

(2008) 08 AHC CK 0241

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 42180 of 2008

Saeed Ali And Others

APPELLANT

Vs

Union of India And Others

RESPONDENT

Date of Decision : 27-08-2008

Acts Referred:

Cantonments Act, 1924 — Section 178A, 179, 180A, 181, 182

Citation : (2008) 08 AHC CK 0241

Hon'ble Judges : V.K.Shukla, J

Final Decision : Dismissed

Judgement

V.K. Shukla, J.—Petitioners who are 14 in number have filed present writ petition claiming following relief which is extracted below:

"(i) to issue a suitable writ, order or direction in the nature of certiorari quashing the order dated 17.8.2001 passed in Appeal No. 43 of 2000 by the Respondent No. 3

(ii) Issue a suitable writ, order or direction in the nature of certiorari quashing the impugned notice dated 2.8.2008 issued by Respondent No. 2 (Annexure 3)

(iii) Issue an appropriate writ, order or direction in the nature of Mandamus, restraining the respondent No. 2 from demolishing the shops of the petitioners located within the premises of Bunglow No. 81 Hill Street, Meerut Cantt. Meerut.

(iv) Issue any other suitable writ, order or direction in favour of the petitioners, as this Hon'ble Court may deem fit and proper in the circumstances of the case.

(v) Award costs of this petition to the petitioner."

2. Brief background of the case as disclosed by the petitioners are that each one of the petitioners is having individual shop within the premises of Bunglow No. 81 Hill Street, Meerut Cant. Meerut. Said Bunglow No. 81 Hill Street, Meerut Cantt Meerut was purchased by late Jamuna Swaroop by way of sale deed dated 28.2.1936 and ultimately its" possession by way of succession passed on to J.S.

Gupta grandson. Initially name of Jamuna Swaroop was mutated and on his death name of Damodar Swaroop was mutated and thereafter name of J.S.Gupta was mutated in the record of Cantonment Board. Said property is within the limit of Meerut Cantonment Board and has been recorded as B3 Old Grant Property in the record of the Cantonment Board. Petitioners claim that shops in question were let out to them by J.S.Gupta owner of Bunglow No. 81 Hill Street, Meerut Cantt. Meerut and tenancy in question was by way of registered agreement. Tenancy in question continued and rent was being continuously paid by the petitioners. Petitioners claim that agreement of similar nature as has been appended alongwith the Annexure1 was entered in respect of each one of the petitioners.

Petitioners in the writ petition have contended that they have raised temporary constructions in nature of tin shed standing on the iron pipe bolted to the ground without there being any foundation etc. The said structures were temporary in nature and no permission of any kind was required for the same. Petitioners have contended that on 2.8.2008 they received notice from Chief Executive Officer, Meerut Cantt. Meerut in respect of illegal constructions and petitioners have been asked to vacate premises in question. Petitioners have contended that after receiving notice dated 2.8.2008, they acquired knowledge that J.S. Gupta has sold the said Bunglow No. 81 Hill Street, Meerut Cantt. Meerut to one Sarabjeet Singh S/o Sri Amarjeet Singh in the year 2007 itself and on further verification they have acquired knowledge that notice was issued on 24.4.1996 to J.S. Gupta by Executive Officer, Cantonment Board for demolition of the shops constructed within the compound of the premises of Bunglow No. 81 Hill Street, Meerut Cantt. Meerut and against said notice Appeal under Section 274 of the Cantonments Act, 1924 being Appeal No. 43 of 2000 was filed before Director Defence Estate, Central Command Lucknow by J.S. Gupta and said appeal was dismissed on 17.8.2000. Petitioners have tried to contend and show that entire proceedings qua them are exparte and principle of natural justice has been violated and in this background demolition proceedings which has been sought to be undertaken are unjustifiable proceedings.

3. Present matter was taken up afresh 19.8.2008 and then it was directed to be taken up on 21.8.2008 and thereafter on 21.8.2008 it was again directed to be taken up on 22.8.2008 and on 22.8.2008 with the consent of the parties, present writ petition is being heard and finally decided at the admission stage itself.

