

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.765 OF 2020
WITH
WRIT PETITION NO.632 OF 2019

Meher Pheroze Sethna and others ... Petitioners
Vs.
Pune Cantonment Board and another ... Respondents

Mr. Vineet B. Naik, Senior Advocate a/w. Mr. Sukand Kulkarni for
Petitioners in both the Petitions.

Mr. G. P. Sharma for Respondent Nos.1 and 2 in both the Petitions.

Mr. R. S. Apte, Senior Advocate i/b. Mr. Pravartak Pathak for Respondent
No.3 in both the Petitions.

**CORAM : UJJAL BHUYAN &
SMT. ANUJA PRABHUDESSAI, JJ.**

Reserved on : AUGUST 13, 2020

Pronounced on : OCTOBER 16, 2020

Judgment and Order : (Per Ujjal Bhuyan, J.)

Facts and issues being identical and inter-related, both the writ
petitions were heard together and are being disposed off by the present
common judgment.

2. Writ Petition No.765 of 2020 was filed at an earlier point of time
i.e., on 06.04.2018 but registered only in the year 2020. On the other
hand, Writ Petition No.632 of 2019 was filed subsequently on
09.01.2019 but because of earlier registration it appears that it was filed
earlier. However, learned counsel for the parties had made submissions
centering on Writ Petition No.765 of 2020. Accordingly, Writ Petition
No.765 of 2020 is taken as the lead case and all facts and references
made in the judgment pertain to Writ Petition No.765 of 2020.

3. Heard Mr. Vineet B. Naik, learned senior counsel along with Mr.
Sukand Kulkarni, learned counsel for the petitioners; Mr. G. P. Sharma,
learned counsel for respondent Nos.1 and 2; and Mr. R. S. Apte, learned

senior counsel instructed by Mr. Pravartak Pathak, learned counsel for respondent No.3.

4. The three petitioners are legal heirs of late Smt. Homai Nussarwanji Pudumjee, who was the holder of occupancy rights in respect of bungalow No.6, Maneckji Mehta Road, Pune (briefly 'the said bungalow'). The said bungalow is an old grant bungalow constructed in the year 1931. It is stated that the bungalow is located outside the notified civil area under the Cantonment Board, Pune. Thus, the area where the said bungalow is situated is under the administrative control of the Defence Estates Officer, Pune Cantonment Board.

5. The bungalow was in a dilapidated condition due to lack of maintenance and not safe to occupy. Power of attorney holder of the original holder of occupancy rights had commenced the work for carrying out necessary repairs of the said bungalow sometime in October, 2011. It is stated that in terms of the revised land policy dated 09.02.1995 prior permission of the respondents was not required for carrying out repair works. However, sometime in December, 2011, respondent No.2 i.e., Chief Executive Officer of Pune Cantonment Board issued a stop work notice. It was alleged that in the guise of repair the said bungalow was sought to be demolished and reconstructed. Ultimately, this led to issuance of notice on 27th March / 12th April, 2012 under section 248(1) of the Cantonments Act, 2006 alleging that erection / re-erection of building constituted an offence under section 247.

6. It is stated that a statutory appeal under section 340 of the Cantonments Act, 2006 was preferred against the aforesaid notice. During the pendency of the appeal, a request was made to respondent No.2 for composition and regularization. Respondents insisted on withdrawal of the appeal. In such circumstances, petitioners approached this Court by filing writ petition being Writ Petition No.6355 of 2013. By order dated 30.09.2013, this Court directed respondent Nos.1 and 2

to consider the request of the petitioners in respect of composition and regularization, at the same time recorded the undertaking of the petitioners to withdraw the appeal in case the composition and regularization proposal was accepted by the respondents.

7. Very belatedly on 14.09.2014, respondents in compliance to the order of this Court approved the composition and regularization subject to payment of certain fees which were paid by the petitioners. In conformity with the undertaking given before this Court, petitioners withdrew the statutory appeal.

8. After the composition and regularization, petitioners through the power of attorney holder applied before respondent No.2 on 03.11.2014 seeking permission for carrying out repair works in the bungalow. The application was later on corrected by another application dated 27.02.2015 mentioning the repair works to be carried out.

9. It may be mentioned that the application was forwarded to the Defence Estates Officer under section 238(3) on 20.03.2015 and later on forwarded to the Local Military Authority though there was no necessity to forward the application to the Local Military Authority as petitioners had not applied for relocation of the bungalow. Application was received by Defence Estates Officer on 20.03.2015 and forwarded to the Local Military Authority on 29.07.2015. Though such forwarding of application was beyond the statutory period, nonetheless the application dated 27.02.2015 remained pending with the respondents.

10. On 11.08.2015, petitioners wrote to respondent No.2 enquiring about the status of the application dated 27.02.2015. Reference was made to sub-section (6) of section 238 of the Cantonments Act, 2006 whereafter it was contended that if the application dated 27.02.2015 continued to remain pending, it would be construed to be an act of negligence and omission and in terms of the said provision after a period

of 15 days from the date of such communication, the Cantonment Board would be deemed to have granted sanction. It was pointed out that as a matter of fact more than 120 days had lapsed and, therefore, the deeming provision under sub-section (6) of section 238 of the Cantonments Act, 2006 was being invoked.

11. Respondent No.2 responded *vide* letter dated 14.08.2015 contending that there was no negligence on the part of the respondents and, therefore, section 238(6) could not be pressed into service. Thereafter, respondent No.2 informed the petitioners *vide* communication dated 08.09.2015 that since the applicant i.e., the power of attorney holder was not recorded as holder of occupancy rights, permission sought for could not be granted. Therefore, the said application was rejected.

12. Against the order dated 08.09.2015, petitioners filed appeal before the appellate authority. Considering the dilapidated condition of the bungalow, petitioners being the legal heirs of the original holder of occupancy rights i.e., late Smt. Homai Nussarwanji Pudumjee decided to submit application themselves seeking permission for repairs and not through the power of attorney holder. Consequently, petitioner No.1 on behalf of herself and on behalf of the other legal heirs i.e., petitioner Nos.2 and 3 filed application under section 235(1)(a) of the Cantonments Act, 2006 on 27.01.2016. By the said application, permission was sought for to repair the said bungalow. Upon filing of the said application, petitioners withdrew the appeal filed against the order dated 08.09.2015. Be it stated that application dated 27.01.2016 was re-submitted on 30.03.2016. Pursuant thereto petitioners were informed that the existing structure of the said bungalow was beyond repairs. Petitioners were asked to submit building plans for demolition and reconstruction of the bungalow. Accordingly, petitioners submitted necessary plans on 07.09.2016.

13. However, nothing was communicated to the petitioners after submission of building plans on 07.09.2016. Therefore, petitioners sent a notice in terms of section 238(6) of the Cantonments Act, 2006 contending deemed sanction. A vague reply was given by the respondents on 20.10.2016. Interestingly on 19.12.2016, the application dated 07.09.2016 filed by the legal heirs of the holder of occupancy rights was rejected on the ground that the names of the legal heirs i.e., the petitioners were not recorded in the General Land Register.

