

Pune Cantonment Board and Another

Vs

M.P.J. Builders and Another

Civil Appeal No. 9390 of 1996

(K. Vankataswami, J. S. Verma JJ)

09.08.1996

JUDGMENT

J. S. VERMA, J. -

1. The dispute relates to the building sanction of House No. 2, Sholapur Bazar Road, Pune, which falls within the area of Pune Cantonment governed by the Cantonments Act, 1924 (hereinafter referred to as 'the Act').

2. Respondent 1 was granted a building sanction under Section 181 of the Act on 2-7-1981 effective from 6-7-1981. The building was intended to be used for commercial/residential purposes; it was to be an RCC framed structure and to consist of ground and five upper stories (i.e. stilt + six upper stories); the nature of soil was "hard rock"; the construction work was to be commenced within one year of the sanction i.e. before 6-7-1982; and was to be completed within 12 months from the date of commencement of the work. The building bye-laws existing at the time of the sanction did not contain any restrictions with regard to the Floor Area Ratio (FAR) or number of floors or height of the building. By a letter dated 3-7-1982, barely three days before expiry of the permissible period for commencement of the work, a letter was sent by Respondent 1 stating that the work had been commenced on that day. For the purposes of this case, the appellants did not dispute this claim of Respondent 1. According to the conditions of the building sanction imposed under the relevant statutory provisions, the construction of the building had to be completed within 12 calendar months from the date of commencement of the work i.e. up to 3-7-1983. Admittedly, the construction of the building was neither completed nor was any extension of time sought within that period.

Respondent 1 claims to have made an application for extension of time to complete the construction on 24-9-1983, after expiry of the time allowed. For the purposes of this case the appellants do not dispute even this claim. The contents of that application alleged to have been made by Respondent 1, are as under :

#"MRJ : 9/86/736The Executive Officer, 24-9-1983Cantonment Board,Pune.##

Sub. - Extension of time.

Ref. - Your sanction No. 2/SH/B3 dated 6-7-1981, for our project at No. 2, Sholapur Bazar Road.

Sir,

We have commenced the above work with effect from 3-7-1982 and your office was intimated

accordingly vide our letter No. MPJ : MK/7/82, dated 3-7-1982.

It was not possible to complete the works within a span of one year due to the various following reasons :

1. Hard rock is met with for basement foundation which requires chiselling.
2. Non-availability of building materials.
3. Due to change in the strata now met with, structural detailing requires some changes.
4. Due to various other difficulties.

We, therefore, request you to kindly grant us an extension of time for a further period of 24 months and oblige.

Yours faithfully, for MPJ Builders, sd/- (Ramesh Kumar More) Partner."##

On 24-5-1984, an Engineer of the Cantonment Board inspected the site and submitted a report that no erection work of the building had been commenced till then; the owner had not made any application for extension of time; and the sanction had lapsed. The making of this report is undisputed. Thereafter, on 9-9-1985, an application, said to be the second application for extension of time was made by Respondent 1. That application is as under :

"BY REGISTERED A.D.HPJ/RRH/9/85/106 September 9th, 1985 Executive Officer, Pune Cantonment Board, Pune-411 001##

Ref. - (a) Your sanction No. 2/SH/B-3 of 6-7-1981 for our project at No. 2, Sholapur Bazar Road.

(b) Our letter No. HPJ/MK/7/82/343 of 3-7-1982 regarding intimation of commencement.

(c) Our letter No. MPJ/9/83/736 of 24-9-1983.

Sir,

Due to various unforeseen reasons and difficulties, we could not make substantial progress with the work at our site at 2, Sholapur Bazar Road.

We request you to grant us further extension of 18 months and oblige.

We assure you that we will try our best to complete the building within this extended period.

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Thanking you, for MPJ Builders,

sd/- (Ramesh Kumar More) Partner."

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On that application, a report dated 3-10-1985 was submitted by an officer of the Cantonment Board. Relevant part of that report is as under :

"The party has not started the construction from the date of sanction and not taken any extension of time-limit for completion of work from this office.

On site inspection, it is found that the owner of this property had started excavation work, which work is in progress.

