appointment. Both the writ petitions are accordingly hereby dismissed. There will, however be no order as to costs.

R.N.R.

Before A. L. Bahri, J.

BASDEV MITTAL (DECEASED) REPRESENTED BY HIS LEGAL HEIRS,—*Appellants.*

versus

CANTONMENT BOARD, JALANDHAR CANTT.,—*Respondent.*

Regular Second Appeal No. 1542 of 1978

19th February, 1990.

The Cantonment Act, 1924—*Ss.* 185, 273 & 274—*Notice to demolish building issued—Statutory appeal challenging notice filed—Suit to question decision of authorities under the Act—Limitation for such suit—Cause of action—Accrual of.*

Held, that where the plaintiff availed the remedy of statutory appeal as provided under S. 274 of the Act against notice issued by the Board under S. 185 of the Act for demolishing the building, the cause of action for filing suit under S. 273 arose on the dismissal of appeal and not on the date of issuing notice under S. 185 of the Act. The suit having been filed within 6 months of dismissal of appeal is held to be within time.

(Para 4)

Regular Second Appeal from the decree of the Court of Shri R. P. Gaind, Addl. District Judge, Jalandhar, dated the 3rd day of April, 1978, *affirming (leaving the parties to bear their own costs throughout) that of Shri G. S. Khurana, Sub-Judge, 1st Class, Jalandhar, dated the 1st October,* 1975, *dismissing the suit of the plaintiff and leaving the parties to bear their own costs.*

Claim.—Suit for permanent injunction restraining defendant from demolishing portion shown red in the plan attached with the plaint of House No. 4, *Mohalla No.* 2, *Sadar Bazar, Jalandhar Cantt.*

Sanjay Majithia, Advocate, *for the Petitioner.*

D. S. Bali, Sr. Advocate (Rakesh Verma, Adv., with him), *for the Respondent.*

JUDGMENT

A. L. Bahri, J.

(1) This appeal was filed by Basdev Mittal, the plaintiff, whose suit was dismissed by the trial Court and further appeal

was dismissed by Additional District Judge. Suit was filed for perpetual injunction restraining the defendant Cantonment Board from demolishing portion, shown red in the site plan attached with the plaint of House No. 4, Mohalla No. 2, Jalandhar Cantt. The plaintiff claimed to be owner of the house in dispute wherein he wanted to add one room along with a projection. He submitted the plan to the Board for sanction on April 15, 1971. Having received no reply he wrote a letter to the Board on March 15, 1972. The letter was sent under postal certificate. 15 days' time was given to the Board to grant the permission to construct the building. Since no intimation was received in response to the aforesaid letter, the plaintiff treated silence on the part of the Board as implied permission. He started construction. However, he was served with a notice, dated July 24, 1972, issued by the Board asking him to stop the construction. This followed by other notices issued under sections 185 and 187 of the Cantonment Act. In the suit for injunction the plaintiff challenged these notices. It may further be stated that before filing the suit, the plaintiff filed an appeal challenging the notices which was dismissed by Deputy Director, Military Lands and Cantonments, Western Command, Simla, on July 23, 1974 and the suit was filed on August 13, 1974.

(2) The Cantonment Board contested the suit taking up different pleas *inter alia* alleging that the suit was barred by time; notices issued were legal, and Jurisdiction of the Court to entertain the suit was also challenged. The suit was tried on the following issues :—

1. Whether the plaintiff is the owner of the house in dispute ? OPP
2. Whether the notices issued by the defendant are illegal, arbitrary, *mala fide*, capracious and unconstitutional as alleged in para 8 of the plaint ? OPP.
3. Whether the suit is time barred ? OPP.
4. Whether the Civil Court has got no jurisdiction to try the suit ? OPP.
5. Whether the plaintiff is entitled to the injunction prayed for ? OPP
6. Relief.

