

(2013) 02 MP CK 0133

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2608 of 2009

S.L. Seth and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 28-02-2013

Acts Referred:

Cantonments Act, 1924 — Section 178A, 179, 180, 181, 181(3)
Cantonments Act, 2006 — Section 234, 238, 360

Citation : (2013) 3 MPLJ 264 : (2014) 1 RCR(Rent) 155

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : Brian D'Silva, assisted by Sanjay Agrawal, for the Appellant; Vikram Singh for Respondent Nos. 1 to 3 and 5 and S.S. Chouhan, for the Respondent

Final Decision : Allowed

Judgement

K.K. Trivedi, J.—The petitioners herein are said to be the persons, who have obtained the lease on transfer from the original lessee and are aggrieved by the action of the respondents, rejecting their application for grant of building permission. During the pendency of the writ petition certain members of the family have died and substitution of legal representatives has been ordered. Brief facts giving rise to filing of present writ petition are that the land measuring 2.60 acres known as Bungalow No. 5 situated at Theater Road bearing survey No. 13, Cantonment, Jabalpur, was allotted way back on 28-3-1930 to the erstwhile lessee Shri C.F. Billby. The terms and conditions mentioned in the said lease is available on record as Annexure P-1. Later on the said property was purchased by registered sale deed by Shri J.N. Seth and the petitioners herein Shri S.L. Seth, Shri K.K. Seth and Shri V.K. Seth (since deceased) and other members of family namely Shri J.M. Seth, Shri K.L. Seth and late Smt. Indira Devi Seth. Apparently such purchase was made with the sanction of the competent authority of respondents, therefore the names of these persons were duly mutated in the General Land Register (hereinafter referred to as "GLR"). It appears that the original purchaser Smt. Indira Devi Seth had died and the

property fallen in her share has been inherited by petitioner No. 5, Kamal Kumar Seth.

2. Some time in the year 1973, the partition took place in the family and a registered partition deed was executed. An area measuring 19080 Sq. feet was allotted to Dr. J.N. Seth in the said partition and the remaining area was held by the members of the family jointly. The letter was issued accepting such partition by the Military Estates Officer on 21-5-1974 saying that subject to the terms and conditions of the original lease in Schedule VIII dated 28-3-1930, the assignment is accepted and that being so, in fact virtually sub division of leased land was accepted saying that assigned portion on the plot will continue to be governed by the original lease dated 28-3-1930. Yet another letter was issued on 14th October 1974 which refers to the aforesaid partition deed by the Military Estates Officer saying that the registered partition deed confers on each member independent and absolute right on the plot of land under the provisions of the original lease deed therefore, it be treated as sub lease of the original deed. It was reiterated that the terms and conditions of the original lease shall be applicable to this sub lease also and any contravention of the terms of the lease by any other previous co-sharer shall have no effect of default on the family members. On 4th November, 1975 specific area as demonstrated by the members of the family through another application was recorded with the consent of the Cantonment Authority and thereby in fact the partition amongst the family members was duly accepted by the Military Estates Officer. Again the same condition was reiterated with respect to the application of the same terms and conditions of the original deed dated 28-3-1930.

3. The family members of the petitioners then decided to have their separate residential portions in the said land and for the said purposes after making of the plan of construction they submitted applications before the respondents. As during the said period certain deaths have taken place in the family, applications were made by persons like petitioner No. 5 for mutation of his name on the share so obtained by the original family member late Smt. Indira Devi Seth. It appears that persons like petitioners were in need of NOC from the concerned authorities before making the application under the provisions of the Cantonment Act, 1924 seeking building permission, therefore such an application was made by the persons like petitioners. Such application when was submitted, the matter was referred to the Defence Estates Officer, Jabalpur, Circle, by the Cantonment Executive Officer. Certain spot inspection was done, reports were submitted and NOCs were issued by the competent authorities. However, later on the matter was proceeded and certain guidance was sought from the Director, Defence Estates, Central Command. Despite issuance of the NOC, it was said that matter was required to be re-examined with reference to the letter dated 19-4-2006 and separate lease deeds were required to be executed in respect of each lessee of sub divided portion. This exercise be initiated and then only application may be considered. With reference to the aforesaid, the impugned communication was issued on 1st May, 2007 and ultimately the claim made by the petitioners was

rejected, against which they filed an appeal but the said appeal have been dismissed, therefore, the writ petition is required to be filed.

