
(2011) 07 DEL CK 0015

In the Delhi High Court

Case No : Writ Petition (C) 1808 of 2011 and CM APPL 3830 of 2011

Rajesh Agarwal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-07-2011

Acts Referred:

Cantonments Act, 1924 — Section 10, 179, 24A, 43A
Cantonments Act, 2006 — Section 235, 244(1), 57

Citation : (2011) 10 AD 541

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : Sunil Gupta, R. Sudhinder, Rahul Ravindran and Prerana Amitabh, for the Appellant; Saqib, for the Respondent

Judgement

Muralidhar, J.—This is the third round of litigation involving the Petitioner and the Respondents pertaining to sanction of the building plans submitted by the Petitioner for development of the property at Bungalow No. 167, Chapel Street, Meerut Cantonment.

2. Earlier the Petitioner filed Writ Petition (Civil) No. 1056 of 2009 challenging an order dated 20 February 2009 whereby in exercise of its power to review u/s 57 of the Cantonments Act, 2006 ("CA 2006") the Government of India ("GOI") in the Ministry of Defence (MoD) (Respondent No. 1) set aside a decision dated 4 January 2008 of the Cantonment Board ("CB"), Meerut (Respondent No. 3) sanctioning the building plans submitted by the Petitioner. By its decision dated 16 February 2010, this Court allowed the said writ petition and set aside the said order dated 20 February 2009 of the GOI, as communicated to the CEO, CB Meerut on 25 February 2009, essentially on the ground that it had been passed without affording the Petitioner an opportunity of being heard. The case was remanded to the GOI for a fresh consideration of the entire matter and giving the Petitioner an opportunity of being heard. Pursuant to the above remand, on 4 May 2010 the MoD again passed a speaking order which was

challenged by the Petitioner in Writ Petition (Civil) No. 3971 of 2010 in this Court. On 19 th October 2010 the said writ petition was disposed of by this Court by the following order:

1. Learned Additional Solicitor General states that having examined the impugned order and without prejudice to the rights and contentions of the parties, the Respondents are ready to give the matter a re-look afresh on th all aspects. In that view of the matter, the impugned order dated 4May 2010 is set aside. The Petitioner will be given another opportunity of being heard by the Respondents within a period of three weeks from today. The exact date of hearing will be communicated to the Petitioner at least 10 days prior to such hearing. A reasoned order, strictly in terms th of the judgment dated 16February 2010, of this Court in W.P. (C) 10156 of 2009 will be passed by the Respondents within a further period of three weeks thereafter and communicated to the Petitioner within two weeks thereafter.

2. It will be open to the Petitioner if aggrieved by such an order to seek such appropriate remedies as are available to him in law.

3. The writ petition is disposed of in the above terms. The pending application is also disposed of.

4. Order dasti.

3. Thereafter, the Petitioner submitted a written representation on 8 th November 2010 enclosing therewith a copy of the sanctioned building plans, letter dated 1st August nd 2007 addressed by him to the CEO of the CB withdrawing his applications dated 22th February 2006 and 7May 2007. After giving the Petitioner an opportunity of being th heard, the MoD passed the impugned order dated 7February 2011 reiterating its th earlier order dated 20 February 2009.

4. This Court has heard the submissions of Mr. Sunil Gupta, learned Senior counsel for the Petitioner and Mr. Saqib, learned Counsel for the Respondents.

The Cantonment Act 1924 and the Rules

5. The facts of the present case, which will be set out in some detail hereafter, and the issues arising for determination, necessitate an examination of the relevant statutory provisions. The Cantonments Act, 1924 ("CA 1924") was enacted to consolidate and amend the law relating to administration of cantonments. Section 10 CA 1924 states that for every cantonment there is to be a CB. Section 24 CA 1924 provides for the appointment of an Executive Officer ("EO") who shall be the Secretary of the CB. Section 24A CA 1924 prescribes the duties to be performed by the EO which includes the duty of exercising supervision and control over the acts and proceedings of the CB and being responsible for custody of all the records of the CB. Section 43-A was inserted in the CA in 1936. There is no definition of the expression "bazaar area". The common dictionary meaning of a bazaar area is a place where goods are bought