4. Sri Rahul Mishra, learned counsel for the petitioners contended with vehemence that entire proceedings which has been sought to be undertaken against the petitioners, apart from being arbitrary and unreasonable are in utter contravention of principle of natural justice, in as much as at no point of time any show cause notice has been issued to the petitioners in term of Section 185(1) of the Cantonment Act, 1924, as such entire proceedings are liable to be quashed qua the petitioners and writ petition deserves to be allowed.

5. Sri Mohd. Is a Khan, Advocate appearing for respondent Nos. 2 to 4

countering said submission contended that in the present case admittedly constructions in question have been raised without taking any prior permission or sanction from the Cantonment Board, Meerut and owner in question was issued notice and validity of said notice was questioned by him by preferring Appeal and said Appeal was dismissed by reasoned order and once owner in question has acquiesced to this fact that constructions in question were illegal construction raised without there being any prior permission or sanction and petitioners who are claiming themselves to be the occupier are duty bound to cooperate in getting earlier order executed as such in the facts of the present case no opportunity was required to be given to the petitioners and writ petition as it has been framed and drawn is liable to be dismissed.

6. Sri Kashi Nath Singh, Advocate representing respondent No. 1 also advanced arguments on same line.

7. In order to appreciate respective arguments which has been advanced relevant provisions of Cantonments Board Act, 1924 is being looked into. Relevant Sections 178 (A), 179, 180, 180A, 181, 182, 183, 184, 185, 256, 256(A) and 274 are being extracted below:

"178A. Sanction for building. No person shall erect or reerect a building on any land in a cantonment

(a) in an area, other than the civil area, except with the previous sanction of the Board;

(b) in a civil area, except with the previous sanction of the Executive Officer, nor otherwise than in accordance with the provisions of this Chapter and of the rules and byelaws made under this Act relating to the erection and reerection of buildings.

"179. Notice of new buildings. (1) Whoever intends to erect or reerect any building in a cantonment shall apply for sanction by giving notice in writing on his intention

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

(b) where such erection or reerection is in a civil area, to the Executive Officer:

(2) For the purposes of this Act, a person shall be deemed to erect or reerect a 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", cattleshed or cowhouse any building originally constructed for human habitation, or

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

(f) 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

(g) makes any alteration to any building which increases or diminishes the height of, or area covered by or the cubic capacity of any room in the building below the minimum prescribed by any bylaw made under this Act.

180. Conditions of valid notice.(1) A person giving notice required by Section 179 shall specify the purpose for which it is intended to use the building to which such notice relates.

(2) No notice shall be valid until the information required under subsection (1) and any further information and plans which may be required under byelaws made under this Act have been furnished to the satisfaction of the [Board or the Executive Officer, as the case may be] alongwith the notice :

Section 108A. Powers of Board under certain sections exercisable by Executive Officer.The powers, duties and functions of the Board under Section 181, subsection (1) of Section 182, Section 183, Section 183Aand Section 185 [excluding the provisions to subsection (1) and the proviso to subsection (2) of the said Section 185] shall be exercised or discharged in a civil area by the Executive Officer]

81. Power of Board to sanction orrefuse.(1) The [Board] may either refuse to sanction the erection or reerection as the case may be of the building or may sanction it either absolutely or subject to such directions as it thinks fit to make in writing in respect of all or any of the following matters, namely:

(a) the free passage or way to be left in front of the building;

(b) the space to be left about the building to secure free circulation of air and facilitate scavenging and the prevention of fire;

(c) the ventilation of the building the minimum cubic area of the rooms and the number of height of the storeys of which the buildings may consist;

(d) the provision and position of drains, latrines, urinals, cesspools or other receptacles for filth;

(e) the level and width of the foundation the level of the lowest floor and the stability of the structure;

(f) the line of frontage with neighbouring buildings if the building abuts on a street;

(g) the means to be provided for egress from the building in case of fire;

(h) the materials and method of construction to be used for external and party walls for rooms, floors, fireplaces and chimneys;

(i) the height and slope of the roof above the upper most floor upon which human beings are to live or cooking operations are to be carried on, and

(j) any other matter affecting the ventilation and sanitation of the buildings and the person erecting or reerecting the building shall obey all such written directions in every particular.

