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C.R.P.NO.3847 OF 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 16 / 12 / 2025

ORDER PRONOUNCED ON: 28 / 01 / 2026

CORAM :

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

C.R.P.NO.3847 OF 2023

AND

C.M.P.NO.23805 OF 2023

1.The Chief Executive Officer,
Cantonment Board,
Wellington, Coonoor.

2.The Senior Engineer,
Cantonment Board,
Wellington, Coonoor.

3.The Sanitary Inspector,
Cantonment Board,
Wellington, Coonoor.

...Petitioners/Petitioners/
Defendants

Verus

G.Venu
D.No.11/345,
Dr.Ambedkar Street,
Wellington, Coonoor Taluk,
Nilgiris District – 643 232.

... Respondent/Respondent/
Plaintiff



C.R.P.NO.3847 OF 2023

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, 1950, praying to set aside the Order dated September 05, 2023 passed in I.A. No.1 of 2022 in O.S. No.66 of 2022 on the file of District Judge of The Nilgiris at Udhagamandalam.

For Petitioners : Mr.M.Vijayan
for M/s.King and Patridge

For Respondent : Mr.M.Santhanaraman

ORDER

This Civil Revision Petition is filed under Article 227 of the Constitution of India, 1950, praying to set aside the Dismissal Order dated September 05, 2023 passed by 'the District Judge of The Nilgiris at Udhagamandalam' ['learned Trial Judge' for convenience] in a petition filed under Order VII Rule 11(a) and (d) of 'the Code of Civil Procedure, 1908' ['CPC' for short] in I.A. No.1 of 2022 in O.S. No.66 of 2022, by the Petitioners therein.

2. The Revision Petitioners herein are the Defendants in the Suit in O.S. No.66 of 2022. The Respondent herein is the Plaintiff therein. For the sake of convenience and clarity, the parties will hereinafter be referred to as per their array in the Original Suit.

3. The Plaintiff filed the aforesaid Original Suit seeking a decree for compensation, for mandatory injunction directing the 1st Defendant to

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permit the Plaintiff to renovate and replaster the suit property and for costs.

4. The Defendants, after receiving summons, filed an application seeking to reject the plaint for the reason that the plaint is barred as per Section 250 of 'the Cantonments Act, 2006' (hereinafter 'the Cantonments Act').

5. The Plaintiff filed a counter, sum and substance of which is that the Defendants did not properly adhere to the principles of natural justice and further, the Defendants did not seek any relief under the Cantonments Act, whereas the Plaintiff has filed the Civil Suit for damages for the illegal and the *mala fide* act committed by the Defendants and hence, the Civil Court has jurisdiction to decide the Suit and therefore, the plaint is maintainable.

6. Mr.M.Vijayan, learned Counsel appearing for the Revision Petitioners/Defendants would submit that as per the Cantonments Act, the 1st Defendant is the Authority to grant building permission. Without getting prior permission from the 1st Defendant, the Plaintiff cannot alter or remodel or put up a new construction. The Plaintiff constructed a roof



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in the 1st floor of the building and also put up some other additional construction, without the prior approval required from the Defendants. Hence, after issuing notice under Section 238 (1) of the Cantonments Act, the Defendants proceeded with the demolition of the illegal construction in good faith. In case the Plaintiff is aggrieved by the Order passed by the Defendants / Cantonment Authority, he can file an appeal as contemplated under Section 340 of the Cantonments Act. Sections 250 and 338 of the Cantonments Act clearly bars the Civil Suit and hence, Civil Suit would not lie. The learned Trial Judge, without considering the said aspects, dismissed the application to reject the plaint. Hence, he prayed to allow this Civil Revision Petition, set aside the Order passed by the learned Trial Judge and allow the Interlocutory Application in I.A. No.1 of 2022.

7. *Per contra*, Mr.M.Santhanaraman, learned Counsel appearing for the Respondent/Plaintiff would submit that the Defendants did not follow the principles of natural justice before demolishing the buildings. The Plaintiff did not seek any relief under the Cantonments Act nor questioned any of the proceedings thereunder. As the Defendants committed an illegal act with *mala fide* intent, the Plaintiff seeks a remedy under common law, which remains available for the purpose of

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seeking compensation. The learned Trial Judge rightly dismissed the application. There is no warrant to interfere with it. Hence, he prayed to dismiss this Civil Revision Petition.

7.1. He would rely on the following decisions in support of his contentions:

- (i) ***Dhulabhai's Case*** - Judgment of Hon'ble Supreme Court in *Dhulabhai -vs- State of Madhya Pradesh* reported in 1968 SCC OnLine SC 40;
- (ii) ***Ramesh Gobindram's Case*** - Judgment of Hon'ble Supreme Court in *Ramesh Gobindram (Dead) through LR's -vs- Sugra Humayun Mirza Wakf* reported in (2010) 8 SCC 726.