and sold. Rule 2 (b) of the Cantonment Land Administration Rules, 1937 ("CLAR") enforced with effect from 20 November 1947 defines a bazaar area as an area declared u/s 43-A CA 1924. Rule 3 provides for the preparation of a general lands register ("GLR") for all lands in the cantonment inside the bazaar and outside the bazaar. Rule 10 provides for maintenance of the GLR. Rule 43 provides that the Military Estate Officer ("MEO") should supply to the CB the extract of the GLR prepared under Rule 3 in respect of all lands in the bazaar the management of which has been entrusted to or vests in the CB. Rule 45 CLAR requires the maintenance of GLR to be performed by the CB in respect of land in the bazaar and the management of which has been entrusted to, or vests in the CB. By way of an amendment to Section 43-A in 1954, the expression "bazaar area" was substituted by the expression "civil area". u/s 2(vii-a) a civil area means an area declared to be a civil area by the Central Government u/s 43-A. From the documents pertaining to the years prior to the substitution of "bazaar area" with "civil area" it appears that residential areas continued to be called as such although they were interspersed with a market or bazaar or commercial areas meant for the residents living in a residential area. It also appears from the entries in the GLR that the word "bungalow" was used to describe both a residential plot as well as a plot for residential and commercial use. The CA 1924 did not provide for any clear demarcation between residential and commercial areas as found in the urban development statutes. The above scheme of the CA 1924 by and large remains unchanged in the CA 2006. The CB and in some matters its CEO have been given wide powers to decide on land use as well administration of the lands in a cantonment area. It is the CB which maintains the GLR as well. Further, in terms of the provisions of the CLAR, the GLR is meant to record the categories of lands, their ownership and/or occupation and incidentally also the land use. In AIR 1935 588 (Lahore) it was observed that if the GLR was not carefully prepared, it was not possible to place reliance upon it without corroborating evidence from other records of the CB. With the above broad overview of the applicable legal provisions, the facts of the case may now be examined.

Relevant facts

6. The Petitioner inherited the property in question which belonged originally to his grandfather. In 1932 the Petitioner's grandfather had constructed a cinema hall and shops in the property after obtaining sanction from the Cantonment authorities. The Petitioner produced documents before the authority which passed the impugned order to show that from 1930 onwards there was a structure in the property comprising of a cinema hall which was known as the Palace Theatre. There were also shops in the property. A firm by the name and style of M/s Pooran Chand & Sons was formed by Late Lala Chiranji Lal and his brother late Mr. Mohan Lal. Later Lala Chiranji Lal, Lala Rameshwar Prasad and Lala Omprakash also became partners in the business. The Petitioner is the son of Rameshwar Prasad Agarwal. The business of the firm comprised, inter alia, of running of the Palace Theatre at Meerut, it also carried on the business of Picture

Palace and Jubilee Theatre at Mussoorie. A photograph of a building named "Pooran Chand Building" has been enclosed with the petition as Annexure P-3. The Palace Cinema underwent additions and alterations from time to time. It is claimed that the usage of the property was always commercial. Resolutions dated 15 January 1952 and 14 June 1957 of the CB recorded that the Petitioner's grandfather had made applications for permission to carry out additions and alterations to the property. Inter alia, it was recorded that the property which was held on "old grant terms" was located "within the bazaar area."

7. The Petitioner submitted a building application with a notice u/s 179 of the CA 1924 on 15 February 2003 to the CB Meerut proposing the demolition of the seventy year old structure and erection of new structures in its place. The building plans were returned to the Petitioner by the CEO of the CB, Meerut asking him to get the mutation done in his favour before submitting the plan. The Petitioner on 22 nd February 2006 applied for correction of the entries in the GLR to show the property as commercial i.e. shops and cinemas instead of "bungalow" as the property had in th fact been used for a commercial purpose for over 70 years. On 27 February 2006 the Principal Director Defence Estates, Lucknow wrote to the Director General Defence th Estates ("DGDE"), Government of India forwarding a letter dated 20 March 2006 of the CEO of the CB Meerut regarding the CB's proposal for regularization of the change of purpose relating to the property. In the said letter, after presenting the history, it was mentioned in paragraph 5 that "the change of purpose has already been approved by the Board as plans for shops and Cinema Hall were sanctioned by the th th Board vide its CBR No. 01, dated 5 February 1952 and CBR No. 1(19), dated 14 June 1957 respectively." Copies of these Resolutions were enclosed with the letter. The CEO, CB Meerut had further reported that the cinema hall which existed at the site was not in a running condition but that the shops therein were still operational. It th was stated in the letter that in terms of the instructions issued on 17 May 2000 by th Respondent No. 3 and those dated 16 November 2002 of the MoD, the building plan submitted by the Petitioner could not be approved by the CB without prior approval of the MoD since the change of purpose was involved. It was stated that "since the th Cantonment Board had sanctioned the plan on 14 June 1957 for granting permission to use the premises for purposes other than residential before the said instructions were issued by the GOI, MOD (DGDE), the change of purpose from Bungalow to Cinema Hall and Shops is required to be regularised." In the meanwhile, on 7th August 2005 mutation was effected in the Petitioner's name in respect of the property. It was mentioned therein that the Petitioner had "purchased the building and not the land which belongs to the Government of India.