14. Petitioners have stated that they had filed an application on 31.01.2016 before respondent No.3 for mutation of their names in the General Land Register in respect of the said bungalow. After the order dated 19.12.2016, petitioners requested respondent No.3 for a decision on the aforesaid application.

15. After following the laid down procedure and compliance thereto by the petitioners, application dated 31.01.2016 was allowed by respondent No.3 on 01.09.2017 and names of the petitioners as legal heirs of the original holder of occupancy rights were recorded in the General Land Register.

16. Since the very reason for rejection of permission sought for by the petitioners for demolition and reconstruction of the bungalow no longer survived, petitioners submitted a fresh application on 04.09.2017 for demolition and re-construction of the said bungalow. Respondent No.2 before whom the application was filed forwarded the same to respondent No.3 in terms of section 238(3) of the Cantonments Act, 2006 on 15.09.2017, the bungalow being situated outside the notified civil area and under the management of respondent No.3. Though not required, respondent No.3 forwarded the said application to the Local Military Authority on 04.10.2017. However, no decision was taken on the said application dated 04.09.2017. Petitioner No.1 sent letter dated 15.11.2017 to respondent No.2 enquiring about the status of the

application dated 04.09.2017. It was alleged that there was neglect / omission to consider the application dated 04.09.2017 beyond the statutory period. Referring to the deeming provision of section 238(6), it was contended that the application would stand deemed to have been sanctioned. However, respondent No.2 denied the aforesaid contentions of the petitioners *vide* letter dated 24.11.2017.

17. Notwithstanding the above, petitioners submitted fresh notice under section 238(6) of the Cantonments Act, 2006 on 04.12.2017 contending that the application dated 04.09.2017 was pending beyond the statutory period and therefore, the mandate of sub-section (6) of section 238 would stand attracted. Again this was vaguely denied by the respondents on 12.12.2017.

18. It is contended that apart from the contention of deemed sanction, respondent No.3 had on 28.12.2017 recommended grant of permission (NOC) in terms of application dated 04.09.2017. On request of respondent No.3, petitioners submitted the required non-judicial stamp paper and other relevant documents for execution of indenture of admission deed as per the revised land policy dated 09.02.1995. Though meeting of the Board was held on 05.02.2018 and thereafter on 17.02.2018, no decision was taken therein on the application of the petitioners. Matter was simply postponed.

19. In view of the aforesaid facts and circumstances, petitioners have preferred the present writ petition seeking the following reliefs:-

- (1) to declare that the application dated 04.09.2017 is deemed to have been sanctioned in terms of section 238(6) of the Cantonments Act, 2006;
- (2) in the alternative and without prejudice to the above prayer, to direct the respondents to consider and decide the application of the petitioners dated 04.09.2017 in a time bound manner.

20. After the meeting held on 17.02.2018, a series of communications were exchanged between the respondents. A number of meetings of the Board were held thereafter on 26.05.2018 and 20.08.2018. However, the Station Cell of Local Military Authority wrote to the Defence Estates Officer on 27.09.2018 stating that the NOC issued by the Defence Estates Officer was not acceptable to the Station Cell. Respondent No.3 explained to the Station Cell about the scheme of section 238 of the Cantonments Act, 2006. Since none of the correspondences was addressed to the petitioners, they issued notice under section 238(6) of the Cantonments Act, 2006 on 20.11.2018 to the Chief Executive Officer. It is in the above context that the subsequent writ petition i.e., Writ Petition No.632 of 2019 came to be filed for quashing the letter dated 27.09.2018 issued by the Station Cell of the Local Military Authority in addition to the principal prayer made in the earlier writ petition.

21. Respondent Nos.1 and 2 have filed a common affidavit. Stand taken in the affidavit is that the bungalow was given on old grant terms. Reference has been made to earlier notice dated 12.04.2012 issued by respondent No.2 under section 248 of the Cantonments Act, 2006 for unauthorized and illegal construction which led to filing of Writ Petition No.6355 of 2013.

21.1. It is contended that the original holder of occupancy rights Smt. Homai Nussarwanji Pudumjee died on 21.12.2010 but she continued to be represented by her power of attorney holder Smt. Gayatri V. Shirke till 08.09.2016 on which date respondent No.2 informed the said Smt. Gayatri V. Shirke that since the applicant i.e., the power of attorney holder was not recorded as holder of occupancy rights, permission for any construction or reconstruction could not be given to her. It was thereafter that petitioner No.1 started making correspondence with the respondents on behalf of the petitioners.

21.2. On 31.01.2016, respondent No.2 informed petitioner No.1 that though the building plan was submitted, there was no mutation entry in her name. Therefore, the building plan was returned as rejected.

21.3. It is however admitted that following execution of admission deed dated 19.06.2017 by the petitioners, they were shown as holders of occupancy rights in the General Land Register effective from 01.09.2017.

21.4. Further stand taken is that as the land belongs to the central government, respondent No.3 wrote letter dated 06.12.2017 addressed to the Station Cell seeking clearance from the Local Military Authority. By letter dated 16.12.2017, the Station Cell informed respondent No.3 that the case for demolition and reconstruction could not be recommended as the bungalow was proposed for resumption. It is stated that in the Board meeting held on 05.02.2018, the effect of resumption of the said bungalow was brought to the notice of the Board.

21.5. Contention of respondent Nos.1 and 2 is that when the central government is resuming the said bungalow for their own purpose, question of petitioners claiming right over the said bungalow would not arise.

21.6. It is stated that an agreement for sale dated 17.03.2006 was entered into between Smt. Homai Nussarwanji Pudumjee as vendor and Smt. Gayatri Vijay Shirke as purchaser whereby both the land and the structure standing thereon were sought to be transferred behind the back of Government of India. This document has not been mentioned in the writ petition. Thus, there is suppression of material facts. Another allegation made is that petitioners have suppressed the admission deed (declaration) dated 18.12.2007 wherein the purchaser had declared and admitted that the land belongs to Government of India and that

Government of India has the right to resume the land with bungalow.

21.7. Under such circumstances, it is contended that the application submitted by different persons on different occasions in respect of reconstruction of the said bungalow can in no manner attain the status of deemed sanction. Respondent Nos.1 and 2 have alleged that petitioners had committed fraudulent acts behind the back of Government of India and Pune Cantonment Board. Therefore, the writ petition should be dismissed.

22. Petitioners in their rejoinder affidavit have mentioned about the developments subsequent to filing of the writ petition stating that it was the reason why the second writ petition came to be filed. It is asserted that case of the petitioners is not for relocation of the bungalow or erection / re-erection. It is purely for repair and renovation.

22.1. Referring to the letter of the Local Military Authority dated 27.09.2018 that the NOC issued by the Defence Estates Officer was not acceptable to the Station Cell, it is stated that the Defence Estates Officer had sent a detailed response to the Local Military Authority on 17.10.2018 justifying grant of statutory NOC. Petitioners have stated that these documents were made available to them when they had sought information under the Right to Information Act, 2005. Notwithstanding the above, Chief Executive Officer informed the petitioners on 30.11.2018 that no communication was received from the Defence Estates Officer and hence the deeming provision of section 238(6) would not apply. This is despite the fact that a detailed response was sent by the Defence Estates Officer to the Local Military Authority on 17.10.2018. Chief Executive Officer had deliberately made an incorrect statement. It is because of the aforesaid situation that the second writ petition i.e. Writ Petition No.632 of 2019 came to be filed.

