


DELHI CANTONMENT BOARD

A Ordinary Cantonment Board Meeting will be held on 28.11.2016 at 1200 hours in the Conference Room of the Cantonment Board Office, Delhi Cantonment. The agenda of items have been enclosed.

You are requested to please make it convenient to attend the same.


 Chief Executive Officer
 Delhi Cantonment
(B. Reddy Sankar Babu)
I.D.E.S.

NO. DCB/6/B-1/2016
 OFFICE OF THE CANTONMENT BOARD
 DELHI CANTONMENT

DATED.....23 November, 2016

1.	Brig. Jai Singh, SM	President
2.	Sh. Jagat Singh	Vice-President
3.	Shri B. Reddy Sankar Babu, CEO	Member –Secretary
4.	Brig. S.C. Dash, YSM, VSM, SEMO	Ex-officio Member
5.	Col. Joydip Mukherjee, Adm Commandant	Nominated Member
6.	Col. Adarsh K. Butail, CO, DAPU	Nominated Member
7.	Col. Dev Raj, SO(Cantt)	Nominated Member
8.	Lt. Col. Abhishek Khanna, GE (East)	Ex-officio Member
9.	Sh. Vivek Kumar Tripathi, ADM	Nominated Member
10.	Sh. Tanwar Sandeep	Elected Member
11.	Smt. Kadiyan Rachna	Elected Member
12.	Smt. Jain Kavita	Elected Member
13.	Sh. Beniwal Nand Kishore	Elected Member
14.	Chaudhary Col. Narender (Retd)	Elected Member
15.	Sh. Vimal Chowdhary	Elected Member
16.	Smt. Chaudhary Priyanka	Elected Member

SPECIAL INVITEES

- | | |
|--------------------------------------|--|
| 1. Smt. Meenakashi Lekhi, Hon'ble MP | } with a request to attend the meeting as Special Invitee. |
| 2. Sh. Surender Singh, Hon'ble MLA | |

1. IMPLEMENTATION OF E-GOVERNANCE

The Govt. of India has given impetus to ease of doing business. All civic agencies have been issued instructions to implement guidelines issued by the Govt. of India for ease of doing business. The instructions include expending services complimentary to public and bringing these services under the ambit of e-governance. It is proposed to bring following services under e-governance by engaging suitable IT firms/ specialized firms having experience in the field by inviting competitive rates from the firms:

- i. Birth & Death registration.
- ii. Registration for professional tax and making payments.
- iii. Issue of trade license.
- iv. Payment of property tax.
- v. Booking of Community Halls.
- vi. Booking of marriage venues.
- vii. Booking of Guest House.
- viii. Payment of water tax, conservancy tax, advertisement tax.
- ix. Grant of water connection.
- x. Grant of sewer connection.
- xi. Sanction of building applications.
- xii. Application for mutation of properties.
- xiii. Vehicles with GPS control.
- xiv. Payment of environment cess.
- xv. Employees portal/ contractual employees portal.
- xvi. Beds availability at CG Hospital, complete details of services provided by CG Hospital and rates of various services, availability of medicines in the hospital etc.
- xvii. Citizen charter.
- xviii. Payment of lease rent/ house rent.
- xix. Registration of contractors.
- xx. Online payment of school fee.
- xxi. Temporary occupation of land.
- xxii. Registration for vocational training.
- xxiii. Payment of fines.
- xxiv. RTI application/ fee.

Relevant file is placed on the table.

2. BUILDING PLAN : PLOT NO.13, CHANAN SINGH PARK, KIRBY PLACE, DELHI CANTT

To consider building plans submitted by Sh. Ranbir Singh, Sh.Kawalbir Singh & Sh.Rajbir Singh in respect of Plot No.13, Chanan Singh Park for construction of house. The building plans have been scrutinized by the Engineering branch and the building plans have been found complying building bye laws applicable to Delhi Cantonment notified on 08.06.2002.

Since the property is located outside civil area. The Board may consider forwarding building plans/ application to the DEO, Delhi Circle for obtaining NOC from land point of view.

Relevant file is placed on the table.

3. GUIDELINES FOR FRAMING OF BUILDING BYE-LAWS BY CANTONMENT BOARDS

Reference CBR No.7 dated 18.07.2016 wherein the Board noted the guidelines issued by Director General Defence Estates, Govt. of India, Ministry of Defence in their letter No.12/1/BLDG BYE LAWS/GEN/C/DE/2015 Dated 23.05.2016 as regards to framing of building bye laws by the Cantonment Boards. The Board had constituted three Member Committee to review the Model Building Bye Laws approved by the Board vide CBR No.31 dated 29.08.2013 so as to comply general guidelines issued by the competent authority for framing of building bye laws. The Board may consider the report of Committee alongwith draft building bye laws for Delhi Cantonment Board prepared by the Committee.

Relevant file is placed on the table.

4. PREVENTION AND REMOVAL OF ENCROACHMENTS FROM DEFENCE LAND – MONITORING OF PROGRESS AND FIXING RESPONSIBILITY

To consider Director General Defence Estates letter No.711/89/L/DE/2013 dated 04th November, 2016 regarding prevention and removal of encroachments from Defence land – Monitoring of progress and fixing. The contents of letter are reproduced hereunder: -

No.711/89/L/DE/2013
Govt. of India, Ministry of Defence
Directorate General Defence Estates
RakshaSampadaBhawan
UlaanBataar Marg, Delhi Cantt-110010
Dated: 04th November, 2016

To

The Principal Director
Defence Estates, Ministry of Defence
Central/ Eastern/Northern/Souther/South Western/Western Commands
Lucknow/Kolkata/Jammu/Pune/Jaipur/Chandigarh.

Sub: PREVENTION AND REMOVAL OF ENCROACHMENTS FROM DEFENCE LAND – MONITORING OF PROGRESS AND FIXING RESPONSIBILITY

Reference quarterly reports for the period ending on 30.09.2016 submitted by the Dtes.

2. It has been observed that new encroachments have been detected during the period on land under the management of Cantonment Boards Mhow, Kamptee, Nasirabad, Fatehgarh, Meerut and Ranikhet. DEO Cochin has also reported one new encroachment.

3. From the report of CEO, Mhow, it has been viewed that CEO Mhow has reflected 17 old encroachments in the report which is not understood, It is necessary for the CEO to give reasons as to why these encroachments were not reported earlier and to fix responsibility on the concerned staff.

4. Wherever new encroachments have been reported, it indicates that the preventive systems in such Cantonments are not working. It is the responsibility of the DEOs and CEOs concerned to prevent new encroachments and if any new encroachment is detected, the same is required to be removed forthwith.

5. Please note that report on prevention and removal of encroachment is reviewed by a Committee at the MOD level. In a recent Oral Evidence before the Sub Committee-I of PAC, it has been recommended that responsibility be fixed on officers who have not taken action in prevention and removal of encroachments. Subsequently, in a meeting of the MOD level Committee chaired by Addl. Secretary on 02.11.2016, the failure to prevent new encroachments and to remove existing encroachments has been viewed seriously. The following decisions have been taken inter alia in the meeting: -

- i) The performance of the officers regarding prevention and removal of encroachments and unauthorized occupation of land should be reflected in their APAR.
- ii) Whenever an officer hands over charge to the incoming officers on account of transfer or retirement etc, a certificate should be given by him by clearly stating that no new encroachment has been permitted during his tenure and/ or how many encroachments took place (with area) during the tenure of the outgoing officer and how many encroachments were removed during the tenure.
- iii) DGDE and the Service HQrs will provide list of Cantonments/ Military Stations from where the annual certificate, as is required under CLAR, 1937 and ACR Rules, 1944 has not been received. The Controlling

Officers will be required to furnish reasons for not submitting the annual certificates.

- iv) In case any field officer has failed to prevent new encroachments or has not been able to remove any encroachments by following due process of law, he will be asked to explain or give reasons for not doing so. This may be examined by concerned HQ to decide any lapse on the part of any officer.

6. As the matter of safeguarding defence land from encroachments is being examined at the highest level in the Govt and prevention and removal of encroachments has been linked to the performance of the officers, Principal Directors are requested to issue suitable instructions to the field officers under their jurisdiction to ensure that new encroachments are prevented by putting in systems in order and old encroachments are removed on priority after following due process of law or obtaining orders from the competent authority, as the case may be. The officers may be told in no uncertain terms that if they fail to prevent or remove encroachments from defence land, the same may be recorded in their APAR and they may also be liable to face punitive action. PDs DE are further requested to personally review the progress on prevention and removal of encroachments from defence land periodically and atleast before sending the quarterly report to the DGDE.

7. The following reports/ details should be sent to the DGDE by 08.11.2016 positively: -

- i) Details of vintage of encroachments separately for DEOs and CEOs as on 30.09.2016 (Annexure – I).
- ii) Details of encroached land as per use as on 30.09.2016 (Annexure – II).
- iii) The list of Cantonments/ Military Stations of which Annual Certificates for the year 2014-15 have not been submitted by DEOs/ LMAs.

8. The issues with the approval of DGDE.

Sd/-
(Ajay Kumar Sharma)
Addl. Director General (L/LA)
Defence Estates.

The Board may consider Director General Defence Estates letter dated 04th November, 2016.

Relevant file is placed on the table.

5. FINAL REPORTS OF GROUPS OF SECRETARIES – PRESENTATIONS MADE BY 8 GROUPS OF SECRETARIES BEFORE THE HON'BLE PM REG.

To consider Director General Defence Estates letter No.56/15/Misc/DGDE/Coord/Vol-II dated 08th September, 2016 regarding Final reports of Groups of Secretaries. The contents of letter are reproduced hereunder:-

No.56/15/Misc/DGDE/Coord/Vol-II
Govt. of India, Ministry of Defence
Dte General Defence Estates
RakshaSampadaBhawan
UlaanBataar Marg, Delhi Cantt
New Delhi -110010
Dated: 08thSeptmber, 2016

To

The Principal Directors, Defence Estates
Central/Southern/Northern/Eastern/Western/South Western Command
Lucknow/Pune/Jammu/Kolkata/Chandigarh/Jaipur.

SUB : Final Reports of Groups of Secretaries-Presentations made by 8 Groups of Secretaries before the Hon'ble PM Reg.

Based on inputs received from concerned wings, action plan of Department of Defence on recommendations made by 8 groups of secretaries was prepared and sent to Cabinet Secretariat and NITI Aayog with the approval of Defence Secretary.

2. The action points and target dates pertaining to Defence Estates organization are as follows:-

- (a) **E-Procurement** – It is to be ensured that E-Procurement is done for all tenders with estimated cost of more than Rs.2 Lakhs.
- (b) **Strengthening of SAMADHAN**- All Cantonment Boards are required to implement app based and web based grievance redressal mechanism (SAMADHAN) by 31 Dec 2016.
- (c) **Provisions of E-services** - All Cantonment Boards are required to strengthen e-services to their residents by 31.03.2017. Some of the indicative areas to be covered under them would be :-
 - (i) Online generation of demand & payment of taxes.
 - (ii) Online application & issue of birth & death certificate.
 - (iii) Online processing of building application.

- (iv) Interactive website.
- (v) Online grievance/ complaint redressal system.
- (vi) Online booking of various facilities/ amenities being provided by the Boards e.g. Community Hall, Water tanker etc.

The above are only indicative and not exhaustive. New area/ services can be added and innovations are welcome.

- (d) **Eco**-friendly measures in building bye-laws - All Cantonment Boards are required to make appropriate provisions in revised building bye-laws to adopt energy conservation measures like roof-top solar power, water conservation measures like rain water harvesting etc. as already communicated vide this Dte General letter No.12/1/BLDG BYE-LAWS/GEN/C/DE/2015 dated 23 May 2016.
- (e) **LED Lights and Solar Energy** - All Cantonment Boards are required to replace existing street lights with LEDs with minimum 25% of existing street lights replacement in every 06 months subject to availability of funds. Similarly Solar Power can be harnessed to the extent possible making use of the roof tops of Cantonment Board buildings and open areas, stand along solar lights, solar geysers for hospitals etc.
- (f) **Skill Development Centres**- Wherever Skill Development Centres do not exist, the same may be opened at the earliest.

3. All PDs DE are requested to issue suitable instructions to CEOs/ DEOs under their jurisdiction for taking necessary action on action points mentioned in para 2 above.

Sd/-
(G VijayaBhaskar)
Dy. Director General (C&Crd)
For Defence Estates

The Board may consider Director General Defence Estates letter dated 08th September, 2016.

Relevant file is placed on the table.

6. FUNCTIONING OF CANTONMENT BOARDS : PERFORMANCE OF STATUTORY DUTIES, REVENUE REGENERATION, DEVELOPMENTAL ACTIVITIES, PROTECTION OF LAND UNDER THE MANAGEMENT OF CANTONMENT BOARDS, ETC

To consider Director General Defence Estates letter No.25/Misc/C/DE/2004 dated 21st October, 2016 regarding functioning of Cantonments Boards : Performance of statutory duties, Revenue regeneration, Developmental Activities, Protection of land under the management of Cantonment Boards etc. The contents of letter are reproduced hereunder: -

No.25/Misc/C/DE/2004
Govt. of India, Ministry of Defence
Dte General Defence Estates
RakshaSampadaBhawan
UlaanBataar Marg,
Delhi Cantt-110010

Dated: 21st October, 2016

To

The Principal Director, DE
Central/ Eastern/Northern/Southern/Western
Lucknow/Kolkata/Jammu/Pune/Chandigarh.

Sub : Functioning of Cantonment Boards : Performance of Statutory duties, revenue generation, developmental activities, protection of land under the management of Cantonment Boards

In one of its reports of the Comptroller and Auditor General of India (C&AG) for the year ending March 2014 (Report No.44 of 2015), a number of observations have been made regarding functioning of the Cantonment Boards, on the basis of their visit of 17 (seventeen) Cantonment Boards (CBs), as indicated in the said Report. A copy of the Report is sent herewith for ready reference.

2. PDs DE must go through the observations of the C&AG Report carefully. It will be observed that adverse comments have been made on various aspects of functioning of the Boards. However, things are not so in respect of all, in so far as discharging the Statutory duties by the CBs in terms of various provisions in the Cantonments Act, 2006 (the Act, henceforth) as well as existing instructions issued by the Ministry of Defence/ DGDE. There is no doubt that a few aspects require out focused

attention, progress of which the Directorates must review and monitor on a regular basis. Some of these area are as under and certain actions to be taken by Dtes are also suggested: -

- (a) Preparation and implementation of town planning schemes;
- (b) Preparation and implementation of Cantonment development plans (CDP) including for improving civic amenities;
Suggested Action for (a) and (b) : Fix target for (a) and obtain copies of (b) by Dec 2016. Plans and programmes in Budgets of CBs must be part of CDPs.
- (c) Plans to provide timely and quality services to the residents;
Suggested Action :Dtes must insist on implementation of Citizens Charter and activation of 'Suvidha' and 'Samadhan", in addition to any e-enabled services.
- (d) Plans to implement the provisions of Municipal and Solid Waste (Management and Handling) Rules 2000 (this is, however, a part of the overall Swachh Bharat Campaign about which separate instructions of DGDE exist);
Suggested Action : Time-bound action plan be got prepared and monitored. Let the project proposals be ready by 31.01.2017.
- (e) Plans to improve standard of education;
Suggested Action : Availability of proper school building and regular maintenance of the same, monitoring on trend of enrolment in schools and taking corrective action, affiliation of English medium schools, recruitment of regular teachers, sending teachers for training courses, introduction of smart/e-class facility, incentive schemes for girl child, availability of extra-curricular activities, etc.
- (f) Plans to improve the medical facilities;
Suggested Action : Availability of proper building and maintenance thereof, gradual upgradation of services, monitoring on providing quality services etc.
- (g) Financial Management
Suggested Action :
 - i) Plans/ projects to enhance the resources base on the CBs.
 - ii) Action taken for triennial assessment of properties timely.
 - iii) Action taken for recovery of Cantonment dues i.e. whether tax bills are computerized and sent to the residents in the very first quarter of the Financial Year. If litigation is involved in recovery of dues, action taken to

have those expedited; initiation of Statutory actions to recover Cantonment Board dues, etc.

- iv) Action taken to recover Cantonment Board dues by use of e-Services, through banks, etc. (as manpower used in collection of revenue is found to be not effective and the process is uneconomical and hence unproductive). As Secunderabad Cantonment Board could implement e-enabled services for revenue collection, guidance be taken from them to ensure that from the Financial Year 2017-18 most CBs could use such services.
- v) Action taken by the CBs to revise the rates of taxes as per Section 66(2) of the Act, etc.
- (h) Action taken to protect Defence land under management of CBs;
- (j) Time-bound action taken against un-authorized constructions including disposal of appeals filed by the affected parties : in this regard DGDE instructions exist to take certain specific actions after the orders of the Hon'ble High Court of Allahabad dated 29.01.2014 regarding certain un-authorized construction in Meerut Cantonment (Contempt Case No.380 of 2001).

Suggested Action : For (h) and (j) orders/ guidelines issued by MoD/ DGDE be caused to be followed strictly.

3. It may also be pointed out that in all these aspects detailed instructions have been issued by DGDE from time to time and it is, therefore, necessary that action taken by the CBs need a thorough examination, monitoring and review at Directorates on a regular basis. As regards revision of rates of taxes (every 5 years) as stipulated in the Act, the information available does not give an encouraging picture and the Directorates must, therefore, be very particular about having this provision implemented by the CBs.

4. Regarding the reasons given to the visiting teams of the C&AG for not being able to take a number of activities by the Boards i.e. non-availability of manpower in CBs as well as shortage of funds, an analysis has also been given in the Report which shows that the data does not fully support those reasons.

- (a) As regards non-receipt of Service Charges in full and/ or non-receipt of funds to implement various schemes of Central Govt the facts are well known.
- (b) The low percentage of utilization of available funds is a cause of worry and one of the reason could be the late receipt of sanction of the budgets of the CBs, as well as receipt of funds (either under ordinary grant-in-aid or services charges) towards the end of financial year. However, there is no reason as to why the funds received towards the end of financial year and probably being kept in the fixed deposit could not be planned for expenditure in the coming year.