4. It is contended by learned Senior counsel appearing for the petitioners that once the partition was duly accepted by the authorities of the respondents, sub division of the leased land was accepted, it was not open to them to say that sub lease have not been executed. If formally any action was required to be taken to execute the sub lease deed that was required to be done by the respondents as the original owners of the land and not by the petitioners. If that was not done, by conduct the respondents were liable to be estopped to say that sub lease deed were not granted. It is further put forth that mutation of the name of family members was already directed and in fact the names of persons who have purchased the land in question, were already required to be recorded in the GLR. That was again the action on the part of the respondents-authorities and this was not to be done by the petitioners. However, petitioners were found to be in continuous possession of the land in question and that being so, only for the purposes of construction of separate residential units if a proposal was made by the petitioners, it was not to be rejected in the manner indicated in the order. It is vehemently contended that when the building plan applications were submitted, the provisions of Cantonment Act, 1924 were applicable. The new Act came into force in the year 2006 only. Having considered the applications of the petitioners under the new Act, wrong was committed by the respondents and the same was rejected on the flimsy ground, which were not made out. Taking this Court to the order dated 11-9-2007 (Annexure P-14), learned Senior counsel would contend that the rejection of the application of the petitioners was not on the specific ground, but on such grounds which were not available. It was illegally said that erection/re-erection of building on the land held on lease could be termed as breach of the conditions of the original lease. It is submitted by learned Senior counsel that neither the sub lease was required to be granted by the petitioners nor could it be said that the said sub lease is refused to be sanctioned by the Government. Similarly, it is pointed out that NOC as was granted under the provisions of old Act was misconstrued and was treated to be one in violation of the Cantonment Act, 2006. The instructions issued after the grant of NOC were not to be made applicable with retrospective effect and no such condition could have been imposed on the petitioners. Lastly, it is submitted that the building plan submitted by the petitioners cannot be said to be violative of any of the provisions of the Cantonment Act, 2006, as the application or the plan was submitted much before coming into force of the said Act. It is further contended that at any rate neither the provisions of Cantonment Act, 2006 were applicable nor could the provisions of Public Premises Eviction Act, 1971 be made applicable in the present claim made by the petitioners. This being so, it is contended that rejection of the claim of the petitioners was not on any justified reason but was made on imaginary ground. It is further contended that when an appeal in detail was filed against such action of respondents, appellate authority instead of deciding the appeal in appropriate manner dismissed the same on

imaginary grounds. Thus it is contended that the entire action taken by the respondents is bad in law and impugned orders are liable to be quashed.

5. Respondents No. 4 and 5 on receipt of the notices of the writ petition, have filed their return. The respondent No. 4 has contended that the disputed land is situated outside the notified civil area of Jabalpur Cantonment and, therefore, is under the management of Defence Estates Officer, Jabalpur. The lease of the land was granted in favour of the original lessee, who after obtaining necessary permission from the competent authority, transferred the land in favour of 12 persons and their occupancy rights have been duly recorded in the relevant register. The lease is granted in perpetuity. The application was submitted by the petitioners in five separate forms under the provisions of section 179 of the Cantonments Act, 1924 (hereinafter referred to as "1924 Act"). Since the land is situated outside the notified civil area of the cantonment, under the provisions of section 181(3) of the 1924 Act, the plans were referred to the Defence Estates Officer for obtaining no objection certificate. A no objection certificate was issued from the land point of view. However, the objection was raised by the C.E.O. of the respondent No. 4 to grant of no objection certificate and the matter was referred to the Principal Director, Defence Estates Central Command, Lucknow. The said authority issued the direction that no such sanction of the building plan was to be accorded and, therefore, the no objection certificate issued by respondent No. 5 was withdrawn. Against such an order, the appeal was preferred and the appellate authority has directed the petitioners to resubmit the plan. In view of this, it is contended that the power of Board has rightly been exercised and, therefore, no illegality can be alleged against the respondent No. 4. However, the respondent No. 4 has contended that action was taken under the Cantonments Act, 2006 (hereinafter referred to as "2006 Act"). Similarly, the respondent No. 5 by filing a separate return, has contended that there was assignment of the original lease. However, in terms of Schedule-VIII of the original lease deed, the information of any assignment was to be given within a period of one month from the date of assignment. As it was agreed when the letters were issued that any such assignment would be governed by the terms and conditions of original lease deed dated 28-3-1930, till proper mutation is done, all objections are decided, no objection certificate was not to be granted. Error was committed and, therefore, the no objection certificate was withdrawn. It is also put forth that one of the assignees namely Shri Kanhaiya Lal Seth was called upon by letter dated 10th September, 1999 to surrender the original lease deed for the purposes of issue of a sub lease deed in terms of the assignment. Copy of the said letter was endorsed to all assignees for the similar action. However, nothing was done by the petitioners in compliance of such a memo and, therefore, no objection certificate was not to be issued. In such circumstances, on the direction of the superior authorities, the no objection certificate was rightly withdrawn. It is contended that in case such a building plan is not sanctioned by the Board, no wrong is committed.

