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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.10.2018

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P. No.27496 of 2018 and
W.M.P. Nos.32005 and 32006 of 2018

V.Madhavan

... Petitioner

-vs-

1.Wellington Cantonment Board,
rep. by its Chief Executive Officer,
Wellington, Nilgiris District-643 231.

2.Appellate Authority/
General Officer Commanding-in-Chief,
HQ Southern Command,
Pune Camp-411 001.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari calling for the records relating to the order dated 28.09.2018 passed in Appeal No.809 of 2012 on the file of the second respondent and quash the same as illegal.

For Petitioner : Mr.J.Bharathiraja

For Respondents: Mr.M.Vijayan for
M/s.King & Partridge for R1

Mr.T.V.Krishnamachari
Senior Panel Counsel
Central Government for R2

O R D E R

(Order of the Court was made by S.VAIDYANATHAN, J.)

The petitioner has come up with this writ petition challenging the impugned order dated 28.09.2018 passed by the second respondent in Appeal No.809 of 2012.



2. The case of the petitioner is that in the year 2007, he along with his wife and son purchased a property measuring an extent of 30 cents comprised in Old S.Nos.23/1A and 20/1C1A, New S.Nos.476/2 and 477/10 in GLR 293 from one Sundarrajan within the Wellington Cantonment Board limits. According to him, the lands in GLR 293 is under notified civil area and in respect of which any notice of erection or re-erection has been submitted, the Chief Executive Officer is empowered to take a decision without placing the matter before the Board under 237 of the Cantonment Act, 2006 (hereinafter called 'the Act') and the land in GLR 298 is classified as other than notified civil area and in respect of which any notice of erection or re-erection has been submitted, the first respondent has to take a decision under Section 238 of the Act. According to the petitioner, on 20.10.2008, the petitioner submitted a notice of erection along with the relevant papers as contemplated under Section 235 of the Act before the first respondent seeking plan approval to construct a dwelling house, but the same was returned on 09.01.2009 stating that GLR 293 is an agricultural land and therefore permission for dwelling house cannot be granted. According to the petitioner, since the first respondent omitted to grant approval for the plan submitted on 13.08.2012, as per Section 238 of the Act, the petitioner's son and wife presented the Appeal dated 18.12.2012 before the Appellate Authority i.e. the second respondent challenging the demolition notices issued by the first respondent. According to the petitioner, without giving him an opportunity of hearing, the second respondent proceeded with Appeal and heard the first respondent alone and passed the order rejecting the appeal in violation of Section 345 of the said Act. Aggrieved over the same, the petitioner is before this Court.

3. The learned counsel for the petitioner would submit that the second respondent failed to see that if at all there was any unauthorised construction as alleged by the first respondent by the petitioner between 12.09.2012 and 18.12.2012, the first respondent could have sealed the unauthorised construction, which they failed to do so and the same would clearly establish that there was no construction. According to the learned counsel, even assuming that the Chief Executive Officer has power to issue notice in respect of the petitioner's building, he cannot straightaway issue the notice of demolition without issuing show cause notice and without conducting inspection in the presence of the petitioner. Therefore, the learned counsel prays for setting aside the impugned order for the simple reason that no opportunity of hearing in the appeal was given to the petitioner as contemplated under Section 345 of the Act.



4. Heard the learned counsel for the petitioner as well as the respective learned counsel for the respondents.

5. The sum and substance of the issue on hand is that the petitioner has not been given an opportunity of being heard while deciding the appeal in terms of Section 345 of the Act, which clearly stipulates that no appeal shall be decided unless the appellant has been heard or a reasonable opportunity of being heard in person. The petitioner herein has obtained prior permission for construction of house which was sanctioned without intimation to the Board, which is the proper Authority, as the land in question is situate outside civil area and the Chief Executive Officer, who is not empowered to take a decision, without placing the matter before the Board, made the Board to pass an order of removal of the unauthorised construction. The petitioner has also produced a communication dated 28.02.2014 for continuance of the electricity supply to the petitioner's property.

