

(2013) 12 AHC CK 0094

Allahabad High Court

Case No: C.M. W.P. No. 54929 of 2012

Afzal and Others

APPELLANT

Vs

Cantonment Board,
Meerut and AnotherRESPONDENT

Date of Decision: Dec. 19, 2013**Citation:** (2014) 1 ADJ 696 : (2014) 3 ALJ 277 : (2014) 102 ALR 894 : (2014) 122 RD 658**Hon'ble Judges:** Tarun Agarwala, J**Bench:** Single Bench

Judgement

Tarun Agarwala, J.

In this group of petitions, the petitioners have prayed for the quashing of the notices issued u/s 248(1) of the Cantonments Act, 2006 (hereinafter referred to as "the Act") for stopping the constructions raised unauthorisedly by the petitioners as well as for the quashing of the notices issued for demolition of the constructions so raised. The petitioners have also prayed for the quashing of the appellate order passed u/s 340 of the Act. Similar orders and notices have been issued under the Cantonments Act, 1924 (hereinafter referred to as the "old Act"). The basic grievance of the petitioners in these writ petitions is, that the notice issued by the Chief Executive Officer was without jurisdiction, inasmuch as, the said officer had no jurisdiction to issue a notice u/s 248(1) of the Act either for stopping the constructions or for demolition of the constructions so allegedly raised and that the power could only be exercised by the Cantonment Board and that the said power has not been delegated u/s 237 of the Act. Further grievance is, that the reply to the show-cause notice was not considered and that no specific order was passed rejecting the petitioner's reply. On the other hand, the respondents have proceeded to mechanically pass an order for demolition. The challenge is also on the ground, that the notice issued u/s 248(1) of the Act, either for stopping the construction or for demolition does not indicate that the erection or re-erection is an offence u/s 247 of the Act, and consequently, in the absence of any finding that such erection or re-erection is an offence u/s 247 of the Act, the notice issued u/s 248(1) of the Act was wholly illegal and liable to be quashed. It was further contended that the notice issued u/s 248 of the

Act did not indicate the date of construction, inasmuch as, section 248 of the Act provides that a notice has to be issued within 12 months from the date of the alleged construction. It was therefore urged that since the date of construction was not mentioned, the notice was barred by limitation.

2. Heard Sri K.K. Arora, Sri Sumit Daga, Sri P.K. Jain, the learned Senior Counsel and Sri Akhtar Ali for the petitioners and Sri S.K. Rai, Sri Mohd. Isa Khan and Sri Prashant Mathur and Sri S.B. Singh for the Cantonment Board.

3. The facts leading to the filing of the writ petition, which are more or less common in all the writ petitions is, that a notice was issued to the petitioners u/s 248(1) of the Act by the Chief Executive Officer to stop the construction. A reply was given by the owner or the occupier or by the tenant disputing the alleged construction. It is alleged that the reply was not considered and that an order of demolition was passed. An appeal was filed and, without giving an opportunity of hearing, the appeal was dismissed in a mechanical manner. It was contended, that all the orders passed by the Chief Executive Officer as well as by the appellate authority have been mechanically passed without any application of mind and that all these orders are more or less identical and that it would be clear that the orders have been passed by using a cut paste method. It was also urged that the burden to prove that the constructions were not raised or that it was only minor repairs, was wrongly placed upon the petitioners.

4. The basic contention in all these petitions is, that minor repair, if any, was being done by the petitioner and that there was no new construction nor there was any erection or re-erection of a building. It was contended that since only minor repairs were being carried out, no permission was required under the Act or under the old Act. In some cases, the Court finds that a boundary, wall was being raised and it was contended that even for raising a boundary wall, no permission or sanction was required under the Act.

5. On the other hand, the contention of the respondents is, that when it came to their knowledge about the illegal constructions being made, an inspection was conducted at the site. The inspecting team made a report in which it was suggested that constructions were being raised unauthorisedly without obtaining sanction from the competent authority. On the basis of the inspection report, the Board found that such construction constituted an offence u/s 247 of the Act and, based on such resolution, a notice u/s 248(1) of the Act was given initially to stop the construction and upon consideration of the reply, if any, an order of demolition was passed. It was further contended that power of the Board u/s 248(1) of the Act has been delegated to the Chief Executive Officer u/s 237 of the Act.