(3) The trial Court on issue No. 1 held the plaintiff to be the owner of the house in dispute. Under issue No. 2 the notices issued by the Board were held to be legal. Under issue No. 3 the suit was held to be time barred. Under issue No. 4 the Civil Court was held to have the jurisdiction. Under issue No. 5 the plaintiff was held not entitled to the injunction prayed for and the suit was dismissed. As stated above appeal filed by the plaintiff was dismissed by the Additional District Judge and now he has approached this Court.

(4) The approach of both the Courts below holding the suits to be barred by time is not correct. The Courts below were of the opinion that the cause of action accrued when initially the Board issued notices to the plaintiff on December 4, 1972. Exhibits P.7 and P.8 and the present suit having been filed beyond six months was barred by time. The contention of counsel for the appellant is that a statutory appeal was provided to challenge those notices and the plaintiff availed of the said remedy and it was on July 23, 1974, that when his appeal was finally dismissed by the Deputy Director, Military Lands and Cantonments, Western Command, Simla, that cause of action accrued to him to challenge the said order and the notices for filing the civil suit and the present suit having been filed within six months therefrom is within time. There is force in this contention. Section 274 of the Act provides that any person aggrieved by any order described in the 3rd column of Schedule V could appeal to the Authorities specified in that behalf in the 4th column of the said Schedule. Schedule V attached to the Act mentions that when Board issues notice to alter or demolish building under section 185 of the Act, the appeal could be filed before the Appellate Authority (Officer Commanding-in-Chief, the Commandant, or other authority authorised in this behalf by the Central Government) within 30 days from service of notice. The suit could be filed within six months as required under section 273(3) of the Act. Since a notice was required to be served giving two months time as required under section 273(1) such a suit could be filed within eight months in all from the date of accrual of cause of action. Where the plaintiff availed the remedy of statutory appeal as provided under section 274 of the Act against notice issued by the Board under section 185 of the Act for demolishing the building, the cause of action for filing suit under section 273 arose on the dismissal of the appeal and not on the date of issuing notice under section 185 of the Act. As already stated above, notice under section 185 of the Act, Exhibit P.8, was issued to the plaintiff on

December 4, 1972 and the plaintiff availed of the statutory remedy of appeal as above which was finally decided on July 23, 1974. The present suit having been filed within six months of dismissal of appeal is held to be within time.

(5) The learned Additional District Judge relied upon decision of Punjab High Court in *Cantonment Board, Ferozepur Cantt. through Executive Officer* v. *Bajrana Singh S/o Babu Singh* (1), to hold that cause of action for challenging order of dismissal of employee of Cantonment Board accrued on the date of passing of dismissal order, and not from the decision of the appeal. Reliance was placed on the decision of the Supreme Court in *Sita Ram Goel* v. *The Municipal Board, Kanpur and others* (2), wherein the aforesaid proposition was laid down. Recently, the Supreme Court in *S. S. Rathore* v. *State of Madya Pradesh* (3), has overruled the decision *in Sita Ram Goel's case* (supra) holding that in service disputes, cause of action does not accrue on the date of original adverse order but on the date of order of higher authority entertaining statutory remedy.

(6) The next question argued in the appeal is that there was implied sanction of the plan submitted by the appellant for construction of the additional accommodation as no action was taken by the Board either on the submission of such plans or subsequently when a letter was written to the Board. The relevant facts again be recapitulated for determining this point. Application for sanctioning of the plan and permission to construct was made on 15th April, 1971 to the Board. It was expected of the Board to communicate the decision thereon within a period of one month. The plaintiff wrote a letter to the Board sent through post (under postal certificate) on March 15, 1972 giving fifteen days to the Board to take a decision on his previous application for permission to sanction. No reply to the same was received within fifteen days. However, as already stated above, notice dated July 24, 1972 was issued to the plaintiff to stop the construction and thereafter to demolish it. Under section 181 of the Act, the Board was required to take a decision either to refuse to sanction the erection or re-erection or to

(1) A.I.R. 1961 Punjab 460.

(2) A.I.R. 1958 S.C. 1036.