22.2. Petitioners have reiterated that their names have been mutated in

the General Land Register on 01.09.2017. On the objection raised by the Chief Executive Officer that the bungalow in question is proposed for resumption and hence permission for demolition and reconstruction cannot be granted, it is stated that Defence Estates Officer had taken the categorical stand that proposal for resumption of bungalow could not be a ground for rejection of permission for repair and renovation.

22.3. Regarding the agreement for sale, it is stated that the same is not at all germane to the issue involved in the writ petition. Title to land is not acquired on agreement for sale. There has to be a sale deed. It is only upon execution of sale deed that the rights of original title holder gets extinguished. Therefore, there was no suppression of material facts.

22.4. Petitioners have admitted that the land over which the bungalow stands belongs to the central government. Petitioners are holding rights under the old grant terms. Central government has definitely the right to resume the land. Petitioners are not claiming any superior right over the central government. However, it is contended that merely because the bungalow is proposed for resumption, permission as sought for by the petitioners cannot be rejected. The bungalow is in an extremely dilapidated condition. It needs urgent repair and renovation. Otherwise it may lead to any untoward incident.

22.5. Defence Estates Officer is the only statutory authority in terms of section 238(3) of the Cantonments Act, 2006. Defence Estates Officer has already accorded its NOC. Therefore, resistance by the Local Military Authority is untenable. Because of the neglect and omission by the respondents in dealing with the application of the petitioners dated 04.09.2017, the deeming provision of section 238(6) would come into play and, therefore, such a declaration is called for.

23. An affidavit in sur-rejoinder has been filed by respondent Nos.1 and 2. It is stated that it is an undisputed and admitted fact that the

bungalow in question was given on old grant terms. It is also undisputed and admitted that the name of Smt. Homai Nussarwanji Pudumjee was recorded in the extract of General Land Register dated 02.09.2005 issued by the Defence Estates Officer, Pune Circle, Pune. However, reference has again been made to the agreement for sale dated 17.03.2006 between Smt. Homai Nussarwanji Pudumjee as the vendor and Smt. Gayatri Vijay Shirke as the vendee whereby the vendor had sold and disposed off her holder of occupancy rights to the vendee. Reference has also been made to clause 2 of the said agreement which states that the vendor had upon execution of the agreement put the purchaser in peaceful and vacant possession of the bungalow in question further declaring that upon handing over of possession, purchaser could start the repair and renovation activities in the bungalow for the purpose of convenient and effective accommodation of the purchaser. On that basis it is contended that Smt. Homai Nussarwanji Pudumjee since deceased had during her lifetime put Smt. Gayatri Vijay Shirke in peaceful and vacant possession of the said bungalow. It is stated that there is no sanction or permission or approval or decision of Ministry of Defence, Government of India allowing such transfer of holder of occupancy rights though the agreement for sale stood executed as far back as on 17.03.2006 behind the back of Ministry of Defence, Government of India.

23.1. It is alleged that legal heirs of Smt. Homai Nussarwanji Pudumjee since deceased i.e. the petitioners had instituted probate proceeding in the Court of 2nd Joint Civil Judge, Senior Division, Pune being Misc. Application No.997 of 2015 wherein they obtained order dated 05.02.2016. As per the said order the said bungalow stood bequeathed to the legal heirs i.e., the petitioners. It is further alleged that petitioners got their names mutated in the General Land Register on 01.09.2017 as holder of occupancy rights in respect of the said bungalow.

23.2. It is thus contended that when the petitioners had obtained holder of occupancy rights through manipulation by getting their names

inserted in the General Land Register from the office of Defence Estates Officer, Pune, answering respondent Nos.1 and 2 cannot afford to be a party to such manipulation. Therefore, question of deemed sanction under section 238(6) of the Cantonments Act, 2006 would not and cannot arise.

24. An affidavit in reply has been filed by respondent No.3. He has stated that he would confine his contentions only to the application dated 04.09.2017 and would not address antecedent facts which are not germane or relevant to the issue at hand. The subject property is an old grant property situated at B3 defence land. In so far the prior application dated 07.12.2016 is concerned, it is stated that the said application was not considered and processed because the application was submitted by Mrs. Meher P. Sethna (petitioner No.1) who was then not the recorded holder of occupancy rights in the government records i.e. in the General Land Register maintained as per provisions of rule 3 of the Cantonment Land Administration Rules, 1937. At that point of time the recorded holder of occupancy rights was Smt. Homai Nussarwanji Pudumjee. Therefore, the application was returned by the office of respondent No.3 to the Cantonment Board *vide* letter dated 13.12.2016.

24.1. Referring to section 238 of the Cantonments Act, 2006, it is stated that the said provision deals with the power of the Cantonment Board to sanction or refuse erection or re-erection of a structure. Under sub-section (3), the Cantonment Board before sanctioning erection or re-erection of a building on a plot of land which is under the management of the Defence Estates Officer shall refer the application to the Defence Estates Officer for ascertaining whether there is any objection on the part of the government to such erection or re-erection. In that context, it is contended that role of respondent No.3 is limited under section 238(3) to submitting a report setting forth his views but the power to sanction or refuse to sanction lies with the Cantonment Board.

24.2. Respondent No.3 has asserted that in the present case the government land policy dated 09.02.1995 would also be applicable. As per this policy, in cases relating to addition, alteration, renovation or reconstruction of private buildings in cantonment areas, it is incumbent upon respondent No.3 to refer plans submitted for additions and / or alterations to the Station Commander of Local Military Authority. It is in this background that respondent No.3 received letter dated 15.09.2017 from the Cantonment Board, Pune following which respondent No.3 referred the said proposal to the Station Commander, Local Military Authority. The case was thereafter in correspondence for queries and clarifications raised by the Local Military Authority. Finally, *vide* letter dated 16.12.2017 views of the Station Commander were intimated.

24.3. In so far deemed sanction under section 238(6) is concerned, it is contended that there is no neglect or omission on the part of the respondents. Respondent No.3 had informed petitioner No.1 too *vide* letter dated 06.12.2017 not to proceed on the basis of deemed sanction and to avoid any construction activity. Therefore, question of any deemed sanction under section 238(6) of the Cantonments Act, 2006 does not arise.

25. Mr. Naik, learned senior counsel for the petitioners submits that the bungalow in question was constructed in the year 1931 and is situated in the cantonment area of Pune. There is no dispute that the said bungalow was allotted to late Smt. Homai Nussarwanji Pudumjee. According to him, since the bungalow was completely in a dilapidated condition, the original holder of occupancy rights through her power of attorney holder had applied for permission seeking repair of the bungalow several times. After the death of the original holder of occupancy rights, present petitioners who are her legal heirs made application for such repair. When such application was rejected on the ground that their names were not reflected in the General Land Register, they had applied for and got their names mutated in the General Land

Register as the legal heirs of the original holder of occupancy rights. Thereafter, petitioners had submitted an application on 04.09.2017 seeking permission from the respondents for repair and renovation of the building. It is this application which has been kept pending for more than two years.