6. In order to resolve the controversy involved in these petitions, it would be necessary for the Court to examine various provisions under the old Act as well as under the Act. The Court finds that most of the provisions under the old Act have been incorporated verbatim in the Act.

7. The statement of object and reasons issued under the Act indicates that the new legislation was enacted to provide for better management in the cantonment area. The Act provides to consolidate and amend the law relating to the administration of cantonments with a view to impart greater democratisation, improvement of their financial base to make provisions for development activities and for matters connected therewith or incidental thereto.

8. It was found that the civil area in the cantonment area was expanding by metes and bounds and it was felt that the management relating to the control of the buildings, streets and trees in a civil area was required to be managed in a more professional manner. This led to the enactment of the Act. Unfortunately, the Court finds that the new Act is nothing but a verbatim copy of the earlier provisions under the old Act barring minor cosmetic changes.

9. Chapter X of the Act covers town planning and control over the building, streets and trees. Section 234 of the Act provides that no person shall erect or re-erect a building on any land 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 235 of the Act provides that whoever intends to erect or re-erect any building in a cantonment shall apply for sanction to the Board or to the Chief Executive Officer as the case may be.

10. Sub-clause (2) of section 235 of the Act provides various factors as to when an alleged construction would be deemed to be "erection" or "re-erection" of a building. u/s 238 of the Act, the Board may either refuse to sanction the erection or re-erection of the building or sanction it upon such terms and conditions mentioned therein. Section 242 of the Act provides that a person who has been granted a sanction for erection or re-erection of a building has to give a notice indicating the date of completion of such erection so that the authority could make the necessary inspection and issue a completion certificate u/s 246 of the Act.

11. Section 247 of the Act provides, that a person who erects or re-erects a building without a proper sanction under sections 235 or 236 of the Act or who has made the construction without complying with the directions u/s 238 of the Act would be punishable with fine and cost of sealing the illegal construction and its demolition. Section 248 of the Act provides, that the Board, if it considers that such erection is an offence u/s 247 of the Act may, at any time, by notice in writing, direct the owner, lessee or occupier of the land to stop the erection or re-erection of a building and may, within twelve months of the completion of such erection or re-erection in a like manner, direct alteration or demolition, as it thinks necessary, of the building. Under the proviso, the Board has been given power for composition of the alleged construction in terms of money as it thinks reasonable.

12. Similar provision exists under the Cantonment Act, 1924, namely, sections 178A, 179, 181, 183B, 184 and 185 of the Act. For facility, the provisions of sections 234, 235, 238, 242, 246, 247 and 248 of the Act of 2006 and the provisions of sections 178A, 179, 181, 183B, 184 and 185 are extracted hereunder:

13. The learned Counsels for the petitioner strenuously contended that the power of the Board to issue a notice for stopping the construction or for demolition or alteration u/s 248(1) of the Act has not been delegated to the Chief Executive Officer, u/s 237 of the Act. On the other hand, the learned Counsel for the Cantonment Board vehemently contended that the power has been delegated but, by a typographical error, instead of the word "proviso" the word "provisions" has been used, which has resulted in a different interpretation (emphasis is mine). The learned Counsel for the respondents contended that the word "proviso" existed under the old Act, which gave power to the Chief Executive Officer to stop the construction or pass an order for alteration or demolition of the building u/s 185 of the Act, which power is still being exercised by the Chief Executive Officer in such matters, which are pending under the old Act.

14. In order to appreciate this controversy, the provision of section 237 of the Act and section 180A of the old Act are extracted hereunder:

(Emphasis is mine)

15. Section 180A was inserted under the old Act by Act No. 15 of 1983, w.e.f. 1.10.1983 and, since then, the power of the Board with regard to the issuance of a notice for stopping the construction, erection or re-erection of a building and for issuing a notice for alteration or demolition of the building was delegated to the Chief Executive Officer and which continued till the Act was promulgated. As has been said earlier, only cosmetic changes has been made in the Act. The provisions relating to control over buildings, streets, trees, as envisaged under Chapter-X of the Act, is more or less pari materia with the provisions of the old Act. The provision relating to demolition u/s 248 of the Act is identical to the provision of section 185 under the old Act. u/s 180A of the old Act, the power of the Board was delegated to the Chief Executive Officer. However, u/s 237 of the Act, the power of the Board u/s 248 of the Act has been delegated to the Chief Executive Officer excluding the provisions to sub-section (1). The word "provisions" (Emphasis is mine) under sub-section (1) of section 237 of the Act relates to the issuance of a notice for stopping construction etc. and for demolition and alteration of building u/s 248 of the Act. On a plain reading of section 237 of the Act, it is clear that the power of the Board to

issue a notice for stopping the construction, erection or re-erection of a building and for alteration and demolition of such building has not been delegated to the Chief Executive Officer.