6. By filing the rejoinder, the petitioners have contended that Schedule-VIII of

the lease nowhere contemplates a condition that on any such condition of assignment, the original lease deed would be surrendered for the purposes of issue of a sub lease. Whatever is provided under the lease, originally granted, was complied with. Even the transfer of properties on sites held on lease in Schedule-VIII is not barred in terms of the instructions issued by the competent authority and, therefore, merely because the original lease deed was not surrendered, it was not open to recall the no objection certificate once it was granted after full enquiry. Meeting out such allegations made in the rejoinder, an additional return is filed by respondent No. 4 wherein it is contended that petitioners have further transferred the land in dispute in the names of several persons and thereby have violated the original lease condition and as such if the permission is refused by the Cantonment Board, in the given circumstances, the petitioners would not be entitled to the relief claimed.

7. Heard learned Counsel for the parties at length and minutely perused the record.

8. First of all this Court is required to examine whether any law is made with respect to the land situated within the cantonment area in terms of the provisions of 1924 Act. The entire Act nowhere prescribes any procedure to be followed in the matter of grant of lease of land situated within the cantonment area. The Act is silent on the said question. However, 1924 Act prescribes grant of sanction to erect or re-erect the building on any land in a cantonment with the previous sanction of the Board. The Act applies to the cantonment area as notified by the Central Government. It is the authority of the Government under sub-section (2) of section 3 of the 1924 Act to issue a notification defining limits of any cantonment. A land not exclusively in the civil area of a cantonment, would still be within the limits of the cantonment if it falls within the limits notified by the Central Government in the Gazette. Therefore, provisions for grant of sanction to erect a building would be squarely applicable to any such building which is erected or re-erected within the cantonment area. Chapter-XI of the 1924 Act deals with such control and power over the buildings, street and boundaries etc. by the Board. Sections 178-A, 179, 180 and 181 of the 1924 Act are relevant for the purposes of consideration of the controversy involved in the present writ petition, therefore, the same are reproduced for the convenience:

178-A. Sanction for building.--No person shall erect or re-erect a building on any land in a cantonment except with the previous sanction of the Board, nor otherwise than in accordance with the provisions of this Chapter and of the rules and bye-laws made under this Act relating to the erection and re-erection of buildings.

179. Notice of new buildings.--(1) Whoever intends to erect or re-erect any buildings in a cantonment shall apply for sanction by giving notice in writing of his intention to the Board.

(2) For the purposes of this Act, a person shall be deemed to erect or re-erect 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, cattle-shed or cow-house 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, the building, or which reduces the cubic capacity of any room in the building below the minimum prescribed by any bye-law made under this Act.

180. Conditions of valid notice.--(1) A person giving the 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 sub-section (1) and any further information and plans which may be required under bye-laws made under this Act have been furnished to the satisfaction of the Board along with the notice.

181. Power of Board to sanction or refuse.--(1) The Board may either refuse to sanction the erection or re-erection, 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 neighboring 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, fire-places and chimneys;
- (i) the height and slope of the roof above the uppermost 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 re-erecting the building shall obey all such written directions in every particular.

(2) The Board may refuse to sanction the erection or re-erection of any building either on grounds sufficient in the opinion of the Board affecting the particular building or in pursuance of a general scheme sanctioned by the officer Commanding-in-chief, the Command, restricting the erection or re-erection of building within specified limits for the prevention of over-crowding or in the interest of persons residing within such limits or for any other public purpose.

(3) The Board, before sanctioning the erection or re-erection of a building on land which is under the management of the Military Estates Officer, shall refer the application to the Military Estates Officer for ascertaining whether there is any objection on the part of Government to such erection or re-erection; and the Military Estates Officer shall return the application together with his report thereon to the Board within thirty days after it has been received by him.