Submitted to your order's pl.

sd/- 3-10-1985"##

3. The Cantonment Executive Officer, exercising the power of the Board, granted extension of time for a period of one year from the date of that order dated 2-5-1986 as under :

"2 May, 1986 From, The Cantonment Executive Officer, Poona Cantonment Board, Poona. To, Shri Ramesh Kumar More, Partner, C/o MPJ Builders, Poona Bottling Co. Ltd., 4101/1, Bombay-Poona Road, Dapodi, Pune-411 012.##

Subject. - Grant of extension of time for completion of work - H. No. 2, Sholapur Bazar, Pune Cantt.

Reference. - Your application dated 9-9-1985

Dear Sir,

Extension of time for completion of work for a period of one year is hereby granted.

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Yours faithfully,

sd/- CANTT. EXECUTIVE OFFICER."

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4. Prior to the grant of extension of time by the Cantonment Executive Officer on 2-5-1986 or even the application for extension of time dated 9-9-1985, certain changes had been made in the building bye-laws imposing additional restrictions. All subsequent building sanctions had to be granted thereafter subject to these additional restrictions also. The first set of restrictions were imposed on 24-12-1982 under which the maximum number of stories which could be constructed were reduced to the ground floor + two upper stories i.e. in all three stories including the ground floor. The maximum permissible FAR commonly known as FSI was two and the maximum permissible built-up area became 1/3rd. These restrictions were imposed under Section 181(2) of the Act which later became Section 181-A in the public interest to regulate the building activities in the cantonment area. More restrictions were imposed on 26-3-1984 under which the permissible FSI was reduced from two to one. It is to be remembered that the report dated 24-5-1984 of the Cantonment Engineer

clearly mentioned the admitted fact that no erection work had been commenced by the respondents till then. The question of extension of time to make the construction according to the initially sanctioned plan had to be decided in this background taking into account the fact that no erection of the building had commenced till both sets of further restrictions had been imposed; and according to the additional restrictions, the kind of building construction sanctioned on 2-7-1981 could not be permitted, if the question of sanction was to be considered afresh.

5. The GOC-in-Chief in exercise of his powers under Section 52(1)(b) of the Act suspended the CEO's order dated 2-5-1986 by an order dated 2-1-1987 and issued a show-cause notice to the Cantonment Board as well as Respondent 1 to show cause why the suspension order be not made absolute. After hearing the parties, the GOC-in-Chief, by order dated 14-2-1987 under Section 52(2)(c) made the suspension order absolute. It appears that a portion of the building had been constructed by then and therefore, on 14-3-1987 the GOC-in-Chief made the consequential order for its demolition.

6. A writ petition was then filed on 27-3-1987 in the Bombay High Court by the respondents which has been allowed and the orders made by the GOC-in-Chief dated 14-2-1987 and 14-3-1987 have been set aside. The High Court granted some further time to complete construction of the building according to the initially sanctioned plan. Aggrieved by the High Court's order, the Pune Cantonment Board and the GOC-in-Chief have preferred this appeal by special leave.

7. It was common ground before us that the stage of construction till now is : the basement, a ground floor and the first floor have been constructed; the ground floor is of an extra height so as to accommodate a mezzanine although the mezzanine floor has not yet been cast; the mezzanine floor sanctioned does not extend to the entire ground floor area but only to a small portion thereof and the rest of the ground floor has been left with the extra height. The construction made so far is already in excess of the permitted FSI of one, being approximately 1.59. The learned Solicitor General, appearing for the appellants, on instructions, stated that the appellants are prepared to permit Respondent 1 to retain the existing structure and complete the finishing of the existing structure with the mezzanine according to the initially sanctioned plan subject to the condition that no additional slab would be laid anywhere else. This offer made on behalf of the appellants at the hearing before us is mentioned since to this extent the appellants consent to grant of relief to the respondents even if the appeal is allowed.

8. Mention may also be made of another relevant fact. The High Court in the impugned judgment invoked the doctrine of estoppel on the ground that the builders had acted upon the order of extension and had completed a portion of the building. Shri F. S. Nariman, the learned Senior Counsel for the respondents, frankly conceded that he could not support the High Court's order on that ground. We need not, therefore, consider the applicability of the doctrine of estoppel which is a clearly untenable plea in the present case.