16. However, u/s 180A of the old Act, the power of the Board has been delegated to the Chief Executive Officer.

17. The principles of statutory interpretation are well-settled. Where the words of the statute are clear and unambiguous, the said provision should be read and given its plain and normal meaning without adding or rejecting any words.

18. In [Shiv Shakti Coop. Housing Society, Nagpur Vs. Swaraj Developers and Others](#) .., the Supreme Court held:

It is well-settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the Legislature. The language employed in a statute is the determinative factor of legislative intent.

19. Words and phrases are symbols that stimulate mental references to referents. The object of interpreting a statute is to ascertain the intention of the Legislature enacting it. (See [Institute of Chartered Accountants of India Vs. Price Waterhouse and Another](#) , . The intention of the Legislature is primarily to be gathered from the language used, which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of words as meaningless has to be avoided. As observed in Robert Wigram Crawford vs. Richard Spooner , Courts, cannot aid the Legislatures" defective phrasing of an Act, we cannot add or mend, and by construction make up deficiencies which are left there. (See [State of Gujarat and Others Vs. Dilipbhai Nathjibhai Patel and Another](#) ,). It is contrary to all rules of construction to read words into an Act unless it is absolutely necessary to do so. (See Stock v. Frank Jones (Tiptan) Ltd. 1973 1 All ER 948 (HL). Rules of interpretation do not permit Courts to do so, unless the provision as it stands is meaningless or of doubtful meaning. Courts are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself. (Per Lord Loreburn L.C. in Vickers Sons and Maxim Ltd. v. Evans (1910) AC 445 (HL), quoted in [The Jumma Masjid, Mercara Vs. Kodimaniandra Deviah](#) ,)."

20. The Supreme Court held that the Court should not read anything into the statutory provision, which is plain and unambiguous. A statute is an edict of the Legislature and the language employed in a statute is the determinative factor of the legislative intent. The Supreme Court held, that the golden rule for interpreting such statute is, that the grammatical and ordinary sense of the word should be adhered to, unless it leads to some absurdity or inconsistency with the rest of the instrument, in which case, the grammatical and ordinary sense or the word could be modified in order to avoid the

absurdity and inconsistency.

21. In [Union of India and another Vs. Deoki Nandan Aggarwal](#), the Supreme Court held, that it was not the duty of the Court either to enlarge the scope of legislation or the intention of the Legislature, especially when the language of the provision was plain. The Supreme Court held that the Court could not rewrite the legislation.

22. In [Gurudevdatto VKSSS Maryadit and Others Vs. State of Maharashtra and Others](#), the Supreme Court held:

It is a cardinal principle of interpretation of statute that the words of a statute must be understood in their natural, ordinary or popular sense and construed according to their grammatical meaning, unless such construction leads to some absurdity or unless there is something in the context or in the object of the statute to suggest to the contrary. The golden rule is that the words of a statute must prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, then the Courts are bound to give effect to that meaning, irrespective of the consequences. It is said that the words themselves best declare the intention of the law-giver. The Courts have adhered to the principle that efforts should be made to give meaning to each and every word used by the Legislature and it is not a sound principle of construction to brush aside words in a statute as being in apposite surpluses, if they can have a proper application in circumstances conceivable within the contemplation of the statute.

23. Similar view was again reiterated by the Supreme Court in [Raghunath Rai Bareja and Another Vs. Punjab National Bank and Others](#).