- (c) In so far as late sanction of the budget by the GOC-in-C is concerned, this remains an issue and to overcome this difficulty, action was taken from this financial year (2016-17) by Directorate DE, Pune, by advancing the date of submission of the Budgets by the CBs by May, 31. On the request of PD DE, GOC-in-C, Southern Command also caused issue of necessary advice to all the CBs there giving a schedule for submission and presentation of budgets. As a result budgets of the most of the CBs this year have already been sanctioned. PDs DE of all other Directorates must also try to do similarly in consultation with the concerned GOC-in-Cs so that CBs have enough time to implement the programmes included in the budget. In the recent meeting of the undersigned with the GOC-in-C, Eastern Command, this suggestion was given and it was readily accepted.
- (d) In fact, as is the norm for general financial management, it is necessary that pace of expenditure by the CBs be monitored quarterly so that there is no rush of expenditure in the last quarter of the financial year and ensure that the Boards normally do not exceed 33% of the budgetary provisions in that quarter and required advice/ directions be issued to the CBs to try to achieve the same. As there is always a sanctioned budget available with the CBs, it should not be difficult to plan expenditure as per those norms.
- (e) Regarding the shortage of manpower as projected by some of the CBs, this is not at all an acceptable proposition. In this regard instructions have already been issued to review the position regarding requirement of manpower and to recruit regular staff as well as to engage required manpower on contract basis, on need-basis and keeping in view the financial condition of the CBs.

5. PDs DE must devise their own way of review and monitoring of works of the CBs and DEO circle, by preparing and sending guidelines/ check-lists on different topics to those offices. Some of such guidelines/ check-lists prepared by Dte DE, Pune for initiating proposals on topics such as leases, encroachments, resumption, mutation, development proposals, etc. are available at NIDEM which can be consulted, if felt necessary.

6. On a few aspects, there will be monitoring at DGDE on progress made and therefore certain proformae are sent herewith. Dtes will have to obtain details for their full appreciation of the issues by devising suitable proformae in those aspects; however, information required at DGDE must be furnished in the proformae sent herewith as per the schedule indicated therein.

7. The PAC was to hold a meeting with regard to their observations which got postponed and a fresh date is expected soon. It is, therefore, necessary that the Directorates collect specific information with regard to the various aspects brought out in the Report not only for the 17 (seventeen) CBs as mentioned in the Report but for All the CBs, specially on the plausible causes for low utilization of funds, action taken to enhance resource base of the CBs

as well as to prevent encroachments and unauthorized constructions, and examine those meticulously and obtain the plans and programmes of the CBs as to how the issues brought out are going to be tackled and concerted views sent to DGDE as quickly as possible. As and when the meeting notice of the PAC is received, it will be intimated in due course, however, it is necessary that the required information is collected on an urgent basis so that proper response could be given on time for such a meeting.

Sd/-
(Jojneshwar Sharma)
Director General
Defence Estates

The Board may consider Director General Defence Estates letter dated 21st October, 2016.

Relevant file is placed on the table.

7. **FUNCTIONING OF CANTONMENT BOARDS : PERFORMANCE OF STATUTORY DUTIES, REVENUE GENERATION, DEVELOPMENTAL ACTIVITIES, PROTECTION OF LAND UNDER THE MANAGEMENT OF CANTONMENT BOARDS ETC.**

To consider Directorate of Defence Estates letter No.30/SC/Audit Performance/Cantt/DE/RMS 5974/20 dated 04th November, 2016 regarding functioning of Cantonments Boards : Performance of statutory duties, Revenue regeneration, Developmental Activities, Protection of land under the management of Cantonment Boards etc. The contents of letter are reproduced hereunder: -

No.30/SC/Audit Performance/Cantt/DE/RMS 5974/20
Govt. of India, Ministry of Defence
Directorate General Defence Estates
RakshaSampadaBhawan
UlaanBataar Marg, Delhi Cantt-110010
Dated: 04th November, 2016

To

All CEOs
In Western Command

Sub : Functioning of Cantonment Boards : Performance of statutory duties, revenue regeneration, developmental activities, protection of land under the management of Cantonment Boards etc.

Reference this Dte letter No.30/SC/Audit Performance/Cantt/DE dated 01st November, 2016.

2. The Comptroller and Auditor General of India (C&AG) in its report no.44 of 2015 have raised a number of observations regarding functioning of Cantonment Boards. A copy of the report has already been forwarded to you vide out letter under reference. Please go through the observations made in C&AG report carefully. Some of the observations made in the report do require our focused attention, like preparation and implementation of Town Planning schemes, preparation and implementation of Cantonment Development Plans. Please ensure preparation of town planning schemes in respect of your Cantonment is done by 31st January, 2017. Please also ensure submission of Cantonment development plan including improvement of civic amenities by 31st December, 2016. The plans and programs includes in budgets of Cantonment Boards should be part of the Cantonment development plan.

Provision of timely and quality services of the Cantonment residents:- Cantonment Board must implement citizen charter and activate Suvidha&Samadhan in addition to provisions of other e-services.

Plans to implement Municipal and Solid Waste (Management and Handling Rules 2000) :- Please prepare time bound action plan which should be submitted by 31st January, 2017 to this Dte. Reference may in this regard also be held to instructions circulated vide this Dte. letter No.15/927/Swchh Bharat/Cantt/DE/RMS 27354/4 dated 02.11.2016.

Plans to improve standard of education:- Please ensure availability of proper school building and periodical maintenance of this area. Enrolment trend in schools may be monitored and English medium schools may be got affiliated. Teachers may be sent on regular training basis and smart/ e-class facility may be introduced. There should be incentives for girl child and provision for extra curricular activities etc.

Plans to improve medical facilities:- Please ensure proper building for hospitals and its regular maintenance, gradual upgradation of health services and provisions of quality services etc.

Financial Management :- Please ensure regular revision of triennial assessment of properties. Action may please be taken for recovery of dues in first quarter of a financial year. Efforts should be made recover dues through e-services, banks etc. Taxes should be revised

as per Section 66(2) of the Cantonments Act. Plan should be made to enhance resource base of Cantonment Board. Defence land placed under management of Cantonment Board be protected and time bound action be initiated against unauthorized construction. Please ensure that aforesaid actions are regularly monitored by you. These shall also be reviewed at the Dte on a regular basis.

One of the reasons for low percentage of utilization of budgetary provisions could be delay in sanction of budgets of Cantonment Boards and receipt of ordinary grant-in-aid or service charges towards end of financial year. However, Cantonment Boards can plan for expenditure in coming year, through fixed deposits received at end of financial year.

For General Financial Management :- The pace of expenditure by Cantonment Board should be monitored quarterly to avoid rush of expenditure in last quarter of a financial year and to ensure that the Boards do not ordinarily exceed 33% of budgetary provisions in that quarter. As regards shortage of manpower, instructions have already been issued vide this Dte letter No.15/428/Ruling/Cantt/DE/2016 dated 19.10.2016, to review position regarding requirement of manpower and to recruit regular staff and to engage manpower on contract basis as per requirement and keeping in view financial condition of the Board. You are requested to furnish information required by DG DE as per the proforma already uploaded and intimated vide our letter under reference. Please ensure that requisite information is furnished and uploaded by the stipulated date.

Sd/-
(S C Kaushik)
Principal Director

The Board may consider Dte. Defence Estates, Western Command letter dated 04th November, 2016.

Relevant file is placed on the table.

8. RECRUITMENT TO FILL VACANCIES AND PROMOTION IN CANTONMENT BOARDS

To consider Director General Defence Estates letter No.25/Misc/C/DE/2004 dated 06th October, 2016 regarding recruitment to fill vacancies and promotions in Cantonment Boards. The contents of letter are reproduced hereunder: -

No.25/Misc/C/DE/2004
Govt. of India, Ministry of Defence
Dte General Defence Estates
RakshaSampadaBhawan
UlaanBataar Marg,
Delhi Cantt-110010
Dated: 06th October, 2016

To

The Principal Director, DE
Central/ Eastern/Northern/South Western/Western
Lucknow/Kolkata/Jammu/Jaipur/Chandigarh.

**Sub : Recruitment to fill vacancies and promotions in
Cantonment Boards**

This is regarding filling vacancies in the Cantonment Boards including giving promotions for various posts by the Boards. It may have been observed that due to financial constraints recourse was taken to the mode of contractual engagements for disposing various works of Cantt Boards; however, wholesale engagement of contractual labour for doing works of any section is not at all advisable for various reasons. Moreover, this system is also leading to different kind of exploitation of contractual labour. It is, therefore, necessary that Cantt Boards review their staff strength and take decisions about recruitment appropriately.

2. In respect of engagement of contractual labour/ personnel also, it must be ensured that it is done through a proper system of contract and through a proper placement agency and **not at all directly by Boards/ CEOs** since direct engagements, mostly of the same person over a number of years, have led to various litigations. In this context, reference may be made to the orders given by the Hon'ble Supreme Court in Case No.appeal (civil) 3595-3612 of 1999 Secretary, state of Karnataka and others Vs Umadevi and others datd 10.04.2016 regarding regularization, etc of such direct engagements of casual personnel. **Such direct engagements, if any, should also be stopped immediately in the Offices of the DEOs also.** The CEOs must be directed to follow a proper and transparent system of recruitment and to follow the existing instructions on the subject.

3. Guidelines issued by Dte. DE SC, Pune vide their letter No.8073/GEN/ESTT/XVI/DE dated 27 Jun 2016 on the subject above are sent herewith for guidance to issue instructions to the Cantonment Boards.

4. One area needing urgent attention is engagement of teachers in the schools run by the Cantonment Boards. In many Cantonments, teachers

have been taken on contract basis and regular posts are lying vacant. Moreover, English medium schools are being run with contract teachers. A thorough review of the position is necessary as teaching cannot be left to such arrangements. Considering the trend of enrolment, required teacher-student ratio, a view be taken as to the requirement of teachers. English medium schools need to be got recognized/ affiliated appropriately and regular posts created for those too, to impart quality education to the students. PDs must have this examined realistically so that standard of education does not suffer.

5. PDs must have this matter of promotion and recruitment in Cantonment Boards, including stopping the system of direct engagement of casual labour/ personnel monitored by nominating one of the officers as Nodal Officer and report submitted to the Dte Gene by 31 Dec 2016 positively on the following:

- (a) Giving promotion to eligible employees of the Cantt Boards;
- (b) Action on recruitments;
- (c) Stopping direct engagement of casual personnel both by DEOs and Cantonment Boards;
- (d) Payment to Contractual labour/ personnel through cheque only.

Sd/-
(Jojneshwar Sharma)
Director General
Defence Estates

The guidelines contained in Dte. DE, SC, Pune vide letter No.8073/GEN/ESTT/XVI/DE dated 27.06.2016 are also reproduced hereunder:

To

All CEOs
In Southern Command

Subject : Recruitment to fill vacancies and promotions in Cantonment Boards

From the information made available by all CEOs on the subject above, it has been observed that except for Cantonment Board Aurangabad, Kamptee and St. Thomas Mount, a large number of promotion posts have been kept vacant in many Cantonment Boards. In the Conference held at Begaum on 23rd& 24th of this month, this was discussed and it has been made very clear to the CEOs that no giving promotion to the existing employees of the Cantonment Board is not a healthy administrative practice.

The Cantonment Board employees have very limited chance of promotion and denying this to them is not at all acceptable. As intimated already during the Conference, all the CEOs shall take necessary action immediately to complete the process of filling the promotion of posts within a period of 02 (two) months and report in this regard must be submitted to this Dte by 27th August, 2016 positively.

2. In so far as filling direct vacancies are concerned, all Cantonment Boards have a large number of vacancies except for Cannanore, Kamptee and Wellington, where the number is very small. It is true that due to financial condition of the Boards, action has been taken to disposing works by way of engaging contractual labour; however, this arrangement is found to be fraught with various administrative problems including exploitation of the contractual labour. As discussed in the Conference, the following steps may immediately be taken; -

- a. Not to allow any section of Cantonment Boards (Sanitation, PWD, Revenue, Accounts etc) to be entirely under contractual arrangements;
- b. To determine the number of vacancies in each section to be filled from out of the existing vacancies, after making an assessment of work-load and financial condition of the Board;
- c. To check if some posts can be abolished and some posts can be reduced (as in Dehurad, where number of post of teachers is now more than required), and some posts in certain sections can be added/ created;
- d. After having done the exercise at (a), (b) & (c) above within a month, action must be initiated to fill vacancies by taking required sanction of this Dte, wherever necessary, and by sending a proper and while sending the proposal itself, necessary paper work for filling vacancy be started.
- e. On receipt of the sanction from this Dte, action to fill the vacancies be taken by following all the instructions of the Government and in a very transparent manner.
- f. CEO being the appointing authority for direct recruitment and for non-supervisory posts, he/ she should put in place a system which is foolproof for the purpose. This process of direct recruitment must be completed within a period of 02 (three) months and a report to this effect be sent by 26th Sept. 2016 to this Dte.

3. Before embarking on direct recruitments, number of posts to be filled through compassionate appointment be earmarked in each category and those be filled by following all existing instructions and this exercise be completed too within 02 (three) months and a report be submitted by 26th Sep, 2016 to this Dte.

4. In so far as contractual arrangement is concerned, please ensure the following: -

- i. That the contractor fulfills all the terms & conditions as mentioned in the contract agreement;
- ii. That payments are made to the persons engaged on contract basis by cheque only;
- iii. That the contractor is paid his dues only after he/ she produces details of the payment debited from his/ her account on account of payments made to the person engaged including the receipts/ challan regarding payment of the PF, ESIS etc.
- iv. That a proper system of supervision of contractual workers by the employees of the Cantonment Board is ensured and checked at site by CEO from time to time.

5. These issues were thoroughly discussed during the Conference at Belgaum and all CEOs now have to ensure action within the time frame as given above.

Please send acknowledgement of this communication.

Sd/-
(Jojneshwar Sharma)
Principal Director
Defence Estates, SC

The Board may consider Dte. Defence Estates, Western Command letter dated 06th October, 2016.

Relevant file is placed on the table.

9. MONITORING OF WORKS BEING EXECUTED BY THE CANTONMENTBOARDS

To consider Director General Defence Estates letter No.56/15/DGDE/COORD/CONF/VOL V/FMS No.52436 dated 06th October, 2016 regarding Monitoring of works being executed by the Cantonment Boards. The contents of letter are reproduced hereunder: -

No.56/15/DGDE/COORD/CONF/VOL V/FMS No.52436
Govt. of India, Ministry of Defence
Directorate General Defence Estates
RakshaSampadaBhawan
UlaanBataar Marg,
Delhi Cantt-110010
Dated: 06th October, 2016

To

The Principal Director
Defence Estates, Ministry of Defence
Central/ Eastern/Northern/Western Commands
Lucknow/Kolkata/Jammu/Chandigarh.

**Sub : MONITORING OF WORKS BEING EXECUTED BY THE
CANTONMENT BOARDS**

This is regarding ensuring quality of works executed by the Cantonment Boards. It may be recalled that this matter was discussed in the conference of the PDs DE at DGDE on 08.07.2016 and everyone felt it necessary that a proper system of monitoring and quality checking of the works undertaken by the Cantonment Boards has to be put in place. Background of the matter was also discussed in the Conference which needs no elaboration herein.

2. In this context, guideline have ready been issued to all the CEOs under jurisdiction of Principal Directorate, Defence Estates, Southern Command vide their letter No.8078/Budget/Cantt/Gen/Vol.III/DE dated 24.08.2016, a copy of which is sent herewith for ready reference. It may be observed that most of the aspects have been tried to be covered therein, which basically entail the following:

- a) Preparation of proper plans and estimates on works including for major repairs/ maintenance works and getting those approved by the Board;
- b) Preparation of proper tender documents, after sanction of works is given by the Competent Authority
- c) Engagement of third party technical evaluation to check on execution of work.
- d) Checking of works by an officer of the Dte at the rank of Director.

3. Principal Directors must ensure putting in place such a system urgently and copy of instructions issued in this respect must be sent to this Dte Gen by 15.10.2016 positively. It must also be ensured that Directors visit various stations to check the quality of works and take corrective actions as per their reports by properly advising the CEOs.

4. Please ensure that the Cantonment Boards engage their third party evaluator, wherever felt necessary, by 30.11.2016 and intimate to the Dtes.

Sd/-
(Jojneshwar Sharma)
Director General
Defence Estates

The guidelines contained in Dte. DE, SC, Pune vide letter No.8073/Budget/Cantt/Gen/Vol.III/DE dated 24.08.2016 are also reproduced hereunder:

To

All the CEOs under the jurisdiction of
Dte.DE Souther Command.

Subject: MONITORING OF WORKS BEING EXECUTED BY THE
CANTONMENT BOARDS

The Cantonment Boards execute various works, original as well as maintenance works, mostly under their own arrangement i.e. through the Engineers of Cantonment Boards. The process followed normally is as under:

I. For Original Works:

- i) Plans and estimates are prepared by the Cantonment Board Engineers/ Specialized agency.
- ii) Vetting of Estimates either by the MES or any Govt. agency.
- iii) After sanction of a project and allocation of funds tender documents are prepared either by taking assistance of MES and/or Specialized agency engaged for the purpose.
- iv) Works is executed under the supervision of Engineers of the Board/ Specialized agency, as the case may, to whom the work is allotted.
- v) Quality of work is checked by the Engineers of the Cantt. Board or the specialized agency engaged for the purpose.

II. For Maintenance Works:

- i) All the works to be executed are considered by the Cantt. Board alongwith estimated amount.
- ii) Tenders are floated and reasonability of the estimates are considered by the Cantt. Board by taking technical advice of the GE who is also a Member of the Cantt. Board.
- iii) After approval of the contracts, works are executed by the Engineers of the Cantt. Board.
- iv) Quality checking is done at Cantt. Board level before release of payment.

2. It may be pointed out that over the last few years, a number of projects have been sanctioned and substantial funds allotted for execution

by the Cantt. Boards. The Boards, therefore, have to ensure transparency and efficiency in execution of the works so that the public gets the maximum benefit and quality work is executed at site. There is provision in the Cantonments Act, 2006 for checking of the works by officers/ Members of the Board and the Boards must ensure checking of quality of works invariably so that public fund is utilized properly.

3. A few Cantonment Boards have also engaged Specialized agencies for 3rd Party checking of works for example, Pune Cantonment Board has engaged Engineers India Ltd, a Central Government Organisation to check the quality of various works executed by them.

4. With a view to bringing transparency and efficiency and effectiveness in execution of work, it has therefore, been decided as under:-

- a) A Director-level Officer of this Dte. will visit Cantonment Boards to check various aspects of works executed by the Cantt. Boards including quality, following of due procedure etc. which will be for both Original & Maintenance works.
- b) The Cantt. Board will engage a Quality-checking technical evaluator – it may be either Central or State Govt. Agency to check the quality of work for which the Board will have to incur expenditure. However, such expenditure is only in the interest of the public and, therefore, there is no harm in incurring such expenditure and Boards must do so.
- c) The Boards are undertaking now major repair/ renovation works of Roads, Drains, etc. and the Specialized agency must be entrusted with checking quality of these works too, if the amount spent for such work is substantial.
- d) CEO must obtain reports from the Specialised agency so engaged about the works undertaken/ executed at site as and when required and take corrective action in terms of suggestions/ advice/ comments (on work under execution) so received.

