



2026:AHC-LKO:21301

**HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW**

MATTERS UNDER ARTICLE 227 No. - 6147 of 2025

Ram Chandra And 3 Others

.....Petitioner(s)

Versus

U.O.I. Thru. General Officer Commanding In Chief
Appellate Authority Lko. And Another

.....Respondent(s)

Counsel for Petitioner(s) : Prashant Agarwal

Counsel for Respondent(s) : A.S.G.I., Sanjeev Singh, Vinay Tripathi

Court No. - 5

HON'BLE ALOK MATHUR, J.

1. Heard Sri Prashant Agarwal, learned counsel for the petitioners as well as Sri Vinay Tripathi, learned Standing Counsel appearing for the Union of India and Sri Sanjeev Singh, learned counsel appearing for respondent no. 2.

2. It has been submitted by learned counsel for the petitioners that petitioners are in occupation of a house situated at House No. 5, Baniya Bazar, Survey No. 462/6, Lucknow Cantt and their name is also mentioned in the General Land Record maintained by the Cantonment Board, Lucknow.

3. It is next submitted by learned counsel for the petitioners that as the structure of House No. 5 is very old and in dilapidated condition, an application under Section 234 of the Cantonment Act, 2006 (*hereinafter referred to as "the Act, 2006"*) was given by the petitioners to the Cantonment Board seeking permission to re-construct the said house. The application of the petitioners are due consideration was submitted to the Government for its views wherein a Board of Officers was constituted to consider the application of the petitioners.

4. It is further submitted by learned counsel for the petitioners that by means of report dated 17.02.2023, the Cantonment Board was informed that sanction could not be given to the petitioners to re-construct the said house from the security point of view and placing reliance upon the

aforesaid report the petitioners were informed with regard to rejection of their application by means of order dated 27.04.2023.

5. The petitioners being aggrieved by order dated 27.04.2023, preferred an appeal under Section 340 of the Act, 2006 before the G.O.C., Central Command who duly considered the appeal of the petitioners and the grounds raised by them as well as material available on record and was of the view that local military authority by means of their letter dated 30.12.2022, had recommended rejection of the application of the petitioners on the grounds that the Board of Officers have found three rooms to be unauthorizedly constructed on the first floor of the said house which is an offence and secondly, it was stated that resumption of the said property is proposed due to deficiency in the Defense Land.

6. During pendency of the appeal the petitioners had contested the findings recorded in the rejection order inasmuch as, there was finding with regard to unauthorized construction on the first floor by the petitioners. Accordingly, the Board of Officers in the presence of petitioners had conducted survey and it was found that on the first floor of the said property room, kitchen, passage and toilet were present apart from the structure on the ground floor.

7. The appellate authority considered the plan submitted by the petitioners and was of the view that plinth area submitted by the petitioners is far exceeding the plinth area which was there in the original records, and in the aforesaid circumstances, while dismissing the appeal of the petitioners had directed them firstly, to demolish the unauthorized construction raised over the subject property and liberty was also granted to them to submit a fresh building plan alongwith the plan for re-erection of the subject property.

8. It has been submitted on behalf of petitioners that the findings recorded by the authority below with regard to unauthorized construction are illegal, arbitrary and deserve to be set aside. It is submitted that the firstly the floor plan deserves to be sanctioned pursuant to which the petitioners are ready and willing to demolish the existing structure.

9. Learned counsel for the respondents on the other hand have submitted

that once sufficient material is available on record with regard to illegal construction made by the petitioners, then certainly same ought to be demolished either by the petitioners themselves or by resorting to proceedings under Section 249 of the Act, 2006. It is further submitted that such illegal construction also amount to offence under Section 247 of the Act, 2006 which is punishable with fine which may extent to Rs.50,000/- and further steps for imposition of cost and demolition of illegal construction may be taken. Accordingly, the respondents have supported the impugned orders and prayed for dismissal of the writ petition.

10. Heard learned counsel for the parties and perused the record.

11. Undoubtedly, the subject property is situated within the cantonment area and subject to the provisions of the Act, 2006. The first issue with regard to unauthorized construction made by the petitioners on the first floor of the subject property. It is noticed that even the Board of Officers who had conducted an inquiry in the presence of the petitioners had found construction having been made on the first floor of the subject property.

12. Even the petitioners before the appellate authority have submitted that unauthorized construction if existing will be demolished as part of the re-erection and consequently, this Court do not find any ground for interference with the finding with regard to unauthorized illegal construction made by the petitioners on the first floor of the subject property.

13. The next ground is for sanction of map submitted by the petitioners. This Court finds that in order to re-erect the building, the existing structure will have to be demolished including the unauthorized construction made by the petitioners and accordingly, no useful purpose would be served by directing he respondents to resort to the provisions of Sections 247 and 248 of the Act, 2006 for demolition of the first floor of the subject property, where in the present case, the petitioners themselves have offered to remove the illegal construction existing on the first floor.

14. With regard to the security concern, no material has been disclosed in the counter affidavit and this Court further finds that the subject property

is located in "*Baniya Bazar*" which is a commercial establishment within the cantonment, and also considering that no finding has been returned by the appellate authority in this regard, we see no reason for rejection of the map on the ground of security.

15. This Court further finds that even the appellate authority has directed the petitioners to submit a fresh building proposal/plan, after considering that the proposed plan was not in accordance with the existing plan.

16. Considering that the subject property is situated in the cantonment area and all the regulations of the military authority as well as Act, 2006 would apply, this Court sees no reason as to why a building which is in a dilapidated state should be permitted to be re-construct the same exactly in terms of the original building plan which is available with the respondents, and even the appellate authority has required to file a fresh building plan.

17. In case the building plan is submitted by the petitioners totally in accordance and sync with the original structure then the same shall be adequately considered by the respondents and if found in accordance with the same be sanctioned as originally authorized structure.

18. Accordingly, the present writ petition is disposed of in the following terms :-

(A) The petitioners shall proceed to demolish the unauthorized structure on the first floor of the subject property within six weeks from today.

(B) Once first floor is demolished the same shall be verified by the Cantonment Board in accordance with law as well as by the DEO or any person nominated on his behalf. Such verification shall be undertaken within two weeks subsequent to the time prescribed for demolition by the petitioners.

(C) Once it is verified that the first floor of the subject property is demolished, the petitioners shall be at liberty to submit fresh proposal/plan as per observations made by this Court herein above.

(D) Once fresh proposal/Plan is submitted the same shall be considered

by the respondents and a decision shall be taken within two months from the date of submission of such plan strictly in accordance with law. The petitioners would be communicated about the sanction of plan.

(E) In case building plan is sanctioned, the petitioners shall proceed to re-construct the building strictly in accordance with the sanctioned plan.

19. The petitioners undertake to cooperate in the proceedings before the respondent authorities.

20. The appellate order is deemed to be modified in terms of the order passed by this Court.

21. With the aforesaid directions present writ petition stands **disposed of**.

(Alok Mathur,J.)

March 24, 2026

A. Verma