

(2017) 05 DEL CK 0066

In the Delhi High Court

Case No : 70 of 2015

DELHI CANTONMENT BOARD

APPELLANT

Vs

SMT SHAMIM BANO & ORS

RESPONDENT

Date of Decision : 09-05-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 378\(4\)](#) - Appeal in case of acquittal
[Cantonments Act, 2006](#), [Section 247](#),
[Section 236](#), [Section 235](#)

Citation : (2017) 05 DEL CK 0066

Hon'ble Judges : R.K.Gauba

Bench : SINGLE BENCH

Advocate : Ankur Bansal, Shekhar Nanavaty

Judgement

1. These thirteen petitions presented under Section 378(4) of the Code of Criminal Procedure, 1973 (Cr.P.C.) by Delhi Cantonment Board (the complainant), a statutory authority constituted under the Cantonments Act, 2006, seek leave to appeal against acquittal of the respective respondents by identical judgments rendered by the court of Metropolitan Magistrate-03, South West District on 26.09.2014 dismissing the criminal complaint cases instituted earlier on the basis of complaints of the petitioner against the respondents they having been registered as complaint case CC Nos.208/4, 64/4, 122/4, 126/4, 230/4, 141/4, 48/4, 148/4, 118/4, 137/4, 276/4, 11/4, and 206/4 respectively. The complaints had alleged offences under Section 247 of the Cantonments Act, 2006 having been committed by the respective respondents by carrying out certain construction work at different plot of lands, such work statedly constituting breach of inhibition in Section 235 of the Cantonments Act, 2006.

2. It may be mentioned here that the complaints were presented through the Chief Executive Officer of Delhi Cantonment Board, in terms of proper authorization by the Cantonment Board, primarily on the basis of a report of unauthorized construction submitted by the junior engineer of the area, in the

wake of which action is also shown to have been initiated under Section 248 (1) of the Cantonments Act, 2006, calling upon the respective respondents to show cause as to why the work in the nature of erection/re-erection of the building be not stopped and the work carried out be not demolished.

3. The respondents have appeared through counsel on notice. Trial court records have been called for. Arguments have been heard and the record of each case has been perused.

4. Section 235 of the Cantonment Act, 2006 reads thus:- "235. Notice of new buildings.-(1) Whoever intends to erect or re-erect any building in a cantonment shall apply for sanction by giving notice in writing of his intention-

(a) where such erection or re-erection is in an area, other than the civil area, to the Board;

(b) where such erection or re-erection is in a civil area, to the Chief Executive Officer.

(2) For the purposes of this Act, a person shall be deemed to erect or re-erect building who-

(a) makes any material alteration or enlargement of any building; or

(b) converts into a place for human habitation any building not originally constructed for human habitation; or

(c) converts into more than one place for human habitation a building originally constructed as one such place; or

(d) converts two or more places of human habitation into a greater number of such places; or

(e) converts into a stable, cattle-shed or cow-house any building originally constructed for human habitation; or

(f) converts into a dispensary, stall, shops, warehouse, godown, factory or garage any building originally constructed for human habitation; or

(g) makes any alteration which there is reason to believe is likely to affect prejudicially the stability or safety of any building or the condition of any building in respect of drainage, sanitation or hygiene; or

(h) makes any alteration to any building which increases or diminishes the height of, or area covered by, or the cubic capacity of, the building, or which reduces the cubic capacity of any room in the building below the minimum prescribed by any bye-law made under this Act."

5. Section 236 clarifies that a person required to give notice under Section 235 quoted above must specify the purpose for which he intends to put to use the building to which the notice relates. Sub-Section (2) of Section 236 further

makes it clear that no such notice would be valid until the information required under sub-Section (1) and any further information, plans and undertakings as may be necessary under the building bye-laws have been furnished to the satisfaction of the Chief Executive Officer alongwith the notice.