25.1. Learned senior counsel for the petitioners has elaborately referred to the provisions contained in section 238 of the Cantonments Act, 2006. According to him, sub-section (1) stipulates that the Board may either refuse to sanction or sanction erection or re-erection of a building in writing in respect of matters enlisted under clauses (a) to (j). In other words, refusal or sanction from the Board must be in writing and conform to the requirement of clauses (a) to (j). While sub-section (2) says that the Board may refuse to sanction erection or re-erection on any sufficient ground, contention of Mr. Naik is that the expression 'any ground' would have to mean the grounds enlisted in clauses (a) to (j) in sub-section (1). It is only in the proviso which empowers the Board to traverse beyond the above grounds if the erection or re-erection is not in conformity with the scheme sanctioned under section 240. Referring to sub-sections (3) and (4), he submits that the said procedural provisions contemplate seeking of views of the Defence Estates Officer by the Board. After receipt of the views of the Defence Estates Officer, the Board is required to take action under sub-section (4). Under the said provision the Board may refuse to sanction permission for erection / re-erection following receipt of report from the Defence Estates Officer only in three eventualities:-

- 1) When the land is held on lease from the government and the erection or re-erection constitutes a breach of the terms of the lease;
- 2) When the land is entrusted to the management of the Cantonment Board by the government and such erection / re-erection constitutes a breach of the terms of entrustment or contravenes any of the instructions issued by the government

regarding management of the land by the Board; and

- 3) When the land is not held on lease from the government, if the right to build on such land is in dispute between the person applying for sanction and the government.

Other than the above three eventualities, the Board cannot refuse sanction, he submits.

25.2. Particular reference has been made to sub-section (6) of section 238. It is contended that the said sub-section provides for a deeming fiction. In a case where the Board neglects or omits for one month after receipt of a valid notice to make and to deliver to the noticee an order under section 238 and such person thereafter sends a written communication by registered post to the Board calling the attention of the Board to such neglect or omission and if such neglect or omission continues for a further period of 15 days from the date of such communication, the Board shall be deemed to have given sanction to the erection or re-erection, as the case may be.

25.3. He submits that when the petitioners had made the application on 04.09.2017, the same cannot be kept pending for more than two years by making internal correspondences. Petitioners had brought to the notice of the Board about invocation of section 238(6) *vide* letters dated 15.11.2017 and 04.12.2017. Therefore, there is no escape from the rigour of section 238(6). He also submits that making reference to Local Military Authority and seeking of its views is totally unwarranted as under the scheme of section 238, it is the Board and the Defence Estates Officer who are the relevant authorities. Views of Local Military Authority may be required only if it is a case of relocation of the site of existing bungalow which is not the case here. Pointing out to the objections raised by the Local Military Authority, Mr. Naik submits that pendency of resumption proposal of the bungalow in question cannot be a ground for rejection of application. This was in fact clarified by the Defence Estates Officer himself. Besides, resumption is a long drawn

process. Petitioners being the legal heirs of the original holder of occupancy rights and such rights having devolved upon them, they have a definite right to the property of the bungalow in question. Despite recommendation of the Defence Estates Officer, the Board without any valid reason postponed taking a decision on the representation of the petitioners dated 04.09.2017. Objections of Local Military Authority are wholly irrelevant because the proposal in question is for renovation and not for relocation.

25.4. After the Defence Estates Officer had sent his report to the Chief Executive Officer of the Board on 28.12.2017, the Board ought to have taken a decision in terms of section 238. There is no provision for re-referring the matter to the Local Military Authority.

25.5. Reference to agreement for sale is wholly unwarranted as the same is not at all germane for taking a decision on the application dated 04.09.2017. No reliance can be placed on such an agreement when admittedly the same did not lead to execution of any sale deed.

25.6. Thus having regard to the facts and circumstances of the case, learned senior counsel for the petitioners submits that Court may make a declaration that the application filed by the petitioners on 04.09.2017 is deemed to have been sanctioned.

26. Responding to the submissions of learned senior counsel for the petitioners, Mr. G. P. Sharma, learned counsel for respondent Nos.1 and 2 at the outset submits that filing of two writ petitions on the same subject matter is not permissible. On such ground itself, Court may decline any relief to the petitioners. He further submits that petitioners have no *locus standi* to file the writ petitions as their mother, the original holder of occupancy rights, had sold the bungalow during her lifetime *vide* registered agreement for sale dated 17.03.2006. In fact deceased Smt. Homai Nussarwanji Pudumjee on receipt of sale consideration had

put the purchaser namely, Smt. Gayatri Vijay Shirke in possession of the property in question. Thus, the petitioners as the legal heirs could not / did not inherit the said property which was disposed off in 2006 itself. In such circumstances, as the petitioners did not inherit the said property and are not in possession thereof, question of applying for sanction for repair and renovation of the said property does not arise.

26.1. He submits that there is no dispute that the said property is an old grant property. Being so, the land solely belongs to the Government of India. Though the structure was erected by the grantee, status of the grantee would be that of a mere licensee / occupier.

26.2. Referring to sub-section (6) of section 238, Mr. Sharma submits that no deemed sanction under the said provision has taken place. Even if such a deemed sanction is construed to have taken place, section 243 of the Cantonments Act, 2006 says that such a deemed sanction would lapse after two years which period has already lapsed.

26.3. It is further contended that government has proposed for resumption of the property. When there is a proposal for resumption of property by the government, question of erection or re-erection of the bungalow in question does not arise. He, therefore, submits that there is no merit in the writ petitions which should be dismissed.

27. Mr. Apte, learned senior counsel appearing for respondent No.3 submits that stand of respondent No.3 has been articulated in his affidavit and he would not traverse beyond what has been stated in the affidavit. Whatever was required to be done under the law, respondent No.3 has done that. Therefore, having regard to the facts and circumstances of the case, Court may consider passing an appropriate order in accordance with law.

28. In his reply submissions, Mr. Naik submits that as has already

been clarified, Writ Petition No.765 of 2020 was filed at an earlier point of time, to be precise on 06.04.2018. It is another matter that it was registered subsequently in the year 2020. Because of subsequent development i.e., inaction of the Board and calling for further report from the Local Military Authority which in turn had questioned the NOC given by respondent No.3, petitioners were constrained to file the second writ petition being Writ Petition No.632 of 2019. That cannot be a ground for declining relief to the petitioners.

28.1. Mr. Naik submits that reliance placed by Mr. Sharma on the agreement for sale and thus to contend that the property itself was sold in the year 2006, which would mean that petitioners could not inherit the said property and be in possession thereof is totally misplaced and wholly untenable. Such an agreement for sale cannot be construed to be and in fact is not a sale. There can be no transfer of title of an immovable property without execution of a sale deed. An agreement for sale is only a promise to transfer the property on satisfaction of certain terms and conditions. Mr. Naik has categorically and vehemently opposed the submission of Mr. Sharma that pursuant to such agreement for sale, possession of the bungalow was handed over to the purchaser. It is asserted that the vendee has not occupied the bungalow. In support of this, he has referred to the order of the civil court and other documents on record. Further, this has been buttressed by the finding recorded by the Cantonment Board itself. Besides, the present condition of the bungalow is such that in its present state it is not at all fit for human habitation. The bungalow in question has remained unoccupied since the year 2006 being in a completely dilapidated condition.

