

Defence Estates Officer and Others Vs III A.D.J. and Others

Court: Allahabad High Court

Date of Decision: Sept. 19, 2011

Citation: (2011) 10 ADJ 107 : (2011) 6 AWC 5887

Hon'ble Judges: Sibghat Ullah Khan, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Sibghat Ullah Khan, J.

In spite of sufficient service no one had appeared on behalf of contesting Respondents in these writ petitions, hence on 08.07.2011 only the arguments of Sri A.K. Rai learned Counsel for the Petitioners were heard and judgment was reserved.

2. These writ petitions arise out of common judgment and order dated 19.05.1995 passed by III A.D.J. Meerut in four miscellaneous appeals filed

by the contesting Respondents in these writ petitions. Number of the miscellaneous appeal filed by Darshan Lal and Ors. Respondents No. 2 to 6

in the first writ petition was 41 of 1993. Number of the miscellaneous appeal filed by Respondent No. 2, Manoj Kumar in the second writ petition

was 36 of 1993 and number of the miscellaneous appeal filed by Devendra Kumar and Ors. Respondents No. 2 and 3 in the third writ petition

was 38 of 1993. One more appeal, i.e. Miscellaneous Appeal No. 37 of 1993 filed by Raj Kumar Goel, was also decided by the same judgment

however writ petition in respect of judgment in the said appeal if filed is not connected with these writ petitions.

3. All the appeals were allowed by III A.D.J., Meerut on 19.05.1995 hence these writ petitions.

4. Proceedings had been initiated against the contesting Respondents by Petitioners Defence Estate Officer, Meerut Cantt., Meerut and Union of

India for demolition of unauthorized constructions (shops and godown) in Bungalow No. 277 (Survey No. 373) Police Street Meerut Cantt.). The

land over which bungalow is constructed, total area about half an acre, was leased out by Petitioners for 30 years. The lease expired on

20.07.1992. The lease had been given to Darshan Lal and Ors. Respondents No. 2 to 6 in the first writ petition. The bungalow is situate within the

Cantonment Board area. The officer concerned of the Cantonment Board submitted a report on 29.04.1992 that certain persons were raising

unauthorized constructions in the form of shops and by putting a tin-shed for constructing go-downs. A complaint was made to the Estate Officer

as Prescribed Authority under Public Premises Eviction of Unauthorised Occupants Act, 1971 stating therein that three shops and a go-down had

been constructed over the disputed property unauthorisedly and without permission of the competent authority.

5. On 17.06.1992 prescribed authority/ Estate Officer passed the order for demolition. The order was passed in Order No. Estate/2/165/II/291

dated 03.02.1993. It was a composite order against four sets of persons. Through the said order, construction of two shops and a tin-shed were

directed to be demolished. Against the said order the appeals were filed which were allowed.

6. The lower appellate court allowed the appeals on utterly untenable ground. Appellate court mentioned that Darshan Lal to whom the land over

which bungalow was constructed and over which unauthorized constructions were made, had been allotted by the Defence Department stated in

his reply dated 06.07.1992 before the Prescribed Authority that matter had already been referred to the Cantonment Board for sanction and

compounding. This clearly amounted to admission of unauthorized construction. Appellate court also clearly mentioned that ""No other defence was

taken by the other occupants."" In spite of it, the appellate court held that there was no sufficient material before the Estate Officer to pass order of

demolition and report on the basis of which proceedings were initiated was not duly proved and lease deed was not brought on record. In the

latter portion of the judgment also appellate court categorically mentioned that the argument of learned Counsel for Union of India and Cantonment

Board was that in spite of sufficient opportunity, apart from Darshan Lal, no other person appeared before the prescribed authority. The appellate

court ultimately held that unauthorized constructions were not technically proved and ""it could also not be ascertained as to whether constructions

were unauthorized.

7. I completely fail to understand as to what difference would have been made in case lease deed had been filed. It was not disputed that Darshan

Lal and Ors. were the lessee and lease had expired. In an area within the Cantonment Board over the property leased out to a private person by

Cantonment Board/ Union of India no construction can be made without permission of the Cantonment Board. Construction was there. It was not

the case of any of the contesting Respondents that permission had been obtained before making the constructions. Rather it was admitted by the

lessees Darshan Lal and Ors. that constructions were unauthorized in the sense that they admitted that they had applied for compounding. Nothing

more was required to be proved. The view taken by the lower appellate court borders on absurdity.

8. Accordingly, writ petitions are allowed. Impugned order passed by the lower appellate court in respect of Respondents in these writ petitions is

set aside. Order passed by the prescribed authority/ Estate Officer is restored. The unauthorized constructions shall be demolished forthwith and

the occupants shall be liable to pay Rs. 1000/-per month damages since the date of unauthorized constructions till date to the Petitioners.