5. The action suggested above does not, however, absolve the Engineers of Cantonment Boards of their responsibility of supervision on works under execution which they must do thoroughly & professionally.

6. The Director deputed for checking of such works will take the assistance of Specialized agency appointed for the purpose in checking the quality of work t site.

7. It is, however, presumed that Boards have taken due care in preparation of tender documents properly & have included all clauses to protect the interest of government/ Board. These documents form a part of contract agreements. In the tender document itself, Board/ CEO's likely to have the works being executed checked through specialized agencies before

making payment must be included. CEOs must ensure, additionally, conforming to the work procedure stipulated in Cantonment Account Code, relevant provisions of Financial Rules, CVC guidelines, budgeting etc.

8. All the Cantonment Boards will take action with immediate effect and confirm about the engagement of such agency by 31/10/2016 positively so that the concerned Directors can chalk out their programme for visiting various Cantt. Boards.

Please acknowledge receipt.

Sd/-
(Jojneshwar Sharma)
Principal Director, DE

The Board may consider Dte. Defence Estates, Western Command letter dated 06th October, 2016.

Relevant file is placed on the table.

10. SWACHH BHARAT CAMPAIGN – RELATED ACTIVITIES

To consider Director General Defence Estates letter No.76/68/Swachh Bharat/C/DE/16 V-II dated 04th November, 2016 regarding Swachh Bharat Campaign – Related Activities. The contents of letter are reproduced hereunder:-

No.76/68/Swachh Bharat/C/DE/16 V-II
Govt. of India, Ministry of Defence
Dte General Defence Estates
RakshaSampadaBhawan
UlaanBataar Marg,
Delhi Cantt-110010
Dated: 04th November, 2016

To

The Principal Director, DE
Central/Eastern/Northern/Southern/South Western/Western
Lucknow/Kolkata/Jammu/Pune/Jaipur/Chandigarh.

Sub :Swachh Bharat Campaign – Related Activities

Reference DG DE's DO letter of even no. dated 07 Oct 2016 regarding various activities connected with Swachh Bharat Campaign. In this regard please find herewith a copy of letter No.B-190001/NGRBA/CPCB/2012-2013/12433-12469 dated 09.10.2015 issued by Central Pollution Control

Board, in which various aspects relating to sewage treatment have been indicated. The parameters stipulated at Annex-I i.e. Standards for Treated Effluent of Sewage Treatment Plants (copy enclosed), in designing and implementing a Sewage Treatment Plant (STP) need to be kept in view by all the Cantonment Boards which are planning to execute such plants.

2. It may be brought out that this letter was personally given by the Hon'ble RM to the undersigned with further advice that stipulations given therein be circulated to all concerned. The letter was already circulated to all the CEOs under jurisdiction of Dir DE, Pune during the Conference of CEOs and DEOs held at Belgaum in Jun 2016.

3. PD Des are accordingly advised to bring it to the notice of all the CEOs for further necessary action.

Sd/-
(Jojneswar Sharma)
Director General
Defence Estates

The Central Pollution Control Board letter No.B-190001/NGRBA/CPCB/2012-13/12433-12469 dated 09/10/2015 are also reproduced hereunder:

To

The Commissioner/ Executive Officer/ Mayor/ Chairman,
Municipal Corporation
(As per the list enclosed)

**DIRECTIONS UNDER SECTION 5 OF THE ENVIRONMENT
(PROTECTION) ACT, 1986 REGARDING TREATMENT AND
UTILIZATION OF SEWAGE FOR RESTORATION OF WATER
QUALITY OF RIVER**

Whereas, sewage is major cause for poor water quality and adversely impacts human health and aquatic life. The discharge of untreated, partially treated and treated sewage not meeting standards is further adding to the problem of water pollution and very sizeable gap exist in general and treatment of sewage.

Whereas, Central Pollution Control Board assessed sewage generation and treatment capacity for Urban Population of India for the year 2015. The sewage generation is estimated to be 62000 MLD approximately and installed sewage treatment capacity of 816 STPs developed so far is only 23277 MLD.

Whereas, sewage generated from, in **Uttrakhand** is responsible for deterioration of the water quality of river **Ganga**.

Whereas, water quality monitoring results of rivers indicate that water quality has been affected because of disposal of untreated or partially treated sewage into the rivers and as a result, there is high level of Bio-Chemical Oxygen Demand (BOD) making water unfit for human consumption or for other uses.

Whereas, the cities and the towns have not created adequate systems for sewage collection and its treatment and thus untreated waste water either goes into rivers or lakes or remains inundated on land causing ground water contamination.

Whereas, the majority of the municipal authorities have not sought consents under the Water (Prevention and Control of Pollution) Act, 1974 which is a statutory requirement and also have not provided facilities for sewage treatment.

Whereas, over the years, storm water drainage systems have been used as convenient system with increase in urbanization for disposal of sewage and sullage by Municipalities. These drains dispose sewage and mixed effluent into rivers and lakes or dispose it on land.

Whereas, the State Pollution Control Boards/ Pollution Control Committees have also been directed under Section 18 (1) of Water (Prevention and Control of Pollution) Act, 1974 to direct concerned agencies in the State/ Union Territory to develop infrastructure for sewage management.

Whereas, CPCB has requested the Municipal Corporation to build capacity for treatment, utilization of sewage and restoration of water quality of recipient systems and for identification of drains in the city and the place of disposal of the effluents and action proposed to treat sewage vide letter dated 10/09/2015.

Whereas, CPCB has also communicated guidelines for Rejuvenation/ Improving sanitary conditions of open drains carrying sewage – sullage to Municipal Corporatin, vide letter dated 28/09/2015.

Whereas, Hon'ble Supreme Court had cited in the matter of Dr. B.L. Wadhwa vs Union of India and Others (1996) INSC 352 (1 arch 1996) regarding pollution in Delhi as under:

....."it is no doubt correct that rapid industrial development, urbanization and regular flow of persons from rural areas to urban areas

have made major contribution towards environmental degradation but at the same time the Authorities – entrusted with the work of pollution control – cannot be permitted to sit back with folded hands on the pretext that they have no financial or other means to control pollution and protect the environment. Apart from Article 21 of the Constitution of India, which guarantees 'Right of Life', Article 48A and 51A (g) of the Constitution are as – 48A, protection and improvement of environment and safeguarding of forests and wildlife – the State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country and 51 (g) – to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures”.

WHEREAS, the water quality monitoring carried out by CPCB at 1275 locations covering 445 rivers for assessing suitability of water quality for various purposes revealed that 718 locations are not meeting the water quality criteria with respect to BOD and Fecal Coliform bacteria. The water quality assessment has further indicated that there are 302 polluted river stretches on 275 rivers which are along the 35 metropolitan cities and 615 other urban centres. The exceedance of criteria pollutants has been observed in the downstream stretches of rivers passing through the urban centres.

WHEREAS, water quality of river Ganga has been monitored at 57 locations and observed that water quality is deteriorated on account of disposal of sewage through various drains. The sewage carrying drains after joining the river Ganga have affected the water quality and the sanctity of the river. This also holds true for the other polluted river stretches. The comprehensive assessment of water quality of river Ganga has also pointed out that the Fecal Coliform bacteria as one of the major contributory factor for pollution.

WHEREAS, based on the performance studies carried out by CPCB on STPs, it has been observed that capacity of the STPs is either under utilized and the operating plants also not meeting with the standards. The poor operation and maintenance of the STPs has also been observed.

WHEREAS, the Central Government has notified the general discharge standards of environmental pollutants from various sources including municipal wastewater under the Environment (Protection) Act, 1986 and the rules framed there under; and

WHEREAS, the Ministry of Environment & Forests, Govt. of India, vide notification S.O. 157(E) of 27.02.1996 has delegated powers vested under Section 5 of the Environment (Protection) Act, 1986 (29 of 1986) to the Chairman, Central Pollution Control Board (CPCB), to issue direction to any industry Municipal Corporation Municipal Council Cantonment Board to any

local or other Authority for the violation of emission and effluent standards notified under the Environment (Protection) Rules, 1986 and other standards and norms and

AND NOW, THEREFORE, in view of the above stated facts and realizing that rivers and water bodies are getting polluted and to prevent further deterioration of surface sub-surface and coastal waters, it is essential to issue following directions in exercise of the powers delegated to the Chairman, CPCB under section 5 of the Environment (Protection) Act, 1986 to the Municipal Authority of

- 1) Untreated sewage shall not be disposed into the river or at any other recipient system.
- 2) Local/ urban body to set up STPs of adequate capacity and provide sewerage system to cover the entire local/ urban areas and to ensure complete treatment of sewage generated.
- 3) In case of disposal of effluents on land or river or any water body including coastal water/ creek or a drain, the treated effluents shall meet the standards given in Annexure – I.
- 4) Existing sewage treatment plants, if any, as applicable shall be properly maintained to comply with the standards given in Annexure – I. At the inlet and outlet of the sewage treatment plant online monitoring devices should be installed to monitor the consented parameters.
- 5) The local bodies shall seek consent under Water (Prevention and Control of Pollution) Act, 1974 from the SPCB/ Committee within a period of 60 Days.
- 6) The Municipal Authority shall properly manage the wastewater flowing in drains and take required actions to ensure that such wastewater is treated and disposed off in accordance with standards given in Annexure – I.
- 7) Municipal authority and the concerned authority shall submit a time bound action plan to the effect for proper collection treatment and disposal of sewage and such plan shall be submitted by the municipal authority to the State Pollution Control Board and copy to CPCB within a period of 90 Days. The Action Plan shall be brought in public domain.

You are requested to acknowledge the receipt of this direction within 15 days and shall communicate the status on the action plan and its implementation.

Sd/-
(Arun Kumar Mehta)
Chairman

STANDARDS FOR TREATED EFFLUENT OF SEWAGE TREATMENT PLANTS

Sl. No.	Industry	Parameters	Standards for New STPs (Design after notification date)*
1	Sewage Treatment Plant	pH	6.5-9.0
2		BOD, mg/1	10
3		COD, mg/1	50
4		TSS, mg/1	10
5		NH ₄ -N, mg/1	5
6		N-total, mg/1	10
7		Fecal Coliform (MPN/100 ml)	<230
8		PO ₄ -P, mg/1	2

Note : (i) These standards will be applicable for discharge in water resources as well as for land disposal. The standards for Fecal Coliform may not be applied for use of treated sewage in industrial purposes.

- Achievements of Standards for existing STPs within 05 years from date of notification.

The Board may consider Director General Defence Estates letter dated 04th November, 2016.

Relevant file is placed on the table.

11. COURT ORDERS : ENGAGEMENT OF PERSONS ON CASUAL, TEMPORARY, ADHOC, DAILY-RATE AND CONTRACTUAL BASIS

To consider Director General Defence Estates letter No.105/17/MISC/ADM/DE dated 04th November, 2016 regarding Court Order :Engagement of person on Casual, Temporary, Adhoc, Daily-rate and contractual basis. The contents of letter are reproduced hereunder: -

No.105/17/MISC/ADM/DE
 Government of India, Ministry of Defence
 Dte General Defence Estates
 RakshaSampadaBhawan, UlaanBataar Marg,
 Delhi Cantt-110010
 Dated: 04th November, 2016

To

The Principal Director
Defence Estates,
Ministry of Defence,
Central/ Southern/Western/Norther/Eastern/South Western Command,
Lucknow/Pune/Chandigarh/Jammu/Kolkata/Jaipur

**SUBJECT : COURT ORDER: ENGAGEMENT OF PERSONS ON CASUAL,
TEMPORARY, ADHOC, DAILY-RATE AND CONTRACTUAL
BASIS.**

The Supreme Court of India has given its judgement in Civil Appeal No.213 of 2013 State of Punjab & Others versus Jagjit Singh & Others, alongwith a number of other Civil Appeals, on 26th October, 2016. This judgement has laid the principles of grating "equal pay to equal work" to temporary employees on par with regular employees. Paras 42 to 45 of this judgement are especially relevant.

2. Your attention has already been drawn to Supreme Court of India order dated 10th April, 2006 in Appeal (Civil) 3595-3612 of 1999 in the case of Secretary, State of Karnataka & Others versus Umadevi& Others, laying down the principles regarding regularization of temporary employees.

3. You are requested to peruse both these judgments carefully and also educate the officers in your jurisdiction, including the CEOs and DEOs, about the implications of these orders on engagement of persons on Casual, Temporary, Adhoc, Daily-Rate and Contractual basis by the different offices. Care may be taken to ensure that no occasion arises for any person to approach the Court of Law citing violation of these judgments/ orders.

4. We should also check order/ OMs to be issued by the Government in this regard.

5. Both the orders can be downloads from the website of the Hon'ble Supreme Court of India; however, the same is being emailed too.

6. This is issued with the approval of Director General Defence Estates.

Sd/-
(P DANIEL)
Addl. DG (Admin &Vig)
Defence Estates

The Board may consider Director General Defence Estates letter dated 04th November, 2016.

Relevant file is placed on the table.

12. CIRCULAR RESOLUTION

To note circular resolution dated 12.09.2016 regarding setting up of cell towers on wheel .

SETTING UP OF CELL TOWERS ON WHEEL.

The MoD vide letter no 11026/1/2005/D/DE dated 16.5.2016 approved policy for provisioning of Defence Land to communication operators to construct shared communication towers and other infrastructure to extend communication network in Military Stations/Cantonments. The policy relates to permitting cell towers on wheels and the detailed policy was noted by the Board vide its resolution contained in CBR 7 dt. 18.7.2016. As per policy the assessment of requirement of mobile towers in case of B-4 land and Class-C land will be carried but by the CEO in consultation with Vice President Cantonment Board. The undersigned and Vice President, Cantonment Board Delhi have finalized 17 sites classified as Class-C and B-4 land with the Deptt. Of Ministry of Communication &ITDeptt. of Telecommunications, Govt. of India in this connection Ministry letter No.13-2/2015-AS-IV/TF dt. 9.9.2016 refers. The sites found feasible area detailed here under.

Sr No	Proposed Site	Tentative Lat.	Tentative Long.	Land Authority
1.	Deep Strike Eagle, 147 field workshop EME	28.58513	77.11744	DCB
2.	HQ Air FMN signal company sarvodya square	28.578538	77.114199	DCB
3.	SNCO Mess Palam, near Palam-turn bus stop	28.58036	77.12401	DCB
4.	In front of Garrison Engineer Gate	28.59266	77.12979	DCB
5.	Station workshop Cariappa marg	28.60596	77.1363	DCB
6.	Taurus pet Clinic near bus stop	28.6004	77.14004	DCB
7.	Near Rajputana Rifle	28.5966	77.14953	DCB
8.	Near Gate No-2 Army Golf-course road	28.59405	77.15602	DCB
9.	Fresh Grp LPG office	28.60756	77.12162	DCB
10.	DCB (CEO) Office	28.598148	77.124015	DCB
11.	Nangal Raya Near Water Tank	28.60615	77.11461	DEO
12.	Uri Enclave near Brar square near CB Sr. sec school	28.60784	77.14459	DEO
13.	Dhaulakuan near SP Marg (DEO pole no.CB-49)	28.59552	77.16786	DEO
14.	ShamshanGhat, Mahram Nagar	28.56652	77.12599	DEO

15.	PulPahladpur near kabaddi shop	28.57866	77.10049	DEO
16.	Jharera village, near open ground near NH-8	28.57982	77.14263	DEO
17.	Jharera village near Barat Ghar	28.57977	77.1374	DEO

The Board may consider approving sites for provisioning of Cell towers on wheels. The allocation of sites to communication companies will be strictly by conducting auction as per policy framed by the MoD and sites to the cell operators will be handed over after obtaining approval of PDDE, Western Command as per the policy.

Relevant file placed on the table.

Sd/-
Chief Executive Officer
Delhi Cantonment
(B. Reddy Sankar Babu)

RESOLUTION :

Considered and resolved to approve the 17 sites for establishing cell towers on wheels as brought out on the agenda side. The auction of sites be carried out strictly as per policy framed by the MoD.

DATED : 12th September, 2016

1. Brig. Jai Singh, SM
President sd/-
2. Sh. Jagat Singh
Vice-President sd/-
3. Shri B. Reddy Sankar Babu, CEO
Member-Secretary sd/-
4. Brig. S.C. Dash, YSM, VSM, SEMO
Ex-Officio Member
5. Lt. Col. Abhishek Khanna, GE(East)
Ex-Officio Member sd/-
6. Col. Joydip Mukherjee, Adm Commandant
Nominated Member sd/-

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| 7. Col. Adarsh K. Butail, CO, DAPU
Nominated Member | sd/- |
| 8. Lt. Col. Dev Raj, SO(Cantt)
Nominated Member | sd/- |
| 9. Shri Vivek Kumar Tripathi, ADM
Nominated Member | |
| 10. Shri Tanwar Sandeep
Elected Member | sd/- |
| 11. Smt. KadiyanRachna
Elected Member | sd/- |
| 12. Smt. Jain Kavita
Elected Member | sd/- |
| 13. Shri BeniwalNand Kishore
Elected Member | sd/- |
| 14. Chaudhary Col. Narender (Retd.)
Elected Member | sd/- |
| 15. Shri VimalChowdhary
Elected Member | sd/- |
| 16. Smt. Chaudhary Priyanka
Elected Member | sd/- |

Relevant file is placed on the table.

13. CIRCULAR RESOLUTION

To note circular resolution dated 03.10.2016 regarding Commissioning of Mobile Toilet Complexes

SUB :SWACHH BHARAT MISSION : COMMISSIONING OF MOBILE TOILET COMPLEXES

Ms. MeenakashiLekhi, Hon'ble Member of Parliament, Lok Sabha had provided four numbers of 10 seater mobile toilet complexes through M/s Wokhard Foundation under their CSR responsibility to be installed at Kirby Place Jhuggi Cluster. It is pertinent to mention here that under Swachh Bharat Mission provisioning of public conveniences and individual toilets is being promoted by the Central Govt. and even Govt. is providing grants to municipal bodies for these facilities to eradicate open defecation. At Kirby Place cluster about 4,000 persons are residing and proper toilet complexes does not exist in the area which is resulting in open defecation. It is proposed to commission four mobile toilet complexes immediately by providing septic tank and soak pits at available class C land, under the management of the Board, at Kirby Place Cluster. Further, since these toilets will be used by considerable number of persons daily, daily cleaning of toilet complexes, routine maintenance and upkeep of these complexes would be of paramount importance. As also maintenance of septic tank and soak pits through mechanical measures would be required because of site conditions. M/s Sulabh International Social Service Organization has submitted a proposal for provisioning of septic tank and soak pits for commissioning of four mobile toilet complexes of 10 seats each amounting to Rs.3,03,405/-. Further for cleaning, upkeep, repair maintenance of mobile van, cleaning of septic tanks soak pits the firm has requested for charges of Rs.11,747/- per month per mobile toilet complex. Under Swachh Bharat Mission it is obligatory for the Board to take immediate action to prevent open defecation in the areas and to provide public conveniences. The arrangement of water supply and electricity for the complexes will be done under relevant term contracts. The Board may consider commissioning of four toilet complexes at Kirby Place Cluster through M/s Sulabh International Social Service Organization.