28.2. In so far the deeming fiction under section 238(6) of the Cantonments Act, 2006 is concerned, it is contended that the Cantonment Board has not refused permission but has denied to make the deeming fiction applicable. Petitioners acknowledge the fact that in so far the land over which the bungalow is situated, the central

government certainly has superior claim. Resumption of land is the sole prerogative of the central government. However, the mere fact that the bungalow is under proposal for resumption cannot be a ground for rejection or withholding of sanction for repair and renovation of the bungalow.

28.3. Mr. Naik has appreciated the fair stand taken by Mr. Apte, learned senior counsel for respondent No.3 and finally submits that in so far the present case is concerned, the only logical conclusion that can be reached is that there is omission and neglect on the part of the Cantonment Board in dealing with the application submitted by the petitioners on 04.09.2017. As a result the said application has been kept pending much beyond the statutory time line. In such circumstances, petitioners are entitled to the reliefs as sought for.

29. Submissions made by learned counsel for the parties including the written notes of arguments submitted by the petitioners and respondent Nos.1 and 2 have been duly considered. Also perused the materials on record.

30. Before advertng to the facts of the case and the rival contentions, it would be apposite to deal with the relevant provisions of the Cantonments Act, 2006.

31. The Cantonments Act, 2006 has been enacted to consolidate and amend the law relating to administration of cantonments with a view to impart greater democratisation, improvement of their financial base to make provisions for developmental activities and for matters connected therewith or incidental thereto. Cantonments being central territories under the Constitution, the civic bodies functioning in these areas are not covered under the state municipal laws. In order to bring in modern municipal management procedures to such areas keeping in mind the present day aspirations and needs of the people residing in cantonment

areas and having regard to the 74th constitutional amendment, the Cantonments Act, 2006 has been enacted to provide for better urban management in cantonments.

31.1. Section 2(b) defines 'Board' to mean a Cantonment Board constituted under the Cantonments Act, 2006 (briefly “the Act” hereinafter). 'Defence Estates Circle' has been defined in section 2(n) to mean one of the circles into which India is divided for the purposes of defence estates management; and includes any area which the central government may by notification in the official gazette declare to be a Defence Estates Circle for the purposes of the Act. Section 2(o) defines 'Defence Estates Officer' to mean the officer appointed by the central government to perform the duties of the Defence Estates Officer for the purposes of the Act and the rules made thereunder. Section 2(u) defines 'Forces' to mean the regular army, navy and airforce or any part of any one or more of them. As per section 2(y), ‘Government’ in relation to the Act would mean the central government.

31.2. Chapter II deals with definition and delimitation of cantonment. Definition of cantonments is given in section 3. Section 3(1) provides that the central government may by notification in the official gazette declare any place or places along with boundaries in which any part of the forces is quartered or which being in the vicinity of any such place or places is or are required for the service of such forces to be a cantonment for the purposes of this Act. As per sub-section (2) the central government may by a like notification define the limits of any cantonment and under sub-section (3) the central government shall constitute a Board i.e., a Cantonment Board to look after the cantonment area once any place is so declared under sub-section (1).

31.3. Chapter III deals with Cantonment Boards. Section 10 provides that for every cantonment there shall be a Cantonment Board (also referred to as Board) which shall be deemed to be a municipality and a

body corporate. Sections 24, 25 and 26 falling within chapter III deal with the Chief Executive Officer who exercises the executive power of the Cantonment Board. On the other hand, chapter IV deals with duties and discretionary functions of Boards. Section 62 in particular deals with duties of Board which includes amongst others securing or removing dangerous buildings and places; maintaining and developing the value of property vested in or entrusted to the management of the Board; and preparing and implementing town planning schemes. Discretionary functions of Board are provided under section 64.

31.4. Chapter-X comprises sections 233 to 264 and deals with town planning and control over buildings etc. While section 233 deals with preparation of land use plan, section 234 deals with sanction for building. Section 234 says that no person shall erect or re-erect a building on any land in a cantonment in an area other than the civil area except with the previous sanction of the Board; and in a civil area except with the previous sanction of the Chief Executive Officer. Section 238 deals with the power of Board to sanction or refuse sanction. Since section 238 is relevant, the same is extracted hereunder in its entirety:-

“238. Power of Board to sanction or refuse.-

(1) The Board may either refuse to sanction the erection or re-erection, as the case may be, of the building, or may sanction it either absolutely or subject to such directions as it thinks fit to make in writing in respect of all or any of the following matters, namely:-

- (a) the free passage or way to be left in front of the building;
- (b) the space to be left about the building to secure free circulation of air and facilitate scavenging and the prevention of fire;
- (c) the ventilation of the building, the minimum cubic area of the rooms and the number of height of the storeys of which the building may consist;
- (d) the provision and position of drains, latrines, urinals, cesspools or other receptacles for filth;
- (e) the level and width of the foundation, the level

of the lowest floor and the stability of the structure;

- (f) the line of frontage with neighbouring buildings if the building abuts on a street;
- (g) the means to be provided for egress from the building in case of fire;
- (h) the materials and method of construction to be used for external and party walls for rooms, floors, fire-places and chimneys;
- (i) the height and slope of the roof above the uppermost floor upon which human beings are to live or cooking operations are to be carried on; and
- (j) any other matter affecting the ventilation and sanitation of the buildings, and the person erecting or re-erecting the building shall obey all such written directions in every particular.

(2) The Board may refuse to sanction the erection or re-erection of any building on any grounds sufficient in the opinion of the Board affecting the particular building:

Provided that the Board shall refuse to accord sanction the erection or re-erection of any building if such erection or re-erection is not in conformity with any general scheme sanctioned under section 240.

(3) The Board, before sanctioning the erection or re-erection of a building on land which is under the management of the Defence Estates Officer, shall refer the application to the Defence Estates Officer for ascertaining whether there is any objection on the part of the Government to such erection or re-erection; and the Defence Estates Officer shall return the application together with his report thereon to the Board within thirty days after it has been received by him.

(4) The Board may refuse to sanction the erection or re-erection of any building-

- (a) when the land on which it is proposed to erect or re-erect the building is held on a lease from the Government, if the erection or re-erection constitutes a breach of the terms of the lease; or
- (b) when the land on which it is proposed to erect or re-erect the building is entrusted to the management of the Board by the Government if the erection or re-erection constitutes a

breach of the terms of the entrustment of management or contravenes any of the instructions issued by the Government regarding the management of the land by the Board; or

- (c) when the land on which it is proposed to erect or re-erect the building is not held on a lease from the Government, if the right to build on such land is in dispute between the person applying for sanction and the Government.

(5) If the Board 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 notice was given.

(6) Where the Board neglects or omits, for one month after the receipt of a valid notice, to make and to deliver to the person who has given the notice any order of any nature specified in this section, and such person thereafter by a written communication sent by registered post to the Board calls the attention of the Board to the neglect or omission, then, if such neglect or omission continues for a further period of fifteen days from the date of such communication the Board shall be deemed to have given sanction to the erection or re-erection, as the case may be:

Provided that, in any case to which the provisions of sub-section (3) apply, the period of one month herein specified shall be reckoned from the date on which the Board has received the report referred to in that sub-section.”

