

CANTONMENT BOARD, MEERUT

v.

NARAINDAS & ANR.

April 9, 1969

[S. M. SIKRI, R. S. BACHAWAT AND K. S. HEGDE, JJ.]

Cantonments Act (2 of 1924), ss. 185 and 187—Kiosk over drain belonging to Cantonment Board—Direction for removal eighteen years after its construction—Competency of the Board.

Section 185 of the Cantonments Act, 1924, deals with the erection or re-erection of buildings on private lands and the Cantonment Board is given the power to direct the alteration or demolition of such a building within twelve months of the completion of erection or re-erection. Section 187 deals with constructions, which are projections or structures, encroaching on any street, drain, sewer or aqueduct. The Cantonment Board has the right to direct the demolition of such structures under s. 187, within the period of limitation for suits for possession of public streets or roads, that is, within 30 years from the date of encroachment.

In the present case, the owner of a shop constructed a stone projection over the drain belonging to the Cantonment Board, after obtaining permission of the Cantonment Board, to facilitate approach to his shop. But, without obtaining the permission of the Cantonment Board, he put up a kiosk on the stone projection, which thus encroached upon the drain belonging to the Cantonment Board. The Board, eighteen years after the construction, directed the removal of the kiosk under s. 187.

On the question whether s. 185 or s. 187 applied.

HELD: The act complained of fell within the scope of s. 187, because, the permission given by the Board to put up the stone projection did not confer on the owner of the shop any proprietary right over the drain but merely gave him a licence. As the action of the Board was within 30 years from the date of encroachment, the Board was competent to get the kiosk removed. [242 A; 243 A—B, E—F]

[Whether the Board could take action even after the period of limitation of 30 years, left open]. [243 E]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 747 of 1966.

Appeal by special leave from the judgment and order dated February 2, 1965 of the Allahabad High Court in Second Appeal No. 2097 of 1958.

C. B. Agarwala and *O. P. Rana*, for the appellant.

P. N. Bhardwaj, for respondent No. 2.

The Judgment of the Court was delivered by

Hegde J., The only question arising for decision in this appeal by special leave is whether the notices impugned in these pro-

- A** ceedings are governed by s. 185(1) or s. 187(1) of the Cantonments Act, 1924. The trial court held that s. 185 (1) is the governing provision. The first appellate court differed from it and held that s. 187(1) governs. The High Court in second appeal has restored the decision of the trial court.
- B** The respondent is the owner of shop No. 344 in Mohalla Bakri, Lal-Kurti Bazar, Meerut Cantt. The shop in question was constructed about 20 years before the institution of the suit from which this appeal arises. At about the time of the construction of that shop permission was obtained from the Cantonment Board to put up a stone projection over the drain by the side of the road in front of the shop to facilitate ingress into the shop and egress therefrom. The first appellate court has found and that finding has been accepted by the High Court that about 18 years prior to the institution of the suit, the owner of the shop put up a wooden kiosk over the stone projection and the same is being used as a pan shop. According to the finding of those courts the kiosk in question was put up without obtaining the permission of the Cantonment Board. On November 9, 1953, the Cantonment Board issued a notice to the occupier of shop No. 344 under s. 187, requiring him to demolish and remove the kiosk within 7 days from the receipt of that notice. As that demand was not complied with, a final notice under s. 187 was given to him on December 8, 1953. Thereafter the owner of the shop instituted the suit from which this appeal has arisen seeking a perpetual injunction restraining the Cantonment Board from getting the kiosk removed. As mentioned earlier, the trial court decreed the suit holding that as the kiosk had been put up 18 years prior to the issue of the notices referred to earlier, the Cantonment Board cannot compel its removal in view of s. 185(1). This decision was reversed by the learned District Judge in appeal. The learned District Judge accepted the finding of the trial court that the kiosk in question had been put up about 18 years prior to the date of the suit but yet according to him it was competent for the Cantonment Board to get the same removed under s. 187(1). The learned District Judge opined that s. 185(1) has no relevance to the facts of the case. In second appeal, the High Court agreed with the conclusion of the trial court that s. 185(1) is the governing provision.
- G**