8. Heard on either side. Perused the materials available on record.

9. According to the Plaintiff, his grandfather constructed a tiled house 50 years ago in the suit property which is situate in the Cantonment Area, and the same fell into a dilapidated condition over the years. Hence, the Plaintiff sought permission from the 1st Defendant to renovate the same vide his notice dated November 20, 2018. The 1st Defendant did not respond to the same.



9.1. But on May 15, 2019, referring to a complaint dated February 25, 2019 received from one Kavitha, the 1st Defendant issued a show cause notice to the Plaintiff asking him to remove unauthorised construction within three days from the receipt of the notice. The Plaintiff replied to the same on May 25, 2019, stating that he is only replastering the wall with cement and reconditioning the roof, and he has neither changed the existing plan of the building nor has he taken up any additional construction. Further, the Plaintiff requested the 1st Defendant to pay a visit to the site to understand the physical features of the building.

9.2. Thereafter, on June 18, 2019, the 1st Defendant again issued a notice, citing one Ranganayaki's complaint dated May 6, 2019 containing allegation that the Plaintiff obtained patta wrongly and calling for explanation thereon. The Plaintiff replied to the same on June 29, 2019 that patta has been obtained correctly in a proper manner.

9.3. Thereafter, on July 9, 2019, the 1st Defendant called upon the Plaintiff to submit his father death certificate and legal heir certificate, for which the Plaintiff replied on July 17, 2019 that he has applied for the same and shall submit as soon as he receives them.



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9.4. Then, the Plaintiff filed a writ petition in W.P. No.18205 of 2019 seeking direction to the 1st Defendant herein to consider the representation dated May 29, 2019, whereby he had sought for permission for renovation. This Court vide Order dated July 24, 2019, directed the 1st Defendant to consider the said representation dated May 29, 2019 within a period of 6 months. Even thereafter, the 1st Defendant has not considered the Plaintiff's representation. On the other hand, the 1st Defendant on August 16, 2019, issued a notice under Section 248 of the Cantonments Act for demolishing the construction in the suit property, as though the Plaintiff made unauthorised construction. In reply to the same, the Plaintiff sent a letter dated August 24, 2019 requesting the 1st Defendant to visit the site once to understand that he did not put up any such illegal construction, which was received by the 1st Defendant on August 26, 2019. But the 1st Defendant did not make any arrangement to themselves visit the site nor deputed anyone for that purpose.

9.5. According to the Plaintiff, he has not done any material alteration. He has only renovated the house by replastering the wall with cement, refixed the roof with roof sheet, tiles and new angles and nothing else. In fact, after the renovation, the Cantonments Board revised the tax



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assessment for the suit property under Section 76 (1) of the Cantonments Act.

9.6. While so, on November 22, 2021 in contravention of the provisions of the Cantonments Act and the principles of natural justice, the 1st Defendant through Defendants 2 and 3 demolished a portion of the suit property with a *mala fide* intention to satisfy some persons. Once again on December 11, 2021, they demolished the roof of the house. Hence, the Suit for damages and mandatory injunction. This is the case of the Plaintiff.

10. The case of the Defendants in the Interlocutory Application is that the Civil Suit is barred under Sections 241 and 250 of the Cantonments Act.

11. This Court deems fit to extract the said provisions hereunder for ease of reference:

"241. Compensation.—(1) No compensation shall be claimable by any person for any damage or loss which he may sustain in consequence of the refusal of the Board of sanction to the erection of any building or in respect of any direction issued by it under sub-section (1) of section 238.



(2) The Board shall make compensation to the owner of any building for any actual damage or loss sustained by him in consequence of the prohibition of the re-erection of any building or of its requiring any land belonging to him to be added to the street:

Provided that the Board shall not be liable to make any compensation in respect of the prohibition of the re-erection of any building which for a period of three years or more immediately preceding such refusal has not been in existence or has been unfit for human habitation.

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250. Courts not to entertain proceedings in certain cases.—

(1) After the commencement of this Act, no court shall entertain any suit, application or other proceedings in respect of any order or notice unless an appeal under section 340 is preferred and the same is disposed of by the appellate authority under sub-section (3) of section 343 of this Act.

(2) Notwithstanding anything contained in sub-section (1), every suit, application or other proceedings pending in any court immediately before the commencement of this Act shall continue to be dealt with and disposed of by that court as if the said section has not been brought into force.

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338. Protection of action of Board, etc.—No suit or prosecution shall be entertained in any court against a Board or against the Chief Executive Officer, the Officer Commanding a station, Defence Estates Officer, Principal Director, General Officer Commanding in Chief, the Command, Director General Defence Estates, or against any member of a Board, or against any officer or employee of a Board, for anything which is in good faith done or intended to



be done, under this Act or any rule or bye-law made thereunder. "

12. In this regard, reference may be made to ***Dhulabhai's Case*** [cited *supra*], wherein Hon'ble Supreme Court held as follows:

"20. . . .