(3) A.I.R. 1990 S.C. 10.

sanction it. Sub-section (6) of section 181 of the Act reads as under :—

> "Where the Board neglects or omits, for one month after the receipt of a valid notice, to make and to deliver to the person who has given the notice any order of any nature specified in the section, and such person thereafter by a written communication sent by registered post to the Board calls the attention of the Board to the neglect or omission, then, if such neglect or omission continues for a futher period of fifteen days from the date of such communication the Board shall be deemed to have given sanction to the erection or re-erection, as the case may be, unconditionally :
>
> Provided that, in any case to which the provisions of sub-section (3) apply, the period of one month herein specified shall be reckoned from the date on which the Board has received report referred to in that sub-section."

(7) The aforesaid provision reveals that the Board was required to take a decision within one month of submitting of the application for sanction for constructions or re-construction of a building and if no action was taken within the said period, the person concerned could by a written communication send by registered post to the Board calling the attention of the Board to the neglect or omission and allowing fifteen days time. It is presumed, if no action is taken, that there was deemed sanction for construction or re-construction, as asked for. The proviso added to sub-section (6) further makes it clear that if on receipt of original application for sanction, report had been called as required under sub-section (3), the period of one month would be reckoned from receipt of the said report.

(8) As far as submitting of the original application for the grant of sanction for construction is concerned, though originally this averment was denied, however subsequently, it was admitted that such an application, was received by the Board. As far as the written communication alleged to have been sent through post (under postal certificate), the same was denied on behalf of the Board in the written statement. The said letter, Exhibit P.4, was sent under certificate of posting, copy of which is Exhibit P.3. Immediately on receipt of notice, Exhibit P.5, the appellant replied

to the same,—*vide* letter dated August 18, 1972, copy Exhibit P.6 specifically mentioning therein that he had sent the letter on March 17, 1972 under section 181 (6) of the Act and that he had not made any breach of the provisions of section 179 of the Act. Subsequently, he sent copy of his letter dated March 15, 1972 Ex. P.4 to the Board along with his letter dated December 20, 1972, copy Annexure P.9. Thereafter he was called by the Executive Officer of the Board to bring all the documentary and oral evidence in support of his objections. The said notice is Exhibit P.10. During pendency of the suit, an application for production of documents was filed by the plaintiff. In para 4 of the application, it was submitted that the plan was submitted for sanction on 13th/15th April, 1971 and a letter under certificate of posting was sent on March 15, 1972. Notice of this application dated January 27, 1975 was gien to the Board. Similar application was again made on May 12, 1975, notice of which was also given to the Board. In reply submitted on behalf of the Board, it was admitted that the original plan was submitted for sanction. However, receipt of the second letter was denied. It was further stated that even if any such letter was proved to have been despatched, it never reached the office and it was not according to law on the subject. It had no relevancy. It has been argued on behalf of the appellants that when it has been established and a letter dated March 15, 1972 Exhibit P.4 was sent by post to the Board and as per evidence of the plaintiff it was sent under postal certificate a presumption should be drawn under Article 114 of the Evidence Act that the said letter reached the office of the Board with the result that the Board having not taken any action within fifteen days from the receipt of the said letter, there was deemed sanction of the plan for construction under section 181(6) of the Act. On the other hand, learned counsel for the Board while referring to sub-section (6) of section 181 of the Act, as reproduced above, has argued that since there is no evidence that the letter giving fifteen days notice was sent through registered post, no such presumption can be drawn that the plan stood deemed to have been sanctioned. I have given due consideration to these arguments. The intention of the Legislature providing service of notice by registered post under section 181(6) of the Act was to draw the attention of the Board that a plan submitted for sanction for construction was pending in the Board requiring its action and even if within fifteen days after receipt of the notice, no action is taken, then presumption could be drawn that such a plan stood sanctioned. The intention was to rule out pleas of