24. The Supreme Court in [Afcons Infrastructure Ltd. and Another Vs. Cherian Varkey Construction Co. \(P\) Ltd. and Others](#), however, held that even where the words in the statutes are clear and unambiguous, the departure from the literal rule can be made under certain circumstances, especially where the words used in the statutory provision are vague and ambiguous or where the plain and normal meaning of its words would lead to confusion, absurdity, repugnancy with other provisions. In such circumstances, the Court, instead of adopting the plain and grammatical construction may use the interpretative tools to set right the situation by adding or omitting or substituting the words in the statutes or explaining the existing words in the statutes in a harmonious manner so that a meaningful approach and procedure could be adopted from the said statute. While doing so, the Court would prefer to presume that a clerical error or a typographical error was conducted by the draftsman rather than concluding that the Legislature had introduced an absurd or irrational provision. The Supreme Court in Afcons case (supra) held that such departure from the literal rule of plain and straight reading should only be made in exceptional cases. The Supreme Court, while making the aforesaid observation, considered Maxwell Interpretation of Statutes and for facility, the same is extracted hereunder:

21.1. Maxwell on Interpretation of Statutes (12th Edn., page 228), under the caption "modification of the language to meet the intention" in the chapter dealing with "Exceptional Construction" states the position succinctly:

Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, which can hardly have been intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them altogether, on the ground that the Legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used.

25. This Court in [Tirath Singh Vs. Bachittar Singh and Others](#), approved and adopted the said approach.

21.2. In [Shamarao V. Parulekar Vs. The District Magistrate, Thana, Bombay and Others](#), this Court reiterated the principle from Maxwell (AIR p. 327, para 12):

12.....if one construction will lead to an absurdity while another will give effect to what common sense would show was obviously intended, the construction which would defeat the ends of the Act must be rejected even if the same words used in the same section, and even the same sentence, have to be construed differently. Indeed, the law goes so far as to require the Courts sometimes even to modify the grammatical and ordinary sense of the words if by doing so absurdity and inconsistency can be avoided.

21.6. Justice G.P. Singh extracts four conditions that should be present to justify departure from the plain words of the Statute, in his treatise Principles of Statutory Interpretation (12th Edn. 2010, Lexis Nexis, p. 144) from the decision of the House of Lords in *Stock v. Frank Jones (Tipton) Ltd.* 1978 (1) All ER 948 (HL : (WLR p. 237 F.G))

.....a Court would only be justified in departing from the plain words of the statute when it is satisfied that: (1) there is clear and gross balance of anomaly; (2) Parliament, the legislative promoters and the draftsman could not have envisaged such anomaly, could not have been prepared to accept it in the interest of a supervening legislative objective; (3) the anomaly can be obviated without detriment to such a legislative objective; (4) the language of the statute is susceptible of the modification required to obviate the anomaly.

26. In [Great Offshore Ltd. Vs. Iranian Offshore Engineering and Construction Company](#), the Supreme Court further carved out exception to the ordinary rule of interpretation and held:

An exception to this rule can be made. But before adding words to a statute,

..... the Court must be abundantly clear of three matters: (1) the intended purpose of the statute or provision in question; (2) that by inadvertence the draftsman and Parliament failed to give effect to that purpose in the provision in question; and (3) the substance of the provision Parliament would have used, had the error in the Bill been noticed." [See Justice G.P. Singh's Principles of Statutory Interpretation, 11th Edition, 2008 at page 75 citing *Inco Europe Ltd. v. First Choice Distribution (a firm)* (2000) 2 All ER 109, at page 115 (HL).

27. Similarly, in [Girnar Traders Vs. State of Maharashtra and Others](#), the Supreme Court held:

Many a times, it becomes necessary to look into the true intention of the Legislature in order to give a proper effect to the statutory provisions and in order to achieve the actual intended goal behind the legislation. In [Tirath Singh Vs. Bachittar Singh and Others](#), it was held by the Court that: (AIR p. 833, para 7):

Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence.

The same has been upheld by the Supreme Court in [Commissioner of Income Tax, Bangalore Vs. J.H. Gotla, Yadagiri](#), and in [Andhra Cotton Mills Ltd. Vs. Sri Lakshmi Ganesh Cotton Ginning Mill](#), . Similarly, in [State of Rajasthan Vs. Leela Jain](#), it was held that: (AIR p. 1299 para 11)

Unless the words are unmeaning or absurd, it would not be in accord with any sound principle of construction to refuse to give effect to the provisions of a statute on the very elusive ground that to give them their ordinary meaning leads to consequences which are not in accord with the notions of propriety or justice.....