(2) The Board may refuse to sanction the erection or reerection of any building on any grounds sufficient in the opinion of the Board affecting the particular building:

Provided that the Board shall refuse to accord sanction the erection or reerection of any building if such erection or reerection is not conformity with any general scheme sanctioned under Section 181 A.

(3) The Board, before sanctioning the erection or reerection of a building on land which is under the management of the [Defence Estates Officer] shall return the application together with his reportthereon to the Board within thirty days after it has been received by him.

(4) The Board may refuse to sanction the erection or reerection of any building

(a) when the land on which it is proposed to erect or reerect the building is held on a lease from the Government, if the erection or reerection constitutes a breach of the terms of the lease, or

(aa) when the land on which it is proposed to erect or reerect the building is entrusted to the management of the Board by the Government if the erection or reerection constitutes a breach of the terms of the entrustment of management or contravenes any of the instructions issued by the Government regarding the management of the land by, the Board, or]

(b) when the land on which it is proposed to erect or reerect the building is not held on a lease from the Government, if the right to build on such land is in dispute between the person applying for sanction and the Government.

(5) If the Board decides to refuse to sanction the erection or reerection of the building it shall communicated in writing the reasons for such refusal to the person by whom notice was given.

(6) Where the Board neglects or omits, for one month after the receipt of a valid notice, to make and to deliver to the person who has given the notice any order of any nature specified in this section and such person thereafter 9 by a written

communication sent by registered post to the Board call the attention of the Board to the neglect or omission, then if such neglect or commission continues for a further period of fifteen days from the date of such communication the Board shall be deemed to have given sanction to the erection or reerection, as the case may be, unconditionally :

Provided that any case to which the provisions of subsection (3) apply, the period of one month herein specified shall be reckoned from the date on which the Board has received the report referred to in that subsection.]

182. Compensation.(1) No compensation shall be claimable by any person for any damage or loss which he may sustain in consequence of the refusal of the [Board] of sanction to the erection of any building or in respect of any direction issued by it under subsection (1) of Section 181.

(2) The [Board] shall make compensation to the owner of any building for any actual damage or loss sustained by him in consequence of the prohibition of the reerection of any building or of its requiring any land belonging to him to be added to street:

Provided that [Board] shall not be liable to make any compensation in respect of the prohibition of the reerection of any building which for a period of three years or more immediately preceding such refusal has not been in existence or has been unfit for human habitation.

183. Lapse of sanction.Every sanction for the erection or reerection of a building given or deemed to have been given by the [Board] as here in before provided shall be available for one year from the date on which it is given, and if the building so sanctioned is not begun by the person who has obtained the sanction or some person lawfully claiming under him within that period it shall not thereafter be begun [unless the Board on application made therefore has allowed an extension of that period.]

184. Unlawful erection and reerection.Whoever begins, continues or completes the erection or reerection of a building

(a) without having given a valid notice as required by Sections 179 and 180 or before the building has been sanctioned or is deemed to have been sanctioned, or

(b) without complying with any direction made under subsection (1) of Section 181, or

(c) when sanction has been refused or has ceased to be available [or has been suspended by the Officer Commanding in Chief, the Command under clause (b) of subsection (1) of Section 52]

shall be punishable with fine which may extend to [five thousand rupees].

185. Power to stop erection or reerection or to demolish.[(1)] [Board] may, at any time, by notice in writing, direct, the owner, lessee or occupier of any land in

the cantonment to stop the erection or reerection of a building in any case in which the [Board] considers that such erection or reerection is an offence under Section 184 and may in any such case [or in any other case in which the Board considers that the erection or reerection of a building is an offence under Section 184, within [twelve months] of the completion of such erection or reerection] in like manner direct the alteration or demolition, as it thinks necessary, of the building or any part thereof, so erected or reerected:

Provided that the [Board] may, instead of requiring the alteration or demolition of any such building or part there of accept by way of composition such sum as it thinks reasonable :

[Provided further that the Board shall not, without the previous concurrence of the Officer Commanding in Chief the Command accept any sum by way of composition under the foregoing proviso in respect of any building on to land which is not under the management of the Board.

