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**(2012) 02 AHC CK 0266**  
**In the Allahabad High Court**  
**Case No : Writ C No. 28487 of 2000**

Smt. Khuslata Tiwari

APPELLANT

Vs

Director, Defence Estates and Others

RESPONDENT

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**Date of Decision :** 09-02-2012

**Acts Referred:**

Cantonments Act, 1924 — Section 179, 184, 185

**Citation :** (2012) 4 ADJ 712 : AIR 2012 All 111 : (2012) 3 AWC 2239

**Hon'ble Judges :** Sibghat Ullah Khan, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Hon"ble Sibghat Ullah Khan, J.—Heard learned counsel for the parties.

2. The matter relates to unauthorised construction in servant quarter of a bungalow (No. 51) belonging to respondent No. 3 Lucknow Diocesan Trust Association, Allahabad (LDTA) situate in Varanasi Cantt. According to the petitioner her father being ex-army man was leased an out house of the Bungalow by LDTA. Executive Officer of the Cantonment Board issued notice to the father of the petitioner on 26.04.1991 copy of which is Annexure-I to the writ petition and to the property manager of Bungalow No. 51, Varanasi Cantt. It was alleged in the notice that two rooms of 12 feet by 21 feet 9 inch and 18 feet by 7 feet 4 inches with brick walls and A.C. sheet roof towards north of outhouse situate in south west side of the Bungalow had been constructed. Noticee was required to show cause as to why action u/s 184 of the Cantonment Act, 1924 should not be taken against him. Father of the petitioner filed reply, copy of which is Annexure-II to the writ petition stating that the constructions were quite old and he had not made constructions and that LDTA was adopting different measures to evict him. Thereafter, on 27.05.1991 order of demolition of the above two rooms was passed copy of which is Annexure-III to the writ petition. Against the said order father of the petitioner filed appeal which was dismissed on 17.05.2000 (Annexure-V to the writ petition). Consequent notice was issued

on 26.06.2000.

3. Before the appellate authority father of the petitioner had requested for compounding (composition) of the construction. Through this writ petition, orders passed by the first authority and by the appellate authority have been challenged. Father of the petitioner Masih Charan died during pendency of appeal and was substituted by the petitioner. Appeal was heard and decided by Director Defence Estates. In the appeal LDTA is described as holder of occupancy rights (HOR) and Masih Charan as sub-tenant of LDTA. The appellate court has noted the arguments of LDTA to the effect that Masih Charan had been asked to vacate the premises and he had carried large construction without permission of HOR (LDTA). In Para-5 of the judgment under the heading "Analysis of Evidence" reasons for rejecting the appeal have been given. The said para is quoted below:

5. Analysis of the evidence:

6. The constructions were reported in 1991. Requisite notices were issued on the authority of the Board. The property is held on old grant terms and the recorded HOR is Methodist Missionary Trust Association. No sanctioned building plan has been produced. Shri Masih Charan was admittedly a tenant of the HOR. No constructions can be carried out by a tenant without the approval of the house owner/ HOR. While there is no evidence that new constructions have been carried out in the out house, there is no doubt that new constructions have been carried out on vacant land on or behalf of Shri Masih Charan. The HOR apparently wanted to evict Shri Masih Charan. This is, however, an issue with which the Appellate Authority is not concerned. This is a dispute of civil nature between the house owner/ HOR and the tenant. There is, however, clear evidence of new construction, as found during site inspection in the presence of all the parties. No credible evidence has been adduced to show that the notice is time barred. No constructions can be carried out on old grant site without prior permission of the competent authority and subject to the prescribed formalities as per the land polity/ Cantonments Act. The application for composition can only be submitted by the HOR and not the tenant.

7. The first defect in the judgment of the appellate court is that no finding has been recorded regarding the period when new constructions were made.

8. However the main argument raised by learned counsel for the appellant is that the last sentence of the judgment is erroneous according to which application for composition can only be submitted by the HOR and not by the tenant. In this regard reference may be made to Section 179 of Cantonment Act, 1924 which starts with words "whoever intends to erect....." Power of compounding/ composition is provided u/s 185, first proviso, which is quoted below:

provided that the Board may instead of requiring the alteration or demolition of any such building or part thereof accept by way of composition such sum as it thinks reasonable.

9. It is correct that in normal course a tenant cannot make any construction without the consent of the landlord. It is also correct that unless a person prima facie establishes his right to make construction over a particular piece of land, sanction to construct cannot be granted. However while granting sanction to construct either under Cantonment Act or any other law relating thereto like Municipalities Act or Development and Planning Acts, the question whether the person seeking permission to build is authorised to do so over the particular piece of land cannot finally be decided. In this case constructions have been made. Date or period of constructions has not been decided by the appellate authority. The person who made the construction was tenant and applied for composition/ compounding of the existing constructions. In such situation request/ prayer for composition/ compounding was maintainable and the cantonment authorities could decide as to whether constructions were in accordance with relevant regulations or bye-laws or not without prejudice to the right of the HOR.

10. Matter is therefore remanded to the appellate authority only and only to consider the question of composition. If the appellate authority is of the opinion that no rules, regulations in respect of construction have been violated then the constructions may be compounded/ composited otherwise not. However even if order of composition/ compounding is passed, it will not in the least jeopardise the right of the HOR i.e. LDТА to evict the tenant on any ground including the ground of unauthorised construction in the sense that constructions were made without the permission of LDТА.

11. Writ petition is allowed as above. Petitioner is directed to appear before the appellate authority on 14.03.2012 along with certified copy of this judgment failing which this writ petition shall be deemed to have been dismissed.