9. At this stage, before we proceed to consider the rival contentions, we may notice the relevant statutory provisions :

"THE CANTONMENTS ACT, 1924##

52. Power of Officer Commanding-in-Chief, the Command, on reference under Section 51, or otherwise. - (1) The Officer Commanding-in-Chief, the Command, may at any time -

#(a) * * *##

(b) direct the suspension, for such period as may be stated in the order, of action on any decision of a Board, other than a decision which has been referred to him under sub-section (1) of Section 51, and thereafter cancel the suspension or after giving the Board a reasonable opportunity of showing cause why such direction should not be made, direct that the decision shall not be carried into effect or that it shall be carried into effect with such modifications as he may specify.

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

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 -

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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 on any grounds sufficient in the opinion of the Board affecting the particular building :

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

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(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.

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181-A. Power to sanction general scheme for prevention of overcrowding, etc. - The Officer Commanding-in-Chief, the Command may sanction a general scheme for erection or re-erection of buildings within such limits as may be specified in the sanction for the prevention of overcrowding or for purpose of sanitation, or in the interest of persons residing within those limits or for any other purpose, and may, in pursuance of such scheme, impose restrictions on the erection or re-erection of buildings within those limits :

Provided that no such scheme shall be sanctioned by the Officer Commanding-in-Chief, the Command, unless an opportunity has been given by a public notice to be

published locally by the Executive Officer requiring persons affected or likely to be affected by the proposed scheme, to file their objections or suggestions in the manner specified in the notice, within a period of fifteen days of the publication of such notice, and after considering such objections and suggestions, if any, received by the Executive Officer within the said period.

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183. Lapse of sanction. - Every sanction for the erection or re-erection of a building given or deemed to have been given by the Board as hereinabove 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 someone lawfully claiming under him within that period, it shall not thereafter be begun unless the Board on application made therefor has allowed an extension of that period.

183-A. Period for completion of building. - A Board, when sanctioning the erection or re-erection of a building as hereinbefore provided, shall specify a reasonable period after the work has commenced within which the erection or re-erection is to be completed, and, if the erection or re-erection is not completed within the period so fixed, it shall not be continued thereafter without fresh sanction obtained in the manner hereinbefore provided, unless the Board on application made therefor has allowed an extension of that period :

Provided that not more than two such extensions shall be allowed by the Board in any case."

The learned Solicitor General appearing on behalf of the appellants advanced several arguments. He submitted that no reasons were given by the Cantonment Executive Officer for extension of time, on these facts, to justify grant of the extension. The relevant facts for this purpose were that the sanction had expired on 3-7-1983 even prior to the making of the alleged first application for extension of time dated 24-9-1983, assuming that the application was made; no construction of the building had been commenced within the time allowed or even till 3-10-1985 as evident from the inspection note of that date; and much before that date additional restrictions had been imposed on 26-12-1982 and 26-3-1984 by amendments made in the building bye-laws which did not permit such a construction. It was contended that these changed circumstances were of great significance but they were not considered by the CEO and no reason was given for the extension of time granted by the CEO on 2-5-1986. The learned Solicitor General also submitted that the only ground mentioned in the application dated 9-9-1985 made by Respondent 1 did not justify grant of extension of time to make any construction in breach of the restrictions imposed meanwhile in 1982 and 1984 when no construction of the building had been commenced even till 3-10-1985 and the sanction had already lapsed on 3-7-1983. It was urged that the exercise of power by the GOC-in-Chief under Section 52 to set aside the order made by the CEO was valid for the reasons given by him. We have already mentioned the offer made by the appellants to permit retention of the existing structure even if the appeal succeeds.

10. In reply, Shri F. S. Nariman, the learned Senior Counsel for the respondents, submitted that the reasons given in the order of the GOC-in-Chief setting aside the order of the CEO are inapplicable because the additional building restrictions imposed in 1982 and 1984 did not apply to a building sanction granted prior to the imposition of those additional restrictions. Shri Nariman heavily relied

on a footnote dated 4-4-1984 clarifying this position at the end of the relevant public notice quoted in the decision in *Usman Gani J. Khatri v. Cantonment Board* [(1992) 3 SCC 455] as under : (SCC p. 464, para 16)