28. In the light of the aforesaid decisions, the Court finds that from a plain reading of section 237 of the Act, it is apparently clear that the power of the Board has not been delegated to the Chief Executive Officer. The Court finds that the plain and normal meaning of the words used in section 237 of the Act leads to a confusion and absurdity and, therefore, the Court is of the opinion, that the interpretative tools should be used to set right the situation. The Court is of the opinion, that apparently there is a defect in the statute and the Court prefers to presume that the draftsman had committed a mistake in using the word "provisions" instead of the word "proviso"

(Emphasis is mine)

29.. The reason is not far to see. Section 180A of the old Act was incorporated in the year 1983, which continued till the year 2006, i.e., for 30 years until it was repealed and replaced by the Act. Under the old Act, the power of the Board was delegated to the Chief Executive Officer. The power of the Board under the old Act for stopping construction, demolition, etc. has been repeated verbatim u/s 248 of the Act. The intention of the Legislature was that such power, which was existing earlier under the old Act, should continue under the Act. Section 180A of the old Act was also incorporated under the Act as section 237, but, unfortunately instead of the word "proviso", the word "provisions" has been used.

30. This absurdity can also be seen from another angle. The Chief Executive Officer is still exercising the powers of the Board u/s 185 of the old Act, with regard to stopping construction, demolition etc., which are still pending as on date. There is no reason for the Court to hold that the same power continues with the Chief Executive Officer under the Act. It would lead to an absurd result that the Chief Executive Officer exercises the power under the old Act but cannot exercise the power under the Act.

31. In the light of the aforesaid, the Court considers that it is a fit case for departure from the literal rule of plain and straight reading and, in exceptional circumstances, the Court is using the interpretative tool to set right the situation till such time the Legislature rectifies the defect in section 237 of the Act.

32. In the light of the aforesaid, the contention of the petitioners that the power of the Board was not delegated to the Chief Executive Officer under subsection (1) of section 248 of the Act is patently erroneous. The Court, by an interpretative process, holds that the word "provisions" used u/s 237 of the Act in relation to sub-section (1) of section 248 of the Act should be read as "proviso", which shall continue to operate and remain in force till such time corrective measures are taken and the mistake is corrected by the Legislature.

33. Section 248 of the Act and section 185 of the old Act have already been extracted above. From a bare perusal of this provision, the Court finds that it does not provide any notice or show cause notice to be given to the owner or occupier of the premises before passing an order for stopping the construction nor does it provide for a notice to be given for alteration and demolition of the building. Section 248 of the Act does make any provision for conducting any inquiry in the matter where an owner or occupier disputes the notice for stopping the construction or the notice for demolition. The Court finds that no such provision has been incorporated for consideration of such objections. Section 248 of the Act is silent and so is section 185 of the old Act.

34. Prima facie, the provision appears to be arbitrary and violative of Article 14 of the Constitution of India. Stopping construction, passing orders for alteration of the building or for demolition has grave penal consequences. Such action taken by an authority without giving notice or an opportunity of hearing would be hit by Article 14 of the Constitution of

India.

35. In [Government of Andhra Pradesh and Others Vs. Smt. P. Laxmi Devi](#), the Supreme Court held that every effort should be made by the Court to try to uphold the validity of the statute since invalidating a statute would be a grave step. The Supreme Court held that at times one would have to read down the statute in order to make it constitutional. The Constitution is the highest law of the land and no statute can violate it. If there is a statute, which appears to violate it, the Court can declare it unconstitutional or can read down the statute in order to make it constitutional.

36. In the light of the aforesaid decision, the Court is of the opinion, that the law must supply the omission to make it in consonance with Article 14 of the Constitution otherwise it could lead to an absurd result or the said provision would be hit by Article 14 of the Constitution of India. Therefore, Article 14 of the Constitution has to be read in section 248 of the Act and a harmonious construction of the provision is required to be made, namely, where the Board considers such erection or re-erection is an offence u/s 247 of the Act, it may issue a notice to stop the construction. For stopping the construction and for demolition or alteration such notice should be accompanied by an inspection report and such other evidence as is relevant for the purpose of the case alongwith a resolution of the Board indicating that such erection or re-erection is an offence u/s 247 of the Act. Upon receipt of such notice, the person concerned would be given an opportunity to reply to such notice. The person concerned will reply to the said notice as to why it cannot be demolished and why the alleged constructions are legal or valid, etc. If the Board accepts such explanation, the notice would be discharged and the matter would come to an end. If the Board rejects the reply, it would be obligatory upon the Board to pass a speaking order giving reasons for rejecting the objections of the occupier/owner of the building and would further pass such orders as it thinks fit and proper directing alteration or demolition of the building. Such order/notice would be served upon the person concerned to enable such person to file an appeal, if any, as provided under the Act.