Relevant file is placed on the table.

Sd/-
Chief Executive Officer
Delhi Cantonment
(B. Reddy SankarBabu)
I.D.E.S.

RESOLUTION :

Resolution : Considered and resolved to approve commissioning of four mobile toilet units of 10 seats each at Kirby Place cluster through M/s Sulabh International Social Service Organization as brought out on the agenda side.

DATED : 03rdOctober, 2016

1. Brig. Jai Singh, SM
President

sd/-

2. Sh. Jagat Singh
Vice-President sd/-
3. Shri B. Reddy SankarBabu, CEO
Member-Secretary sd/-
4. Brig. S.C. Dash, YSM, VSM, SEMO
Ex-Officio Member
5. Lt. Col. Abhishek Khanna, GE(East)
Ex-Officio Member sd/-
6. Col. Joydip Mukherjee, Adm Commandant
Nominated Member sd/-
7. Col. Adarsh K. Butail, CO, DAPU
Nominated Member
8. Lt. Col. Dev Raj, SO(Cantt)
Nominated Member
9. Shri Vivek Kumar Tripathi, ADM
Nominated Member
10. Shri Tanwar Sandeep
Elected Member sd/-
11. Smt. KadiyanRachna
Elected Member sd/-
12. Smt. Jain Kavita
Elected Member sd/-
13. Shri BeniwalNand Kishore
Elected Member sd/-

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|---|------|
| 14. Chaudhary Col. Narender (Retd.)
Elected Member | sd/- |
| 15. Shri VimalChowdhary
Elected Member | sd/- |
| 16. Smt. Chaudhary Priyanka
Elected Member | sd/- |

Relevant file is placed on the table.

14. CONSTRUCTION OF UNDERGROUND RESERVOIR AT VILLAGE JHARERA, DELHI CANTT

To consider letter No.NKB-840/16 dated 23.09.2016 received from Sh. Nand Kishore Beniwal, Member, Delhi Cantonment Board requesting for construction of underground reservoir of 1,00,000 gallon capacity to improve water distribution system of Village Jharera.

Relevant file is placed on the table.

15. FURNISHING OF PROPOSALS FOR GRANT OF FINANCIAL ASSISTANCE TO STATES/ UTS/CTIS FOR PROFESSIONAL DOCUMENTATION AND DISSEMINATION OF GOOD GOVERNANCE INITIATIVES/ PRACTICES THROUGH E-BOOK (ELECTRONIC) ALONG WITH PRODUCTION OF SHORT DOCUMENTARY FILM UNDER THE PLAN SCHEME AS PER REVISED GUIDELINE.

To consider National Institute of Defence Estates Management, RakshaSampadaBhawan, Delhi Cantt letter No.DE/365/NIDEM/2016-17 dated 25.10.2016 forwarding Ministry of Personnel, Public Grievances & Pensions, Department of Administrative reforms & Public Grievances letter dated 29.08.2016 & 05.10.2016. DAR&PG is implementing schemes for granting financial assistance for professional documentation and decimation of good governace initiative/ practice upto Rs.3 lacs. The Board may consider DAR&PG guidelines received from NIDEM.

Relevant file is placed on the table.

16. RENEWAL OF CONTRACT : ENGAGEMENT OF CHARTERED ACCOUNTANT

The Board vide its resolution contained in FC/Spl. CBR No.33/3 dated 18.08.2015/22.08.2015 had approved engagement of M/s Susheel K. Gupta & Co. for providing Chartered Accountants & B.Com graduates for scrutiny of contracts, bills, payments to the contractors, updating of ABAS, monthly bank reconciliation statement etc. The engagement of agency was approved for period of 05 years subject to performance review by the Board annual. The first year of engagement has expired in Sept., 2016 & the performance of the agency has been found satisfactory and the Accountant has recommended for renewal of their contract for further period of one year. The Board may consider approving renewal of contract of M/s Susheel K. Gupta & Co.

Relevant file is placed on the table.

17. ALLOTMENT OF CF ACCOMMODATION

To consider office note dated 18.10.2016 of Revenue Supdt vide which submitted that following Ladies Doctor have made request for allotment of CF accommodation as per details are given here under: -

- a) Dr. Rinku Kumar, GDMO (Contractual) vide her application dated 01.09.2016 has made request for allotment of CF accommodation. She is working as GDMO in Cantonment General Hospital since 2015.
- b) Dr. Anuradha Bora, GDMO (Contractual) vide her application dated 19.09.2016 has made request for allotment of CF accommodation. She is working as GDMO in Cantonment General Hospital since 2012.
- c) At present CF Qtr. No.02, Type-IV is lying vacant in front of Cantonment Board office, Sadar Bazar, Delhi Cantt.

Relevant file is placed on the table.

18. Court Case : M/s Indus Tower V/s Delhi Cantt. Board Case Suit No. 171/15

To consider office Note dated 07.11.2016 of Revenue Supdt wherein stated that the case M/s Indus Tower V/s Delhi Cantonment Board is pending in the court of Shri Ajay Garg, Ld. CJ, Patiala House Court, New Dehi. M/s Idea Cellular Limited was installed the telecommunication tower on the roof top of Sr. Sec. School, Jharera, Delhi Cantt on licence basis as approved by the Board vide CBR No. 22 dated 07.2.2003. The permission was given initially for period of three years w.e.f. 27.2.2004. However, the permission was not further extended after 26.2.2007. But M/s Idea Cellular

Limited has failed to remove the telecommunication tower and other equipments from the roof top of CB school, Jharera, Delhi Cantt. As per record available with Revenue Branch, no such agreement is found in the concerned file.

2. Infurtherence to above, this office has demanded an amount of Rs. 8,61,000/- plus interest @ 12% per annum balance amount up to March, 2016 from M/s Idea Cellular Limited. Now, Shri Mahesh Kumar Sharma, Cantonment Legal Advisor has intimated to this office vide his letter dated 18.10.2016 that the matter pending/subjudice before the Court of Sh. Ajay Garg, Ld. CJ, Patiala House Court, New Delhi and further informed that the counsel for the plaintiff Indus Towers has offered to pay an amount worth Rs. 6,00,000/- full & final on account of rental charges for telephone tower installed at the roof top of Jharera School as full & final settlement on account of rent payable by them instead of Rs.8,61,000/- plus interest @ 12% per annum. After payment of the aforesaid offered amount worth Rs. 6,00,000/- as full & final settlement, the plaintiff company will remove telephone tower & other connected equipments lying in the Jharera School complex.

It may be noted that the amount of Rs.8,61,000/- plus interest @ 12% demanded by the office is upto period March, 2016. The Mobile tower ws sealed as the company did not remove tower even after expiry of the lease period. It is also pertinent to mention here that M/s Indus Towers has installed few more mobile tower antennas in Cantonment area without permission of the competent authority thus all such antennas are illegal. Waiver of amount due from the agency will not be in the financial interest of the Board and that M/s Indus Towers should pay rent plus interest upto date. The Board may consider the matter.

Relevant file is placed on the table.

19. SPORTS FACILITIES AT SHEKHAWATI LINES, DELHI CANTT

Reference letter dated 16.11.2016 received from Col(Retd) Narender Chaudhary, Member, Delhi Cantonment Board wherein he has stated that the Board had approved creation of sports facilities vide CBR No.5 dtaed 05.01.2016. He has also stated that the Board is lacking this essential facilities for inter school competitions and promotion of sports activities. He has requested that the work be undertaken on priority out of grants received by the Board for promotion of Secondary education including extra curricular activities. The Board may consider.

Relevant file is placed on the table.

20. PREQUALIFICATION CRITERIA : CENTRAL VIGILANCE COMMISSION GUIDELINES.

As per Central Vigilance Commission guidelines the principles for prequalification criteria to adopted for selection of firms for Civil/ Electrical as contracts under: -

Civil/Electrical works

- (i) Average Annual turnover during last 3 years, ending 31st March of the previous financial year, should be at least 30% of the estimated cost.
- (ii) Experience of having successfully completed similar works during last 7 years ending last day of month previous to the one in which applications are invited should be either of the following:
 - (a) Three similar completed works costing not less that the amount equal to 40% of the estimated cost.
 - (b) Two similar completed works costing not less that the amount equal to 50% of the estimated cost.
 - (c) One similar completed work containing not less than the amount equal to 80% of the estimated cost.
- (iii) Definition of similar works should be clearly defined.

Relevant file is placed on the table.

21. W.P.(C) 8695/2014 & CM APPLs. 20011 & 20012/2014 SAROJ CHABRA Versus DELHI CANTONMENT BOARD

Hon'ble Mr. Justice Manmohan in its order dated 23.09.2016 challenging the sealing orders passed by Chief Executive Officer, Delhi Cantonment in respect of property bearing No.CB-231, Village Naraina, Delhi Cantt under section 249 (1) of Cantonments Act, 2006 passed orders as under:

"Though no appeal lies against the impugned sealing order, yet it is an admitted fact that the petitioners have filed appeals against the demolition orders with the General Officer Commanding-in-Chief, Western Command. Even the compounding applications filed by the petitioners are stated to be pending.

Today, learned counsel for the petitioners assures and undertakes to this court that in the event there is any unauthorized construction or encroachment, the petitioners shall voluntarily remove the same.

Keeping in view the pendency of the appeals and the compounding applications as well as the fact that common issues arise for determination in the demolition appeals as well as the present proceedings, this Court directs the appellate authority, viz. General Officer Commanding-in-Chief, Western Command as well as the Cantonment Board to decide the appeals and the compounding applications within a period of three months.

It is further directed that the appellate authority as well as the Cantonment Board shall decide the appeals and applications filed by the petitioners on merits and shall not dismiss the same on the ground of limitation."

It is pertinent to mention here that the application submitted by the petitioner for composition of illegal construction in compliance to orders passed by Hon'ble High Court of Delhi on 16.03.2016 were considered by the Board and the Board vide its resolution contained in CBR No.20 dated 11.05.2016 had resolved to obtain opinion of ASG, Govt. of India before taking final decision on the application submitted by the petitioner.

Accordingly the opinion of ASG, Govt. of India was obtained by this office which is reproduced hereunder:

OPINION OF SH. SANJAY JAIN, ADDITIONAL SOLICITOR GENERAL OF INDIA

OPINION

Date- 16.09.2016

QUERIST

Office of the Delhi Cantonment Board
Delhi Cantonment – 110010

Through

Anchit Sharma, Advocate

QUERY

1. Whether the view/ opinion of the members of the Querist regarding the sealing of properties being illegal under section 249 of the Cantonments Act, 2006 in absence of Rules describing the manner to implement the said power of sealing, is legally sustainable?

BACKGROUND FACTS (AS PROVIDED BY THE QUERIST)

1. The Querist after completing formalities of issuing notices under the relevant provisions of the Cantonments Act, 2006 sealed certain properties in Naraina,

New Delhi under section 249 of the Cantonments Act, 2006 for unauthorized/ illegal construction.

2. The concerned individuals whose properties were sealed approached the Delhi High Court against the orders of sealing and during the proceedings before the Delhi High Court, the individuals/ petitioners sought permission from the court to approach the Querist for compounding the alleged illegal/ unauthorized construction.
3. The Querist in its meeting dated 11.05.2016 considered the applications of the individuals/ petitioners. A member cited decisions of the Hon'ble High Court of Andra Pradesh at Hyderabad passed in Writ Petition nos. 18838 of 2014, Writ Appeal No.44 of 2013 and writ petition no.25819 of 2012, regarding sealing of the properties being illegal.

DOCUMENTS PROVIDED

1. Letter of request for opinion with broad facts
2. Order dated 09.07.2014 passed in W.P. No.18838 of 2014 by High Court of Andra Pradesh at Hyderabad.
3. Order dated 22.01.2013 passed in Writ Appeal No.44 of 2013 by High Court of Andra Pradesh at Hyderabad.
4. Order dated 12.10.2012 passed in W.P. No.15950 of 2012 by High Court of Andra Pradesh at Hyderabad.

OPINION

1. During the meeting of the members of the Querist dated 11.05.2016, certain members expressed that in their view the *sealing of buildings by the Board under section 249 of the Cantonments act is illegal as the Central Govt. has not published rules for sealing/ de-sealing of the premises so far as provided in the Act.* He further relied on the orders of the Hon'ble High Court at Hyderabad issued in the Wirt Petition nos. 18838 of 2014, Writ Appeal No.44 of 2013 and Writ Petition No.25819 of 2012.
2. Therefore, the challenge to the legality of the sealing undertaken by the Querist is on two counts, namely, a) absence of rules with regard to sealing and de-sealing; b) the grounds taken and reasoning given in the orders passed by the High Court at Hyderabad mentioned above.
3. Section 249 read as follows,

"Section 249 – Power to seal unauthorized constructions

*(1) It shall be lawful for the Chief Executive Officer, any time, before or after making an order of demolition under section 248 or of the stoppage of erection of any building, or execution of any work, to make an order directing the sealing of such erection or work or of the premises in which such erection or work is being carried on or has been completed at the cost of the offender **in such***

manner as may be prescribed by rules for the purpose of carrying out the provisions of this Act or for preventing any dispute as to the nature and extent of such erection or work.

(2) Where any erection or work or any premises in which any erection or work is being carried on, has or, has been sealed, the Chief Executive Officer may, for the purpose of demolishing such erection or work in accordance with the provisions of this Act, order such seal to be removed.

(3) No person shall remove such seal except-

- (a) Under an order made by the Chief Executive Officer under sub-section (2); or
- (b) Under an order of an appellate authority in an appeal made under this Act.

(4) Any person who contravenes the provisions contained in sub-section (3) shall be punishable with imprisonment which may extend to six months or with fine which may extend to twenty thousand rupees, or with both."

4. At the outset, it is pertinent to discuss the legal position with regard to enforceability of a statute in relation to which the Rules have not been framed. The following judgements are useful and relevant for an analysis of the legal question under consideration.

- a. This legal question has been discussed and adjudicated upon by the Hon'ble Apex Court, in the judgment passed in the matter of **Mysore State Road Transport Corporation Vs. Gopinath Gundachar char** [AIR 1968 SC 464] wherein it was held as follow,

*"Bearing in mind this statement of law, let us consider whether the appellant had the power to appoint officers and servant and to lay down their conditions of service in the absence or regulations framed under s. 45(2)(c) of the Road Transport Corporation Act, 1950. The appellant is an autonomous Corporation incorporated under the Act for the purpose of operating road transport services in the State and extended areas. **For the proper discharge of its functions. It is necessary for the Corporation to appoint officers and servants. Section 14(2) expressly confers upon on the Corporation the incidental power to appoint such officers and servants as it considers necessary for the efficient performance of its functions. Section 19(1)(c) empowers it to provide for employees suitable conditions of service. Section 14(3) provides that the conditions of appointment and service and the scales of pay of its officers and servants shall be such as may subject to the provisions of s. 34 be determined by regulations made under the Act.** Section 45(2)(c) empowers the Corporation to frame regulations with the previous sanction of the State Government prescribing the conditions of appointment, service and scales of pay of the officers and servants. If the State Government issues any directions under s. 34 relating to the recruitment and conditions of service of the employees, the Corporation must obey those directions. **The con-joint effect of Section 14(3)(b), 34 and 45(2)(c) is that the appointment of officers and servants and their conditions of service must conform to the directions, if any, given by the State Government under s. 34 and the regulations, if any, framed under s. 45(2)(c). But until such regulations are framed or directions***

are given the Corporation may appoint such officers or servants as may be necessary for the efficient performance of its duties on such terms and conditions as it think fit. There is necessarily a time-lag between the formation of the Corporation and the framing of regulations under s. 45(2)(c). During the intervening period, the Corporation must carry on the administration of its affairs with the help of officers and servants. In the absence of clear words, it is difficult to impute to the legislature the intention that the Corporation would have no power to appoint officers and servants and fix the conditions of service unless the regulation under s. 45(2)(c) are framed."

- b. This point of the law was further discussed and amplified in the judgment in **Surinder Singh v. Central Govt.**, [(1986) 4 SCC667], wherein it was held as follows,

*"6. The High Court has held that the disposal of property forming part of the compensation pool was "subject" to the rules framed as contemplated by Section 8 and 40 of the Act and since no rules had been framed by the Central Government with regard to the disposal of the urban agricultural property forming part of the compensation pool, the authority constituted under the Act had no jurisdiction to dispose of urban agricultural property by auction-sale. Unless rules were framed as contemplated by the Act, according to the High Court the Central Government had no authority in law to issue executive directions for the sale and disposal of urban agricultural property. This view was taken, placing reliance on an earlier decision of a Division Bench of that court in Bishan Singh v. Central Government. The Division Bench in Bishan case took the view that since the disposal of the compensation pool property was subject to the rules that may be made, and as no rules had been framed, the Central Government had no authority in law to issued administrative directions providing for the transfer of the urban agricultural land by auction-sale. **In our opinion the view taken by the High Court is incorrect. Where a statute confers powers on an authority to do certain acts or exercise power in respect of certain matters, subject to rules, the statute expressly provides for the same. In the exercise of power conferred by the statute does not depend on the existence of rules unless the statute expressly provides for the same. In other words framing of the rules is not condition precedent to the exercise of the power expressly and unconditionally conferred by the statute. The expression "subject to the rules" only means, in accordance with the rules, if any. If rules are framed, the powers so conferred on authority could be exercised in accordance with these rules. But if no rules are framed there is no void and the authority is not precluded from exercising the power conferred by the statute."***

- c. The judgment in the matter of U.P. State Electricity Board Lucknow Vs. City Board, Mussoorie and Ors. [1985 SCC (2) 16] again highlighted the above legal position in the following manner,

“The first contention urged before us by the City Board is that in the absence of any regulations framed by the Electricity Board under Section 79 of the Act regarding the principles governing the fixing of Grid Tariffs, it was not open to the Electricity Board to issue the impugned notifications. This contention is based on Sub-Section (1) of Section 46 of the Act which provides that a tariff to be known as the and Tariff shall in accordance with any regulations made in this behalf, be fixed from time to time by the Electricity Board. It is urged that in the absence of any regulations laying down the principles for fixing the tariff, the impugned notifications were void as they had been issued without any guidelines and were, therefore, arbitrary. It is admitted that no such regulations had been made by the Electricity Board by the time the impugned notifications were issued. The Division Bench has negative the above plea and according to us, rightly. It is true that Section 79(h) of the Act authorises the Electricity Board to make regulations laying down the principles governing the fixing of Grid Tariffs. But Section 46(1) of the Act does not say that no Grid Tariff can be fixed until such regulations are made. It only provides that the Grid Tariff shall be in accordance with any regulations made in this behalf. That means that if there were any regulations, the Grid Tariff should be fixed in accordance with such regulations and nothing more. We are of the view that the framing of regulations under, Section 79(h) of the Act cannot be a condition precedent for fixing the Grid Tariff.”