8. The Petitioner by a letter dated 1st August 2007 withdrew the two applications nd th dated 22th February 2006 and 7th May 2007 made by him to the CB for change of purpose. He stated therein that he had been advised that the change of purpose which already took place in 1935 and again in 1957 and the plans for the shops were already sanctioned in 1952 by the CB. Therefore, the change of

purpose was not necessary. His request for withdrawal of the application was placed before the CB on 27th August 2007 and accepted by it. The Petitioner, on 7December 2007 again applied to the CB by giving a written statutory notice u/s 235 of the CA 2006 (which replaced the CA 1924). The said application was considered by the CB and th by its resolution dated 4January 2008 the plan was sanctioned. However the no objection certificate ("NOC") from the "fire point of view" was asked to be obtained by the Petitioner from the Chief Fire Officer. The CB required the Petitioner to deposit Rs. 53,223/-towards charges for sanctioning the building plan. The amount th was paid by the Petitioner on 16January 2008 and the building plans were duly sanctioned on that day.

9. On the basis of the sanctioned building plan, the Petitioner commenced reconstruction and redevelopment of the property. The old structure was demolished. In the second week of January 2009 the Petitioner was surprised to come across a news item in the local newspaper that the sanctioned building plans of the Petitioner had been put on hold by the Board by the instructions of the DGDE. The Petitioner then made representations on 9, 12th and 19th February to a senior official asking th them for a personal hearing before any decision was taken. On 25th February 2009, the MoD informed the CEO of the CB Meerut that the GOI India had set aside the th Resolution dated 4January 2008 of the CB. Thereafter, the Petitioner received a letter dated 16th March 2009 from the CB informing him that the MoD had by its th th order dated 20th February 2009 set aside the CB's Resolution dated 4th January 2008. The letter also referred to a Resolution dated 12th March 2009 of the CB whereby it was decided to keep a strict watch to ensure that no unauthorised construction took th place. The said letter also referred to a letter dated 18th September 2008 of the CB which according to the Petitioner was never received by him. After the Petitioner made enquiries for the reasons for the sanction being set aside, it was revealed that th one Mr. Om Pal on 8February 2008 sent a complaint to the DGDE. The copy of the said complaint was furnished to the Petitioner pursuant to an application made by him th under the Right to Information Act, 2005 ("RTI Act"). In its letter dated 20February 2008, the CB informed the Principal Director (PD), Defence Estates, inter alia, that no person named Om Pal resided at the given address therefore the th complaint was bogus. Further on 5th March 2008, the CB wrote to the PD stating that the DGDE had spoken to the CEO of the CB and advised him that sanction of a shop and cinema hall in the property did not constitute any change of use of land as the CB had already sanctioned the building of the cinema hall and shops more than 50 years ago. It was pointed out that the CB was the competent authority to permit change of W.P. (C) 1808 of 2011 Page 6 of 17 use of any land or building and that in the instant case, the sanction accorded by the CB was only a reiteration of the old sanction.