(2) A Board shall by notice in writing direct the owner, lessee or occupier of any land in the cantonment to stop erection or reerection of a building in any case in which the order under Section 181 sanctioning the erection or reerection has been suspended by the Officer Commanding in Chief the Command, under clause (b) of subsection (1) of Section 52 and shall in any such case in like manner direct the demolition or alteration as the case may be of the building or any part there of so erected or reerected where the Officer Commanding in Chief the Command, there after directs that the order of the Board sanctioning the erection or reerection the building shall not be carried into effect or shall be carried into effect with modification specified by him :

Provided that the Board shall pay to the owner of the building compensation for any loss actually incurred by him in consequence of the demolition or alteration of any building which has been erected or reerected prior to the date on which the order of the Officer Commanding in Chief, the Command has been communicated to him.]

256. Powers of Board in case of noncompliance with notice etc. In the event of noncompliance with the terms of any notice, order or requisition issued to any person under this Act, or any rule or byelaws made there under requiring such person to execute any work or to any act, it shall be lawful for the [Board][or the civil area committee or the Executive Officer at whose instance the notice, order or requisition has been issued], whether or not the person in default is liable to punishment therefor, after giving notice in writing to such person to take such action or such steps as may be necessary for the completion of the act or work required to be done or executed by him and all the expenses incurred on such account shall be [recoverable by the Executive Officer on demand and if not paid within ten days after such demand shall be recoverable in the same manner as moneys recoverable by the Board under Section 259:

Provided that where action or step relates to the demolition of any erection or

reerection under Section 185 or the removal of any projection or encroachment under Section 187, the Board or the civil area committee or the Executive Officer may request any police officer to render such assistance as considered necessary for the lawful exercise of any power in this regard and it shall be the duty of such police officer to render forthwith such assistance on such requisition.]

256A. Occupier not obstruct owner when complying with notice. If the owner of any property in respect of which a notice as is referred to in Section 256 has been given is prevented by the occupier from complying with such notice, the Board or the civil area committee or the Executive Officer at whose instance such notice has been given, may, by order, require the said occupier to permit the owner within eight days from the date of service of such notice to take all such action as may be necessary to comply with the said notice and such owner shall for the period during which he is prevented as aforesaid be exempted from any fine or penalty to which he might otherwise have become liable by reason of noncompliance with such notice.

274. Appeals from executive orders. (1) Any person aggrieved by any order described in the [third column] of Schedule may appeal to the authority specified in that behalf in the [fourth column] of the said Schedule.

(2) No such appeal shall be admitted if it is made after the expiry of the period specified in that behalf in the [fifth column] of the said Schedule.

(3) The specified as aforesaid shall be computed in accordance with the provisions of the [Limitation Act, 1963 (36 of 1963)] with respect to the computation of periods of limitation thereunder."

8. In Chapter XI of the Cantonment Act, 1924, Section 178A clearly provides that no person shall erect or reerect a building on any land in a cantonment; (a) in an area, other than the civil area, except with the previous sanction of the Board; (b) in a civil area, except with the previous sanction of the Executive Officer nor otherwise than in accordance with the provisions of this Chapter and by means of the rules and byelaws made under this Act relating to the erection and reerection of buildings. Thus, this particular provision is mandatory provision on its own showing. Section 179 obligates that incumbent whoever intends to erect or reerect any building in a cantonment shall apply for sanction by giving notice in writing on his intention. Section 180 obligates that a person given the notice required by Section 179 shall specify the purpose for which it is intended to use the building to which such notice relates. Section 181 confers power on Board to sanction or refuse the erection or reerection as the case may be of the building and further also authorises the Board to sanction it either absolutely or subject to such directions as it thinks fit to make in writing in respect of all or any of the following matters provided for. Subsection (2) of Section 181 authorises the Board to refuse or sanction the erection or reerection of any building on any grounds sufficient in the opinion of the Board affecting the particular buildings.

Section 182 deals with that no compensation shall be claimable by any person for any damage or loss which he may sustain in consequence of the refusal of the [Board] of sanction to the erection of any building or in respect of any direction issued by it under subsection(1)of Section 181. Section 183 deals with lapse of sanction accorded.