31.5. From a careful analysis of section 238 we find that under sub-section (1) the Board may either refuse to sanction erection or re-erection of the building or grant sanction, either absolutely or subject to such directions in respect of all or any of the matters mentioned therein from clauses (a) to (j).

31.6 Under sub-section (2) the Board may refuse to sanction erection or re-erection of any building on any ground construed to be sufficient in the opinion of the Board affecting the particular building.

31.7. Before sanctioning erection or re-erection of a building on land which is under the management of the Defence Estates Officer, the Board shall refer the application to the Defence Estates Officer for ascertaining whether there is any objection on the part of the government to such erection or re-erection. On such reference being made the Defence Estates Officer shall return the application together with his report thereon to the Board within thirty days after the reference was received by him. This is provided in sub-section (3). Thus, when the Defence Estates Officer submits his report, he conveys the views of the government i.e., the central government.

31.8. The Board may refuse to sanction erection or re-erection of any building under sub-section (4) if the land on which such erection or re-erection is proposed is held on a lease from the government and such erection and re-erection constitutes a breach of the terms of the lease; if the erection or re-erection constitutes a breach of the terms of entrustment if the concerned land is entrusted to the management of the Board; or if the land on which erection or re-erection is proposed is not held on a lease from the government and if the right to build on such land is in dispute between the person applying for sanction and the government.

31.9. If the Board decides to refuse to sanction erection or re-erection of the building, sub-section (5) requires that such decision shall be communicated in writing to the person concerned with reasons for such refusal.

31.10. Sub-section (6) on which much reliance has been placed by learned counsel for the petitioners visualizes a situation where there is neglect or omission by the Board in taking a decision for one month after receipt of a valid notice and such person thereafter makes a written communication calling the attention of the Board to the neglect or omission and if such neglect or omission continues for

further period of fifteen days thereafter, the Board shall be deemed to have given sanction to erection or re-erection as the case may be. As per the proviso, in a case covered by sub-section (3), the period of one month shall be reckoned from the date on which the Board has received the report from the Defence Estates Officer. Sub-section (6) thus is a deeming provision whereby the Board shall be deemed to have given sanction to the erection or re-erection if it neglects or omits to make any order within one month after receipt of a valid notice. The procedure prescribed is that after expiry of the one month period the applicant gives written communication to the Board drawing its attention to the neglect or omission and if such neglect or omission continues for a further period of 15 days thereafter, then the Board shall be deemed to have given sanction to the erection or re-erection, as the case may be.

32. At this stage we may also look into the revised land policy dated 09.02.1995. The revised land policy is contained in the letter dated 09.02.1995 issued by the Under Secretary to the Government of India, Ministry of Defence addressed to the Chief of the Army Staff and the Director General, Defence Estates. It regulates addition, alteration, repair, maintenance, reconstruction and renovation of buildings in cantonments erected on sites held on old grant and other resumable tenures. Therefore, it is quite evident that the revised land policy deals with repair, renovation, etc. of buildings in cantonments erected on sites held on old grant and other resumable tenures. This itself is indicative that there is no bar under the said policy for repair, renovation, etc. of buildings on sites which may be resumed by the central government. Para 3.1D is the only provision which envisages a role for the Officer Commanding of the Local Military Station. It says that if the Officer Commanding of the Local Military Station and the Defence Estates Officer consider that reconstruction of a bungalow should be at another part of the plot other than the place where the building to be demolished is situated, the reconstruction shall be sited only at such part of the land.

Other than that there is no role envisaged or provision for the Local Military Authority. Para 4.1 A says that repair, maintenance, addition, alteration, renovation and reconstruction which do not attract the provisions of section 179(2) of the Cantonments Act, 1924 may be made to the building by the grantee. However, as per para 4.1 B such addition, alteration and re-erection of the building which attracts the provisions of section 179(2) of the Cantonments Act, 1924 may be sanctioned on compliance with the requirements of the Cantonments Act, 1924, bye-laws, orders made thereunder and other relevant laws. As per para 4.1 C the provisions contained in paras 4.1 A and 4.1 B are subject to the grantee / successor-in-interest executing and registering an indenture as per format clearly accepting government's ownership of the land and the terms of holding the land. Para 4.4 even empowers the Cantonment Board to regularize unauthorized constructions on collection of compounding fee and on execution of the indenture as per para 4.1 C.

33. Having broadly noticed the relevant legal provisions, we may now advert to the facts of the present case. As already noted above, we are concerned with the application dated 04.09.2017 of the petitioners addressed to the Cantonment Board seeking sanction of the plan for repair and renovation of the said bungalow. But before we delve on the said application *vis-a-vis* contention of the petitioners that because of the neglect and omission of the Cantonment Board the deeming provision of sub-section (6) of section 238 of the Act would come into play, we may deal with the objections raised by respondent Nos.1 and 2 as forcefully articulated by Mr. Sharma in his submissions.

34. We have already noticed and noted the objections of respondent Nos.1 and 2 to the relief claimed by the petitioners. We may summarise the objections as under:-

1. Filing of two writ petitions by the petitioners on the same subject matter would disentitle the petitioners to any relief from the Court.

2. Petitioners have no *locus standi* to file the writ petitions as their mother, the original holder of occupancy rights, had sold the said bungalow during her lifetime *vide* the registered agreement for sale dated 17.03.2006 whereby the purchaser Smt. Gayatri Vijay Shirke was put in possession of the property in question. Since petitioners neither inherited the property in question nor are in possession thereof, question of them seeking sanction for repair and renovation of the property does not arise.
3. The land over which the bungalow is situated belongs to the Government of India. Though the structure was erected by the grantee, the property being an old grant property, status of the grantee is that of a licensee / occupier. Government has proposed resumption of the property. When there is proposal for resumption, question of erection / re-erection or repair / renovation of the bungalow does not arise.
4. Therefore, the deeming provision under sub-section (6) of section 238 would not be attracted and cannot be invoked. Even assuming for the sake of argument that deemed sanction had taken effect, the same stood lapsed after two years in terms of section 243 of the Act.

35. In so far the first objection is concerned, we have already noticed in the initial part of this judgment that Writ Petition No.765 of 2020 was filed first in point of time on 06.04.2018 assailing the inaction of the Board in taking a decision on the application of the petitioners dated 04.09.2017 despite having a positive report from the Defence Estates Officer; though the Board held meetings on 05.02.2018 and 17.02.2018, no decision was taken thereon. This was inspite of petitioners invoking the provisions of deemed sanction under sub-section (6) of section 238. While the writ petition was filed on 06.04.2018 it came to be registered only in the year 2020.

35.1. After filing of this writ petition, Board held further meetings on 26.05.2018 and 20.08.2018 but without taking any decision. In the meanwhile Station Cell of the Local Military Authority wrote to the Defence Estates Officer i.e., respondent No.3 on 27.09.2018 that the NOC issued by respondent No.3 was not acceptable to the Station Cell though respondent No.3 had explained to the Station Cell about the scheme of section 238, further justifying grant of NOC. It is under such circumstances that the second writ petition i.e., Writ Petition No.632 of 2019 came to be filed on 09.01.2019.

