



\$~10 & 31

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

+ W.P.(C) 1564/2018, CM APPL. 6412-14/2018

RAM KISHAN AND ORS.

.....Petitioners

Through: Mr. Praveen Kumar, petitioner in person.

versus

UNION OF INDIA AND ORS.

.....Respondents

Through: Mr. Ankur Mishra, Advocate for DCB.

Ms. Sweety Singh, Advocate for GNCTD.

Ms. Archana Sharma, SPC for UOI.

SI Brajesh Patel, PS: Naraina.

Mr. Manish Tanwar and Mr. Abhinav Sharma, Advocates for R-7D and 7E.

CM APPL. 55601/2024 & CM APPL. 55602/2024

+ W.P.(C) 12850/2024

ASHOK VERMA

.....Petitioner

Through: Mr. Manish Tanwar and Mr. Abhinav Sharma, Advocates.

versus

DELHI CANTONMENT BOARD

.....Respondent

Through: Mr. Ankur Mishra, Advocate for DCB.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

%

14.10.2024

1. The captioned writ petitions concern alleged illegal construction in



the same properties and have, therefore, been taken up for hearing together.

2. Mr. Ram Kishan (since deceased) and his son, Mr. Praveen Kumar filed W.P.(C) 1564/2018 seeking a direction to the Delhi Cantonment Board [“Cantonment Board”] to demolish illegal and unauthorised construction raised by respondent No.7 to 9 in the back lane of *Khasra No. 960 [Cantonment Board No. 97 and 97A], Naraina Village, New Delhi 110010*. Mr. Ram Kishan died during the pendency of the writ petition. By an order dated 22.08.2023, his name was deleted from the array of parties, and Mr. Praveen Kumar has thereafter prosecuted the writ petition as the sole petitioner.

3. Three individuals, namely Mr. Tara Chand, Mr. Ashok Kumar and Ms. Savitri Devi (hereafter, collectively, “the private respondents”), have been arrayed as respondent Nos.7 to 9 in this writ petition. Respondent No.7 – Mr. Tara Chand died during the pendency of the writ petition and has been substituted by his legal heirs, including Mr. Manish Kumar and Mr. Atul Tanwar [respondent Nos.7D and 7E].

4. The private respondents have also filed writ petitions with regard to the same property. They have sought directions for demolition notices and orders, issued against them, to be kept in abeyance, until appeals filed by them are heard by the competent authority. The writ petition filed by Mr. Atul Tanwar and Mr. Manish Kumar [W.P.(C) 12485/2024] was disposed of by order dated 09.09.2024, and certain subsequent applications filed by Mr. Praveen Kumar were also disposed of by an order dated 19.09.2024. The petition filed by respondent No.8 – Mr. Ashok Kumar [in the name of Ashok Verma], i.e., W.P.(C) 12850/2024,



is listed today for consideration of certain applications filed by Mr. Praveen Kumar. The said petition is taken on Board with the consent of learned counsel for the parties. A petition filed by Ms. Savitri Devi [by the name of *Ms. Seema Devi & Ors. v, Delhi Cantonment Board*], i.e. W.P.(C) 13018/2024 is scheduled to be listed on 16.10.2024.

5. The case of the writ petitioner in W.P.(C) 1564/2018 is that the constructions by respondent Nos. 7 to 9 are unauthorized constructions and are liable to be demolished. During the pendency of the petitions, demolition orders in respect of the properties of respondent Nos. 7 to 9 have been passed on 28.08.2024.

6. By an order dated 31.07.2024, this Court recorded that the Cantonment Board has taken a stand that the construction is unauthorised, but no concrete steps have been taken to remove the same. The Court noted that, although the private respondents have filed appeals, it was unclear whether any stay operated in their favour. Further affidavits were, therefore, called for from the Cantonment Board. By a further order dated 10.09.2024, it was noted that the Cantonment Board proposed demolition action to be carried out on 19.09.2024. The Court directed the Board to do so and the Station House Officer to extend full cooperation. However, the Court noted the contention of respondent Nos.7D and 7E, that they have been protected by an interim order dated 09.09.2024 in W.P.(C) 12485/2024, and directed the Cantonment Board to take this aspect into account.