- d. The above decisions of the Hon'ble Supreme Court have been followed and referred to, in the recent decisions rendered by it. In the matter of **Orissa State (Prevention and Control of Pollution) Board Vs. Orient Paper Mills and Anr. [(2003) 10SCC421]**, the Hon'ble Supreme Court evaluated the above question in context of section 19 under Air (Prevention and Control of Pollution) Act, 1981. The relevant extracts from the said judgment are extracted below,

“14. The question for consideration is, as to whether, as long the manner is not prescribed under the Rules for declaration of an area as Air Pollution Control Area, a valid Notification under Section 19 (1) of the Act can be published in the Official Gazette or not.

15. So far the statutory provision is concerned, the Act under Section 19 vests the State Government with power to notify any area, in an official gazette, as Air Pollution Control Area, but to say that exercise of such power is solely dependent upon framing of the rules prescribing the manner in which an area may be declared as air pollution control area, does not seem to be correct. Section 19 of the Act would read as follows by omitting the words “ in such manner as may be prescribed”...

21. In one of the cases decided by this Court, to be referred later in this judgment, “as may be prescribed” has been held to mean that “if any”. It is thus clear that such expression leave the scope for some play for the workability of the provision under law. The meaning of the word “as”

takes colour in context with which it is used and the manner of its use as prefix or suffix etc. There is not rigidity about it and it may have the meaning of a situation of being in existence during a particular time or contingent, and so on and so forth. **That is to say something to happen in a manner, if such a manner is in being or exists, if it does not, it may not happen in that manner. Therefore, the reading of the provision under consideration makes it clear that manner of declaration is to be followed 'as, may be prescribed' i.e. "if any" prescribed.**

22. Thus, in case manner is not prescribed under the Rules, there is not obligation or requirement to follow any, except whatever the provision itself provides viz. Section 19 in the instant case which is also complete in itself even without any manner being prescribed as indicated shortly before to read the provision omitting this part "in such manner as may be prescribed". Merely because of absence of Rules, the State would not be divested of its powers to notify in official gazette any area declaring it to be air pollution control area. In case, however, the Rules have been framed prescribing the manner, undoubtedly the declaration must be in accordance with such rules...

...Once the manner is prescribed under the rules undoubtedly the declaration of the area has to be only in accordance with the manner prescribed but absence of Rules will not render the Act inoperative. The power vested under Section 19 of the Act, would still be exercisable as provided under the provision i.e. by declaring an area as all pollution control area by publication of notification in the official gazette. **Non-framing of Rules does not curtail the power of the State Government to declare any area as air pollution control area by means of a notification published in the official gazette. The part of the provision "in such manner as may be prescribed" would spring into operation only after such manner is prescribed by framing the rules under Section 54(2)(k) of the Act.**

- e. Again, following the earlier precedents, in the case of Jantia Hill Truck Owners Association v. Shailang Area Coal Dealer and Truck Owner Association and others, [(2009) 8 SCC 492], the same issue was adjudicated upon in the context of motor vehicles and the Hon'ble Court held as follow,

*"The provisions of the Act mandate that the unladen weight and laden weight must be determined. Indisputably, weighing devices had to be provided for the said purpose. **It is true that for the said purpose Rules may have to be framed. It is, however, a well settled principle of law that even in a case where the statute provides for certain things to be done, subject to Rules, any action taken without framing the Rules would not render any action invalid. If a statute is workable even without framing of the Rules, the same has to be given effect to. The law itself except in certain situations does not envisage vacuum.**"*

- f. Another important decision in this line of arguments is that given by the Division Bench of Patna High court in the matter of **Pawan Kumar Purbey vs**

The State of Bihar & Ors [LPA no.1564 of 2009 decided on 15 April, 2010]. The judgment authored by the then Chief Justice of Patna High Court, Mr. Justice Deepak Mishra, very aptly elucidates on the workability aspect of a statutory provision in the absence of rules as follows,

*“26. From the aforesaid enunciation of law, it is clear as crystal that **if the provisions of the Act can be given effect to, non-framing of the rules would not vitiate the act. The acid test is the workability of the provisions...**”*

27. On a scrutiny of the scheme of the Act, we are of the considered opinion that it cannot be said that without laying down of the procedure for conduct of business in a special meeting under the rules, the provision as engrafted under Section 25 and 51 of the Act cannot really be effectively carried out. The procedure to be adopted has to be fair. Appreciating the scheme of the Act in entirety, we notice that the Chief Councillor has been empowered to convene a meeting of the Municipality. In fact, Section 48 of the Act adequate guidance and safeguard. It is a well settled proposition of law that a statute has to be read as a whole to understand its object and purpose. On a reading of the provisions in entirety, we are of the considered view that a vote of no confidence can be mooted and carried out without framing of the rules and, hence, the provisions of the statute are workable.”

5. From a perusal of the above judgments, the legal position may be summarized thus,
 - a. Where a statute confers powers on an authority to do certain acts or exercise power in respect of certain matters, subject to rules, the statute expressly provides for the same.
 - b. The use of the phrase in statutory provisions, “as may be prescribed” has been held to mean that “if any”. It is thus clear that such expression leaves the scope for some play for the workability of the provision under law. The part of the provision “in such manner as may be prescribed” would spring into operation only after such manner is prescribed by framing the rules under the Act.
 - c. Even in a case where the statute provides for certain things to be done, subject to Rules, any action taken without framing the Rules would not render any action invalid. If a statute is workable even without framing of the Rules, the same has to be given effect to. The law itself except in certain situations does not envisage vacuum.
 - d. The process followed to give effect to the provision should be fair and just.
6. The above judgments have to be necessarily distinguished from the cases where the courts have held that the statutory powers could not be exercised without the framing of rules, for example, in taxing statutes where the rules were to prescribed the maximum of statutory levy, in which situation the power

of imposing the levy itself was found to be lacking. Reference may be had to the case of Consumer Online Foundation, etc. Vs. Union of India (UOI) and Ors.,etc [2011(5)SCC 360].

7. In context of Section 249 of the Act, which is under consideration, it is pertinent to note that the said provision is to prevent mischief and is in the interest of maintaining discipline in the society by preventing deviations from the bye-laws and building norms. To render such a power un-exercisable for lack of rules, which are supposed to prescribed the procedure, will defeat the purpose of the Act. Further, the provision can be made workable by following the principles of natural justice even when a specific procedure has not been prescribed. However, once rules are framed and a procedure is prescribed then the same shall have to be followed.
8. At this instance, it will be appropriate to analyse the orders passed by the High Court at Hyderabad and evaluate the applicability of those orders in the present facts and circumstances,
 - a. Order dated 09.07.2014 passed in W.P No.18838 of 2014
 - i. The said petition was filed seeking issuance of a writ of mandamus or any other appropriate declaring the action of the Cantonment Board in sealing the petitioner's property for want of a trade licence u/s 277 of the Act, being arbitrary and violative of principles of natural justice and further declare that no trade licence is necessary for the activity of the petitioner.
 - ii. The Hon'ble Court observed that a notice u/s 248(1) of the Act was issued on 25.06.2014, which notice was served on the petitioner on 04.07.2014. While the order u/s 249 of the Act directing sealing of the entire premises of the petitioner under a panchanama was also issued on 05.07.2014. Another notice dated 02.07.2014 was also issued u/s 277 for lack of a trade licence as required under the Act, giving only 48 hours to respond to the said notice. It was further observed that the basic grievance of the petitioners was that at no stage were they heard and permitted to submit any explanation against the proposed action of the respondent.
 - iii. The Hon'ble Court ordered removal of seal from the petitioner's premises while imposing condition on the petitioner not to tamper with the premises while the explanation with respect to the notice issued to them was submitted and considered. Also, the notice issued u/s 277 was stayed.
 - iv. Thus, from a perusal of the above order it emerges that the Hon'ble Court was pleased to issue interim orders keeping in view the fact that the Cantonment Board had issued the order of sealing in a hasty manner and without giving the petitioner any reasonable opportunity to present their case.
 - v. This case is still pending in the Hon'ble High Court at Hyderabad.
 - b. Order dated 22.01.2013 passed in Writ Appeal No.44 of 2013
 - i. The writ petition was filed seeking a writ of mandamus to declare the action of the Cantonment Board of sealing the premises of the petitioners as arbitrary and unsustainable. The case of the petitioner was that against the notice issued

u/s 248 (1) of the Act, they filed an appeal before the Appellate authority under section 340 of the Act. Section 342 of the Act provides for suspension of action, against which an appeal has been filed.

- ii. In view of the Cantonment Board's action of sealing the premises while the appeal was pending, the sealing was held illegal. The appeal was accordingly disposed off.
- iii. The review petition against the said order of the Division bench was also dismissed.
- iv. Therefore, it is clear from the order that the same pertains to the automatic stay of an order passed u/s 248(1) when an appeal has been filed with the appellate board.

c. Order dated 12.10.2012 passed in W.P. No.15950 of 2012

- i. The Hon'ble High Court directed the petitioners to deposit a sum of Rs.5,00,000 before the respondent cantonment board and on such deposit the respondent was directed to open seal and handover the subject property to the petitioners. The said order was made subject to the final outcome of the writ petition.
- ii. From a perusal of the above order no reasoning emerges for granting a conditional stay in favour of the petitioner.

9. From a perusal of the three orders cited by the member of the Querist, the following position is obtained: -

- i. The said order have not taken into account the law as discussed above, which would govern the field in cases, where the Rules though contemplated in the main Act have not been yet framed/ notified.
- ii. The said orders do not take note of the legal position that a power emanating from the statutory provisions of an enactment cannot be constructed as incapable of being exercised for want of the rules and that in all such cases, where guidelines or procedure, which normally the rules would have supplied, the void can be filled up by resorting to a fair procedure and following the principles of natural justice.
- iii. The said orders are merely interim orders.
- iv. None of the orders amounts to a verdict that a municipality is powerless to effect sealing of premises bearing unauthorized construction, merely because the rules have not been framed.

10. Further the legal position with regard to following principles of natural justice as a pre-requisite while sealing a property is very clear. The said legal position has been highlighted in the case of **Ahuja Property Developers (P) LTD. Vs. Municipal Corporation of Delhi** [Manu/de/0485/1990], rendered in the context of section 345A of the Delhi Municipal Corporation Act which is *parimateria* to section 249 of the cantonments Act, as follows,

*“(12) Section 343 provides for orders being passed for demolition of stoppage of building and works inter alias on the ground that they have been completed without or contrary to the sanctioned plan. Section 344 provided for an order being passed stopping the construction of a building or works in certain circumstances. Section 345A, makes a reference to section 343 and section 344 in inter alias provides that action under 345A can be taken for sealing any building before or after making an order of demolition under section 343 or passing an order under section 344. It is clear, therefore, that the action under Section 345A can be taken only if the authorities are satisfied that the condition as mentioned under section 343 & 344 exist. **It is true that under Section 345A, there is no provision for any show cause notice being given before any action is taken by the authorities under that provision. In as much as the sealing of a property may of act civil right we would read into Section 345A, the principles of normal Justice which would required a show cause notice being issued, for however small duration it may be before any action u/s 345A is taken, the respondent should issue a show cause notice and given an opportunity to the builder to explain as to why the property should not be sealed. Though the said notice may be of a short duration. Be that as it may we cannot appreciate the contention of the learned counsel for the petitioner that Section 345A contains arbitrary powers. As we have already observed the said provision is attracted when an order under section 343 or 344 can be made. The order which is to be passed under Section 345 A, is by way of an interim arrangement so that further mischief or damage cannot be done. It is to prevent the use of the building which has been constructed in violation of the law.”***

11. Considering the consequences of an exercise involving sealing a property, it is pertinent that a show cause notice be issued to the individuals concerned so that an adequate opportunity is given to them to represent their case.
12. In view of the above analysis, it is opined that the statutory power under Section 249 can be exercised even in the absence of Rules and the said power should be exercised, following the principles of natural justice in a reasonable manner.
13. I am also informed that property owners have approached the Querist seeking compounding of unauthorized construction. In this regard, it is needless to say that the power of the Querist to compound certain portions of an unauthorized construction within permissible limits, in accordance with building bye-laws applicable to the local area, remains un-eclipsed.

Opinion is rendered accordingly.

Sd/-
Sanjay Jain

As regards issue of disposal of appeal preferred by the petitioner u/s 340 of the Cantonments Act, 2006 is concerned the Cantonment Board is not the competent authority to decide the appeal under the provisions of Cantonments Act, 2006. The competent authority to decide upon appeal is the GOC-in-C, Western Command. As regards issue as to whether the construction undertaken by the petitioner at the demised property can be compounded or not that can only be decided on merits as to whether the construction existing at site false within the ambit of building bye laws notified by the Govt. of India in Gazette notification dated 08.06.2002. As a matter of rule for any composition of illegal construction the applicant is required to submit building plans in the prescribed Performa and with all documents as provided in the building bye laws notified by the Govt. of India. Whereas, the petitioner has submitted a simple request letter for composition of unauthorized construction without any building plans and mandatory certificates/ documents required in this regard. As such the application for composition of unauthorized construction submitted by the petitioner is incomplete and does not satisfy requirement of building bye laws notified by the Govt. of India.

In the absence of any building plan submitted by the petitioner, from the office record, it is seen that Smt. SarojChabra undertook construction on a plot measuring 41' - 4" x 56' - 7" i.e. on a area of plot measuring 2338.45 sqft. or 217.33 sqmt. However as per GPA submitted by the petitioner before the Hon'ble Court alongwith writ the area of demised property i.e. CB-231 has been shown as 175 sq.yd. i.e. 1575 sqft.or 146.37 sqmt.

As per building bye laws notified by Govt. of India, Ministry of Defence dated 08.06.2002 the provisions of set back, FAR & maximum ground coverage permissible is given hereunder: -

TABLE '2'

S. No.	Plot Size (Sq.mt.)	Front	Min Set Back		
			Rear	Side (1)	Side (2)
1.	Upto 60	0	0	0	0
2.	Above 60 and upto 150	3	0	0	0
3.	Above 150 and upto 300	3	3	0	0
4.	Above 300 and upto 500	3	3	3	0
5.	Above 500 and upto 1000	6	3	3	3
6.	Above 1000 and	9	3	3	3

	upto 2000				
7.	Above 2000 and upto 4000	9	6	6	6
8.	Above 4000 and upto 10,000	15	6	6	6
9.	Above 10,000	15	9	9	9

TABLE '3'

Floor Area Ratio

S. No.	Area of Plot (in Sq.mt.)	F.A.R.
1	Below	225
2	Above 32 to 50	225
3	Above 50 to 100	225
4	Above 100 to 250	200
5	Above 250 to 500	150
6	Above 500 to 1000	150
7	Above 1000 to 1500	100
8	Above 1500 to 2250	100
9	Above 2250 to 3000	100
10	Above 3000 to 3750	100
11	Above 3750	100

TABLE '4'

S. No.	Area of Plot (in Sq.mt.)	Maximum Ground Coverage (%)
1	Below	75
2	Above 32 to 50	75
3	Above 50 to 100	75
4	Above 100 to 250	66.66
5	Above 250 to 500	50
6	Above 500 to 1000	40
7	Above 1000 to 1500	33.33
8	Above 1500 to 2250	33.33
9	Above 2250 to 3000	33.33
10	Above 3000 to 3750	33.33
11	Above 3750	33.33

Following observations are brought out:

- i) The petitioner has constructed building on area in excess of area provided in the GPA i.e. as per GPA area of property is 146.37 sqmt. whereas constructed area is 217.33 sqmt.
- ii) As per building bye laws maximum permissible ground coverage is 66.66% whereas the petitioner has not only cover area in full but in excess of area shown in GPA.
- iii) As per building bye laws maximum FAR is 200 whereas the constructed area violates permissible FAR.
- iv) As per building bye laws set back of 3 mtr each are to be left both in the front and rear of the plot whereas petitioner has constructed building without leaving any set backs.
- v) It is further brought out that the petitioner in his various correspondences with the Board dated 27.10.1999, 23.01.2002, 08.08.2003 & 12.11.2007 submitted information about existing construction at demised property comprising of only one tin shed and ground floor for assessment of property tax. Whereas now at site petitioner has constructed three storied building without permission of the competent authority.

The construction existing at site does not comply with the existing building bye laws notified by Govt. of India in Gazette notification dated 08.06.2002.

The Board has issued following notices to the petitioner for unauthorized construction at demised premises:

Sl. No.	Notices issued	Date
1.	Notice u/s 239 (1) of Cantonments Act, 2006.	19.09.2014
2.	Prosecuted u/s 247 of the Cantonments Act, 2006	19.09.2014
3.	Notice u/s 239 (2) & (4) of the Cantonments Act, 2006	06.10.2014
4.	Prosecuted u/s 247 of the Cantonments Act, 2006	06.10.2014
5.	Notice u/s 248 of the Cantonments Act, 2006	20.11.2014
6.	Notice u/s 248 of the Cantonments Act, 2006	20.11.2014

The Board may consider application submitted by the petitioner for composition of the construction at demised premises on merits alongwith factual site report of the Engineering branch.

Relevant file is placed on the table.

ALEXENDER JOHN Versus DELHI CANTONMENT BOARD

Hon'ble Mr. Justice Manmohan in its order dated 23.09.2016 challenging the sealing orders passed by Chief Executive Officer, Delhi Cantonment in respect of property bearing No.CB-165, Village Naraina, Delhi Cantt under section 249 (1) of Cantonments Act, 2006 passed orders as under:

"Though no appeal lies against the impugned sealing order, yet it is an admitted fact that the petitioners have filed appeals against the demolition orders with the General Officer Commanding-in-Chief, Western Command. Even the compounding applications filed by the petitioners are stated to be pending.