6. A glance of the documents would make it clear that the petitioner had made a representation only before the Chief Executive Officer, who is not the notified authority for outside civil area, and the original authority has passed a detailed order taking into account the unauthorised construction and held that a portion of the building is in violation of the sanctioned plan and the same has got to be demolished. Aggrieved by the same, the petitioner has filed an Appeal under Section 340 of the Act and also made written submissions. However, he has requested for postponement of hearing and at one stage stated that as the appeal has been heard at Pune, instead of the three petitioners, one of the petitioners, namely, the son of Vasudevan may be permitted to appear and represent the matter.

7. When the matter was taken up for hearing by the Appellate Authority, since none represented, based on the available records, the Appellate Authority passed an order confirming the order of the original authority and the impugned order reads as follows:

'(a)The Impugned Notice No.UAC/V/Mx/Engg dated 20 Nov 2012 issued to the Appellant by Wellington Cantonment Board under Section 248(1) of the Act does not suffer any legal infirmity and hence, is legally enforceable.

(b)The Appeal preferred by the Appellant is without merit and substance therefore it is rejected.

(c)The Appellant are directed to comply with the directions given in the Impugned Notice.



(d) In the event of failure of the Appellant to comply with the Impugned Notice, the respondent shall enforce the same in accordance with the provisions of law.'

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8. Though there appears to be a prima facie case based on the contentions of the respondents with regard to the unauthorised construction of 805.21 sq.ft., in cellar floor made by the petitioner, in our considered opinion, as the petitioner was not given ample opportunity of being heard in person and that the petitioner has got adjournments on many occasions, in terms of Section 345 of the Act, which is mandatory, the petitioner has to be given a reasonable opportunity of being heard in person. Though the petitioner referred to Section 238 (6) of the Act and contended that there is a deemed sanction to the erection of the building, the said contention cannot be accepted as, in the case on hand, the petitioner has made his representation only to the Chief Executive Officer and not to the Board and hence, Section 238 cannot be read in isolation and a harmonious reading has to be given along with Section 235 of the Act.

9. In view of the above, the matter is remanded to the appellate authority only for the purpose of giving a reasonable opportunity to the petitioner of being heard in person. The Appellate Authority is directed to fix the date of hearing for appearance of the petitioner within one month from the date of receipt of a copy of this order. Thereafter, from the date of appearance of the petitioner, the Appellate Authority shall dispose of the appeal within a period of two months, on merits and in accordance with the provisions of the Act. If the petitioner fails to appear on that day and in case of non appearance, he can submit additional written arguments, which can be treated as personal appearance and if the petitioner fails to comply either one or both, it is open to the Appellate Authority to record the same and pass orders on merits and in accordance with the provisions of the Act, as stated supra, and in that event, the petitioner cannot contend that there is violation of Section 345 of the Act. As the issue is not pending before the Original Authority and that the appeal alone is pending, once the appeal is disposed of and in case, any adverse order is passed against the petitioner, electricity supply shall stand disconnected within 24 hours and the supply shall not be restored unless the building is brought in accordance with the Plan. The petitioner has also undertaken to abide by the orders of the Appellate Authority.



10. With the above observation, the writ petition stands disposed of. Consequently, W.M.P. Nos.32005 and 32006 of 2018 are closed. No costs.

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Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.Chief Executive Officer,
Wellington Cantonment Board,
Wellington, Nilgiris District-643 231.
2. General Officer Commanding-in-Chief/
Appellate Authority/
HQ Southern Command,
Pune Camp-411 001.

+1cc to Mr.J.Bharathiraja, Advocate Sr.71631
+2cc to Mr.T.V.Krishnamachari, Advocate Sr.71602
+1cc to Kign & Partridge, Advocate Sr.71603

W.P. No.27496 of 2018 and
W.M.P. Nos.32005 and 32006 of 2018

srg 31/10/2018