9. Section 184 deals with illegal erection and reerection and clearly and unequivocally provides that whoever begins continues or completes the erection or reerection of a building without having given a valid notice as required by Sections 179 and 180 or before the building has been sanctioned or is deemed to have been sanctioned, or without complying with any direction made under subsection (1) of Section 181 or when sanction has been refused or has ceased to be available or has been suspended by the Officer Commanding in Chief, the Command under clause (b) of subsection (1) of Section 52 shall be punishable with fine which may extend to 5000/-. Section 185 authorises the Board at any time by notice in writing, directing the owner, lessee or occupier of any land in the cantonment to stop the erection or reerection of a building in any case in which the Board considers that such erection or reerection is an offence under Section 184 and also further in any such case in like manner direct the alteration or demolition, as it thinks necessary, of the building or any part thereof, so erected or reerected. Subsection (2) of Section 185 deals with contingency wherein the order of erection or reerection is suspended by Officer Commanding in Chief the Command, under clause (b) of subsection (1) of Section 52 then in that event in like manner order could be passed, by notice in writing.

10. Under Chapter XV of Cantonments Act 1924, powers, procedure, penalties and appeals have been provided for and Section 256 clearly deals with powers of Board in case of noncompliance with notice etc. Section 256A clearly obligates that occupier should not obstruct owner in complying with notice. Section 274 deals with appeals from executive orders.

11. After aforesaid provisions have been noted in extenso, facts of the present case are being dealt with. In the present case documentary evidence Annexure appended by the petitioners clearly reflects that each one of the petitioner was given shop on rent by registered agreement and it was also categorically mentioned therein that in case said shop in question was to be converted into permanent construction then permission will have to be taken from J.S. Gupta. Thus, this is admitted position that construction in question had been raised by J.S. Gupta and thereafter shop in question was handed over to the petitioners. As far as petitioners are concerned this fact has not been disputed that before proceedings to raise these constructions J.S. Gupta moved any application for sanction of plan in question for raising construction. This is admitted position inter se parties that at no point of time till date any permission was taken as has been provided under Section 178(A) and Section 179 of the Cantonments Act, 1924 for erecting building in Cantonment area. Once this is admitted position that there was statutory bar for not raising any construction

without taking any prior sanction as envisaged then admitted position is that construction in question which has been raised is unauthorized construction warranting action under Section 185(1) of the Cantonments Act, 1924. In this background as against the owner of property J.S.Gupta proceedings were undertaken by issuing notice to him on 24.4.1996 under Section 185(1) of the Act and in the said notice categorical stand was taken that unauthorized constructions in the open compound of Bunglow No. 81 roorkee Delhi Road, Meerut Cantt. Meerut has been made without prior sanction of the Cantonment Board Meerut. Against the said order in question, Appeal was preferred under Section 274 of Cantonments Act, 1924 and said Appeal has been rejected by recording categorical finding that nothing has been shown by the appellant that he has submitted any building plan under Section 179 of the Act and no building plan of constructions of building is available on record. In this background order dated 17.8.2007 has been passed dismissing the Appeal. Said order passed was permitted to attain finality by J.S. Gupta. Thereafter it appears that property in question has been sold away by J.S. Gupta to Sarabjeet Singh S/o Sri Amarjeet Singh in the year 2007 and as there was already order of demolition and Cantonment Board was setting tight over the matter, he preferred Civil Misc. Writ Petition No. 13698 of 2008 before this Court and this Court on presentation of aforesaid writ petition asked the respondents Cantonment Board as to why demolition has not been undertaken, then order dated 2.8.2008 was passed asking petitioner to vacate the premises in question within 24 hours so that at the point of time when demolition proceeding takes place they should not suffer loss. Thus, undisputed position is that in the present case landlord J.S. Gupta who admittedly raised construction qua him notice has been issued under Section 185(1) of the Cantonments Act, 1924 and validity of the said notice was duly questioned by him by preferring Appeal under Section 274 of Cantonments Act, 1924 and same has been rejected on merit on 17.8.2001 by recording categorical finding that without there being any building plan under Section 179 of the Act constructions have been raised.

12. Once admitted position is that no building plan has been submitted under Section 178A/179 of the Cantonment Act and the person (owner) who has raised illegal constructions had been issued notice under Section 185(1) of the Cantonments Act, 1924 and said order was challenged in Appeal and there after said" order attained finality even in spite of the said admitted position concerned petitioners were entitled of hearing by virtue of being occupiers.