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

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

(b) when the land on which it is proposed to erect or re-erect 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 re-erection of the building, it shall communicate 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 by a written communication sent by registered post to the Board calls the attention of the Board to the neglect or omission, then, if such neglect or omission 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 re-erection, as the case may be, unconditionally:

Provided that, in any case to which the provisions of sub-section (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 sub-section.

9. Undisputedly originally the lease was obtained by Mr. C.F. Billby way back on 28th March, 1930. The conditions as appended to Schedule-VIII were reflected in the lease deed granted in favour of the said person. The relevant provisions made in the said lease deed, as reflected in Schedule-VIH are reproduced for ready reference:

I. AND THE LESSEE DOTH hereby covenant with the Secretary of State--

xxx xxx xxx

(6) Not to make any alterations in the plan or elevation of the said dwelling house without such consent as aforesaid nor to use the same or permit the same to be used for any purpose other than that of a dwelling house without the consent of the Cantonment Authority.

xxx xxx xxx

(8) *(Not to assign transfer or under - let the premises hereby demised or any part thereof without the previous consent in writing of the Cantonment Authority and) upon every assignment transfer or sublease of the premises hereby demised or any part thereof or within one calendar month thereafter to deliver a notice of such assignment transfer or sub-lease to the Military Estates Officer setting forth the names and description of the parties to every such assignment transfer or sub-lease and the particulars and effect thereof.

It is also not in dispute that after the execution of the said lease deed, the land in question was obtained by the present petitioners on an assignment by the original holder vide Annexure P-2. Admittedly, this was done with the previous approval of the competent authority and there was no violation of any terms and conditions of the original lease deed. This is why such an assignment was duly accepted by memo dated 21st May, 1974 by the Military Estates Officer in the following manner:

To,

Dr. J.N. Seth,

5 Theatre Road,

JABALPUR

Subject: BUNGALOW NO. 5 THEATRE ROAD JABALPUR CANTT

Reference: Your application dated 8-5-1974.

The consent of the Cantonment Authorities i.e. the undersigned accorded for assignment of the portion of the site such portion measuring 19080 Sq.Ft. (out

of 2.60 acres) in your name.

The remaining portion will be in the names of Six others. The assignment is subject to the terms and conditions of the original lease in Schedule VIII dated 28-3-1930. You will effect now the assignment and inform us one month of that i.e. partition which document should clearly state inter alia that the assigned portion and the balance will continue to be governed by the original lease terms dated 28-3-1930.

Sd/- Military Estates Officer M.P. Circle Jabalpur (BHARAT BHUSHAN)

A further communication was made on 14th October, 1974 accepting the partition deed between the family members of the petitioners. This was also done in the manner, which left no doubt that the same was fully accepted by the Military Estates Officer. The letter dated 14th October, 1974 reads thus:

To,

Dr. J.N. Seth,

5, Theatre Road,

Jabalpur Cantt

SUBJECT:-- BUNGALOW NO. 5, THEATRE ROAD. JABALPUR CANTT

Reference: Your application dated 14-10-1974.

2. An area measuring 19080 Sq.Ft. out of the total area of 2.60 acres from Bungalow No. 5, Theatre Road, Jabalpur Cantt (building lease in perpetuity Schedule VIII) has already been assigned to you by this office under the terms of Registered Partition Deed submitted by you. This assignment by itself confers on you independent and absolute right on this plot of land under the provisions of the original lease and should therefore be treated as a sub-lease of the original. The terms and conditions of the original lease shall be applicable to this sub-lease also. Any contravention of the terms of the lease by any other previous copartner shall have no effect of default on you.

Sd/- MILITARY ESTATES OFFICER M.P. CIRCLE, JABALPUR (M.H. ALAVI)

Further division of the land in dispute was accepted by letter dated 1-11-1975 reflecting the names of all those family members, who have effected the partition of land in dispute amongst them. This letter further makes a note in the following manner:

1. The plot referred to above are those as shown in the plan attached to deed.
2. Plot area includes the road area proposed to be constructed as shown in the plan.
3. The above assignment are subject to the terms and conditions of the original lease in Schedule VIII dated 28-3-1930. You will effect now the assignments and

inform us within one month of the partition through addendum to the memorandum of partition dated 10-5-1975 that the assigned portion will continue to be governed by the terms and conditions of the original lease dated 28-3-1930.