37. On the basis of the aforesaid harmonious construction of the provision so made, the Court has considered and perused various orders, which have been passed for stopping the construction and for demolition. The Court finds that in some of the petitions, a composite notice for stopping construction and demolition was issued. In others, separate notice for stopping the construction and separate notice of demolition was issued. The Court finds that wherever the reply had been submitted, the authority had not considered the reply and, if considered, no reasons have given for rejecting the objections. The Court finds that the authority has straight away passed an order for demolition. Such orders passed without considering the objections and without supplying the reasons was wholly arbitrary and violative of Article 14 of the Constitution of India.

38. Some of the notices issued u/s 248 of the Act indicates that the Board has considered such erection or re-erection of the building as an offence u/s 247 of the Act. The Court is of the opinion, that merely by stating that such construction or erection or re-erection of a

building is an offence u/s 247 of the Act is not sufficient by itself. Something more is required to be done, namely, that the order/resolution of the Board indicating that it is an offence should also be attached to the said notice. The inquiry report of the inspection team on the basis of which a resolution was passed u/s 247 of the Act should also be annexed to the notice. It is a mandatory requirement that the notice should contain the reasons and the documents in support of such assertion made in the notice. This is primarily that the person receiving such notice is made aware of the factual controversy and the proposed evidence that is being used against him.

39. The Court has perused the notices u/s 248 of the Act in all the writ petitions, and finds that the notices relating to illegal construction are vague. Specific assertion as to the alleged construction has not been made. Whether it is a new construction, which is being raised from the plinth and is not a minor repair should be clearly indicated in the notice alongwith the evidence such as the inspection report, photographs, resolution of the Board, which in all these cases are lacking. The Court finds that most of the orders u/s 248 of the Act have been issued on a printed format and blank spaces have been filled up by incorporating the name, house number, etc. with minor deviation, wherever necessary.

40. So much so, the Court finds that the appellate order has been done on a cut-paste basis. All the appellate orders are more or less identical, passed in a pre-determined manner without giving any opportunity of hearing. The appellate orders indicate that several opportunities were given to the appellant to appear and that the appellant chose not to appear. There is no finding that the notices were issued to the appellant indicating that the matter would be heard on a particular date nor any proof has been indicated in the impugned order that the notices were duly served. On the other hand, submissions have been made by the Counsels for the petitioners that no opportunity of hearing was ever granted to the petitioners and that all the orders were passed without hearing the petitioners.

41. A submission was made that the notice u/s 248 of the Act should indicate the date of construction or the date of completion of the construction and, in the absence of these dates, the notice u/s 248 of the Act would be illegal since a valid notice could only be sent within 12 months from the date of the alleged completion of the construction. The Court is of the opinion, that the controversy in this regard has been squarely settled by a decision of a Division Bench of this Court in *The Prabhu Narain Union Club, Varanasi v. Union of India and others*, passed in Writ Petition No. 61768 of 2013, dated 12.11.2013 wherein the Court held that the period of 12 months of the completion of the erection or re-erection of the building in the matter of demolition or stopping construction u/s 248 of the Act has to be counted only from the date of service of notice of completion of the building as contemplated by section 242 of the Act and not otherwise. The contention of the petitioner in this regard is rejected.

42. In the light of the discussion made above and upon a harmonious construction of section 248 of the Act and section 185 of the old Act, the Court is of the opinion, that the

notices issued for stopping the constructions and the notices issued for demolition have not been passed in a correct manner and consequently, is violative of Article 14 of the Constitution of India. The appellate orders have been mechanically issued without giving an opportunity of hearing and consequently, cannot be sustained.

43. Consequently, the impugned orders are quashed. The writ petitions are allowed leaving it open to the Cantonment Board or the Chief Executive Officer to proceed afresh in the light of the observations made above in respect of the procedure to be adopted u/s 248 of the Act or under the old Act. In the circumstances of the case, parties shall bear their own cost.