10. A show cause notice was issued by the MoD to the CB Meerut on 21st November 2008 as to why the sanction should not be revoked or modified. A detailed reply was furnished by the CB on 1st January 2009 explaining why the sanction of the Petitioner's building plan was legally justified. However, on 20th

February 2009 the MoD issued a "notice" conveying to the CB, Meerut its decision to set aside the decision dated 4th January 2008 of the CB. This decision conveyed to the CEO of the th CB Meerut by the DGDE by a letter dated 25th February 2009. The CB in turn conveyed the decision to the Petitioner by its letter dated 16th March 2009. The changing stand of the Respondents as regards change of purpose

11. The stand of the Respondents on the change of purpose in regard to the property in question has been varying with time. In the counter affidavit filed in the earlier writ petition W.P. (C) No. 10156 of 2009 three reasons were given for cancelling the sanction accorded by the CB to the Petitioner's building plan. The first was that the CB had sanctioned the building plan without waiting for the response of the MoD to the proposal for amendment of the GLR in respect of the property changing its description from residential to shops and cinema theatre. Secondly, in terms of the th land policy dated 9February 1995, the authorised floor space was 37,650 sq. feet whereas the space approved by the Board was 57,383 sq. feet comprising ground floor plus two floors. Thirdly, the regulations concerning the cost of reconstruction of the building were not followed with an underlying motive to commercialise the use of the Government land contrary to the original grant terms. The last two objections have th been persisted with in the impugned order dated 7February 2011 but not pressed during the course of hearing before this Court in these proceedings. In fact it has been conceded by learned Counsel for the Respondents that the plans submitted were consistent with the applicable building regulations concerning floor space and cost.

12. As regards the first objection regarding change of purpose, the impugned order th dated 7February 2011 of the MoD acknowledges that the Petitioner is a holder of occupancy ("HOR") of GLR Survey Nos. 357/1742, 357/1742/1 to 357/1742/3 and W.P. (C) 1808 of 2011 Page 7 of 17 357/1742/6 to 357/1742/8 of Meerut Cantonment. It acknowledges that the aforementioned sites are described as Bungalow No. 167, Southern triangular plot in Bungalow No. 167; Western Open Plot in Bungalow No. 167 Chapel Street, Bungalow No. 167/1, 167/C with all out houses, Chapel Street; Eastern Open plot in Bungalow No. 167, Chapel Street; and common passage in Bungalow No. 167, Chapel Street. Further, it proceeds on the basis that the sites are situated inside the civil area and placed under the management of the CB Meerut. The impugned order however observes that "a commercial building at 167, Chapel Street existed since at least 1937 is not borne out by the official records." The impugned order also states th that the partition deed dated 28February 1950 does not specify Bungalow No. 167 as Palace Theatre.

13. The documents produced by the Petitioner belies the stand of the Respondents. It appears that the officials undertook photographs of the said building prior to its th demolition on 19 July 2008. Through an application under the RTI Act the Petitioner managed to obtain copies of some of the photographs. The Petitioner has also placed th on record a copy of the letterhead dated

19October 1937 of M/s Pooran Chand and Sons showing that the firm was the property of Palace Theatre at Meerut. A photo of the property at Chapel Street, Meerut Cantonment is also produced. It appears that a copy of this letter was taken by the Petitioner from the Mussoorie Municipality and was still available on record of the said Municipality. In 1945, the Petitioner's firm advertised in Thacker's Indian Directory, a document to this effect which has been placed as Annexure P-6 to the writ petition. A letterhead of M/s Pooran Chand & Sons showing the photograph of Palace Theatre has also been annexed as Annexure P-7. The Petitioner has also placed on record a photocopy of a partnership deed dated 28February 1950. The said partnership deed entered into between Late Lala Chiranji Lal, Smt. Chameli Devi, Smt. Sunehri Devi, Rameshwar Prasad Agarwal, Om Prakash Agarwal and Chandra Prakash Agarwal and Baboo, aged four and a half years (the Petitioner herein) makes a reference to the Picture Palace, Jubilee and Rialto Cinemas at Mussoorie in Clause 8 and Palace Theatre in Meerut in Clause 13. The schedule to the partnership deed also makes a reference to shops in some of the plots which have since been taken over by the Petitioner and entries have been made to the HOR. Clause 13 of the said partition deed, a photocopy of which is enclosed as Annexure P-8, states that "property Palace Theatre Meerut has been allotted to Party No. 4, in his Lot "B"." The schedule specifies the Lot B and in the assets column clearly mentions Palace Theatre, Meerut. Yet, the impugned order states that the partition deed dated th 28 February 1950 does not specify Bungalow No. 167 as Palace Theatre.

