

Cantonment Board and another

Vs

Mohanlal and another

Civil Appeal No. 1470 of 1981

(K. Ramaswamy, G. B. Pattanaik JJ)

02.01.1996

JUDGMENT

1. This appeal by special leave arises from the order of the Division Bench of the Madhya Pradesh High Court in Misc. Petition No. 2090/75 passed on November 5, 1979, filed under Art. 226 of the Constitution. The admitted facts are that the appellant had issued a notice on March 27, 1973 under Section 85 of the Cantonments Act, 1924 (for short, 'the Act') to the respondent for demolition of the construction made in the property now in controversy. The Ist respondent has received the notice on May 2, 1973, but he carried out further construction. However, notice under Section 256 was issued on January 3, 1974 and second notice ultimately was issued for demolition on September 13, 1974 under Section 185. The Ist respondent has submitted his reply on October 30, 1974. The Area Committee on December 7, 1974, passed resolution after considering the representation made by the Ist respondent to give 15 days, time for compliance of the notice dated March 27, 1973 and September 13, 1974 and in case he does not comply with the same it further resolved to have the structure demolished through the agency of the Board. Calling this action in question the respondent had filed the above writ petition in the High Court. The Division Bench has held that though Section 185 read with 5th Schedule does not contemplate any enquiry being conducted or reason to be recorded, principle of natural justice require that the Board is to consider the representation since it is an offence under Section 184 and principles of natural justice require that necessary notice and opportunity of hearing be given and after consideration of the representation speaking order is required to be passed. Since the speaking order has not been passed the action of the respondent was in violation of the law.

2. The only question in this case is whether the view taken by the High Court is good in law. It is seen that the respondent in his reply had admitted that they constructed, as pointed out by the Cantonment Board in its notice dated September 13, 1974, and the previous notice. But he stated that he had done it bona fide and as he would not demolish it but requested the authority to reconsider the matter and withdraw the notice. In other words, he admitted that he had carried on illegal construction without compliance with law. So the question is whether enquiry in that behalf is required to be conducted. We are of the considered view that the High Court was not right in its conclusion that an independent enquiry requires to be held after the notice was issued and the reply thereof was given by the respondent.

3. It is seen that the Cantonment Board is an elected body represented by people themselves. When opportunity was given putting on notice of illegal construction made by the respondent, reply thereof was given. The Board had considered the representation and was not inclined to accede to the request made by the respondent. Accordingly, the resolution passed by the Cantonment Board cannot be faulted as violative of the principles of natural justice.

4. However, Shri Lekhi, learned counsel appearing for the appellants stated that the action taken by the respondent can be condoned provided he complies with the law. In view of the stand taken by the appellants it would be open to the respondent to make a representation to the Board which would forward the same to General Officer Commanding-in-Chief at Sagar who would pass an appropriate order according to law.

5. The appeal is accordingly allowed. No costs. Appeal allowed.