

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

**RSA No.1928 of 1988 (O&M)
Date of Decision.04.04.2019**

Manohar Lal (deceased) through LRs

...Appellant

Vs

The Cantonment Board, Amritsar through its Executive Officer

..Respondent

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. A.K. Chopra, Senior Advocate with
Mr. Ankit Midha, Advocate
for the appellant.

Mr. R.K. Chhibbar, Senior Advocate with
Mr. Deep Prabhu, Advocate
for the respondent.

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AMIT RAWAL J. (ORAL)

The present regular second appeal is directed against the concurrent finding of fact whereby suit of the appellant-plaintiff for permanent injunction seeking restraint against defendant from demolishing the structure in occupation by impugning notice dated 25.05.1982 has been dismissed by the trial Court and affirmed in appeal.

The plaintiff alleged that he had been in occupation as owner of Bungalow No.17, Amritsar Cantt. There existed an annexe in the said bungalow and being very old structure its roof became dilapidated, was compelled to repair it, which was styled by the defendant Board as kitchen. The Cantonment Board on 25.05.1982 pointed out that alleged digging foundations of the walls of the old dilapidated building which was duly replied vide letter dated 29.05.1982. The provisions of Cantonment Board, 1924 were not

denied but it was explained that only minor repairs such as flooring, white washing and plastering etc. were carried out. Another notice dated 1.6.1982 was issued which was again replied on 12.6.1982. While exercising power under Section 179 of the Cantonment Act, authorities sent a notice dated 15.6.1982 and then under Section 185 (1) of the Act on 19.07.1982 ordering to stop the alleged erection forthwith and to demolish the building so erected within 30 days, against which an appeal was filed on 09.08.1982 before the General Officer, Commanding-in-Chief, Western Command, Shimla. Another notice dated 31.8.1982 was served and appeal against the same was also preferred. On 28.12.1982 another notice was served, which was also replied. In other words, three appeals were filed by the appellant-plaintiff were pending and decided by the Director, Defence Lands and Cantonment, Ministry of Defence, H.Q., Western Comand, Shimla vide order dated 31.1.1984 whereby it was held that the alleged reconstruction amounted to material alteration as per the provisions of Section 179(2)(a) of the Cantonment Act, 1924. It is in this process, suit was filed.

Defendant opposed the suit and raised objections qua maintainability and jurisdiction of the Civil Court as no notice under Section 273 of the Act was served. The Cantonment Act was complete Code and action was duly supported by the reports of inspection. It was explained that alterations were material and not the minor repairs as alleged.

On receipt of the plaintiff's replication, the trial Court framed following issues:-

- “1. Whether the plaintiff is entitled to injunction prayed for, on the allegations made in the plaint? OPP*
- 2. Whether the Civil Court has no jurisdiction in view of Sections 274 and 278 of the Cantonment Act? OPD*
- 3. Whether notice under Section 273 of the Cantonment Act was necessary and the suit is bad for non service of this notice? OPD*
- 4. Whether the suit is not maintainable in view of Section 278 of the Cantonment Act or otherwise legally not maintainable? OPD*
- 5. Relief.”*

The plaintiff in support of pleadings examined four witnesses whereas the defendant examined two witnesses. Both the parties brought on record documentary evidence.

The trial court on the basis of documentary evidence dismissed the suit by holding that the Civil Court as per the provisions of Section 274 and 278 of the Cantonment Act did not have jurisdiction.

Mr. Ashwani Chopra, learned Senior counsel assisted by Mr. Ankit Midha, learned counsel appearing on behalf of the appellant submitted that though offer was made for compounding of the construction, which was as per the provisions of Section 185 of the Act, the said prayer was erroneously rejected on the premise that it was situated outside the civil area. In this background of the matter, injunction suit was filed, therefore, Court could not have dismissed the suit for want of jurisdiction. Material alterations have been defined under Section 179 of the Act but contents of the site plan Ex.PW4/5 and other documentary evidence did not depict material alterations. It was only by few inches and nothing beyond.

The site plan placed on record was testimony of the alleged alterations which were perfectly in accordance with the original site plan of the quarters i.e. Bangalow No.17. He also drew attention of this Court to Ex.D25 and D26 in support of the aforementioned submission. The appellant vide letter dated 15.03.1982 Ex.PW4/3 informed the Board regarding the collapse of the roof of the annexe and had also submitted request along with the plan Ex.PW4/5. This fact was admitted by Subhash Chander, who appeared as DW1 but no action was taken, therefore, in such circumstances, the alleged repairs cannot be brought within the ambit of material alterations. The reasoning assigned for non-compounding of the alleged deviation on its competency is neither here and there, in view of proviso to Section 185 of the Act, thus, urges this Court for setting aside the finding under challenge.

Per contra, Mr. R.K. Chibber, Ld. Senior Counsel assisted by Mr. Deep Prabhu, learned counsel appearing for the respondent supported the judgments and decrees under challenge on the premise that the plaintiff miserably failed to bring the case within the parameters of proviso to Section 185 of the Act. As per provisions of Section 179, a person is deemed to erect or re-erect a building, make material alternation or enlargement of any building, shall give notice in writing of his intention to the authority. The contents of the notice revealed the enlargement and therefore, fell within the ambit of material alterations. Plaintiff raised construction upon new block, which fact proved through Ex.D4 dated 31.5.1982 and thereafter, on 16.12.1982 Ex.D15. Previously, there existed only

kitchen as per site plan Ex.D23 and Ex.D24 and thereafter new construction was made as per Ex.D25. Ex.D22 showed RCC slabs which were not in accordance with the original site plan Ex.D26, thus, urges this Court for dismissal of the appeal as no substantial questions of law arises for determination by this court.