6. The expression "erect" or "re-erect" a building is spelt out in sub- Section (2) of Section 235. It appears from bare perusal of each of the eight clauses that the existence of a building seems to be pre-supposed. It is for this reason that clause (a) visualizes material alteration or enlargement of "any building". Similarly, clause (b) speaks of conversion of a place in any such building for human habitation as was "not originally constructed" for such purposes. Clause (c) talks of conversion of more than one place for human habitation in a building "originally constructed as one such place". Further, clause (d) envisages conversion of two or more places of human habitation into greater number of such places. Clause (e) relates to conversion of a building "originally constructed for human habitation" into a stable, cattle-shed or cow-house. Clause (f), likewise, pertains to conversion of "any building originally constructed for human habitation" into a building for purposes like dispensary, stall, shops, warehouse, godown, factory or garage. Clause (g) concerns such alterations as are likely to prejudicially affect the stability or safety of building or its drainage, sanitation or hygiene. Clause (h) relates to such alterations as increase or diminish the height of, or covered area, etc. within a building.

7. It appears from conjoint reading of Section 247 and 248 of the Cantonments Act, 2006 that whenever the work in the nature of "erection or re-erection of a building" commenced, continued or being completed comes to the notice of the competent authorities of a cantonment board, action may be initiated to have such work of erection or re-erection stopped or to be demolished (in terms of Section 248) or to institute criminal proceedings (under Section 247) leading to imposition of fine, the latter action also resulting in cost of sealing the construction and its demolition being realized.

8. It appears from the complaints lodged in each of these cases, and the evidence adduced in support thereto, that on the basis of reports of the junior engineers concerned, who were the solitary witnesses in each cases on behalf of the complainant (the petitioner), show cause notices in the nature of proceedings to have the construction work stopped and the impugned construction demolished under Section 248 of the Cantonments Act, 2006 was initiated. But then, it is not clear from the material on record of these cases as to what was the response submitted in answer to such show cause notices or the action eventually taken there upon. Be that as it may, since such action would be over and above the criminal prosecution for the offence under Section 247 of the Cantonments Act, 2006, the Court in the present proceedings, is called upon to address the issues, which have been raised on the basis of evidence that was adduced against the respondents.

9. It was conceded that the allegations primarily constituted an offence under

Section 247 (a) of the Cantonments Act, 2006, the provision in entirety, however, reading thus:- "247. Illegal erection and re-erection.-Whoever begins, continues or completes the erection or reerection 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."

10. From the above, it is clear that in order to succeed in the criminal prosecutions, it was the onus of the petitioner to prove that the respondents had carried out work in the nature of erection or re-erection of a building within the meaning of any of the clauses of sub-Section (2) of Section 235 referred to earlier, such work having been undertaken, commenced or completed without a notice under Section 236 of the Cantonments Act, 2006.

11. In the facts and circumstances, the learned Magistrate is correct in concluding that it was required of the complainant to bring some evidence on record as to what was the structure, if any, existing on, or user of, the plots of land prior to the impugned activity. It is clear that from bare reading of the complaints and the evidence in these cases that such crucial evidence was remiss.

12. Without such material having been adduced, the complainant could not succeed only on the basis of allegations that some activity in the nature of construction was found having been undertaken at the respective places. Whether or not the work carried out was "construction", and further whether or not such construction (assuming the work was construction) was unlawful is for the court to decide. Mere allegation by the complainant, asserted by its witness, that the activity undertaken was in the nature of "unauthorized construction" was merely an opinion. It is trite that in criminal jurisprudence the court looks for evidence rather than opinion.

13. The sum and substance is that the complainant could have been produced cogent material to bring on record to the satisfaction of the court, the use of the plot of land and structure, if any, existing there upon immediately prior to the impugned acts. This only would have assisted the court in reaching a conclusion as to whether the impugned work was within the breach of any of the clauses of Section 235 (2) of the Cantonments Act, 2006. Since such material was not adduced, the complaints could not have succeed and, thus, are found to have been rightly dismissed.

14. Therefore, the leave petitions are dismissed.