7. Having regard to these orders, it is necessary to examine the subsisting orders in the writ petitions filed by the private respondents. However, before advertng to the said orders, four provisions of the



Cantonments Act, 2006 [“the Act”], which have been cited by learned counsel for the parties, may be referred to. Sections 247, 248, 320 and 340 are reproduced below:

“247. Illegal erection and re-erection.—Whoever begins, continues or completes the erection or re-erection of a building—

(a) without having given a valid notice as required by Sections 235 and 236, or before the building has been sanctioned or is deemed to have been sanctioned; or

(b) without complying with any direction made under sub-section (1) of Section 238; or

(c) when sanction has been refused, or has ceased to be available or has been suspended by the General Officer Commanding-in-Chief, the Command, under clause (b) of sub-section (1) of Section 58,

shall be punishable with fine which may extend to fifty thousand rupees and the cost of sealing the illegal construction and its demolition.

248. Power to stop erection or re-erection or to demolish.—*(1) A Board 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 Board considers that such erection or re-erection is an offence under Section 247 and may, in any such case or in any other case in which the Board considers that the erection or re-erection of a building is an offence under Section 247, within twelve months of the completion of such erection or re-erection 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 Board 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:

Provided further that the Board shall not, without the previous concurrence of the General Officer Commanding-in-Chief, the Command, accept any sum by way of composition under the foregoing proviso in respect of any building on land which is not under the management of the Board.

xxx

xxx

xxx



320. Powers of Board in case of non-compliance with notice, etc.—

In the event of non-compliance with the terms of any notice, order or requisition issued to any person under this Act or any rule or bye-law made thereunder, requiring such person to execute any work or to do any act, it shall be lawful for the Board, or the civil area committee or the Chief Executive Officer at whose instance the notice, order or requisition has been issued whether or not the person in default is liable to punishment for such default or has been prosecuted or sentenced to any punishment therefor, after giving notice in writing to such person, to take such action or such steps as may be necessary for the completion of the act or work required to be done or executed by him, and all the expenses incurred on such account shall be recoverable by the Chief Executive officer on demand, and if not paid within ten days after such demand, shall be recoverable in the same manner as moneys recoverable by the Board under Section 324:

Provided that where the action or step relates to the demolition of any erection or re-erection under Section 248 or the removal of any projection or encroachment under Section 252, the Board or the civil area committee or the Chief Executive officer may request any police officer to render such assistance as considered necessary for the lawful exercise of any power in this regard and it shall be the duty of such police officer to render forthwith such assistance on such requisition.

xxx

xxx

xxx

340. Appeals from executive orders.—(1) Any person aggrieved by any order described in the third column of Schedule V may appeal to the appellate authority specified in that behalf in the fourth column of the said Schedule.

(2) The Central Government may, for the purposes of expeditious disposal of the pending appeals, by notification in the Official Gazette, amend Schedule V so as to designate additional appellate authority in the fourth column of the said Schedule.

(3) No such appeal shall be admitted if it is made after the expiry of the period specified in that behalf in the fifth column of the said Schedule.

(4) The period specified as aforesaid shall be computed in accordance with the provisions of the Limitation Act, 1963 (36 of 1963), with respect to the computation of periods of limitation thereunder.”

8. Section 340 refers to the Fifth Schedule of the Act. The relevant



entry with regard to Section 248 of the Act is Sl.No.14 of the Fifth Schedule, is set out below:

<i>“Sl.No.</i>	<i>Section</i>	<i>Executive Order</i>	<i>Appellate Authority</i>	<i>Time allowed for appeal</i>
<i>14</i>	<i>248</i>	<i>(a) Notice to stop erection or re-erection of, or to alter or demolish, a building in a civil area.</i>	<i>Principal Director</i>	<i>Thirty days from service of communication.</i>
		<i>(b) Notice to stop erection or re-erection of, or to alter or demolish, a building in a Cantonment (other than a civil area).</i>	<i>General Officer Commanding-in-Chief, Command</i>	<i>Thirty days from service of communication”</i>

9. It may first be noticed that Section 248 of the Act provides for issuance of a notice in writing by the Cantonment Board to the owner/lessee/occupier of any land, *inter alia*, for demolition of any building, if the erection or re-erection of the building constitutes an offence under Section 247 of the Act. Section 247 of the Act, in turn, provides that erection or re-erection of a building without sanction or in violation of a sanction would be punishable with a fine which may extend to Rs.50,000/- and the cost of sealing the illegal construction and its demolition. Section 320 empowers the Cantonment Board to take action itself in the event of non-compliance of a notice under Section 248. A notice under Section 248 of the Act is appealable under Section 340 of the Act read with the Fifth Schedule thereto.



10. In the present case, it is not disputed that the private respondents have filed appeals against the notices issued to them under Section 248 of the Act. The appeals remain pending before the appellate forum, but the private respondents all approached this Court for orders of stay of demolition during the pendency of the appeals. The writ petition filed by respondent Nos. 7D and 7E has been disposed of by order dated 09.09.2024, alongwith a batch of other similar petitions, recording as follows:

“6. It is thus seen that the appeals preferred by the respective petitioners are under active consideration at different stages and are yet to be decided finally.