"Note. - It is clarified for information of the general public that the above orders will be effective from the date the GOC-in-Chief, HQSC, has signed the above order i.e. 26-3-1984. These restrictions will apply only to the buildings whose plans will be considered/passed on or after 26-3-1984. Building plans passed prior to 26-3-1984 will be governed by the FSI existing during that period.

sd/-Dated S. P. Nijhawan 4-4-1984 Cantonment Executive Officer, Pune"##

It is not necessary to quote in extenso the public notices imposing the additional restrictions on 24-12-1982 and 26-3-1984, which have been summarised earlier and are not disputed. The other submission of Shri Nariman was that even though the delay in making the application for extension of time after expiry of the period of sanction and imposition of additional restrictions are relevant circumstances to be considered for granting extension of time yet its non-consideration is not a jurisdictional defect to denude the CEO of the power to grant extension of time. Shri Nariman submitted that the initial building sanction granted to Respondent 1 being prior to the imposition of the additional restrictions which were prospective in operation, the further extension of time to complete the earlier sanctioned building would be governed only by the building bye-laws existing at the time of grant of the initial sanction. Shri Nariman, therefore, argued for dismissal of the appeal for these reasons.

11. Section 180-A empowers the Executive Officer to exercise certain powers, duties and functions of the Board which include the Board's power to sanction or to refuse to sanction the erection or re-erection of the building under Section 181, and to allow the extension of the period for completion of the building. Extension of time granted by the CEO in the present case was in exercise of this power. The only question in the present case pertains to the validity of the extension of that period by the order dated 2-6-1985 made by the CEO in exercise of the power under Section 183-A.

12. Section 183 prescribes the period of one year from the date on which a building sanction has been given to begin the building so sanctioned, failing which the sanction lapses unless the Board, on an application made therefor has allowed an extension of that period. In the present case, the compliance of this provision is not disputed since the claim of Respondent 1 by a letter dated 3-7-1982 is not contested. The significant provision is Section 183-A.

13. Section 183-A requires the period for completion of the building to be specified when the sanction is granted. It is to be a reasonable period after the work has commenced. In the present case the period so specified was one year. The fixation of the period of one year as the reasonable period for completion of the building after commencement of the work was not challenged. Thus, the work having commenced on 3-7-1982 as claimed by Respondent 1, the period for its completion according to Section 183-A, expired on 3-7-1983. Section 183-A further provides that if the erection of the building is not completed within the period so fixed, it shall not be continued thereafter without fresh sanction obtained in the manner hereinbefore provided i.e. Section 181, unless the Board on an application made therefor has allowed an extension of that period. The proviso then limits the power of the Board to allow not more than two such extensions.

14. In short, Section 183-A provides for the specification of the period for completion of the

building when the sanction is granted; and on expiry of that period construction of the building cannot be continued without a fresh sanction, unless an extension of that period has been allowed on an application made therefor. It means that unless the Board has allowed an extension of the period specified for completion of the building on an application made therefor, the sanction lapses and the construction of the building shall not be continued thereafter without a fresh sanction. Section 183-A speaks of a fresh sanction on expiry of the period fixed for completion of the building as well as extension of that period on an application made therefor. Meaning must, therefore, be given to both the provisions, namely, fresh sanction and extension of that period; and the two powers must be construed to be available in two different situations. This is necessary to exclude any conflict and arbitrariness in exercise of the choice between the two powers in similar cases. It appears that the two powers are meant to be exercised in two different situations and the provision does not leave it to the option of the authority to decide which of the two powers is to be exercised in the case. This means that unless time is extended on an application made before its expiry, the sanction lapses and the erection of the building cannot be continued thereafter without a fresh sanction.

15. Effect of the proviso in Section 183-A must also be kept in mind. Extension of time allowed has to be in continuity and it cannot exceed the period fixed initially for completion of the building. The limit is of two extensions. In the present case, the period fixed was one year and, therefore, the permissible two extensions could not exceed two years because of the proviso. Thus, the total extension of time could not be beyond two years from 3-7-1983 (up to which date time was allowed for completion). In other words, time extended under Section 183-A because of the proviso in the present case could not be beyond 3-7-1985 since the extension had to be in continuity. In the present case that application made much later on 9-9-1985 had to be rejected by the CEO for this reason alone and the only power available on that date was of a fresh sanction. This obviously could not be granted in view of the additional restrictions imposed meanwhile. Thus, extension of time by the order dated 2-5-1986 was clearly without jurisdiction for this reason alone.