13. Concept of natural justice has under gone a great deal of change in recent year. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from nature of duties to be performed under statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case frame work of the statute under which inquiry is held. Principle of natural justice have been interpreted in the Court over the years by process of judicial interpretation.

14. Hon"ble Apex Court in the case of Union of India v. P.K. Roy.AIR 1968 SC 850 has taken the view "the extent and application of the doctrine principle of natural justice cannot be imprisoned with the straight jacket of a rigid formula. The application of the doctrine depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case."

15. Hon"ble Apex Court in the case of Chairman Board of Mining Examination and Chief Inspector of Mines v. Ramjee, 1977 (2) SCC 256 took the view that principles of natural it is trite, cannot be put in a strait jacket formula. In a given the party should not only be required to show that he did not have a proper notice resulting in violation of principles of natural justice but also to show that he was prejudiced thereby. Paragraph13 is being extracted below:

"Natural justice is no unruly horse, no lurking land mine, nor a judicial cureall. If fairness is shown by the decisionmaker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other facts of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexibly yet firm in this jurisdiction. No man shall be hit below the belt that is the conscience of the matter."

16. The principle that in addition to breach of natural justice prejudice much also be proved has been developed in several cases thereafter.

17. Hon"ble Apex Court in the case of K.L Tripathi v. State Bank of India, 1984(1) SCC 4, also laid down principle that not mere violation of natural justice but de facto prejudice (other than nonissuance of notice) had to be proved. It was observed quoting Wade Administrative Law (5th Ed. Pp 472475) as follows:

"... it is not possible to lay down rigid rules as to when principles of natural justice are to apply, nor as their scope and extent.....there must have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry the rules under which the tribunal is acting, the subjectmatter to be dealt with and so forth."

18. The above ruling and various other rulings taking the same view have been exhaustively referred to in State Bank of Patiala v. S.K. Sharma, 1996 (3) SCC 364. In that case the principle of "prejudice" has been further elaborated. The same principle has been reiterated again in Rajendra Singh v. State of M.P., 1996(5) SCC 450.

19. Hon"ble Apex Court, again in the case of Aligarh Muslim University v.

Mansoor Ali Khan, AIR 2000 SC 2783 reiterated the principle of prejudice as well as useless formality theory. Paragraph 24 is being extracted below :

"24. The useless formality theory it must be noted, is an exception. Apart from the class of cases of "admitted or indisputable facts leading only to one conclusion" referred to above there has been considerable debate of the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in M.C. Mehta, 1999 AIR SCW 2754 (AIR 1999 SC 2583, referred to above. This Court surveyed the view expressed in various judgments in England by Lord Reid, Lord Wiberforce, Lord Woolf, Lord Singham Megarry, J. and Staughton L.J. etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, De Smith, Wade, D.H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the Court will be prejudging the issue. Some others have said, that there is no such absolute rule and prejudice must be shown yet, some others have applied viamedia rules. We do not think it is necessary in this case to go deeper into these issues. In the ultimately analysis. It may depend on the facts of a particular case."

20. Hon"ble Apex Court in the case of Canara Bankv. V.K. Awasthy, 2005 (6) SCC 321 again reiterated same principle of prejudice and useless formality theory. Relevant paragraphs 7, 8, 9,14 and 18 are being quoted below:

"7. The crucial question that remains to be adjudicated is whether principles of natural justice have been violated; and if so, to what extent any prejudice has been caused. It may be noted at this juncture that in some cases it has been observed that where grant of opportunity in terms of principles of natural justice do not improve the situation, "useless formality theory" can be pressed into service.

8. Natural justice is another name for commonsense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a commonsense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

9. The expressions "natural justice" and "legal justice" do not present a watertight classification. It is the substance of justice which is to be secured by both and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Backmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants" defence.

14. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed there under. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the facts and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves dire consequences must be consistent with the rules of natural justice. Expression "civil consequences" encompasses infringement of not merely property or personal rights but of civil liberties, material deprivations, and nonpecuniary damages. In its wide umbrella comes everything that affects a citizen in his civil life.