35.2. Though strictly speaking the internal communications between the Defence Estates Officer and the Station Cell of Local Military Authority post filing of the first writ petition did not give rise to further cause of action to institute a fresh writ petition, which could have been brought on record by way of an additional affidavit, nonetheless filing of the second writ petition cannot be construed as an abuse of the process of the Court. Even if the second writ petition is taken out of consideration or discarded, it would not impact adjudication of the first writ petition in any manner. It is not a case of petitioners pursuing two remedies simultaneously.

35.3. Therefore, on this ground we are of the considered opinion that the petitioners should not be non-suited and denied consideration. Consequently we are not inclined to accept this objection of respondent Nos.1 and 2.

36. Proceeding to the next objection, it is seen that according to respondent Nos.1 and 2, an agreement for sale dated 17.03.2006 was entered into between Smt. Homai Nussarwanji Pudumjee as vendor and Smt. Gayatri Vijay Shirke as the vendee whereby the former, being the original holder of occupancy rights, had transferred her rights over the bungalow to the vendee. As per the said agreement for

sale the vendor had put the vendee in possession of the bungalow. Thus the contention is that since the bungalow did not devolve upon the petitioners on the death of their mother Smt. Homai Nussarwanji Pudumjee and they having no possession over the bungalow, question of petitioners seeking sanction for repair and renovation of the bungalow does not arise.

36.1. First and foremost, there is a clear distinction in law between an agreement for sale and a sale deed. By its very nomenclature, an agreement for sale is not a document for transfer of title; it is an agreement or a promise. Unless subsequent steps post the agreement for sale are taken it cannot be said that title over the land has got transferred from the vendor to the vendee. The conditions mentioned in the agreement would have to be complied with followed by execution of sale deed. It is only then that transfer of ownership of the immovable property can be said to have taken place. An agreement to sell does not create any right or title in favour of intending buyer; transfer of immovable property by way of sale can only be by a deed of conveyance (sale deed). In the absence of a deed of conveyance duly stamped and registered, no right, title or interest in an immovable property can be transferred. Admittedly, even as per respondent Nos.1 and 2, no sale deed was executed.

36.2. It may not be out of place to mention herein that the power of attorney holder of the original holder of occupancy rights had first filed application on 03.11.2014 before respondent No.2 (subsequently corrected on 27.02.2015) seeking permission to carry out repair works in the bungalow. This application was rejected by respondent No.2 *vide* communication dated 08.09.2015 by taking the stand that the applicant who had made the application was the power of attorney holder of the holder of occupancy rights. She was not recorded as holder of occupancy rights in the General Land Register. When the petitioners being the legal heirs of the original holder of occupancy rights filed

application on 27.01.2016 seeking permission to repair the said bungalow (resubmitted on 30.03.2016 and building plans submitted on 07.09.2016) the same was rejected by respondent No.2 on 19.12.2016 on the ground that names of the legal heirs i.e., the petitioners were not recorded in the General Land Register. In the meanwhile petitioners had filed an application before respondent No.3 on 31.01.2016 for mutation of their names in the General Land Register in respect of the said bungalow. This was allowed by respondent No.3 on 01.09.2017. Thus names of the petitioners were recorded as the legal heirs of the original holder of occupancy rights in the General Land Register. Thereafter fresh application dated 04.09.2017 was filed by the petitioners before respondent No.2 to carry out repair and renovation of the said bungalow. As has been contended by the petitioners no decision has been taken by respondent Nos.1 and 2 on the said application though respondent No.3 on 28.12.2017 had recommended according of sanction to the application dated 04.09.2017.

36.3. Thus from the above it is clearly evident that at no point of time respondents had taken the stand that applications of the petitioners for repair and renovation of the said bungalow could not be considered or were rejected because of the agreement for sale dated 17.03.2006. This is an objection which has been developed by respondent Nos.1 and 2 in the affidavit filed which in any case has got no legal enforceability today because of the subsequent developments; besides there is nothing on record to show or suggest that the vendee had sought for enforcement of the said deed. As a matter of fact, in one of the communications of the Defence Estates Officer dated 18.10.2010, it was confirmed that the purchaser had not occupied the property.

36.4. If that is not enough we find from the pleadings and documents on record that after the death of the original holder of occupancy rights i.e., Smt. Homai Nussarwanji Pudumjee, petitioners had instituted probate proceedings in the Court of the Second Joint Civil Judge, Senior

Division, Pune. The same was registered as Misc. Application No.997 of 2015. Institution of probate proceedings would pre-suppose that there was a will by the testator. Learned Civil Judge had passed an order on 05.02.2016 holding that the said bungalow stood bequeathed to the legal heirs i.e., the petitioners.

36.5. Petitioners had filed an application before respondent Nos.3 on 31.01.2016 for mutation of their names in the General Land Register in respect of the said bungalow. By order dated 01.09.2017 respondent No.3 had allowed the application of the petitioners and recorded their names as the legal heirs of the original holder of the occupancy rights in the General Land Register. In the extract from the General Land Register generated on 01.09.2017, the above facts regarding bequeathing of the property are clearly mentioned. Thus, names of the petitioners were mutated in the General Land Register as the holder of occupancy rights in respect of the said bungalow.

36.6. Therefore, the second objection raised by respondent Nos.1 and 2 has also no merit and is accordingly rejected.

37. This brings us to the third objection made on behalf of respondent Nos.1 and 2. The objection is that there is a proposal for resumption of the land over which the said bungalow is situated by the central government. When there is such a proposal for resumption, question of erection/re-erection or repair/renovation of the bungalow does not arise. There is no dispute that the land over which the bungalow is situated belongs to the Government of India. It is also not disputed that the bungalow was erected by the grantee, the property being an old grant property. It is now also not in dispute that the three petitioners are the legal heirs of the original holder of occupancy rights. After her death and following the order of the civil court the property has devolved on the petitioners. Further, their names as holders of occupancy rights over the said bungalow have also been recorded in the General Land Register.

When the grantee had exercised the right to erect the structure, i.e., the said bungalow, the right of repair and renovation of the said bungalow cannot be denied to the grantee, petitioners having stepped into the shoes of the grantee. As has rightly been pointed out by respondent No.3, proposal for resumption of the land by the Government of India cannot be a ground to deny repair and renovation of the said bungalow. There is no conflict between the two. In fact, the revised land policy makes it abundantly clear that it deals with addition, alteration, repair, maintenance, reconstruction and renovation of buildings in cantonments erected on sites held on old grant and ***other resumable tenures*** (*emphasis ours*).