7. Since the appeal preferred by the petitioners will have to be adjudicated depending upon the facts and circumstances involved in each case, therefore, the Court is of the considered opinion that till the appeals are decided, the petitioners are entitled for protection as was directed by the interim order.

8. Therefore, it is made clear that during the pendency of the appeal, the interim order dated 16.08.2024 shall remain in force in all writ petitions. The appellate authority shall endeavour to decide the appeal without undue delay and with due expedition.

9. Accordingly, the Court disposes of the instant writ petitions reserving all rights and liberties of the parties to be agitated before the Appellate Authority.”

[Emphasis supplied.]

11. The present position, therefore, is that the property of respondent Nos. 7D and 7E remains protected until the disposal of their appeals.

12. Mr. Praveen Kumar thereafter filed certain applications in the disposed of writ petition, for impleadment and for recall of the order dated 09.09.2024, as well as for initiation of action for perjury against the private respondents. By order dated 19.09.2024, the Court granted him liberty to agitate his grievances before the appellate authority.

13. In the meanwhile, interim orders have also been passed in the writ



petitions filed by respondent Nos.8 and 9 herein. The interim order in W.P.(C) 12850/2024 is dated 12.09.2024. In that case, also, Mr. Praveen Kumar has filed applications for impleadment and for recall of the interim order. In W.P.(C) 13018/2024 also, there is a subsisting interim order dated 17.09.2024, protecting the writ petitioner therein from coercive proceedings.

14. Upon a consideration of the aforesaid facts and orders, I am of the view that these writ petitions have worked themselves out. The Cantonment Board has already passed an order of demolition, which is in appeal before the competent authority. This Court has granted interim orders protecting the property of the owners/occupants during the pendency of the appeals. One of the petitions has been disposed of, making the stay order absolute, but granting liberty to the petitioner to approach the appellate authority and make his submissions. This result is, in my view, an appropriate resolution of these writ petitions also.

15. One submission remains to be dealt with, which is raised in the applications filed by the petitioner for impleadment and recall of the interim order in dated 12.09.2024 in W.P.(C) 12850/2024. The contention of the writ petitioner in W.P. (C) 1564/2018 is that the demolition orders were not appealable, and the contention with regard to appeal is really a red herring raised by the private respondents. He submits that the demolition action is, in fact, to be taken under Section 247 of the Act, read with Section 320 of the Act, which are both not appealable.

16. I am afraid this contention proceeds on misunderstanding of a statutory scheme. Section 247 of the Act provides for an offence in the event of erection or re-erection of a building without sanction or in



violation of an order refusing sanction. The notice of demolition is provided under Section 248 of the Act. By virtue of this Section, the Cantonment Board is empowered to direct the owner/lessee/occupier of land to demolish a building which has been erected contrary to Section 247 of the Act. Section 320 of the Act, on the other hand, only provides that in the event the notice under Section 248 of the Act is not complied with, the Cantonment Board is at liberty to take steps for completion of the work required, i.e. for demolition of the building. As far as demolition is concerned, therefore, the first step is issuance of notice under Section 248 of the Act - which is admittedly appealable - and only in the event of non-compliance, does Section 320 become applicable.

17. For the aforesaid reasons, W.P.(C) 1564/2018 and W.P.(C) 12850/2024 are disposed of with the following directions:

- a. The competent authority, which is in *seisin* of the appeals filed by Mr. Ashok Verma, against the notice of demolition dated 28.08.2024, is directed to consider the appeal as expeditiously as possible, and dispose of the same within a maximum period of twelve weeks from today.
- b. Mr. Praveen Kumar will be entitled to apply to the appellate authority for intervention in the said appeal, and to raise all his contentions before the appellate authority.
- c. Until the appeals are decided, the Cantonment Board will maintain *status quo* with regard to the property which is the subject matter of the pending appeal.
- d. The private respondents will also maintain *status quo* as to title, possession, and construction on the said premises until the disposal



of their appeals.

- e. In the event, the appeal fails, the Cantonment Board will act in terms of the demolition orders already issued, expeditiously, and the concerned police authorities are also directed to provide police assistance in this regard.

18. The next date of hearing in W.P.(C) 12850/2024, i.e.16.10.2024, stands cancelled.

19. All pending applications also stand disposed of.

PRATEEK JALAN, J

OCTOBER 14, 2024
SS/