I have heard learned counsel for the parties, appraised the paper, records of the Courts below and of the view that following Substantial Question of Law arises for determination by this Court:-

“Whether the authorities had power as per provisions of Section 185 and 181 of the 1924 Act to compound the alleged alterations, resulting into satisfaction of the violation falling within the parameters of Section 179 of the Act?

It would be apt to reproduce Section 185 of the 1924 Act, which reads as under:-

“185. Power to Stop erection or re-erection or to demolish.- A Cantonment Authority may, at any time, by notice in writing, direct the owner, lessee or occupier of any land in the cantonment to stop the erection or re-erection of a building in any case in which the Cantonment Authority considers that such erection or re-erection is an offence under Section 184, and may in any such case in like manner direct the alteration or demolition, as it thinks necessary, of the building, or any part thereof, so erected or re-erected:

Provided that the Cantonment Authority may, instead of requiring the alteration or demolition of any such building or part thereof, accept by way of composition such sum as it thinks reasonable.”

A perusal of the record Ex.PW4/DX reveals that the then Executive Officer, Cantonment Board, Amritsar Cantt. vide letter dated 15.03.1982 was informed regarding the collapse of annexe in 17 Cantt Amritsar and sought permission for carrying out major repairs, which was purportedly as per provisions of Section 179. Vide Ex.D1 dated 25.5.1982, the competent officer brought to the notice of CO regarding digging of the foundation of the wall and the first show cause notice was sent on 25.05.1982 but there was no reference to the letter dated 15.03.1982. The aforementioned notice was duly replied vide Ex.D3 wherein it was brought that no sanction was required. Explanation given was that it was old building known as kitchen only to the roof level and other was perpendicular wall. The erection of the wall on the new foundation did not amount to enlargement/extension of the covered area/plinth area. In order to understand controversy, it would, also, be in the fitness of things to extract Section 179 and Section 183 of the 1924 Act, which are as under:-

“Section 179. Notice of new buildings (1) Whoever intends to erect or re-erect any building in a cantonment shall apply for sanction by giving notice in writing of his intention,-

(2) For the purposes of this Act, a person shall be deemed to erect or re-erect a building who--

(a) makes any material alteration or enlargement of any building, or

(b) converts into a place for human habitation any building not originally constructed for human habitation, or

(c) converts into more than one place for human habitation a building originally constructed as one such place, or

(d) converts two or more places of human habitation into a greater number of such places, or

(e) converts into a stable, cattle-shed or cow-house any building originally constructed for human habitation, or

(f) makes any alteration which there is reason to believe is likely to affect prejudicially the stability or safety of any building or the condition of any building in respect of drainage, sanitation or hygiene, or

(g) makes any alteration to any building which increases or diminishes the height of, or area covered by, or the cubic capacity of, the building, or which reduces the cubic capacity of any room in the building below the minimum prescribed by any bye-law made under this Act.

183. Lapse of sanction. *Every sanction for the erection or re-erection of a building given or deemed to have been given by the Cantonment Authority as hereinbefore provided shall be available for one year from the date on which it is given, and, if the building so sanctioned is not begun by the person who has obtained the sanction or some one lawfully claiming under him within that period, it shall not thereafter be begun without fresh sanction obtained in the manner hereinbefore provided.”*

A plain and simple language of the aforementioned provisions reveals that whoever intends to erect or re-erect any building in a cantonment shall give notice in writing of his intention to the cantonment authority.

Provisions of sub-sections (2) and (3) of Section 181 envisage that in case the Cantonment Authority decides to refuse to sanction the erection or re-erection of the building, it shall communicate in writing the reasons for such refusal to the person by whom the notice was given and in case neglects or omits, for “one month” after the receipt of a valid notice, to make and deliver to the person any order of any nature and such person by written communication calls attention of the Authority to the neglect or omission but despite that such neglect or omission continues for a

further period of 15 days, then the Cantonment Authority shall be deemed to have given sanction to the erection or ere-erection, as the case may be, unconditionally.

The intimation was given by the appellant in March, 1982 whereas the first notice in the instant case was of May, 1982 i.e. beyond one month. The authorities at the helm of affairs did not examine the proviso to Section 185 empowering them to compound the alleged alteration.

This Court while issuing notice of motion on 22.08.1988 had stayed the dispossession of the appellant and on admission of the appeal, the order still continues. The appeal is pending since 1988 with interim stay. It would be too onerous by this Court to put the clock back particularly when the aforementioned provisions of law were not adverted to by the Courts below as well as the authorities.

In view of such circumstances, the judgments and decrees rendered by the Courts below, in my view, suffer from illegality and perversity and accordingly set aside. The Substantial Question of Law is answered in favour of the appellant and against the defendant. However, this order shall not preclude the Authorities to take action, in accordance with law, as per proviso to Section 185 of the Act.

The second appeal is allowed in above terms.

(AMIT RAWAL)
JUDGE

April 04, 2019
Pankaj*

Whether Reasoned/Speaking	Yes
Whether Reportable	No