14. It is also important to note that the stand of the Respondents in the counter affidavit in the present writ petition is different from what is stated in the impugned order. In reply to para 3 of the writ petition, the counter affidavit states that "Bungalow No. 167, Chapel Street Meerut Cantt comprising GLR survey No. 357/1742 measuring 1.04 acres is held on old grant terms for residential use and is situated inside notified civil area of Meerut Cantonment." Consequently, it appears to be the admitted position that the property in question was being held on "old grant terms" and was not therefore held on the basis of any lease. While, it is maintained that this property was meant exclusively for residential use, the factual position was that the property did contain a cinema hall and shops. In the same para, i.e. para No. 3, of the counter affidavit it is stated that "as per record available it is admitted that a cinema hall/shops was constructed at the site and on the basis of the same the Board has permitted to make addition/alterations at the site in question." It has been clearly th th mentioned in CBR No. 2(1) dated 5February 1952 and CBR No. 1(19) dated 14June 1957 that change of purpose is involved in the case. A similar statement about the existence of cinema hall/shops at the site and the fact that the CB had permitted the previous HO Rs of the property to make additions/alterations at the site from time to time has been admitted in para 10 in the parawise reply of the counter affidavit. Further, in para 12(i), it is admitted that as per the records available with it, "a cinema hall (Palace Cinema) was in existence at site but at present there is no structure of cinema hall at site as the

same has been demolished by the Petitioner." This admission by the Respondents contradicts the impugned order in a significant aspect. The impugned order had concluded that the official records did not bear out the fact that "a commercial building at 167, Chapel Street existed since at least 1937."

15. The Petitioner has placed on record a copy of the CB Resolution dated 15 January 1952 which talks of a building application dated 21st December 1951 from Shri Chiranjilal requesting permission to carry out certain additions and alterations to Bungalow No. 167/1, Chapel Street. The plan enclosed with this Resolution recognizes that a change of purpose already exists. It states that "the proposal will involve sub division of site, a change of purpose is already existing in this case." Then there were additions/alterations in the said building in 1953. The Resolution dated 31st December 1953 and the plan approving shops by the CB have been enclosed as th Annexure P-10. Likewise, CB Resolution No. 19/1 dated 14 June 1957 which also deals with records and recognizes the earlier change of purpose along with sanctioned plans had been enclosed with the writ petition. The approved sanctioned building th th plans dated 13 January 1969 and 17 October 1969 clearly show the existence of shops and that permission was sought for additions/alterations of the shops.

16. In response to the above, in the counter affidavit, there is no denial by the Respondents that there did exist the cinema hall and shops and that additions/alterations were sought by the aforementioned resolution of the CB. However, what is sought to be contended is that "earlier the said Bungalow No. 167 was a single unit, however, subsequently, the property was sub-divided in the year 1950 by the Meerut Cantonment Board under powers delegated to Respondent No. 3 (CB, Meerut) for approving sub-division/change of purpose." The said power was withdrawn by the GoI, MoD by its letter No. 31/3/L/L&C/36/7260-L/D(C&L) dated th 16 November 1962. The further submission is that "no plan for whole bungalow was ever sanctioned/passed by the Cantonment Board Meerut but plans for separate portion has been passed by the Board earlier from time to time." It is contended in para 10 of the parawise reply that "change of purpose has never regularized by any competent authority till date."

17. In the first place, it requires to be noticed that the above submissions are clear th admission by the Respondents that prior to 16 November 1962 itself the property in question was being used for commercial purpose; it was held on "old grant terms"; and that periodical additions/alterations were permitted to the previous H Ors. th Turning to the GoI's letter dated 16 November 1962, it reads as under:

3. Sub-division etc. of sites held on Old Grant Terms inside civil areas.

I am directed to say that recently some cases have come to light, where, in pursuance of the instruction contained in the late Defence Department letter No. 11890/1/D.4, dated the 1st November 1941, and subsequently clarified in Defence Estate Directorate General letter No.

th th 8/17/L/L&C/52/9212-L/52, dated the 13/19 November 1952, Cantonment Boards have permitted indiscriminate sub-division of sites comprising large holding situated inside notified Civil Areas held on "Old Grant" terms, without demanding leases therefore according to normal rules and have thereby, in addition to congesting the areas caused loss of considerable revenue which could have been secured had the policy been judiciously and prudently followed by insisting upon execution of leases in respect of each sub-divided portions on payment of current market rent and suitable premium.