- The established facts are :—Shop No. 344 was constructed on the land belonging to the respondent. Cantonment Board had no right in or over that land. The stone projection was constructed over the drain adjoining the road after obtaining the permission of the Cantonment Board. It cannot be disputed that the property in the road including the drain statutorily vests in the Cantonment Board. The permission, given by the Cantonment Board to the owner of the shop to put up the projec-
- H**

tion does not confer on him any proprietary right over the drain. It merely gives him a licence to use the projection. He cannot exclude the public from using that projection. The kiosk had been put up without obtaining the permission of the Cantonment Board. The kiosk is a structure and it projects or encroaches upon the drain belonging to the Cantonment Board. It can even be said that it overhangs the drain. We have now to examine the provision of law applicable bearing in mind those facts.

Section 185(1) reads :

"A (Board) may, at any time, by notice in writing direct the owner, lessee or occupier of any land in the cantonment to stop the erection or re-erection of a building in any case in which the (Board) considers that such erection or re-erection is an offence under section 184, and may in such case (or in any other case in which the Board considers that the erection or re-erection of a building is an offence under s. 184, within (twelve months) of the completion of such erection or re-erection) in like manner direct the alteration or demolition as it thinks necessary, of the building or any part thereof, so erected or re-erected."

We are unable to agree with the High Court that this section applies to the facts of the present case. In our judgment that section applies only to cases where a building is erected or re-erected over a land belonging to someone other than the Cantonment Board. That is why that section says that a notice under that section can be given "to a owner, lessee or occupier of any land". A notice under that section cannot be given to any person other than the owner or lessee or the occupier of the land over which the building in question had been erected or re-erected. The notices with which we are concerned in this case were not given to the owner, lessee or occupier of the land over which kiosk is put up. As seen earlier the kiosk has been constructed over the land under the ownership of the Cantonment Board. Neither the owner of shop No. 344 or its occupier can be considered as a lessee of the land over which the projection was put up. Hence the provisions contained in s. 185(1) are not attracted to the present case.

This takes us to s. 187(1). It reads :

"No owner or occupier of any building in a cantonment shall, without the permission in writing of the the (Board) add to or place against or in front of the building any projection or structure overhanging, projecting into, or encroaching on, any street or any drain, sewer or aqueduct therein".

A

This section deals with constructions which are projections or structures overhanging, projecting into or encroaching on any street or any drain, sewer or aqueduct. Undoubtedly the kiosk is a structure. Further it is a projection into a drain. It also encroaches on the drain if it does not also overhang it. Therefore the act complained of clearly falls within the scope of s. 187(1).

B

In other words s. 185 deals with erection or re-erection of buildings on private lands whereas s. 187 deals with the construction of projections or structures overhanging, projecting into or encroaching on any street, any drain or aqueduct. The two provisions deal with different situations. One has nothing to do with the other. Obviously the legislature does not want the Cantonment Board to demolish buildings erected on private lands after the period mentioned in s. 185(1) but public interest requires that no such limitation should be placed on the Cantonment Board while acting under s. 187(1). Otherwise our streets and roads may soon disappear. The High Court missed the distinction between s. 185(1) and s. 187(1). Quite clearly the present case falls within s. 187(1).

C

D

E

Judicial opinion is divided on the question whether local Boards can take action under provisions similar to s. 187 even after the period of limitation for filing suits by those bodies for possession of public streets or roads or parts thereof or on which they have discontinued their possession, expires. It is not necessary to go into that controversy in the present case. The period of limitation prescribed for a suit of the type referred to earlier is 30 years. In the present case action under s. 187(1) had been commenced within 18 years from the date of the encroachment.

F

For the reasons mentioned above this appeal is allowed and decree of the High Court is set aside and that of the first appellate court restored.

G

Now coming to the question of costs, at the time of granting special leave this Court had directed that the appellant shall pay the costs of the respondent in any event. We incorporate that order as a part of this judgment.

V.P.S.

Appeal allowed.