No such appeal shall be admitted if it is made after the expiry of the period specified in that behalf in the fifth column of the said Schedule. (Schedule No.V). Also that, Section 340(4) of the Act, 2006 contemplates that the period specified as aforesaid shall be computed in accordance with the provisions of the Limitation Act, 1963 (36 of 1963), with respect to the computation of periods of Limitation thereunder.

Discussions:

7. It is to be noted that Section 341 of the Cantonments Act, 2006 deals with 'Petition of Appeal'. Section 342 of the Act relates to 'Suspension of action pending appeal'. Section 343 of the Act deals with filing of an 'Revision' of decision before the Central Government by either party after an Appeal from an order made by the Board has been disposed of by the District Magistrate. Section 344 of the Act categorically points out that 'Save as otherwise provided in Section 343, every order of appellate authority shall be final. Section 345 of the Act speaks of Right of every Appellant to be heard in person or through a legal practitioner before an Appeal is decided.

8. It is to be pointed out that 'Power of Review' is a conferment by statute. Further, an error on the face of record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning.

9. At this juncture, this Court aptly points out the decision in *M/s. Abhijit Tea Company Private Limited V. M/s. Terai Tea Company Private Limited and others*, AIR 1995 Calcutta 316 at special page 326, wherein at paragraphs 86 & 87, it is observed and laid down as follows:

"86. When a Court did not apply the provisions of an enactment which on the face of it would apply to a case, same would be a mistake or error apparent on the face of the record. But a mere error of law is not a ground for review only a manifest error would be a ground for review.

87. As observed by Supreme Court, an error apparent on the face of record cannot be defined precisely or exhaustively there being an element of indefiniteness inherent from its very nature. It must be left to be determined judicially on the facts of the each case. In this connection, I may take note of the judgment and decision in the case of *Hari Vishnu v. Ahmed Ishaque* reported in AIR 1955 SC 233. In the aforesaid decision the Supreme Court in paragraph 23 of the said judgment inter alia held and observed as follows:

"When does an error cease to be mere error, and become an error apparent on the face of the record? Learned Counsel on either side were unable to suggest any clear cut rule by which the boundary between the two classes of errors could be demarcated. Mr. Pathak for the first respondent contended on the strength of certain observations of Chagla, C.J. in *Batuk K. Vyas v. Surat Borough Municipality*, AIR 1953 Bom 133, that no error could be said to be apparent on the face of the record if it was not self-evident, and if it required an examination or argument to establish it. This test might afford a satisfactory basis for decision in the majority of cases. But there must be cases in which even this test might break down, because judicial opinions also differ, and an error that might be considered by one judge as self-evident might not be so considered by another. The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent

in its very nature, and it must be left to be determined judicially on the facts of each case."

10. Coming to the aspect of 'Object of Mandamus', it is to be mentioned that the same is simply to compel performance of a legal duty on the part of someone or body who is entrusted by Law with that duty, the Court in a proceeding for mandamus will enough sit as a 'Court of Appeal' so as to examine facts or to substitute its own wisdom for the discretion vested by Law in the person or body against whom the Writ is sought, as per decision of the Hon'ble Supreme Court in Vice Chancellor, Utkal University and others V. S.K.Ghose reported in 1954 SC 217 at special page 220.

11. It is to be remembered that existence of a legal right and an obligation of a Public Authority to fulfil the same on the date of petition are the conditions precedent to seek a Writ of Mandamus as per decision in Director of Settlements, A.P. and others V. M.R.Apparao and another, (2002) 4 Supreme Court Cases 638.

12. A Writ of Mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on his part to perform that duty function of such writ is to compel performance of public duty as per decision in Ram Singh Vijay Pal Singh and others V. State of U.P. and others, (2007) 6 Supreme Court Cases 44.

13. It must be borne in mind that 'Mandamus' is a discretionary remedy and not of right. As a general rule, a Mandamus is not issued in 'Anticipation of an Injury'.

14. In the instant case on hand, although the Petitioner has filed a Review Petition (under Section 57 of the Cantonments Act, 2006) before the 3rd Respondent/Secretary, Union of India, Ministry of Defence, New Delhi, he is yet to establish his legal right in a crystalline manner, in regard to the maintainability of the same in Law. Viewed in this real and proper perspective, this Court is of the considered opinion that the filing of the Writ of Mandamus by the Petitioner before this Court is a 'Premature and Otiose' one. When the Petitioner has filed the Review Petition coupled with the Stay Petition before the 3rd Respondent, well before the filing of the present Writ Petition before this Court on 26.06.2018 and further that, when the same are admittedly pending, then, for the same relief, the Petitioner cannot invoke the jurisdiction of this Court, as he

cannot maintain a parallel proceedings, by filing the present Writ Petition before this Court. Looking at from any angle, the Writ Petition fails.

Disposition:

15. In the result, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Sgl

To

1. The Chief Executive Officer,
Office of the Cantonment Board,
St. Thomas Mount cum Pallavaram,
Chennai - 600 016.
2. The General Officer,
Commanding in Chief
Ministry of Defence, Southern Command,
Manekji Mehta Road, Pune - 411 001.
3. The Secretary,
Ministry of Defence,
South Block, Central Secretariat, Rajpat,
New Delhi 110 011.

+1cc to M/S.King & Partridge, Advocate Sr.55091
+1cc to M/S.G.R.Associates, Advocate Sr.55009
+1cc to Mr.K.Srinivasa murthy, Advocate Sr.54964

W.P.No.19392 of 2018

srg 16/08/2018