(2) Government of India have given careful consideration to the matter and have decided that hereinafter change in the use of or sub-division of a site or erection of additional buildings, in respect of old grant sites inside notified civil areas, shall not be sanctioned by a Board without the previous sanction of the Central Government. All cases not yet finalised should be dealt with accordingly.

[GOI, Min of Def letter No. 31/3/L/L&C-36/7260-L/D (C&L) dated 16.11.1962]

18. It is clear from the reading of the above letter that it was meant to be prospective. In other words, the requirement of obtaining the previous sanction of the GOI for any change in the use or sub-division of a site or erection or additional buildings by the CB was not to reopen the decisions already taken by the CB prior to 1962 without obtaining such previous sanction. The present case fell in the latter category since the change of purpose as acknowledged by the CB itself already existed prior to 1962.

19. The Petitioner has also obtained through the RTI copies of the GLR as they stood th right from the beginning. Prior to the first change in the entry on 13 December 1947, the description of the property was shown as "Shop No. 167". The HOR was Chiranji Lal and Sons. In the column "Nature of Holder Rights" the entry is "old grant". It is evident that even as per the GLR the property was originally described as "Shop". This clearly contradicts the stand of the Respondents, which has been reiterated in the counter affidavit, that the use of the property remained "residential" throughout. Entries corresponding to the mutation on 31st December 1947, 18th February 1948 and thereafter in the GLR first describe the property as "Shop No. 167 and thereafter Bungalow No?..". It would therefore not be possible from the above entries in the GLR to infer that the purpose remained residential always.

20. By a further affidavit dated 5th July 2011, the Petitioner has placed on record the reply dated 27th June 2011 given by the CB, Meerut to an application made on 21st April 2011 by the Petitioner. In the said application, the Petitioner sought to know W.P. (C) 1808 of 2011 Page 11 of 17 th why in the GLR against the entry dated 18 February 1948 in the "Description" column the property was described as a "Bungalow". The reply states that the reason th was that partition dated 19 September 1947 described the sites as "bungalow" numbers. When Late Shri Chiranji Lal, Rameshwar Prasad Agarwal, Om Prakash Agarwal and Chandra Prakash Agarwal made a joint application for mutation, they referred to the

property with its bungalow numbers. Therefore it was not as if the GLR accurately recorded the description because even by then there already existed a cinema hall and shops in the land. In any event, the word "bungalow" in the context of the CA 1924 and the CLRA did not mean exclusive residential use.

21. The Petitioner has further averred that there are various properties in the area which are admittedly till date commercial but described in the respective GLR as "bungalows". Examples cited are Nishat Cinema which is shown as Bungalow No. 189, Mayfair Cinema as Bungalow No. 64, Vijay Bar Hotel (Abu Lane) and Abu Plaza all of which were described as bungalows. Therefore, the word "bungalow" would not automatically mean that the property was meant to be exclusively for residential purpose. It is indeed inconceivable that a cinema hall and shops existing since 1930 would have been permitted without any sanctioned plan. Even assuming that was the state of affairs, the fact that no action was taken to prosecute the predecessor-in-interest of the Petitioner for any such violation of the sanctioned plan would mean that there was an implied approval of the change of purpose of the property in question.

22. During the hearing of the present case, the Respondents were permitted to file additional documents. An affidavit was filed by the Respondents on 2 June 2011 enclosing another whole set of documents. These were basically the resolutions and the applications made by the predecessor-in-interest of the Petitioner for approval of additions/alternations in the portion of the property in question. Learned Counsel for the Respondents referred to some of these applications in which against the column "the purpose of which the building is being used" it was indicated "residential". A scrutiny of the said applications reveals that in some applications (e.g. in regard to Building No. 167-A and B, Annexures R/18 and 19) the purpose is indicated as "commercial" and in some others as "shops and residence" (Annexure R/15). In any event, what the applicants stated in their respective applications cannot be determinative of what the permissible use was. It also does not take away the fact that there was already a change of use in the property much prior to 1952. Consequently, the documents placed with additional affidavit filed on 2 June 2011 do not support the case of the Respondents.