18. As was observed by this Court we need not to go into "useless formality theory" in detail; in view of the fact that no prejudice has been shown. As is rightly pointed out by learned counsel for the appellant unless failure of justice is occasioned or that it would not be in public interest to do so in particular case, this Court may refuse to grant relief to the concerned employee. (See *Gadde Venkateswara Rao v. Govt. Of A.P. and others*, AIR 1966 SC 828. It is to be noted that legal formulations cannot be divorced from the facts of the case. Personal hearing was granted by the Appellate Authority, though not statutorily prescribed. In a given case postdecisional hearing can obliterate the procedural deficiency of a predecisional hearing. (See *Charan Lal Sahu v. Union of India etc.*, AIR 1990 SC 1480)."

21. Thus inevitable conclusion is that principle of natural justice cannot be put in a strait jacket formula and the requirement of natural justice must depend on the facts and circumstances of the case, nature of the inquiry, the rules under which the authority is acting the subject matter to be dealt with and so forth. In a given case the party is not only required to show that it had no notice but also that he was seriously prejudiced thereby and further the Courts cannot indulge into "useless formality" of technical compliance of natural justice when it would not serve any useful purpose and where facts are admitted and established and said breach is of no consequence.

22. On the parameter as set out, now the claim of the petitioners is being looked into. Admitted case of the petitioners, which is also fully fortified from the record and the documents which have been filed as Annexure 1 copy of the agreement and Annexure 5 copy of notice sent by all fourteen petitioners to the Chief Executive Officer that after shops in question had been constructed same were handed over to the petitioners by J.S. Gupta and rent was being paid thereafter. Once this is admitted position that construction in question was carried by J.S. Gupta who was their landlord owner and after raising constructions had handed over the shop to the petitioners and petitioner had taken over possession of the said shops and had been using the same then construction having been made by J.S.

Gupta, proceedings had been rightly initiated against him by issuing notice to him by Cantonment Board as envisaged under Section 185(1) of the Cantonments Act, 1924 and all possible pleas which could have been taken by J.S. Gupta in Appeal was taken by him and said plea was repelled by Appellate Authority while rejecting the Appeal under Section 274 of the Cantonments Act, 1924. Petitioners have not at all raised any constructions rather constructions had been raised by J.S. Gupta and there after possession of the same has been handed over. In paragraph 7 of writ petition contrary to their own documents filed as Annexure1 and 5 to the writ petition, statement of fact has been sought to be mentioned, that petitioners raised temporary construction in nature of tin shed, standing on iron pipe bolted to the ground. Said statement is factually incorrect on the face of it, inasmuch as shop in question has been described as "khoka in Annexure1 and it has been specifically mentioned that in the event of converting the same into permanent structure, prior permission would be required. Even in the notice, Annexure5 written by petitioners to Chief Executive Officer, Cantonment Board, Meerut, in paragraph 1 and 2 specific admission is there, that shops were constructed and thereafter handed over. In this admitted background once constructions in question have not been raised by the petitioners then merely because they were occupiers no notices were required to be given under Section 185(1) of Cantonments Act, 1924 rather to the contrary once order has been passed against the owner after providing full opportunity to him and said order had attained finality, then occupiers are obligated not to obstruct owner in complying with notice. Consequently violation of principles of natural justice is of no consequence, in view of the following peculiar characteristics of the case which has emerged namely (i) at no point time, of this is admitted position, any sanction/permission whatsoever has been undertaken under Section 178A/179 of Cantonments Act 1924 for raising constructions in the shape of shop which is occupied by the petitioners by owner; (ii) admittedly shop in question has been constructed by landlord and possession of the same has been handed over to the petitioners as per tenancy agreement copy of which has been filed as Annexure1 to the writ petition and as per notice Annexure5 issued by the petitioners to the Chief Executive Officer, Cantonment Board, and owner was given notice, owner had been given full opportunity and Appeal has also been dismissed qua said illegal constructions; (iii) Once appeal in question has been dismissed, constructions raised are without any permission/sanction inevitably same has to be demolished and for this purpose time was given to petitioners to remove their goods. Breach of principles of natural justice in the present case is of no consequence on admitted position and opportunity to the petitioner is nothing but empty formality. In view of discussion made above violation of principles of natural justice is neither here nor there.