10. This Court fails to understand if the mutation of the bungalow concerned and the land in dispute in this writ petition, was accepted way back, where was the question asking the petitioners to surrender the original lease deed and to obtain sub-lease deed in their respect separately. Virtually it was the responsibility of the granting authority, i.e. the Chief Executive Officer of the Cantonment, Jabalpur, to issue the sub-lease deed in favour of persons like petitioners. If that was not done on their end, the petitioners were not to be held responsible for the same.

11. On the strength of these documents, the petitioners moved the application indicating their desire that each of them were willing to construct a separate residential unit on the land in dispute, which falls exclusively in the share of each person. Obviously the lease deed was granted in respect of the land, originally also for the residential purposes and the building permission was sought only for the purposes of construction of a residential building and not otherwise that too under the provisions of the 1924 Act, which were in vogue at the relevant time. Of course since the land in dispute falls out of the civil area of the Cantonment, Jabalpur, the matter was referred to the Military Estates Officer for grant of relevant no objection certificate, which according to the respondents, was issued. Once such a no objection certificate was issued, what was the authority of the Chief Executive Officer of the Board to refer the matter to the higher authorities. No such provision was made in the relevant Act at the relevant time. Nothing is provided in the entire scheme of the 1924 Act to refer the matter to any authority by the Chief Executive Officer. Once the notice is given u/s 179 of the 1924 Act, the power u/s 181 of the 1924 Act is required to be exercised. Only under sub-section (3) of section 181 of the 1924 Act, the Board before sanctioning the erection or re-erection of the building on the land, which is under the management of Military Estates Officer, is required to refer the said application to the said officer for ascertaining whether there is any objection on the part of the Government to such erection or re-erection. The Board has only two grounds on which sanction for erection or re-erection of any building can be refused. None of these contingencies were there nor there was any power available with the Board to refer the matter to the next higher authority or anybody. The applications submitted by the petitioners were either to be granted or to be rejected on valid reasons as mentioned in sub-section (4) of section 181 of 1924 Act. How and why a letter was sent by the Board on 1st May, 2007 to the Principal Director, Defence Estates Central Command, Lucknow, is not known. What was the reasons for such applications and why guidance was required when there was already a no objection certificate issued by the competent authority, i.e. the Military Estates Officer. The only requirement was obtaining of a no objection certificate, that too from the land point of view as prescribed u/s 181 of

1924 Act.

12. The competent authority instead of looking into all these aspects, examining the records or even the law applicable, sent back the application of the petitioners and letter of refusal was issued by respondent No. 4, the Cantonment Board, on 11th September, 2007. The entire consideration was done by the higher authority as well as by the Cantonment Board as if application was made under 2006 Act as is clear from the perusal of the impugned order dated 11th September, 2007. How the Public Premises Eviction Act, 1971 became applicable in such a situation was not even tested and this was said that the construction will be treated as unauthorized and action will be taken under the provisions of 2006 Act and Public Premises Eviction Act, 1971 at the risk and cost of the petitioners, which may include demolition of unauthorized construction. This particular aspect is challenged by the petitioners and they say that this was beyond the jurisdiction of the respondents. When a detailed appeal was filed by the petitioners before the competent appellate authority, instead of considering the appeal in appropriate manner, the appellate authority virtually reproduced the entire grounds raised by the appellants in their memo of appeal and passed the order in paragraphs 5 and 6 of the impugned order in the following manner:

5. I, therefore, after considering the Appeal filed, written arguments forwarded by the Appellants and on hearing the submission of the parties, direct that the Applicants may submit Revised Plans after complying with/rectifying the observations raised by Cantonment Board Jabalpur vide letter No. RBP/Svy No. 113 (Part) B. No. 5/07/659 dated 11 September, 2007, once their names are mutated in the GLR and a fresh No Objection Certificate is given by the DEO, Jabalpur Circle, Jabalpur.

6. The Applicants are also advised to approach Principal Director Defence Estates Central Command to seek the status of their case, presently under reference to Director General Defence Estates (MoD) for confirmation.