The clear stand of the CB on change of purpose th

23. The stand of the CB in its letter dated 5 March 2008 in response to the letter written to it by the MoD is significant. It explains the proceedings that took place before the CB in response to the Petitioner's letter dated 1st August 2007 seeking to withdraw his earlier applications for change of purpose as under:

The matter was placed before the Board who vide its Resolution No. 227 dated 27.08.2007 considered the matter in detail and observed that it is clear that building plan showing Cinema Hall and shops were in existence even before that. Therefore, a sanction of a fresh building plan for cinema hall, shops or other similar commercial venture will not amount to change of purpose. It was further

observed by the Board that applications dated 22.02.2006 and 07.05.2007 submitted by the applicant was not required in the office of the DG DE New Delhi. Therefore, the applicant was allowed to withdraw his application dated 22.02.2006 and 07.05.2007. It was further resolved that the building plan for cinema hall and shops as and when submitted by the applicant be sanctioned in accordance with the provision of Cantonments Act, 2006 and the building byelaws (copy of CBR is enclosed).

Moreover, it is submitted that Section 244(1) of the Cantonments Act, 2006 which deals with the subject of change of use of any land or building in the Cantonment lays down that:

No person shall, without the written permission of the Board or otherwise than in conformity with the conditions, if any, of such permission

(a).....

(b) Change or allow the change of the use of any land or building.

From a perusal of the above section, it is clear that Board is competent authority to permit change or use of any land or building. In the instant case, the Board had already allowed the commercial use of Property No. 167, more than 50 years back and the sanction accorded by the Board recently is only re-iteration of the old sanction and therefore, there is no irregularity in this action of the Board please.

24. The CB, Meerut stuck to the above stand when a show cause notice was issued to it on 21st November 2008. The CB replied by a very detailed letter dated 1st January 2009 in which it pointed out that the matter was placed before the CB, Meerut on 1st December 2008 and it was resolved at that meeting as under:

That the Board had sanctioned the subject building plan vide CBR No. 330 dated 04.01.2008 on the basis of the recommendation made by the technical staff who had scrutinized the proposed plans in terms of building bye-laws, Govt. Land Policy etc. thereupon the said technical staff i.e. the CEE, AE & JE (Civil) were called before the Board to explain the deviations from Govt. Land policy in the light of the observations made by the MOD received through the DG DE letter under consideration. the technical staff explained that as per long standing practice in Meerut Cantt, the term "authorized floor space" has always been interpreted as "authorized plinth area" with number of storeys as per the building bye-laws i.e. ground + 2 storeys. They quote the cases of House No. 151, Ganj Bazar, Shop No. 332, Bridge Street, Shop Nos. 102 & 103, Dal Mandi, Shop Nos. 27-27A & 28-28A, Rangsaaz Mohalla, Shop No. 158, Rangsaaz Mohalla, B. No. 289, Center Road & B. No. 87-B, Hill Street, Meerut Cantt etc. in support of their contention which were sanctioned by the Board/CEO involving much larger floor area than the originally sanctioned area as per the details given below:

Inside Civil Area

Property No.

Tenure of site

Previous sanction

Last sanctioned

Year

Area

Year

Area

151, GanjBazar, Sadar, Area as per GLR: 1252 sq. ft.

Old grant

1922

1252 sq. ft ground

2002

3117 sq. ft ground + 2 floor

332, Bridge street area as per GLR: 1750 sq. ft

Old grant

1968

1750 sq. ft. ground floor

2005

3500 sq. ft. ground +1st Floor

102 & 103, DalMandi, Sadar Area as per GLR: 367 sq. ft.

Old grant

1946

513 sq.ft ground floor +1st floor

2003

652 sq. ft ground + 1st floor

27-27A & 28-28A, Rangsaaz Mohalla, Area as per GLR: 634 sq. ft.

