
(2008) 07 GAU CK 0073
In the Gauhati High Court
Case No : CRP No"s. 190 and 191 of 2008

Pema Chomphei

APPELLANT

Vs

Cantonment Board and Another

RESPONDENT

Date of Decision : 02-07-2008

Acts Referred:

Cantonments Act, 1924 — Section 184, 185, 256
Civil Procedure Code, 1908 (CPC) — Section 115, 115(3), 151
Constitution of India, 1950 — Article 227

Citation : (2009) 2 GLR 8

Hon'ble Judges : Jasti Chelameswar, C.J; Brojendra Prasad Katakey, J

Bench : Division Bench

Advocate : D.K. Misra, for the Appellant; D. Mazumdar, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Katakey, J.—The Plaintiffs in Title Suit Nos. 12(H)/2007 and 13(H)/2007 pending in the court of the learned Assistant District Judge at Shillong by the present petitions filed u/s 115 of the CPC read with Article 227 of the Constitution of India have challenged the common judgment and order dated 29.5.2008 passed by the learned Addl. District Judge, Shillong in FAO Nos. 6(H)/2007 and 7(H)/2007 dismissing the appeals preferred by them against the separate orders, both dated 1.11.2007 passed by the learned Assistant District Judge at Shillong, refusing to grant the ad-interim injunction prayed for under Order 39, Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, while issuing notice to the Respondents herein to show cause.

2. Since both the petitions are arisen out of the common judgment and order, those are taken up together for consideration, as agreed to by the learned Counsel for the parties.

3. The Petitioners as Plaintiffs instituted Title Suit Nos. 12(H)/2007 and 13(H)/2007 in the court of the learned Assistant District Judge at Shillong praying for a decree that the Plaintiffs" dwelling house standing at 45-A-JB Cantt

has been erected with the required permission and the threatened action of the Defendants of demolition is barred under the Cantonment Act, ("the Act") as well as the principles of the estoppel, waiver and acquiescence and also for permanent injunction, stating, inter alia, that they acquired leasehold right over the holding under their possession in the Cantonment area from the erstwhile lessees and as per the building plan sanctioned by the Defendant-Respondents, they constructed the house. It has further been contended that the Defendants on 26.9.2000 issued a notice u/s 185 of the repealed Cantonment Act, 1924 maliciously and with mala fide intention to cause loss and harassment and, thereafter, issued another notice on 2.4.2001 u/s 256 of the Act and also filed a criminal case u/s 184 of the said Act which was, however, dismissed for default on 30.3.2004. It has also been contended that subsequently the Plaintiffs preferred appeals before the Principal Director of Defence Estate as provided u/s 340 of the Act against the notice issued by the authority for demolition of the unauthorized construction which was, however, dismissed. According to the Plaintiffs, another notice dated 23.10.2007 threatening demolition on 5.11.2007 was issued for which the suits have been instituted. The Plaintiffs also filed an application under Order 39, Rules 1 and 2 read with Section 151 of the CPC praying for temporary injunction restraining the Defendants from demolishing, damaging, destroying or breaking the premises in Holding Nos. 45-A-JB Cantt in building No. 2. The learned Assistant District Judge vide order dated 1.11.2007, while issuing notice, refused to pass any ad interim injunction, against which FAO Nos. 6(H)/07 and 7(H)/07 were preferred, which were dismissed by the learned Addl. District Judge, at Shillong as aforesaid. Hence, the present petitions.

4. We have heard Mr. D.K. Mishra, learned senior Counsel for the Petitioners as well as Mr. D. Mazumdar, learned Counsel for the Respondents.

5. Admittedly, the order dated 1.11.2007 is an interlocutory order. The learned trial court upon consideration of the materials available before it has refused to pass an ad interim order of injunction, while issuing notice to the Defendants to show cause as to why the prayer of the Petitioners should not be granted. No revision u/s 115 of the Code of Civil Procedure, in view of the proviso to Sub-section (1) of Section 115 of the Code of Civil Procedure, is maintainable against such interlocutory order.

6. It is apparent from the order passed by the learned trial court on 1.11.2007 as well as the common judgment and order dated 29.5.2008 that the learned courts below took into consideration the materials available before them and refused to exercise the discretion of granting ad-interim injunction as prayed for. Such discretion exercised by the learned courts below may not be interfered with by this Court in exercise of the jurisdiction under Article 227 of the Constitution of India, unless of course the same suffers from manifest error causing grave injustice. It is not in dispute in the present cases in hand that against the notice of demolition the statutory appeals preferred before the appellate authority under the Act, were also dismissed. Such notices were issued for the purpose of

demolition of the unauthorized constructions. The power of refusal to grant, the ad interim injunction being the discretionary vested in the court below, such exercise of the discretion normally not to be interfered with in exercise of the supervisory jurisdiction under Article 227 of the Constitution of India, which is to be Exercised in far and rare cases and also sparingly. The power under Article 227 of the Constitution of India even not to be exercised, for correcting the error of judgment of subordinate courts, as this Court cannot act as an appellate authority, while exercising the said jurisdiction.

7. In view of the aforesaid position, we are of the view that the common judgment and order impugned in the present petitions heeds no interference in exercise of the jurisdiction under Article 227 of the Constitution of India. Hence, both the petitions are dismissed.

8. No costs.