Today, learned counsel for the petitioners assures and undertakes to this court that in the event there is any unauthorized construction or encroachment, the petitioners shall voluntarily remove the same.

Keeping in view the pendency of the appeals and the compounding applications as well as the fact that common issues arise for determination in the demolition appeals as well as the present proceedings, this Court directs the appellate authority, viz. General Officer Commanding-in-Chief, Western Command as well as the Cantonment Board to decide the appeals and the compounding applications within a period of three months.

It is further directed that the appellate authority as well as the Cantonment Board shall decide the appeals and applications filed by the petitioners on merits and shall not dismiss the same on the ground of limitation."

It is pertinent to mention here that the application submitted by the petitioner for composition of illegal construction in compliance to orders passed by Hon'ble High Court of Delhi on 16.03.2016 were considered by the Board and the Board vide its resolution contained in CBR No.20 dated 11.05.2016 had resolved to obtain opinion of ASG, Govt. of India before taking final decision on the application submitted by the petitioner.

Accordingly the opinion of ASG, Govt. of India was obtained by this office which is reproduced hereunder:

OPINION OF SH. SANJAY JAIN, ADDITIONAL SOLICITOR GENERAL OF INDIA

OPINION

Date- 16.09.2016

QUERIST

Office of the Delhi Cantonment Board
Delhi Cantonment – 110010

Through

Anchit Sharma, Advocate

QUERY

1. Whether the view/ opinion of the members of the Querist regarding the sealing of properties being illegal under section 249 of the Cantonments Act, 2006 in absence of Rules describing the manner to implement the said power of sealing, is legally sustainable?

BACKGROUND FACTS (AS PROVIDED BY THE QUERIST)

1. The Querist after completing formalities of issuing notices under the relevant provisions of the Cantonments Act, 2006 sealed certain properties in Naraina, New Delhi under section 249 of the Cantonments Act, 2006 for unauthorized/ illegal construction.
2. The concerned individuals whose properties were sealed approached the Delhi High Court against the orders of sealing and during the proceedings before the Delhi High Court, the individuals/ petitioners sought permission from the court to approach the Querist for compounding the alleged illegal/ unauthorized construction.
3. The Querist in its meeting dated 11.05.2016 considered the applications of the individuals/ petitioners. A member cited decisions of the Hon'ble High Court of Andra Pradesh at Hyderabad passed in Writ Petition nos. 18838 of 2014, Writ Appeal No.44 of 2013 and writ petition no.25819 of 2012, regarding sealing of the properties being illegal.

DOCUMENTS PROVIDED

1. Letter of request for opinion with broad facts
2. Order dated 09.07.2014 passed in W.P. No.18838 of 2014 by High Court of Andra Pradesh at Hyderabad.
3. Order dated 22.01.2013 passed in Writ Appeal No.44 of 2013 by High Court of Andra Pradesh at Hyderabad.
4. Order dated 12.10.2012 passed in W.P. No.15950 of 2012 by High Court of Andra Pradesh at Hyderabad.

OPINION

1. During the meeting of the members of the Querist dated 11.05.2016, certain members expressed that in their view the *sealing of buildings by the Board under section 249 of the Cantonments act is illegal as the Central Govt. has not published rules for sealing/ de-sealing of the premises so far as provided in the Act.* He further relied on the orders of the Hon'ble High Court at Hyderabad issued in the Writ Petition nos. 18838 of 2014, Writ Appeal No.44 of 2013 and Writ Petition No.25819 of 2012.
2. Therefore, the challenge to the legality of the sealing undertaken by the Querist is on two counts, namely, a) absence of rules with regard to sealing and de-sealing; b) the grounds taken and reasoning given in the orders passed by the High Court at Hyderabad mentioned above.
3. Section 249 read as follows,

"Section 249 – Power to seal unauthorized constructions

- (1) *It shall be lawful for the Chief Executive Officer, any time, before or after making an order of demolition under section 248 or of the stoppage of erection of any building, or execution of any work, to make an order directing the sealing of such erection or work or of the premises in which such erection or work is being carried on or has been completed at the cost of the offender **in such manner as may be prescribed by rules for the purpose of carrying out the provisions of this Act** or for preventing any dispute as to the nature and extent of such erection or work.*
- (2) *Where any erection or work or any premises in which any erection or work is being carried on, has or, has been sealed, the Chief Executive Officer may, for the purpose of demolishing such erection or work in accordance with the provisions of this Act, order such seal to be removed.*
- (3) *No person shall remove such seal except-*
 - (a) *Under an order made by the Chief Executive Officer under sub-section (2); or*
 - (b) *Under an order of an appellate authority in an appeal made under this Act.*
- (4) *Any person who contravenes the provisions contained in sub-section (3) shall be punishable with imprisonment which may extend to six months or with fine which may extend to twenty thousand rupees, or with both."*
- (4) At the outset, it is pertinent to discuss the legal position with regard to enforceability of a statute in relation to which the Rules have not been framed. The following judgements are useful and relevant for an analysis of the legal question under consideration.

- a. This legal question has been discussed and adjudicated upon by the Hon'ble Apex Court, in the judgment passed in the matter of **Mysore State Road Transport Corporation Vs. Gopinath Gundachar** char [AIR 1968 SC 464] wherein it was held as follow,

*"Bearing in mind this statement of law, let us consider whether the appellant had the power to appoint officers and servant and to lay down their conditions of service in the absence or regulations framed under s. 45(2)(c) of the Road Transport Corporation Act, 1950. The appellant is an autonomous Corporation incorporated under the Act for the purpose of operating road transport services in the State and extended areas. **For the proper discharge of its functions. It is necessary for the Corporation to appoint officers and servants. Section 14(2) expressly confers upon on the Corporation the incidental power to appoint such officers and servants as it considers necessary for the efficient performance of its functions. Section 19(1)(c) empowers it to provide for employees suitable conditions of service. Section 14(3) provides that the conditions of appointment and service and the scales of pay of its officers and servants shall be such as may subject to the provisions of s. 34 be determined by regulations made under the Act.** Section 45(2)(c) empowers the Corporation to frame regulations with the previous sanction of the State Government prescribing the conditions of appointment, service and scales of pay of the officers and servants. If the State Government issues any directions under s. 34 relating to the recruitment and conditions of service of the employees, the Corporation must obey those directions. **The con-joint effect of Section 14(3)(b), 34 and 45(2)(c) is that the appointment of officers and servants and their conditions of service must conform to the directions, if any, given by the State Government under s. 34 and the regulations, if any, framed under s. 45(2)(c). But until such regulations are framed or directions are given the Corporation may appoint such officers or servants as may be necessary for the efficient performance of its duties on such terms and conditions as it think fit. There is necessarily a time-lag between the formation of the Corporation and the framing of regulations under s. 45(2)(c). During the intervening period, the Corporation must carry on the administration of is affairs with the help of officers and servants. In the absence of clear words, it is difficult to impute to the legislature the intention that the Corporation would have no power to appoint officers and servants and fix the conditions of service unless the regulation under s. 45(2)(c) are framed.**"*

- b. This point of the law was further discussed and amplified in the judgment in **Surinder Singh v. Central Govt.**, [(1986) 4 SCC667], wherein it was held as follows,

*“6. The High Court has held that the disposal of property forming part of the compensation pool was “subject” to the rules framed as contemplated by Section 8 and 40 of the Act and since no rules had been framed by the Central Government with regard to the disposal of the urban agricultural property forming part of the compensation pool, the authority constituted under the Act had no jurisdiction to dispose of urban agricultural property by auction-sale. Unless rules were framed as contemplated by the Act, according to the High Court the Central Government had no authority in law to issue executive directions for the sale and disposal of urban agricultural property. This view was taken, placing reliance on an earlier decision of a Division Bench of that court in Bishan Singh v. Central Government. The Division Bench in Bishan case took the view that since the disposal of the compensation pool property was subject to the rules that may be made, and as no rules had been framed, the Central Government had no authority in law to issued administrative directions providing for the transfer of the urban agricultural land by auction-sale. **In our opinion the view taken by the High Court is incorrect. Where a statute confers powers on an authority to do certain acts or exercise power in respect of certain matters, subject to rules, the statute expressly provides for the same. In the exercise of power conferred by the statute does not depend on the existence of rules unless the statute expressly provides for the same. In other words framing of the rules is not condition precedent to the exercise of the power expressly and unconditionally conferred by the statute. The expression “subject to the rules” only means, in accordance with the rules, if any. If rules are framed, the powers so conferred on authority could be exercised in accordance with these rules. But if no rules are framed there is no void and the authority is not precluded from exercising the power conferred by the statute.”***

- c. The judgment in the matter of U.P. State Electricity Board Lucknow Vs. City Board, Mussoorie and Ors. [1985 SCC (2) 16] again highlighted the above legal position in the following manner,

“The first contention urged before us by the City Board is that in the absence of any regulations framed by the Electricity Board under Section 79 of the Act regarding the principles governing the fixing of Grid Tariffs, it was not open to the Electricity Board to issue the impugned notifications. This contention is based on Sub-Section (1) of Section 46 of the Act which provides that a tariff to be known as the and Tariff shall in accordance with any regulations made in this behalf, be fixed from time to time by the Electricity Board. It is urged that in the absence of any regulations laying down the principles for fixing the tariff, the impugned notifications were void as they had been issued without any guidelines and were, therefore, arbitrary. It is admitted that no such regulations had been made by the Electricity Board by the time the impugned notifications were issued. The Division Bench has negative the above plea and according to us, rightly. It is true that Section 79(h) of the Act authorises the Electricity Board to make regulations laying down the principles governing the fixing of Grid Tariffs. But Section 46(1) of the Act does not say that no Grid

Tariff can be fixed until such regulations are made. It only provides that the Grid Tariff shall be in accordance with any regulations made in this behalf. That means that if there were any regulations, the Grid Tariff should be fixed in accordance with such regulations and nothing more. We are of the view that the framing of regulations under, Section 79(h) of the Act cannot be a condition precedent for fixing the Grid Tariff."

- d. The above decisions of the Hon'ble Supreme Court have been followed and referred to, in the recent decisions rendered by it. In the matter of **Orissa State (Prevention and Control of Pollution) Board Vs. Orient Paper Mills and Anr. [(2003) 10SCC421]**, the Hon'ble Supreme Court evaluated the above question in context of section 19 under Air (Prevention and Control of Pollution) Act, 1981. The relevant extracts from the said judgment are extracted below,

"14. The question for consideration is, as to whether, as long the manner is not prescribed under the Rules for declaration of an area as Air Pollution Control Area, a valid Notification under Section 19 (1) of the Act can be published in the Official Gazette or not.

15. So far the statutory provision is concerned, the Act under Section 19 vests the State Government with power to notify any area, in an official gazette, as Air Pollution Control Area, but to say that exercise of such power is solely dependent upon framing of the rules prescribing the manner in which an area may be declared as air pollution control area, does not seem to be correct. Section 19 of the Act would read as follows by omitting the words " in such manner as may be prescribed"...

*21. In one of the cases decided by this Court, to be referred later in this judgment, **"as may be prescribed" has been held to mean that "if any". It is thus clear that such expression leave the scope for some play for the workability of the provision under law.** The meaning of the word "as" takes colour in context with which it is used and the manner of its use as prefix or suffix etc. There is not rigidity about it and it may have the meaning of a situation of being in existence during a particular time or contingent, and so on and so forth. **That is to say something to happen in a manner, if such a manner is in being or exists, if it does not, it may not happen in that manner. Therefore, the reading of the provision under consideration makes it clear that manner of declaration is to be followed 'as, may be prescribed' i.e. "if any" prescribed.***

22. Thus, in case manner is not prescribed under the Rules, there is not obligation or requirement to follow any, except whatever the provision itself provides viz. Section 19 in the instant case which is also complete in itself even without any manner being prescribed as indicated shortly before to read the provision omitting this part "in such manner as may be prescribed". Merely because of absence of Rules, the State would not be divested of its powers to

notify in official gazette any area declaring it to be air pollution control area. In case, however, the Rules have been framed prescribing the manner, undoubtedly the declaration must be in accordance with such rules...

...Once the manner is prescribed under the rules undoubtedly the declaration of the area has to be only in accordance with the manner prescribed but absence of Rules will not render the Act inoperative. The power vested under Section 19 of the Act, would still be exercisable as provided under the provision i.e. by declaring an area as air pollution control area by publication of notification in the official gazette. **Non-framing of Rules does not curtail the power of the State Government to declare any area as air pollution control area by means of a notification published in the official gazette. The part of the provision "in such manner as may be prescribed" would spring into operation only after such manner is prescribed by framing the rules under Section 54(2)(k) of the Act.**

- e. Again, following the earlier precedents, in the case of Jantia Hill Truck Owners Association v. Shailang Area Coal Dealer and Truck Owner Association and others, [(2009) 8 SCC 492], the same issue was adjudicated upon in the context of motor vehicles and the Hon'ble Court held as follow,

*"The provisions of the Act mandate that the unladen weight and laden weight must be determined. Indisputably, weighing devices had to be provided for the said purpose. **It is true that for the said purpose Rules may have to be framed. It is, however, a well settled principle of law that even in a case where the statute provides for certain things to be done, subject to Rules, any action taken without framing the Rules would not render any action invalid. If a statute is workable even without framing of the Rules, the same has to be given effect to. The law itself except in certain situations does not envisage vacuum.**"*

- f. Another important decision in this line of arguments is that given by the Division Bench of Patna High court in the matter of **Pawan Kumar Purbey vs The State of Bihar &Ors [LPA no.1564 of 2009 decided on 15 April, 2010]**. The judgment authored by the then Chief Justice of Patna High Court, Mr. Justice Deepak Mishra, very aptly elucidates on the workability aspect of a statutory provision in the absence of rules as follows,

*"26. From the aforesaid enunciation of law, it is clear as crystal that **if the provisions of the Act can be given effect to, non-framing of the rules would not vitiate the act. The acid test is the workability of the provisions...**"*

27. On a scrutiny of the scheme of the Act, we are of the considered opinion that it cannot be said that without laying down of the procedure for conduct of business in a special meeting under the rules, the provision as engrafted under Section 25 and 51 of the Act cannot really be effectively carried out. The procedure to be adopted has to be fair. Appreciating the scheme of the Act in

entirety, we notice that the Chief Councillor has been empowered to convene a meeting of the Municipality. In fact, Section 48 of the Act adequate guidance and safeguard. It is a well settled proposition of law that a statute has to be read as a whole to understand its object and purpose. On a reading of the provisions in entirety, we are of the considered view that a vote of no confidence can be mooted and carried out without framing of the rules and, hence, the provisions of the statute are workable."

5. From a perusal of the above judgments, the legal position may be summarized thus,
 - a. Where a statute confers powers on an authority to do certain acts or exercise power in respect of certain matters, subject to rules, the statute expressly provides for the same.
 - b. The use of the phrase in statutory provisions, "as may be prescribed" has been held to mean that "if any". It is thus clear that such expression leaves the scope for some play for the workability of the provision under law. The part of the provision "in such manner as may be prescribed" would spring into operation only after such manner is prescribed by framing the rules under the Act.
 - c. Even in a case where the statute provides for certain things to be done, subject to Rules, any action taken without framing the Rules would not render any action invalid. If a statute is workable even without framing of the Rules, the same has to be given effect to. The law itself except in certain situations does not envisage vacuum.
 - d. The process followed to give effect to the provision should be fair and just.
6. The above judgments have to be necessarily distinguished from the cases where the courts have held that the statutory powers could not be exercised without the framing of rules, for example, in taxing statutes where the rules were to prescribed the maximum of statutory levy, in which situation the power of imposing the levy itself was found to be lacking. Reference may be had to the case of Consumer Online Foundation, etc. Vs. Union of India (UOI) and Ors., etc [2011(5)SCC 360].
7. In context of Section 249 of the Act, which is under consideration, it is pertinent to note that the said provision is to prevent mischief and is in the interest of maintaining discipline in the society by preventing deviations from the bye-laws and building norms. To render such a power un-exercisable for lack of rules, which are supposed to prescribed the procedure, will defeat the purpose of the Act. Further, the provision can be made workable by following the principles of natural justice even when a specific procedure has not been prescribed. However, once rules are framed and a procedure is prescribed then the same shall have to be followed.

8. At this instance, it will be appropriate to analyse the orders passed by the High Court at Hyderabad and evaluate the applicability of those orders in the present facts and circumstances,

- a. Order dated 09.07.2014 passed in W.P No.18838 of 2014
 - i. The said petition was filed seeking issuance of a writ of mandamus or any other appropriate declaring the action of the Cantonment Board in sealing the petitioner's property for want of a trade licence u/s 277 of the Act, being arbitrary and violative of principles of natural justice and further declare that no trade licence is necessary for the activity of the petitioner.
 - ii. The Hon'ble Court observed that a notice u/s 248(1) of the Act was issued on 25.06.2014, which notice was served on the petitioner on 04.07.2014. While the order u/s 249 of the Act directing sealing of the entire premises of the petitioner under a panchanama was also issued on 05.07.2014. Another notice dated 02.07.2014 was also issued u/s 277 for lack of a trade licence as required under the Act, giving only 48 hours to respond to the said notice. It was further observed that the basic grievance of the petitioners was that at no stage were they heard and permitted to submit any explanation against the proposed action of the respondent.
 - iii. The Hon'ble Court ordered removal of seal from the petitioner's premises while imposing condition on the petitioner not to tamper with the premises while the explanation with respect to the notice issued to them was submitted and considered. Also, the notice issued u/s 277 was stayed.
 - iv. Thus, from a perusal of the above order it emerges that the Hon'ble Court was pleased to issue interim orders keeping in view the fact that the Cantonment Board had issued the order of sealing in a hasty manner and without giving the petitioner any reasonable opportunity to present their case.
 - v. This case is still pending in the Hon'ble High Court at Hyderabad.
- b. Order dated 22.01.2013 passed in Writ Appeal No.44 of 2013
 - i. The writ petition was filed seeking a writ of mandamus to declare the action of the Cantonment Board of sealing the premises of the petitioners as arbitrary and unsustainable. The case of the petitioner was that against the notice issued u/s 248 (1) of the Act, they filed an appeal before the Appellate authority under section 340 of the Act. Section 342 of the Act provides for suspension of action, against which an appeal has been filed.
 - ii. In view of the Cantonment Board's action of sealing the premises while the appeal was pending, the sealing was held illegal. The appeal was accordingly disposed off.
 - iii. The review petition against the said order of the Division bench was also dismissed.
 - iv. Therefore, it is clear from the order that the same pertains to the automatic stay of an order passed u/s 248(1) when an appeal has been filed with the appellate board.

