
(2002) 12 BOM CK 0006

In the Bombay High Court

Case No : Writ Petition No. 1695 of 1987 along with W.P. No. 5358 of 1989

Devika Flatowners Association and Others

APPELLANT

Vs

Pune Contonment Board and Others

RESPONDENT

Date of Decision : 13-12-2002

Acts Referred:

Cantonments Act, 1924 — Section 185

Citation : (2003) 1 ALLMR 895 : (2003) 4 BomCR 197

Hon'ble Judges : V.G. Palshikar, J;V.G. Munshi, J

Bench : Division Bench

Advocate : C.R. Dalvi and M.L. Patil, for the Appellant; K.J. Presswala, instructed by Mulla and Mulla and CBC and A.K. Abhyankar, for the Respondent

Judgement

V.G. Palshikar, J.—Both these petitions are directed against the Resolution of the Cantonment Board, Pune passed on 20th August, 1986 compounding certain unauthorised constructions made by the respondent No. 2.

2. It is worthwhile to note that the petitioners are the flat owners and occupants of the building constructed by respondent No. 2 and it is in respect of this building occupied by them that the aforesaid Resolution was passed. They want that Resolution be quashed. The reason for filing these petitions as given by the petitioner is that if at a later stage it is found that the Resolution impugned by these petitions was illegal for some reason, the moneys payable prior thereto may be recovered from the petitioners, respondent No. 2 being the builder the petition is based on apprehended injury.

3. Certain plots existed in the cantonment area of which construction was undertaken by the respondent No. 2 of a six storey building, in accordance with the plan approved by the appropriate authorities. There was a stipulation in the plan sanctioned by the authority that the ground floor should be of stilt and the remaining six floors should be built thereon. Accordingly the building was completed and the flats was handed over to the members of the petitioner society. They are presently in occupation of those flats. Thereafter it appears that

the respondent No. 2 made certain alterations to the buildings and converted the vacant area between the stilt and the ground floor into a flat/premises. That resulted in obstruction of some sort to some of the members of the petitioner and some flat owners. They have therefore agitated by the same and since the alterations made by the respondent No. 2 are illegal they ought not to have allowed to exist. Therefore the petition has been filed.

4. On behalf of the respondents it is submitted that there is no illegality in the order of Pune Cantonment Board dated 20th August 1986 as the Cantonment Board is having the power to do so under the provisions of Cantonments Act. It is submitted on behalf of the respondent that during the pendency of the petition, appropriate sanction for conversion of the land is granted by the State Government and consequently there was no illegality in passing the order of compounding.

5. Section 185 of the Cantonment Act of 1924 empowering the cantonment to stop erection or re-erection or to demolish any construction which is unauthorised and illegal. This very section by the proviso provides that the Board may, instead of requiring the alteration or demolition of any such building or part thereof, accept by way of composition such sum as it thinks reasonable. There is therefore power in the Cantonment Board to accept composition fees/charges instead of directing demolition. This order is appealable and the appeal lies to the Officer-Commanding-in-chief, the Command where Cantonment is situated. However no appeal has been preferred by the petitioners against the order dated 20th August, 1986. Apart from that there is no tangible injury caused to the petitioners or likely to be caused to the petitioners for which the impugned order is liable to be set aside. The power to compound squarely exists in the Board which has been exercised by the Board but the appeal was not preferred by the petitioner and consequently there is no need to interfere at this stage after so many years an order which causes no injury to the petitioner. Hence both the petitions are dismissed.

Parties to act on the authenticated copy of this order.

Petitions dismissed.