

Cantonment Board, Dinapore and Others

Vs

Taramani Devi

(Civil Appeal No. 576 of 1976)

With

Union of India and Others

Vs

Chandrakanti Devi

(Civil Appeal No. 3727 of 1991)

Civil Appeal Nos. 576 of 1976 and 3727 of 1991

17.09.1991

ORDER

1. Delay condoned.
2. Special leave granted in Special Leave Petition No. 2862 of 1976.
3. In these two appeals by special leave a common question of law arises.
4. The respondents herein were granted permission to make additions to their buildings situated in cantonments administered under the Cantonment Act, 1924 by their respective Cantonment Boards on terms and conditions embodied in the respective sanctions. Section 181 of the said Act authorises the Cantonment Board to grant such sanction by resolution. The resolution is suspendible under Section 52(1)(b) of the Act by the Officer Commanding-in-Chief of the Command within whose area the cantonment is situated. Thereupon, when such an exercise is undertaken, Section 185(2) of the Act provides that on suspension of the resolution, the Board is required to send notice in writing to the owner, lessee or occupier of any land in the cantonment to stop such erection or re-erection of the building. Since Section 52(1)(b) further requires the Board to be given a reasonable opportunity of showing cause why the interim direction made earlier be not made absolute, the board alone is given a hearing and should it not avail of the opportunity, or otherwise, the direction can be made absolute. The later order too is required under Section 185(2) of the Act to be communicated to the owner, lessee or occupier of the land, as the case may be, forbidding him to carry out the erection or re-erection of the building. In either event, the Board is liable to pay to the owner of the building compensation for any loss incurred by him in consequence of the demolition or alteration of any building which has been erected or re-erected prior to the date of communication of the order of the Officer Commanding-in-Chief of the Command. In this state of law, the High Court of Patna, in the respective cases, was required by the aggrieved user of land, challenging the order of the Officer Commanding-in-Chief, to invoke the principles of natural

justice since they were denied a hearing by the Officer Commanding-in-Chief before making the interim directions absolute. The High Court in construing the aforesaid two provisions viewed that there had been violation of the rules of natural justice inasmuch as opportunity of being heard was granted only to the Board and not to the real affected party, the owner, lessee or occupier of the land. He was the one who was denied permission to construct when he had already undertaken construction. It is to challenge such view that these appeals are before us by the Union of India in one case and the Cantonment Board and others in the other.

5. Apart from the fact that these appeals have been pending before this Court for about 15 years, raising a presumption that these orders under appeal might have been worked out by the Officer Commanding-in-Chief by grant of opportunity of being heard to the respondents in the absence of stay orders from this Court, rendering the present exercise avoidable, still we go on to rule that the decision of the High Court in making it obligatory on the Officer Commanding-in-Chief to give a hearing to the owner, lessee or occupier of the land, in the given situation, besides that to the Board, is in consonance with the scheme of our constitutional set up. Audi alteram partem is a part of Article 14 of the Constitution. The proviso to Section 185(2), whereunder the Board is required to 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 re-erected prior to the date on which the order of the Officer Commanding-in-Chief has been communicated to him, is indicative of the fact that the owner is an aggrieved party and his rights to be affected deserve recompense and restitution. What is literally provided for the owner is nonetheless valid for the lessee or occupier as otherwise it would be discriminatory and violative of Article 14 of the Constitution. If the Board is obligated to pay loss in the event of its resolution or decision being upset by the Officer Commanding-in-Chief, then confining the right of being heard to the Board, on literal interpretation of the provision alone, serves no purpose as, at its will, the Board may or may not defend its decision or resolution. The real affected party in such situation would obviously be the party ultimately affected by the decision or resolution being wiped out. Much water has flown since decision in *State of Orissa v. Beenapani Dei* [AIR 1967 SC 1269 : (1967) 2 SCR 625] relied upon by the High Court and now there is a plethora of precedents, which have expanded the ever expanding scope of Article 14 of the Constitution to assert and maintain that no order shall be passed at the back of a person, prejudicial in nature to him, when it entails civil consequences. We are thus in perfect agreement with the High Court in reading such compulsions in the working of the provisions of the Act in providing an opportunity of being heard to the affected party, the respondents herein.

6. For the foregoing reasons, finding no merit, these appeals are dismissed. No costs.

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