

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 10281 OF 1995
(Arising out of SLP (C) No. 19608 of 1994

THE CANTONMENT BOARD, JABALPUR & ORS APPELLANTS

VERSUS

SHRI S.N. AWASTHI & ORS. RESPONDENTS

ORDERS

Leave granted.

This appeal by special leave arises from the order of the High Court of Madhya Pradesh dated March 2, 1992 passed in Misc. Petition No. 2233 of 1991.

The Cantonment Board through its Resolution No. 10 dated 30th March, 1990 had granted permission for construction of a building which later on was cancelled by another proceedings dated July 5, 1991. Calling in question of the cancellation, the respondents filed the writ petition. The High Court allowed the writ petition on the three grounds, viz, that the sanction having been granted in favour of the respondents, cancellation thereof without giving an opportunity would be in violation of the principles of natural justice. It was also held that the appellants had not specified the distinction between the ' Military Estates Officer' and the ' Defence Estates Officer' for the latter to get power to cancel the permission. Further, it was already held that in equity, since the respondents had started construction, the cancellation was not justified.

It is not in dispute and in fact cannot be disputed that the land is situated within the Cantonment area. Therefore, the title in the land stands vested in the Cantonment Board. What a person in lawful possession would be entitled to enjoy is the lease-hold rights there on subject to the conditions mentioned therein. For the erection or re-erection of a buildings, a licence from the Cantonment Board is

required as a pre-condition under the Act. Section 181 of the Act in the behalf covers the field. Sub-s (3) thereof reads thus :-

"(3) The Board, before sanctioning the erection or re-erection of a building on land which is under management of the Military Estates Officer, shall refer the application to the Military Estates Officer for ascertaining whether there is any objection on the part of the Government to such erection or reerection; and the Military Estates Officer shall return the application together with his report there on to the Board within 30 days after it has been received by him".

The Act was subsequently amended by Amendment Act. No. 16 of 1983 which came into force w.e.f. October 1, 1983 substituting for the words "Military Estate Officer' , Defence Estate Officer' . Thus, as on October 1, 1983 the competent officer to be consulted as a condition to grant permission by the Cantonment Board for erection or re-erection of building by the Board was the ' Defence Estate Officer' . Admittedly, prior permission was not obtained from him. It is also on record that GOC-in-Chief had suspended the Resolution by proceedings dated June 22, 1991 and he passed the order directing the Cantonment Board to reconsider the matter and pursuant thereto, the Board had cancelled the sanction. Since the condition precedent of prior sanction of Defence Estates Officer under sub-section (3) of Section 181 had not been obtained, the sanction for construction of the house granted by the Cantonment Board was **per se** illegal. It is true that no prior notice, before cancellation by the Board, was given to the respondents. In view of the fact that statutory condition has not been complied, we do not like to have the proceedings delayed by directing the Board to give an opportunity to pass fresh order. Instead, we think that the proper course would be to direct the respondents to make an application afresh and the same would be considered by the Board according to law and would be disposed of. The Board would consider the same within one month from the date of the application and should make reference within 15 days thereafter to the ' Defence Estates Officer' for appropriate sanction who would then take action under Section 181(3) of the Act within one month. On return thereof, final order would be passed by the Cantonment Board within one month from the date of receipt of the order passed by the Defence Estates Officer. It is needless to mention that in case the Board or the Defence Estates Officer would be inclined to reject the application for sanction, they should give reason in support thereof. It is also needless to mention that along with the application, the respondents would

be at liberty to file all their documents in support of their claim for sanction. Construction made in contravention of law would not be a premium to extend equity. So as to facilitate violation of mandatory requirements of law, the High Court, therefore, was not justified in extending equity for completion of construction.

The appeal is disposed of accordingly. No costs.

Sd/-
(K. Ramaswamy)

New Delhi
November 2, 1995

Sd/-
(B. L. Handaria)