13. Again this Court completely fails to understand where was the authority available with the respondents to ask the petitioners to make an application under the 2006 Act. It is trite that if an application is made before repealing of any enactment and if the application remains pending, even after repeal, the same has to be considered only under the repealed provisions and not otherwise. Even otherwise 2006 Act contains the Repeals and Savings u/s 360 of the 2006 Act, which protects the application, the notice of erection of building submitted by the petitioners. However, analogous provisions are made u/s 234 of the 2006 Act. Under sub-section (4) of section 238 of the 2006 Act, yet another ground has been added for refusal to grant sanction to erect or re-erect any building but in sum and substance the said ground is also not different than the ground prescribed under the old Act. Similar is the provision made with respect to obtaining no objection certificate from the Military Estates Officer. The only difference is that instead of Military Estates Officer, the designation is shown to be Defence Estates Officer. However, again 2006 Act prescribes no provision for

grant of lease of the land and the lease remained under the same provisions of law, which were in vogue when the original lease deed was granted in favour of the erstwhile original lessee. From this it is clear that when the appeal was filed before the respondent Appellate Authority by the petitioners, the same was not rightly considered in appropriate manner as prescribed under the relevant Act. Even the respondent No. 4-Cantonment Board communicated to the petitioners that in case the suitable action is not taken and any construction is made by the petitioners, action under the provisions of the 2006 Act as also the Public Premises Eviction Act, 1971 would be initiated against the petitioners. This Court again completely failed to understand as to how the provisions of Public Premises Eviction Act, 1971 would be attracted in such a case where the erection of the building is done in terms of the provisions of 1924 Act or 2006 Act. In any such circumstances, action was to be taken only and only under the relevant Act and not otherwise. Such a refusal letter is, therefore, not sustainable. The appellate authority has also not taken note of these facts while passing the order and, therefore, the order passed by the Appellate Authority is equally bad in law.

14. It is vehemently contended by learned Counsel for the respondents that in fact there was gross violation of the terms and conditions of the lease granted to the petitioners, inasmuch as the petitioners have sub-divided the plot, have executed the sale-deeds in favour of several persons. While filing a counter affidavit, the respondents have placed on record a circular issued by the competent Government to the extent that in case it is found that any violation of the lease conditions is committed, any sub-division of the land granted on lease is done, strict action would be taken. It is further stated that before a sub-division is permitted, the competent authority's sanction for transfer of the site was mandatory but without obtaining any such sanction, the petitioners have executed the sale-deed of the land in dispute in respect of various persons. Copy of some of the sale-deeds have been placed on record by the respondents. Though this affidavit was filed by the respondents on 21-8-2012, copy of which was already served on the petitioners, yet it appears that supplementary affidavit has not been filed by the petitioners. However, during the course of arguments learned senior Counsel for the petitioners has contended that all such sale-deeds were executed only and only after obtaining sanction from the respondents-authorities and without obtaining such a sanction, the sale-deed was not to be registered by the Registering Authority. This being so, it is contended that not a single violation of lease conditions was committed by the petitioners and as such the entire allegations made by the respondents in their return are vexatious. It is contended that since appropriate action was not taken, the respondents-authorities were head strong, were dealing in arbitrary manner with the application submitted by the petitioners, the action taken on their part was vitiated. It is further contended that all the sale-deeds, if are minutely examined, were executed after filing of the present writ petition and, therefore, frivolous allegations have been made against the petitioners to cause a prejudice against them.

15. This Court is not required to go into such disputed facts. However, if any violation of the lease conditions is committed by the petitioners, that has to be examined and looked into by the respondents-authorities. At any rate, rejection of notice of erection of the building on the ground that sub-leases were not granted to the petitioners or that the mutation of the names of the petitioners was not done in the G.L.R. is not justified or proper. As has been discussed herein above, in fact the applications/notices of erection of building were to be considered only and only under the scheme of 1924 Act, which was in vogue at the time when the applications were submitted by the petitioners.

16. In view of the aforesaid discussion, the impugned orders are liable to be quashed. Resultantly, this writ petition is allowed. The impugned order dated 11-9-2007 (Annexure P-14) and the order dated 13-9-2008 (Annexure P-19) are hereby quashed. The matter is remitted back to the respondent No. 4 for properly considering the application/notice of erection of building made by the petitioners. The Defence Estates Officer, Jabalpur will also consider the matter afresh in terms of the previous no objection certificates granted by the said authority to accord sanction of erection of building to the petitioners. The respondents will also examine whether any transfer of the land in dispute has been made by the petitioners without obtaining the sanction from the competent authority. However, the respondents will not insist the petitioners to submit the original lease-deed for the purposes of grant of sub-lease to the petitioners and will not refuse the sanction to erect the building only on the ground of not granting the sub-lease of land to the petitioners or mutation of their names in the G.L.R. Expeditious action be taken in this respect within a period of three months and necessary orders be passed. The writ petition is allowed to the extent indicated hereinabove. However, there shall be no order as to costs.