- c. Order dated 12.10.2012 passed in W.P. No.15950 of 2012
- i. The Hon'ble High Court directed the petitioners to deposit a sum of Rs.5,00,000 before the respondent cantonment board and on such deposit the respondent was directed to open seal and handover the subject property to the petitioners. The said order was made subject to the final outcome of the writ petition.
 - ii. From a perusal of the above order no reasoning emerges for granting a conditional stay in favour of the petitioner.
9. From a perusal of the three orders cited by the member of the Querist, the following position is obtained: -
- i. The said order have not taken into account the law as discussed above, which would govern the field in cases, where the Rules though contemplated in the main Act have not been yet framed/ notified.
 - ii. The said orders do not take note of the legal position that a power emanating from the statutory provisions of an enactment cannot be constructed as incapable of being exercised for want of the rules and that in all such cases, where guidelines or procedure, which normally the rules would have supplied, the void can be filled up by resorting to a fair procedure and following the principles of natural justice.
 - iii. The said orders are merely interim orders.
 - iv. None of the orders amounts to a verdict that a municipality is powerless to effect sealing of premises bearing unauthorized construction, merely because the rules have not been framed.
10. Further the legal position with regard to following principles of natural justice as a pre-requisite while sealing a property is very clear. The said legal position has been highlighted in the case of **Ahuja Property Developers (P) LTd. Vs. Municipal Corporation of Delhi** [Manu/de/0485/1990], rendered in the context of section 345A of the Delhi Municipal Corporation Act which is *parimateria* to section 249 of the cantonments Act, as follows,

*“(12) Section 343 provides for orders being passed for demolition of stoppage of building and works inter alias on the ground that they have been completed without or contrary to the sanctioned plan. Section 344 provided for an order being passed stopping the construction of a building or works in certain circumstances. Section 345A, makes a reference to section 343 and section 344 in inter alias provides that action under 345A can be taken for sealing any building before or after making an order of demolition under section 343 or passing an order under section 344. It is clear, therefore, that the action under Section 345A can be taken only if the authorities are satisfied that the condition as mentioned under section 343 & 344 exist. **It is true that under Section***

345A, there is no provision for any show cause notice being given before any action is taken by the authorities under that provision. In as much as the sealing of a property may of act civil right we would read into Section 345A, the principles of normal Justice which would required a show cause notice being issued, for however small duration it may be before any action u/s 345A is taken, the respondent should issue a show cause notice and given an opportunity to the builder to explain as to why the property should not be sealed. Though the said notice may be of a short duration. Be that as it may we cannot appreciate the contention of the learned counsel for the petitioner that Section 345A contains arbitrary powers. As we have already observed the said provision is attracted when an order under section 343 or 344 can be made. The order which is to be passed under Section 345 A, is by way of an interim arrangement so that further mischief or damage cannot be done. It is to prevent the use of the building which has been constructed in violation of the law."

11. Considering the consequences of an exercise involving sealing a property, it is pertinent that a show cause notice be issued to the individuals concerned so that an adequate opportunity is given to them to represent their case.
12. In view of the above analysis, it is opined that the statutory power under Section 249 can be exercised even in the absence of Rules and the said power should be exercised, following the principles of natural justice in a reasonable manner.
13. I am also informed that property owners have approached the Querist seeking compounding of unauthorized construction. In this regard, it is needless to say that the power of the Querist to compound certain portions of an unauthorized construction within permissible limits, in accordance with building bye-laws applicable to the local area, remains un-eclipsed.

Opinion is rendered accordingly.

Sd/-
Sanjay Jain

As regards issue of disposal of appeal preferred by the petitioner u/s 340 of the Cantonments Act, 2006 is concerned the Cantonment Board is not the competent authority to decide the appeal under the provisions of Cantonments Act, 2006. The competent authority to decide upon appeal is the GOC-in-C, Western Command. As regards issue as to whether the construction undertaken by the petitioner at the demised property can be compounded or not that can only be decided on merits as to whether the construction existing at site false within the ambit of building bye laws notified by the Govt. of India in Gazette notification dated 08.06.2002. As a matter of rule for any composition of illegal construction the applicant is

required to submit building plans in the prescribed Performa and with all documents as provided in the building bye laws notified by the Govt. of India. Whereas, the petitioner has submitted a simple request letter for composition of unauthorized construction without any building plans and mandatory certificates/ documents required in this regard. As such the application for composition of unauthorized construction submitted by the petitioner is incomplete and does not satisfy requirement of building bye laws notified by the Govt. of India.

In the absence of any building plan submitted by the petitioner, from the office record, it is seen that Sh. Alexender John undertook construction on a plot measuring 36' - 6" x 30' - 3" plus 36' - 3" x 22' - 0" x ½ i.e. on a area of plot measuring 1505.625 sqft. or 139.93 sqmt.

As per building bye laws notified by Govt. of India, Ministry of Defence dated 08.06.2002 the provisions of set back, FAR & maximum ground coverage permissible is given hereunder: -

TABLE '2'

S. No.	Plot Size (Sq.mt.)	Front	Min Set Back		
			Rear	Side (1)	Side (2)
1.	Upto 60	0	0	0	0
2.	Above 60 and upto 150	3	0	0	0
3.	Above 150 and upto 300	3	3	0	0
4.	Above 300 and upto 500	3	3	3	0
5.	Above 500 and upto 1000	6	3	3	3
6.	Above 1000 and upto 2000	9	3	3	3
7.	Above 2000 and upto 4000	9	6	6	6
8.	Above 4000 and upto 10,000	15	6	6	6
9.	Above 10,000	15	9	9	9

TABLE '3'

Floor Area Ratio

S. No.	Area of Plot	F.A.R.
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	(in Sq.mt.)	
1	Below	225
2	Above 32 to 50	225
3	Above 50 to 100	225
4	Above 100 to 250	200
5	Above 250 to 500	150
6	Above 500 to 1000	150
7	Above 1000 to 1500	100
8	Above 1500 to 2250	100
9	Above 2250 to 3000	100
10	Above 3000 to 3750	100
11	Above 3750	100

TABLE '4'

S. No.	Area of Plot (in Sq.mt.)	Maximum Ground Coverage (%)
1	Below	75
2	Above 32 to 50	75
3	Above 50 to 100	75
4	Above 100 to 250	66.66
5	Above 250 to 500	50
6	Above 500 to 1000	40
7	Above 1000 to 1500	33.33
8	Above 1500 to 2250	33.33
9	Above 2250 to 3000	33.33
10	Above 3000 to 3750	33.33
11	Above 3750	33.33

Following observations are brought out:

- i) As per building bye laws maximum permissible ground coverage is 66.66% whereas the petitioner has covered area in full in violation of permissible ground coverage.
- ii) As per building bye laws maximum FAR is 200 whereas the constructed area violates permissible FAR.
- iii) As per building bye laws set back of 3 mtr in the front of the plot was required free of construction whereas the petitioner has constructed building without leaving any set back.
- iv) It is further brought out that the petitioner in his various correspondences with the Board dated 28.06.1985, 22.10.1999, 27.08.2003, 19.07.2004, 29.10.2007 & 28.02.2011 submitted information about existing construction at demised property comprising of only ground floor construction for assessment of

property tax. Whereas now at site petitioner has constructed three storied building without permission of the competent authority.

- v) Further the petitioner pleaded guilty of offence before Sh. Vikram, Hon'ble Presiding Judge, LokAdalat, in respect of prosecutions launched against the petitioner against unauthorized construction under section 247 of the Cantonments Act, 2006 in respect of JE's report dated 09.04.2014, 06.05.2014 & 26.05.2014. In view of the petitioner pleading guilty the petitioner was convicted and sentenced to pay a cost of Rs.1000/- in each case for demolition of illegal construction. The petitioner deposited cost of demolition pronounced by the Court.

The construction existing at site does not comply with the existing building bye laws notified by Govt. of India in Gazette notification dated 08.06.2002.

The Board has issued following notices to the petitioner for unauthorized construction at demised premises:

Sl. No.	Notices issued	Date
1.	Notice u/s 239 (1) of Cantonments Act, 2006.	09.04.2014
2.	Prosecuted u/s 247 of the Cantonments Act, 2006	09.04.2014
3.	Notice u/s 239 (2) & (4) of the Cantonments Act, 2006	19.05.2014
4.	Prosecuted u/s 247 of the Cantonments Act, 2006	19.05.2014
5.	Notice u/s 239 (2) & (4) of the Cantonments Act, 2006	26.05.2014
6.	Prosecuted u/s 247 of the Cantonments Act, 2006	26.05.2014
7.	Notice u/s 239 (2) & (4) of the Cantonments Act, 2006	23.06.2014
8.	Prosecuted u/s 247 of the Cantonments Act, 2006	23.06.2014
9.	Notice u/s 248 of the Cantonments Act, 2006	27.08.2014
10.	Notice u/s 248 of the Cantonments Act, 2006	27.08.2014
11.	Notice u/s 248 of the Cantonments Act, 2006	27.08.2014
12.	Notice u/s 248 of the Cantonments Act, 2006	27.08.2014
13.	Notice u/s 239 (2) & (4) of the Cantonments Act, 2006	27.08.2014
14.	Prosecuted u/s 247 of the Cantonments Act, 2006	27.08.2014
15.	Notice u/s 248 of the Cantonments Act, 2006	24.09.2014

The Board may consider application submitted by the petitioner for composition of the construction at demised premises on merits alongwith factual site report of the Engineering branch.

Relevant file is placed on the table.

**23. W.P.(C) 9362/2014 & CM APPLs. 21167/014 & 3576/2015
MANISH SARPAL Versus DELHI CANTONMENT BOARD**

Hon'ble Mr. Justice Manmohan in its order dated 23.09.2016 challenging the sealing orders passed by Chief Executive Officer, Delhi Cantonment in respect of property bearing No.CB-390-1/2/3, Village Naraina, Delhi Cantt under section 249 (1) of Cantonments Act, 2006 passed orders as under:

"Though no appeal lies against the impugned sealing order, yet it is an admitted fact that the petitioners have filed appeals against the demolition orders with the General Officer Commanding-in-Chief, Western Command. Even the compounding applications filed by the petitioners are stated to be pending.

Today, learned counsel for the petitioners assures and undertakes to this court that in the event there is any unauthorized construction or encroachment, the petitioners shall voluntarily remove the same.

Keeping in view the pendency of the appeals and the compounding applications as well as the fact that common issues arise for determination in the demolition appeals as well as the present proceedings, this Court directs the appellate authority, viz. General Officer Commanding-in-Chief, Western Command as well as the Cantonment Board to decide the appeals and the compounding applications within a period of three months.

It is further directed that the appellate authority as well as the Cantonment Board shall decide the appeals and applications filed by the petitioners on merits and shall not dismiss the same on the ground of limitation."

It is pertinent to mention here that the application submitted by the petitioner for composition of illegal construction in compliance to orders passed by Hon'ble High Court of Delhi on 16.03.2016 were considered by the Board and the Board vide its resolution contained in CBR No.20 dated 11.05.2016 had resolved to obtain opinion of ASG, Govt. of India before taking final decision on the application submitted by the petitioner.

Accordingly the opinion of ASG, Govt. of India was obtained by this office which is reproduced hereunder:

OPINION OF SH. SANJAY JAIN, ADDITIONAL SOLICITOR GENERAL OF INDIA

OPINION

Date- 16.09.2016

QUERIST

Office of the Delhi Cantonment Board
Delhi Cantonment – 110010

Through

Anchit Sharma, Advocate

QUERY

1. Whether the view/ opinion of the members of the Querist regarding the sealing of properties being illegal under section 249 of the Cantonments Act, 2006 in absence of Rules describing the manner to implement the said power of sealing, is legally sustainable?

BACKGROUND FACTS (AS PROVIDED BY THE QUERIST)

1. The Querist after completing formalities of issuing notices under the relevant provisions of the Cantonments Act, 2006 sealed certain properties in Naraina, New Delhi under section 249 of the Cantonments Act, 2006 for unauthorized/ illegal construction.
2. The concerned individuals whose properties were sealed approached the Delhi High Court against the orders of sealing and during the proceedings before the Delhi High Court, the individuals/ petitioners sought permission from the court to approach the Querist for compounding the alleged illegal/ unauthorized construction.
3. The Querist in its meeting dated 11.05.2016 considered the applications of the individuals/ petitioners. A member cited decisions of the Hon'ble High Court of Andhra Pradesh at Hyderabad passed in Writ Petition nos. 18838 of 2014, Writ Appeal No.44 of 2013 and writ petition no.25819 of 2012, regarding sealing of the properties being illegal.

DOCUMENTS PROVIDED

1. Letter of request for opinion with broad facts
2. Order dated 09.07.2014 passed in W.P. No.18838 of 2014 by High Court of Andhra Pradesh at Hyderabad.
3. Order dated 22.01.2013 passed in Writ Appeal No.44 of 2013 by High Court of Andhra Pradesh at Hyderabad.
4. Order dated 12.10.2012 passed in W.P. No.15950 of 2012 by High Court of Andhra Pradesh at Hyderabad.

OPINION

1. During the meeting of the members of the Querist dated 11.05.2016, certain members expressed that in their view the *sealing of buildings by the Board under section 249 of the Cantonments act is illegal as the*

Central Govt. has not published rules for sealing/ de-sealing of the premises so far as provided in the Act. He further relied on the orders of the Hon'ble High Court at Hyderabad issued in the Writ Petition nos. 18838 of 2014, Writ Appeal No.44 of 2013 and Writ Petition No.25819 of 2012.

2. Therefore, the challenge to the legality of the sealing undertaken by the Querist is on two counts, namely, a) absence of rules with regard to sealing and de-sealing; b) the grounds taken and reasoning given in the orders passed by the High Court at Hyderabad mentioned above.

3. Section 249 read as follows,

"Section 249 – Power to seal unauthorized constructions

(1) *It shall be lawful for the Chief Executive Officer, any time, before or after making an order of demolition under section 248 or of the stoppage of erection of any building, or execution of any work, to make an order directing the sealing of such erection or work or of the premises in which such erection or work is being carried on or has been completed at the cost of the offender **in such manner as may be prescribed by rules for the purpose of carrying out the provisions of this Act** or for preventing any dispute as to the nature and extent of such erection or work.*

(2) *Where any erection or work or any premises in which any erection or work is being carried on, has or, has been sealed, the Chief Executive Officer may, for the purpose of demolishing such erection or work in accordance with the provisions of this Act, order such seal to be removed.*

(3) *No person shall remove such seal except-*

a) *Under an order made by the Chief Executive Officer under sub-section (2); or*

b) *Under an order of an appellate authority in an appeal made under this Act.*

(4) *Any person who contravenes the provisions contained in sub-section (3) shall be punishable with imprisonment which may extend to six months or with fine which may extend to twenty thousand rupees, or with both."*

(4) At the outset, it is pertinent to discuss the legal position with regard to enforceability of a statute in relation to which the Rules have not been framed. The following judgements are useful and relevant for an analysis of the legal question under consideration.

a. This legal question has been discussed and adjudicated upon by the Hon'ble Apex Court, in the judgment passed in the matter of **Mysore State Road Transport Corporation Vs. Gopinath Gundachar char** [AIR 1968 SC 464] wherein it was held as follow,

*“Bearing in mind this statement of law, let us consider whether the appellant had the power to appoint officers and servant and to lay down their conditions of service in the absence or regulations framed under s. 45(2)(c) of the Road Transport Corporation Act, 1950. The appellant is an autonomous Corporation incorporated under the Act for the purpose of operating road transport services in the State and extended areas. **For the proper discharge of its functions. It is necessary for the Corporation to appoint officers and servants. Section 14(2) expressly confers upon on the Corporation the incidental power to appoint such officers and servants as it considers necessary for the efficient performance of its functions. Section 19(1)(c) empowers it to provide for employees suitable conditions of service. Section 14(3) provides that the conditions of appointment and service and the scales of pay of its officers and servants shall be such as may subject to the provisions of s. 34 be determined by regulations made under the Act.** Section 45(2)(c) empowers the Corporation to frame regulations with the previous sanction of the State Government prescribing the conditions of appointment, service and scales of pay of the officers and servants. If the State Government issues any directions under s. 34 relating to the recruitment and conditions of service of the employees, the Corporation must obey those directions. **The con-joint effect of Section 14(3)(b), 34 and 45(2)(c) is that the appointment of officers and servants and their conditions of service must conform to the directions, if any, given by the State Government under s. 34 and the regulations, if any, framed under s. 45(2)(c). But until such regulations are framed or directions are given the Corporation may appoint such officers or servants as may be necessary for the efficient performance of its duties on such terms and conditions as it think fit. There is necessarily a time-lag between the formation of the Corporation and the framing of regulations under s. 45(2)(c). During the intervening period, the Corporation must carry on the administration of is affairs with the help of officers and servants. In the absence of clear words, it is difficult to impute to the legislature the intention that the Corporation would have no power to appoint officers and servants and fix the conditions of service unless the regulation under s. 45(2)(c) are framed.**”*

- b. This point of the law was further discussed and amplified in the judgment in **Surinder Singh v. Central Govt.**, [(1986) 4 SCC667], wherein it was held as follows,

“6. The High Court has held that the disposal of property forming part of the compensation pool was “subject” to the rules framed as contemplated by Section 8 and 40 of the Act and since no rules had been framed by the Central Government with regard to the disposal of the urban agricultural property forming part of the compensation pool, the authority constituted

*under the Act had no jurisdiction to dispose of urban agricultural property by auction-sale. Unless rules were framed as contemplated by the Act, according to the High Court the Central Government had no authority in law to issue executive directions for the sale and disposal of urban agricultural property. This view was taken, placing reliance on an earlier decision of a Division Bench of that court in Bishan Singh v. Central Government. The Division Bench in Bishan case took the view that since the disposal of the compensation pool property was subject to the rules that may be made, and as no rules had been framed, the Central Government had no authority in law to issued administrative directions providing for the transfer of the urban agricultural land by auction-sale. **In our opinion the view taken by the High Court is incorrect. Where a statute confers powers on an authority to do certain acts or exercise power in respect of certain matters, subject to rules, the statute expressly provides for the same. In the exercise of power conferred by the statute does not depend on the existence of rules unless the statute expressly provides for the same. In other words framing of the rules is not condition precedent to the exercise of the power expressly and unconditionally conferred by the statute. The expression "subject to the rules" only means, in accordance with the rules, if any. If rules are framed, the powers so conferred on authority could be exercised in accordance with these rules. But if no rules are framed there is no void and the authority is not precluded from exercising the power conferred by the statute.***

- c. The judgment in the matter of U.P. State Electricity Board Lucknow Vs. City Board, Mussoorie and Ors. [1985 SCC (2) 16] again highlighted the above legal position in the following manner,

"The first contention urged before us by the City Board is that in the absence of any regulations framed by the Electricity Board under Section 79 of the Act regarding the principles governing the fixing of Grid Tariffs, it was not open to the Electricity Board to issue the impugned notifications. This contention is based on Sub-Section (1) of Section 46 of the Act which provides that a tariff to be known as the and Tariff shall in accordance with any regulations made in this behalf, be fixed from time to time by the Electricity Board. It is urged that in the absence of any regulations laying down the principles for fixing the tariff, the impugned notifications were void as they had been issued without any guidelines and were, therefore, arbitrary. It is admitted that no such regulations had been made by the Electricity Board by the time the impugned notifications were issued. The Division Bench has negative the above plea and according to us, rightly. It is true that Section 79(h) of the Act authorises the Electricity Board to make regulations laying down the principles governing the fixing of Grid Tariffs. But Section 46(1) of the Act does not say that no Grid Tariff can be fixed until such regulations are made. It only provides that the Grid Tariff shall be in accordance with

any regulations made in this behalf. That means that if there were any regulations, the Grid Tariff should be fixed in accordance with such regulations and nothing more. We are of the view that the framing of regulations under, Section 79(h) of the Act cannot be a condition precedent for fixing the Grid Tariff."