38. We have already noted that petitioners had submitted application dated 04.09.2017 seeking sanction of the Board to carry out repair and renovation of the said bungalow. As per requirement of sub-section (3) of section 238 the same was forwarded by respondent No.2 to respondent No.3 on 15.09.2017 with a further request to obtain the views of the Local Military Authority. Views of the Station Cell, Local Military Authority were sought for by respondent No.3 on 04.10.2017. By letter dated 16.12.2017 the Station Cell had informed respondent No.3 about the two objections that were raised. Firstly, it was stated that there were three holders of occupancy rights of the said bungalow, i.e., the petitioners. But the application dated 15.11.2017 was signed by only one of the holders of occupancy rights, i.e., by petitioner No.1 that was found to be unacceptable. Secondly, the case for demolition and reconstruction could not be recommended as the bungalow was proposed for resumption. Respondent No.3 had clarified the position in his report dated 28.12.2017 to respondent No.2. It was pointed out that on careful perusal of the building application and the plan received from the office of respondent No.2, it was found that the building application and the plan were signed by all the three recorded holders of occupancy rights, i.e., by all the petitioners. Regarding proposal for resumption of the land by the central government it was pointed out by respondent No.3 that merely because the said bungalow was proposed for resumption that

cannot be a reason for rejection of proposal. In this connection he referred to departmental instructions dated 10.09.2013 and 29.03.2014 copies of which were annexed to the report. In the light of the above respondent No.3 submitted his report stating that the Board may consider the building plan; however he stated that the formal sanction should be issued only after receipt of registered indenture to admission deed from the holder of occupancy rights which it was pointed out is a mandatory requirement as per the revised land policy of 1995.

39. Therefore it is quite evident that this objection raised by respondent Nos.1 and 2 is without any substance and is liable to be rejected.

40. Reverting back to the aforesaid narration, we find that petitioner No.1 on her own behalf and on behalf of all the holders of occupancy rights had given notice dated 04.12.2017 to respondent No.2 invoking the deeming provision of sub-section (6) of section 238. This was responded to by respondent No.2 *vide* letter dated 12.12.2017 by pointing out that application of the petitioners dated 04.09.2017 was forwarded to respondent No.3 for his report which was awaited. Therefore there was no negligence or omission on the part of respondent No.2, which are the pre-conditions for invoking the deeming provision of sub-section (6) of section 238.

41. After receipt of report from respondent No.3 on 28.12.2017 as alluded to hereinabove, meeting of the Cantonment Board was held on 05.02.2018. Agenda item No.13 pertained to application of the petitioners seeking sanction for repair and renovation of the said bungalow. After taking note of the report submitted by respondent No.3, Board resolved that respondent No.3 be asked to obtain the views of the Local Military Authority and thereafter the matter be placed before the Board for necessary decision.

42. We have already noted and discussed the scheme of section 238 of the Act. As per sub-section (3), before sanctioning erection or re-erection of a building which is on land under management of Defence Estates Officer, the Board shall refer the application seeking such sanction to the Defence Estates Officer to ascertain whether there is any objection on the part of the government to such erection or re-erection. Within 30 days of receipt of the reference, the Defence Estates Officer shall return the application together with his report. From a careful analysis of sub-section (3) it is evident that the reference is made to the Defence Estates Officer to ascertain whether there is any objection on the part of the central government to erection or re-erection of the building. Therefore when the Defence Estates Officer, who is appointed by the central government, gives his report, he conveys the views of the central government. Once such a report is before the Board, the mandate of section 238 is that the Board should take a decision either to sanction or refuse to accord sanction. There is no provision or requirement under the statute firstly to obtain the views of the Local Military Authority and secondly to go on obtaining such views despite receipt of report from the Defence Estates Officer. Even under the revised land policy dated 09.02.1995 there is no requirement to obtain the views of the Local Military Authority except in a case where reconstruction of bungalow is to be carried out in another part of the plot of land.

43. When the petitioners again invoked the deeming provision of section 238(6) of the Act *vide* letter dated 20.11.2018 addressed to respondent No.2 stating that the registered indenture was forwarded by respondent No.3 alongwith his NOC in the proper format on 19.09.2018 to respondent No.2, the same was responded to by respondent No.2 *vide* letter dated 30.11.2018. In the said letter it was admitted that respondent No.3 *vide* his letter dated 19.09.2018 had intimated that petitioners had submitted indenture of admission deed dated 17.09.2018 duly registered in the office of the Joint Sub-Registrar on 18.09.2018. It was also acknowledged that respondent No.3 had conveyed NOC on behalf of the

government under section 238(3) of the Act. Curiously enough it was thereafter stated that the matter was again placed before the Board on 09.10.2018. Though the Board noted that respondent No.3 had forwarded the plan with registered indenture deed and NOC in the prescribed format, it was mentioned that Station Cell of Local Military Authority had informed respondent No.3 to re-forward the plan for re-consideration of the Local Military Authority. Since this has not been done the matter has been kept pending.

44. We find the above stand taken by respondent Nos.1 and 2 to be completely beyond the scope and ambit of section 238 of the Act. As already observed above Defence Estates Officer represents the Government of India and his report reflects the views of the Government of India. In the instant case he had taken into consideration the views of the Local Military Authority and thereafter had submitted report. Section 238 of the Act does not visualize a situation where the Local Military Authority can question or veto the report of the Defence Estate Officer which reflects the views of the central government. In fact, section 238 does not envisage any role for the Local Military Authority. Section 238 also does not provide for any such provision whereby the Board can keep an application pending despite having received the report from the Defence Estates Officer on the purported ground of obtaining further views of the Local Military Authority. This amounts to failure on the part of respondent Nos.1 and 2 to discharge their statutory duty as mandated by law. This is not permissible.

45. On the other hand, from the documents and materials on record, we find that there has been compliance to all the necessary requirements under the law by the petitioners. In such circumstances, withholding of sanction by respondent Nos.1 and 2 is not all justified.

46. At this stage, we may briefly dilate on the last objection raised by Mr. Sharma that even if the deeming provision under sub-section (6) of section 238 is treated to have taken effect, the same would stand lapsed

after a period of two years in terms of section 243 of the Act; in other words, if invoked the same has already lapsed. To appreciate this contention we may advert to section 243. It says that every sanction for erection or re-erection of building given or deemed to have been given shall be available for two years from the date on which it is given. If the erection or re-erection of the building so sanctioned is not begun by the person who has obtained the sanction, it shall not thereafter be begun unless the Chief Executive Officer on application made before him allows an extension of that period. Therefore, section 243 is very clear that erection or re-erection of a building has to begin within two years of sanction. That situation has not arisen in the present case. Firstly, there is no sanction as yet. Secondly, invocation of deemed sanction under sub-section (6) of section 238 has been negated by the respondents. As a matter of fact, respondent No.3 before submitting his report on 28.12.2017 had cautioned petitioner No.1 *vide* letter dated 06.12.2017 not to proceed on the basis of deemed sanction and to avoid any construction activity. In such circumstances, there is no deemed sanction. If there is no deemed sanction, there is no question of such deemed sanction having lapsed after two years in terms of section 243. Such an objection is therefore clearly untenable.

47. Accordingly and in the light of the discussions made above, we direct respondent Nos.1 and 2 to accord sanction to the application of the petitioners dated 04.09.2017 within a period of 4 (four) weeks from the date of receipt of a copy of the present judgment and order.

48. Writ Petition is accordingly allowed. However, there shall be no order as to costs.

49. This order will be digitally signed by the Private Secretary of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

(SMT. ANUJA PRABHUDESSAI, J.)

(UJJAL BHUYAN, J.)