23. Now the judgements cited by the petitioner at the Bar are being looked into. Petitioner has placed reliance on the judgment in the case of Taramani Devi v. Union of India, AIR 1974 Pat 216. In the said order constructions were completed in pursuance of the sanction granted by Cantonment Board and thereafter

cancellation order of sanction was passed by Commanding Officer. In the said case view taken was that as building was erected as per sanction then to order demolition under Section 185(2) without given owner an opportunity of being heard, principles of natural justice would be violated. Here facts are altogether different as here plan has never been sanctioned and here owner has been given full opportunity and even Appeal his has been dismissed who has raised the offending construction and pursuant to the said order action is being taken, in this background the facts of the case are clearly distinguishable.

24. Second judgment which has been relied upon is the case Mohan Lal v. Union of India and others, AIR 1980 MP 87. In the said case view taken was that under Section 185(1) the Cantonment Board can by notice direct the owner to demolish an unauthorized construction in the Cantonment and before final ordering of demolition Board must give opportunity of hearing to the owner concerned in case he disputes erection being unauthorized and Cantonment Board must pass reasoned order. Here in the present case owner has been given full opportunity and he has acquiesced to the fact that construction raised is an unauthorized one i.e. without taking any sanction from Cantonment Board as is envisaged under Section 178A/179 of Cantonments Act, 1924.

25. Reliance has also been placed on the judgment in the case of Cantonment Board Dinapore and others v. Taramani Devi, AIR 1992 SC 61 wherein view has been taken that once Cantonment Board grants sanction for erection or reerection and Officer CommandinginChief upsets decision of Board then he is obliged to give hearing to owner, lessor or occupier besides that to Cantonment Board. Here in the present case as has already been noted above there has been no sanction at all and opportunity of hearing has been provided to the landlord through whom petitioners have entered into tenancy agreement the facts of the present case are clearly distinguishable.

26. Reliance has also been placed in the judgment in the case of Cantonment Board Belgaum v. Asif Alim Sait and others, AIR 2004 Kant 158 for the proposition that before demolishing unauthorized constructions, show cause notice is must. Said proposition is not disputed. Here in the present case as far as unauthorized constructions are concerned qua the same notice has been given in the present case to the landlord and owner. Said proceedings has been affirmed in Appeal. All these judgments will not at all help petitioners in the fact of the present case which has been noted in detail in earlier part of the judgment.

27. Hon''ble Apex Court in the case of Cantonment Board and another v. Mohanial and another, AIR 1996 SC 1586 has taken the view that in case where owner of the disputed premises admitted on service of notice of illegal construction that he nad carried on same in violation of law and requested the Cantonment Board to reconsider the matter and withdraw notice and Board while considering the representation was not inclined to accede to the request made by the owner the resolution passed by a Cantonment Board thereafter to have the structure demolished.cannot be faulted as violative of principles of natural justice

and no independent inquiry is required to be held after the notice was issued and reply there of was given by the owner.

28. Similar is the situation here also. As far as owner is concerned he had contested the notice and on contest categorical finding of fact has been returned that illegal constructions have been carried out by him in violation of law, without taking any permission/sanction as is envisaged under Section 178A/179 of Cantonments Act, 1924 in this background once constructions have been made without following the law and notice has been issued in the past to the owner which has been affirmed in Appeal, then said constructions will have to be demolished being contrary to the law and having no sanction of law. On the behest of occupier reconsideration of said matter cannot be accorded by any means.

29. Consequently, in the facts of the present case no interference is required with the order dated 17.8.2001 passed in Appeal and with the impugned notice dated 2.8.2008. However in the facts of the present case as petitioners have been staying and carrying on their business from the said premises for more than 10 years and order was passed in Appeal dated 17.8.2001 and Cantonment Board itself was sitting leisurely in the matter, without executing order for all these period and it was only when notices were issued by this Court in Civil Misc. Writ Petition No. 13698 of 2008 then said action has been taken.

30. Consequently, in the peculiar facts and circumstances of the case three month time is allowed to each one of the petitioners to remove their goods from shop in question. In case within period of three months goods are not removed from the shops in question, then respondents would be free to proceed in accordance with law.

31. With the above observations and direction present writ petition is dismissed.

32. No orders as to cost.