16. Even assuming the power to allow extension of time was available, the facts indicate that it could not be granted. As earlier stated, the period fixed for completion of the building under Section 183-A was one year which expired on 3-7-1983. Admittedly, no application for extension of time was made by Respondent 1 before the expiry of that period and such an application is alleged to have been made only on 24-9-1983. No extension was granted on that application since the Board does not admit receiving the same. There was total silence till almost two years thereafter and then on 9-9-1985 the application for extension of time was made by Respondent 1. The period fixed for completion of the building when the sanction was granted had expired more than two years earlier. The report of the officer of the Cantonment Board dated 3-10-1985 clearly showed that the construction of the building had not commenced till then and the only thing done was some excavation work. In spite of this report, the CEO granted extension of time for completion of work for a further period of one year without assigning any reason in his order dated 2-5-1986 made with reference only to the application dated 9-9-1985.

17. It is obvious that the exercise of the statutory power of grant of extension of time under Section 183-A is not mechanical or automatic and requires a decision to be taken on application of mind with reference to the relevant facts and circumstances of the case. The CEO should have considered all the relevant facts and circumstances of the present case before he came to the conclusion that extension of that period was called for, particularly, when no construction of the building had been commenced till then and additional restrictions had been imposed meanwhile according to which such a building sanction could not be granted if the matter were to be considered for grant of a fresh sanction contemplated under Section 183-A. Shri Nariman rightly does not dispute that even if the

additional restrictions were to apply prospectively to the grant of a fresh sanction thereafter, this was a relevant circumstance to be considered while deciding to grant extension of that period even in this case. The total non-consideration of any relevant fact by the CEO while granting extension of time by order dated 2-5-1986 and the absence of any reason for grant of the sanction is alone sufficient to vitiate the CEO's order dated 2-5-1986. This conclusion is reached even if it is assumed that extension of time could be granted on an application made after expiry of the period allowed for completion of the construction and the embargo in the proviso is overlooked.

18. The validity of the GOC-in-Chief's order setting aside the order of the CEO granting extension of time has to be decided on the above conclusion reached by us. The GOC-in-Chief's order refers, inter alia, to the additional restrictions imposed in the meantime as relevant factors for consideration. It is rightly not disputed that this was a relevant factor to consider while deciding the question of extending the period. In substance, the GOC-in-Chief took the view that permitting the construction of such a building which had not till then begun would flagrantly violate the building restrictions which had come into force by then. This reason cannot be said to be arbitrary since it relates to a relevant fact for the grant of extension of time. A perusal of the application dated 9-9-1985 made by Respondent 1 indicates that no fact had been stated therein to make out any ground for grant of extension of time and to explain the inability to even commence erection of the building within the time allowed. Even a reference to the earlier application dated 24-9-1983, assuming it was filed, shows that nothing significant was mentioned therein except some vague, general difficulties of which Respondent 1 must have been aware even while seeking the initial sanction. Thus, neither any facts or cogent grounds for extension of time were mentioned in the application for extension of time nor was any reason given by the CEO while granting extension of time by order dated 2-5-1986. This is sufficient to indicate that the grant of extension of time by the CEO was an arbitrary exercise of power under Section 183-A, even if the power was available. The GOC-in-Chief was, therefore, right in setting aside that order in exercise of his power under Section 52 of the Act.

19. In the above view, the High Court was not justified in interfering with the orders made by the GOC-in-Chief in exercise of his power under Section 52 of the Act. Exercise of the power under Article 226 of the Constitution by the High Court in favour of the respondents in such a case was, therefore, clearly unwarranted. The High Court's order has, therefore, to be set aside.

20. Consequently, the appeal is allowed; the impugned judgment of the High Court is set aside. However, in view of the offer made on behalf of the appellants to permit retention of the existing structure in the manner indicated above and to permit finishing of the existing structure in the manner stated, we permit retention of the same. The orders of the GOC-in-Chief would, therefore, stand modified to this extent only. The respondents to pay Rs. 5000 as costs to the appellants.