sending letters by ordinary post, proof of posting of such letters being subject to doubt. If a letter is sent by registered post, it is required of the postal authorities also to verify delivery of the said letter at the destination or its return. To some extent, the certificate of posting supports the case that such a letter was posted and rest remains on the evidence to be established that such a letter was not received back undelivered. If that evidence is available, then of course a presumption can be drawn that the said letter reached its destination. Thus, in both cases, where a letter is sent by registered post or posted under a certificate, a presumption can be drawn. P.W.2 Vas Dev stated that after he had sent a plan along with his application dated 15th March, 1971. Having received no reply, he sent the letter dated 15th April, 1972 under certificate of posting. He proved the copy of the said letter as well as acknowledgement receipt, as referred to above. On this point, the only cross-examination conducted was that he did not consider it proper to send the letter by registered post and he thought it fit that sending the letter under the postal certificate was sufficient. D.W.1 Pritam Singh, Overseer, appeared on behalf of the Board and stated that he had not brought the receipt register. He went to the length of even denying the receipt of the original plan for sanction. There was no evidence produced that the letter sent under certificate of posting was received back. As stated above, the Receipt Register of the Board was not produced by D.W.1 which would have indicated the receipt of such a letter. As already noticed above, even the stand of the Board with respect to the submitting of the plans had been that the same were not received but subsequently this fact was admitted. In the peculiar circumstances stated above, presumption under section 114 of the Evidence Act could legitimately be raised that the letter sent under certificate of posting reached the destination i.e. the Board. In *Vishwanath Goyal (deceased by L.Rs.) and others* v. *Cantonment Board, Agra,* (4), after noticing that the Board had not called for the report of the M.E.O. on submission of the plans for sanction for construction and there was omission and neglect on the part of the Board even on subsequent communications sent to the Board, a presumption was drawn under section 181(6) of the Act that account of omission or neglect on the part of the Board during the requisite period, there would be deemed sanction of the plan for construction. On the same lines is judgment of Delhi High Court in *Ram Narain and others* v. *Cantonment Board Delhi and others* (5). Learned counsel

(4) A.I.R. 1987 Allahabad 4.
(5) A.I.R. 1973 Delhi 84.

for the Board tried to distinguish the judgment of Delhi High Court on the ground that in that case, notice in fact was sent by registered post. As discussed above, serving of the notice by other post was not prohibited by the statute. The plan is deemed to have been sanctioned with the result that notices for demolition of the additional building constructed would obviously be illegal.

(9) There is another aspect of the matter which needs to be noticed. After the plaintiff had constructed the building in accordance with the plan, the Board assessed water charges and house tax charges on its value. On behalf of the plaintiff, such documents were produced in evidence. Exhibit P.12 is the receipt for deposit of Rs. 42 towards house tax and water tax for the year 1969-70 for the house in dispute and Exhibit P.11 is the bill submitted by the Board in this respect. Likewise, Exhibit P.15 is the bill submitted by the Board amounting to Rs. 15 for consumption of water for the period April, 1971 to June, 1971 and receipt of the same is Exhibit P.16. When the Board recognised the construction in the present case in the form of additional construction of one room and one projection, it would otherwise be deemed to have condoned the fault of the plaintiff, if any. The type of construction is not such that has violated any rules, regulations or bye-laws of the Board as no evidence has been produced by the Board in this respect. As already stated above, report of the M.E.O. was not called which further indicates that the plan submitted by the plaintiff was in accordance with the rules and regulations; otherwise the Engineering Department could have pointed out those defects, if any. Even though, technically, acceptance of water tax or house tax may not legally amount to acquiescence on the part of the Board in raising unlawful or dangerous construction, however, as stated above, since the alleged construction has not been proved to be against the rules or bye-laws, it will not be proper now to get the same demolished.

(10) For the reasons recorded above, this appeal is allowed with no order as to costs. Consequently, the judgment and decree of the Courts below are set aside and the suit filed by the plaintiff restraining the Board from demolishing the disputed construction of the building is decreed.

S.C.K.