(i)Where the statute gives a finality to the orders of the special tribunals the civil courts' jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such provision, however, does not exclude those cases where the provisions of the particular Act have not been complied with or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure."

13. Further reference shall be made to ***Ramesh Gobindram's Case*** [cited *supra*], wherein Hon'ble Supreme Court has laid down the principle that when the statute does not provide for the relief sought for in the Civil Suit or when the authority constituted under the statute is not empowered to deal with the subject matter or relief sought for in the Civil Suit, in



such circumstances, Civil Courts' jurisdiction is not ousted. The principle still holds good and is applicable to this case. Relevant extract reads thus:

"34. The crucial question that shall have to be answered in every case where a plea regarding exclusion of the jurisdiction of the civil court is raised is whether the Tribunal is under the Act or the Rules required to deal with the matter sought to be brought before a civil court. If it is not, the jurisdiction of the civil court is not excluded. But if the Tribunal is required to decide the matter the jurisdiction of the civil court would stand excluded."

14. To be noted, in so far as the plaint prayer for compensation is concerned, the Plaintiff has not sought for any remedy or relief under the Cantonments Act. The sum and substance of the Plaintiff's case is that the Defendants violated the principles of natural justice, failed to hear him out, failed to visit the suit property as per his request to understand the physical features, and thereby grossly erred in illegally demolishing a portion of the suit property with a *mala fide* intent to satisfy some persons. Hence, the Plaintiff is entitled to compensation under common law by invoking jurisdiction of the Civil Court.

15. It is settled law that when it comes to a petition under Order VII Rule 11 of CPC, the Court is supposed to look into the plaint and the

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plaint documents alone. In this case, a comprehensive reading of the plaintiff averments along with the plaintiff documents, through the lens of facts and circumstances of the case, shows a cause of action that disregarding the notices of the Plaintiff, wherein he had stated that he did not carry out any material alteration or put up any additional construction and disregarding his request for a field visit to understand the physical features of the suit property and the ground reality, the Defendants have demolished a portion of the suit property illegally. The authorities *prima facie* seems to have violated the principles of natural justice and thereby, failed to act in conformity with the fundamental principles of judicial procedure. Moreover, the Cantonments Act does not provide for any remedy against any illegal act of the authorities concerned or any act in violation of fundamental principles of judicial procedure, and for any loss or damage occurred in account thereof. Hence, the Plaintiff is entitled to invoke the jurisdiction of the Civil Court for claiming compensation under the common law for the alleged illegal and *mala fide* act of the Defendants in contravention of principles of natural justice and the same would not be 'readily' barred under Sections 250 and 338 of the Cantonments Act, in view of the principle laid down in *Dhulabhai's Case* and *Ramesh Gobindram's Case*. To put it differently, when principles of



natural justice are *prima facie* violated, it cannot be readily inferred that the Civil Courts' jurisdiction is ousted, unless the Defendants establish otherwise. For the Defendants to establish that there was no violation of any fundamental principles of judicial procedure or principles of natural justice and that their acts were in good faith, trial is necessary and hence, the plaint cannot be rejected under Order VII Rule 11 of CPC, at the threshold stage itself.

16. Further, Section 241 of the Cantonments Act states that no compensation shall be claimable for any loss sustained in consequence of any direction issued by the Cantonments Board. However, as the act of the Defendants *prima facie* appears to be illegal and in contravention of principles of natural justice as stated *supra*, the bar under Section 241 also cannot be readily inferred.

17. As regards the plaint prayer for mandatory injunction, as the suit property is situate within the Cantonments Area, it is up to the authorities constituted under the Cantonments Act to grant or refuse permission for renovating and replastering the suit property. The Cantonments Act provides for an appeal remedy as well, against the decision of the authority concerned. Under such circumstances, Civil



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Courts cannot interfere with the same. Hence, as regards the plaint prayer for mandatory injunction, Civil Courts jurisdiction is clearly barred. However, plaint cannot be rejected in part and hence, the Interlocutory Application must fail. The learned Trial Judge rightly dismissed the same and this Court does not find any irregularity or illegality with the Order of the learned Trial Judge.

18. Needless to mention that the observations made by this Court are only for the limited purpose of disposal of this Civil Revision Petition. The learned Trial Judge shall proceed with the Suit as per law, untrammelled by the observations made by this Court on the merits of the case, if any.

19. In the result, this Civil Revision Petition is dismissed. Considering the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petition is closed.

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Speaking Order : Yes
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To

The District Judge,
The Nilgiris at Udhagamandalam.



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R. SAKTHIVEL, J.

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PRE-DELIVERY ORDER MADE IN

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