Old grant

1936

1648 sq. ft ground floor + 1st floor

2002

1834 sq. ft ground + 1st floor

158, Rangsaaz Mohalla, Area as per GLR: 357 sq. ft

Old Grant

1928

609.5 sq. ft ground floor +1st floor

2003

1071 sq. ft ground + 2 floor

Outside Civil Area

Property No.

Tenure of site

Previous sanction

Last sanctioned

Year

Area

Year

Area

B. No. 289, Centre Road Area as per GLR: 1,584 acre

Lease (Schedule VIII)

1960

5616 sq. ft ground floor +1st floor

1999

17005 sq. ft ground +1st floor

B. No. 87-B, Hill Street Area as per GLR: 0.537 acre

Lease (Schedule VIII)

Old existing 3396 sq. ft GF

1998

29484 sq. ft Ground + 1st floor

It was further explained by the technical staff that the cost of reconstruction has

never been taken into consideration in any of the previous sanctions quoted above, and moreover, since the building plan in r/o Bo. No. 284, having much larger area than the old sanctioned one, had already been sanctioned by the GOC-in-C, and as such, they had no doubt about the correctness of their recommendations.

Thereupon it was resolved that the Board had only followed the past practice in sanctioning the subject building plan, the Board had no underlying motive or intention to commercialize the use of Govt land as the cinema hall and shops were sanctioned more than 50 years ago and continued to be in existence till date. However, it was further resolved, that in past practice notwithstanding the Cantt Board Meerut stands corrected on the issue in the light of the observations made by the MOD and has no objection to the revocation/modification of its earlier CBR No. 330 dated 04.01.2008 vide which the subject sanction was accorded. The MOD be informed through the DG DE accordingly.

25. The order dated 20th February 2009 of the MoD made no reference to the above detailed reply on the ground that no response was received from the CB, Meerut. This was then communicated to the CB, Meerut by a letter dated 25 February 2009. On the basis of the said decision, the consequent resolution was passed by the CB, Meerut on 12 March 2009 and communicated to the Petitioner by the impugned order dated 16 March 2009. A further communication to this effect was made on 21st March 2009.

Conclusions of this Court

26. Having examined the entire record carefully, it appears to this Court that the stand taken by the CB, Meerut was correct and perfectly valid. There was no basis for the MoD to come to the conclusion that the change of purpose which already existed in the property in question was without the authority of law. Enclosed with the counter affidavit as Annexure R-8 is the resolution of the CB passed on 27 August 2007 which acknowledges that the cinema hall and shops were in existence even before 1957 and that sanction of a fresh building plan for cinema hall and shops or other similar commercial venture "will not amount to change of purpose." Consequently, the letter dated 16 November 1962 of the Central Government requiring its prior approval for change of purpose did not affect this position at all. In the property in question there was already a change of purpose much prior to 1962. The basic premise of the MoD, that the entire property was meant always only for residential use, is not borne out from the record. Had this position been acknowledged by the authorities earlier, the impugned order may not have been passed at all. The stand of the Respondents now taken in the counter affidavit and the building plans pertaining to the property sanctioned from time to time, copies of which have been placed on record by the Respondents during the course of hearing, are supportive of the above conclusion.

27. The limited scope of the powers of the Central Government u/s 57 of the CA

2006 does not extend to sitting in appeal over the determination of the CB on facts. In the present case the suo motu exercise of the power of review by the MoD was uncalled for. Its conclusions are contrary to the records of the case.

28. It was submitted by Mr. Sunil Gupta, learned Senior counsel appearing for the Petitioner that in terms of the decision of the Supreme Court in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, the Respondents ought not to have been permitted to support the impugned order by reasons other than what was contained therein. In view of the fact that the additional affidavits and documents produced in any event do not support the case of the Respondents, this submission is not dealt with any further.

29. For the aforementioned reasons, the impugned order dated 7th February 2011 of the MoD reiterating its earlier order dated 20th February 2009 as communicated to the CEO, CB, Meerut on 25th February 2009 is hereby set aside. The decision of the CB, Meerut dated 4th January 2008 is restored to file. The Petitioner will be communicated forth with the sanction of his building plans by the CB, Meerut.

30. The writ petition is allowed in the above terms. Considering that the Petitioner has had to approach this Court thrice for relief, it is directed that the Respondents will pay to the Petitioner Rs. 10,000/- as costs within four weeks. The pending application is disposed of.