- d. The above decisions of the Hon'ble Supreme Court have been followed and referred to, in the recent decisions rendered by it. In the matter of **Orissa State (Prevention and Control of Pollution) Board Vs. Orient Paper Mills and Anr. [(2003) 10SCC421]**, the Hon'ble Supreme Court evaluated the above question in context of section 19 under Air (Prevention and Control of Pollution) Act, 1981. The relevant extracts from the said judgment are extracted below,

"14. The question for consideration is, as to whether, as long the manner is not prescribed under the Rules for declaration of an area as Air Pollution Control Area, a valid Notification under Section 19 (1) of the Act can be published in the Official Gazette or not.

15. So far the statutory provision is concerned, the Act under Section 19 vests the State Government with power to notify any area, in an official gazette, as Air Pollution Control Area, but to say that exercise of such power is solely dependent upon framing of the rules prescribing the manner in which an area may be declared as air pollution control area, does not seem to be correct. Section 19 of the Act would read as follows by omitting the words " in such manner as may be prescribed"...

*21. In one of the cases decided by this Court, to be referred later in this judgment, **"as may be prescribed" has been held to mean that "if any". It is thus clear that such expression leave the scope for some play for the workability of the provision under law.** The meaning of the word "as" takes colour in context with which it is used and the manner of its use as prefix or suffix etc. There is not rigidity about it and it may have the meaning of a situation of being in existence during a particular time or contingent, and so on and so forth. **That is to say something to happen in a manner, if such a manner is in being or exists, if it does not, it may not happen in that manner. Therefore, the reading of the provision under consideration makes it clear that manner of declaration is to be followed 'as, may be prescribed' i.e. "if any" prescribed.***

22. Thus, in case manner is not prescribed under the Rules, there is not obligation or requirement to follow any, except whatever the provision itself provides viz. Section 19 in the instant case which is also complete in itself even without any manner being prescribed as indicated shortly before to read the provision omitting this part "in such manner as may be prescribed". Merely because of absence of Rules, the State would not be divested of its powers to notify in official gazette any area declaring it to be air pollution control area. In

case, however, the Rules have been framed prescribing the manner, undoubtedly the declaration must be in accordance with such rules...

...Once the manner is prescribed under the rules undoubtedly the declaration of the area has to be only in accordance with the manner prescribed but absence of Rules will not render the Act inoperative. The power vested under Section 19 of the Act, would still be exercisable as provided under the provision i.e. by declaring an area as all pollution control area by publication of notification in the official gazette. **Non-framing of Rules does not curtail the power of the State Government to declare any area as air pollution control area by means of a notification published in the official gazette. The part of the provision "in such manner as may be prescribed" would spring into operation only after such manner is prescribed by framing the rules under Section 54(2)(k) of the Act.**

- e. Again, following the earlier precedents, in the case of Jantia Hill Truck Owners Association v. Shailang Area Coal Dealer and Truck Owner Association and others, [(2009) 8 SCC 492], the same issue was adjudicated upon in the context of motor vehicles and the Hon'ble Court held as follow,

*"The provisions of the Act mandate that the unladen weight and laden weight must be determined. Indisputably, weighing devices had to be provided for the said purpose. **It is true that for the said purpose Rules may have to be framed. It is, however, a well settled principle of law that even in a case where the statute provides for certain things to be done, subject to Rules, any action taken without framing the Rules would not render any action invalid. If a statute is workable even without framing of the Rules, the same has to be given effect to. The law itself except in certain situations does not envisage vacuum.**"*

- f. Another important decision in this line of arguments is that given by the Division Bench of Patna High court in the matter of **Pawan Kumar Purbey vs The State of Bihar &Ors [LPA no.1564 of 2009 decided on 15 April, 2010]**. The judgment authored by the then Chief Justice of Patna High Court, Mr. Justice Deepak Mishra, very aptly elucidates on the workability aspect of a statutory provision in the absence of rules as follows,

*"26. From the aforesaid enunciation of law, it is clear as crystal that **if the provisions of the Act can be given effect to, non-framing of the rules would not vitiate the act. The acid test is the workability of the provisions...**"*

27. On a scrutiny of the scheme of the Act, we are of the considered opinion that it cannot be said that without laying down of the procedure for conduct of business in a special meeting under the rules, the provision as engrafted under Section 25 and 51 of the Act cannot really be effectively carried out. The procedure to be adopted has to be fair. Appreciating the scheme of the Act in entirety, we notice that the Chief Councillor has been empowered to convene a

meeting of the Municipality. In fact, Section 48 of the Act adequate guidance and safeguard. It is a well settled proposition of law that a statute has to be read as a whole to understand its object and purpose. On a reading of the provisions in entirety, we are of the considered view that a vote of no confidence can be mooted and carried out without framing of the rules and, hence, the provisions of the statute are workable."

5. From a perusal of the above judgments, the legal position may be summarized thus,
 - a. Where a statute confers powers on an authority to do certain acts or exercise power in respect of certain matters, subject to rules, the statute expressly provides for the same.
 - b. The use of the phrase in statutory provisions, "as may be prescribed" has been held to mean that "if any". It is thus clear that such expression leaves the scope for some play for the workability of the provision under law. The part of the provision "in such manner as may be prescribed" would spring into operation only after such manner is prescribed by framing the rules under the Act.
 - c. Even in a case where the statute provides for certain things to be done, subject to Rules, any action taken without framing the Rules would not render any action invalid. If a statute is workable even without framing of the Rules, the same has to be given effect to. The law itself except in certain situations does not envisage vacuum.
 - d. The process followed to give effect to the provision should be fair and just.
6. The above judgments have to be necessarily distinguished from the cases where the courts have held that the statutory powers could not be exercised without the framing of rules, for example, in taxing statutes where the rules were to prescribe the maximum of statutory levy, in which situation the power of imposing the levy itself was found to be lacking. Reference may be had to the case of Consumer Online Foundation, etc. Vs. Union of India (UOI) and Ors., etc [2011(5)SCC 360].
7. In context of Section 249 of the Act, which is under consideration, it is pertinent to note that the said provision is to prevent mischief and is in the interest of maintaining discipline in the society by preventing deviations from the bye-laws and building norms. To render such a power un-exercisable for lack of rules, which are supposed to prescribe the procedure, will defeat the purpose of the Act. Further, the provision can be made workable by following the principles of natural justice even when a specific procedure has not been prescribed. However, once rules are framed and a procedure is prescribed then the same shall have to be followed.

8. At this instance, it will be appropriate to analyse the orders passed by the High Court at Hyderabad and evaluate the applicability of those orders in the present facts and circumstances,

a. Order dated 09.07.2014 passed in W.P No.18838 of 2014

- i. The said petition was filed seeking issuance of a writ of mandamus or any other appropriate declaring the action of the Cantonment Board in sealing the petitioner's property for want of a trade licence u/s 277 of the Act, being arbitrary and violative of principles of natural justice and further declare that no trade licence is necessary for the activity of the petitioner.
- ii. The Hon'ble Court observed that a notice u/s 248(1) of the Act was issued on 25.06.2014, which notice was served on the petitioner on 04.07.2014. While the order u/s 249 of the Act directing sealing of the entire premises of the petitioner under a panchanama was also issued on 05.07.2014. Another notice dated 02.07.2014 was also issued u/s 277 for lack of a trade licence as required under the Act, giving only 48 hours to respond to the said notice. It was further observed that the basic grievance of the petitioners was that at no stage were they heard and permitted to submit any explanation against the proposed action of the respondent.
- iii. The Hon'ble Court ordered removal of seal from the petitioner's premises while imposing condition on the petitioner not to tamper with the premises while the explanation with respect to the notice issued to them was submitted and considered. Also, the notice issued u/s 277 was stayed.
- iv. Thus, from a perusal of the above order it emerges that the Hon'ble Court was pleased to issue interim orders keeping in view the fact that the Cantonment Board had issued the order of sealing in a hasty manner and without giving the petitioner any reasonable opportunity to present their case.
- v. This case is still pending in the Hon'ble High Court at Hyderabad.

b. Order dated 22.01.2013 passed in Writ Appeal No.44 of 2013

- i. The writ petition was filed seeking a writ of mandamus to declare the action of the Cantonment Board of sealing the premises of the petitioners as arbitrary and unsustainable. The case of the petitioner was that against the notice issued u/s 248 (1) of the Act, they filed an appeal before the Appellate authority under section 340 of the Act. Section 342 of the Act provides for suspension of action, against which an appeal has been filed.
- ii. In view of the Cantonment Board's action of sealing the premises while the appeal was pending, the sealing was held illegal. The appeal was accordingly disposed off.
- iii. The review petition against the said order of the Division bench was also dismissed.
- iv. Therefore, it is clear from the order that the same pertains to the automatic stay of an order passed u/s 248(1) when an appeal has been filed with the appellate board.

- c. Order dated 12.10.2012 passed in W.P. No.15950 of 2012
 - i. The Hon'ble High Court directed the petitioners to deposit a sum of Rs.5,00,000 before the respondent cantonment board and on such deposit the respondent was directed to open seal and handover the subject property to the petitioners. The said order was made subject to the final outcome of the writ petition.
 - ii. From a perusal of the above order no reasoning emerges for granting a conditional stay in favour of the petitioner.
9. From a perusal of the three orders cited by the member of the Querist, the following position is obtained: -
- i. The said order have not taken into account the law as discussed above, which would govern the field in cases, where the Rules though contemplated in the main Act have not been yet framed/ notified.
 - ii. The said orders do not take note of the legal position that a power emanating from the statutory provisions of an enactment cannot be constructed as incapable of being exercised for want of the rules and that in all such cases, where guidelines or procedure, which normally the rules would have supplied, the void can be filled up by resorting to a fair procedure and following the principles of natural justice.
 - iii. The said orders are merely interim orders.
 - iv. None of the orders amounts to a verdict that a municipality is powerless to effect sealing of premises bearing unauthorized construction, merely because the rules have not been framed.
10. Further the legal position with regard to following principles of natural justice as a pre-requisite while sealing a property is very clear. The said legal position has been highlighted in the case of **Ahuja Property Developers (P) LTd. Vs. Municipal Corporation of Delhi** [Manu/de/0485/1990], rendered in the context of section 345A of the Delhi Municipal Corporation Act which is *parimateria* to section 249 of the cantonments Act, as follows,

*“(12) Section 343 provides for orders being passed for demolition of stoppage of building and works inter alias on the ground that they have been completed without or contrary to the sanctioned plan. Section 344 provided for an order being passed stopping the construction of a building or works in certain circumstances. Section 345A, makes a reference to section 343 and section 344 in inter alias provides that action under 345A can be taken for sealing any building before or after making an order of demolition under section 343 or passing an order under section 344. It is clear, therefore, that the action under Section 345A can be taken only if the authorities are satisfied that the condition as mentioned under section 343 & 344 exist. **It is true that under Section 345A, there is no provision for any show cause notice being given***

before any action is taken by the authorities under that provision. In as much as the sealing of a property may of act civil right we would read into Section 345A, the principles of normal Justice which would required a show cause notice being issued, for however small duration it may be before any action u/s 345A is taken, the respondent should issue a show cause notice and given an opportunity to the builder to explain as to why the property should not be sealed. Though the said notice may be of a short duration. Be that as it may we cannot appreciate the contention of the learned counsel for the petitioner that Section 345A contains arbitrary powers. As we have already observed the said provision is attracted when an order under section 343 or 344 can be made. The order which is to be passed under Section 345 A, is by way of an interim arrangement so that further mischief or damage cannot be done. It is to prevent the use of the building which has been constructed in violation of the law."

11. Considering the consequences of an exercise involving sealing a property, it is pertinent that a show cause notice be issued to the individuals concerned so that an adequate opportunity is given to them to represent their case.
12. In view of the above analysis, it is opined that the statutory power under Section 249 can be exercised even in the absence of Rules and the said power should be exercised, following the principles of natural justice in a reasonable manner.
13. I am also informed that property owners have approached the Querist seeking compounding of unauthorized construction. In this regard, it is needless to say that the power of the Querist to compound certain portions of an unauthorized construction within permissible limits, in accordance with building bye-laws applicable to the local area, remains un-eclipsed.

Opinion is rendered accordingly.

Sd/-
Sanjay Jain

As regards issue of disposal of appeal preferred by the petitioner u/s 340 of the Cantonments Act, 2006 is concerned the Cantonment Board is not the competent authority to decide the appeal under the provisions of Cantonments Act, 2006. The competent authority to decide upon appeal is the GOC-in-C, Western Command. As regards issue as to whether the construction undertaken by the petitioner at the demised property can be compounded or not that can only be decided on merits as to whether the construction existing at site false within the ambit of building bye laws notified by the Govt. of India in Gazette notification dated 08.06.2002. As a matter of rule for any composition of illegal construction the applicant is required to submit building plans in the prescribed Performa and with all

documents as provided in the building bye laws notified by the Govt. of India. Whereas, the petitioner has submitted a simple request letter for composition of unauthorized construction without any building plans and mandatory certificates/ documents required in this regard. As such the application for composition of unauthorized construction submitted by the petitioner is incomplete and does not satisfy requirement of building bye laws notified by the Govt. of India.

In the absence of any building plan submitted by the petitioner, from the office record and other records available with the office, it is seen that Sh. Manish Sarpal in his writ petition had purchased demised property bearing No.CB-390-1/2/3 through Power of Attorney dated 07.08.1991, 06.05.1991 & 25.06.1991, the copies of GPA have been enclosed by the petitioner in his writ. As per GPA the total area claimed by the petitioner in respect of demised property is 294 sq.yds. or 245.91 sqmt. Whereas the petitioner undertook construction on a plot measuring 21 mtr x 6.90 mtr + 13.60 mtr x 2540 mt i.e. on a area of plot measuring 490.34 sqmt. However as per three GPA submitted by the petitioner before the Hon'ble Court alongwith writ the area of demised property i.e. CB-390-1/2/3 has been shown as 245.91 sqmt.

As per building bye laws notified by Govt. of India, Ministry of Defence dated 08.06.2002 the provisions of set back, FAR & maximum ground coverage permissible is given hereunder: -

TABLE '2'

S. No.	Plot Size (Sq.mt.)	Front	Min Set Back		
			Rear	Side (1)	Side (2)
1.	Upto 60	0	0	0	0
2.	Above 60 and upto 150	3	0	0	0
3.	Above 150 and upto 300	3	3	0	0
4.	Above 300 and upto 500	3	3	3	0
5.	Above 500 and upto 1000	6	3	3	3
6.	Above 1000 and upto 2000	9	3	3	3
7.	Above 2000 and upto 4000	9	6	6	6
8.	Above 4000 and upto 10,000	15	6	6	6

9.	Above 10,000	15	9	9	9
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TABLE '3'**Floor Area Ratio**

S. No.	Area of Plot (in Sq.mt.)	F.A.R.
1	Below	225
2	Above 32 to 50	225
3	Above 50 to 100	225
4	Above 100 to 250	200
5	Above 250 to 500	150
6	Above 500 to 1000	150
7	Above 1000 to 1500	100
8	Above 1500 to 2250	100
9	Above 2250 to 3000	100
10	Above 3000 to 3750	100
11	Above 3750	100

TABLE '4'

S. No.	Area of Plot (in Sq.mt.)	Maximum Ground Coverage (%)
1	Below	75
2	Above 32 to 50	75
3	Above 50 to 100	75
4	Above 100 to 250	66.66
5	Above 250 to 500	50
6	Above 500 to 1000	40
7	Above 1000 to 1500	33.33
8	Above 1500 to 2250	33.33
9	Above 2250 to 3000	33.33
10	Above 3000 to 3750	33.33
11	Above 3750	33.33

Following observations are brought out:

- i. The petitioner has constructed building on area in excess of area provided in three GPAs i.e. 245.91 sqmt. whereas constructed area at the demised premises is 490.34 sqmt.
- ii. As per building bye laws maximum permissible ground coverage for plot of 490.34 sqmt is 50% whereas the petitioner has not only cover area in full but in excess of area shown in GPA.

- iii. As per building bye laws maximum FAR is 150 whereas the constructed area violates permissible FAR.
- iv. As per building bye laws set back of 3 mtr each are to be left both in the front and rear of the plot as also 3 mtr set back is to be left on one side of the plot whereas petitioner has constructed building without leaving any set back.
- v. It is further brought out that the petitioner in his various correspondences with the Board dated 06.11.1998, 11.03.2004, 08.02.2005, 17.12.2012 & 18.03.2014 submitted information about existing construction at demised property comprising of only ground floor construction for assessment of property tax. Whereas now at site petitioner has constructed four storied building without permission of the competent authority.
- vi. Further the petitioner pleaded guilty of offence before Sh. Vikram, Hon'ble Presiding Judge, LokAdalat, in respect of prosecutions launched against the petitioner against unauthorized construction under section 247 of the Cantonments Act, 2006 in respect of JE's report dated 24.01.2014 & 03.06.2014. In view of the petitioner pleading guilty the petitioner was convicted and sentenced to pay a cost of Rs.1000/- in each case for demolition of illegal construction. The petitioner deposited cost of demolition pronounced by the Court.

The construction existing at site does not comply with the existing building bye laws notified by Govt. of India in Gazette notification dated 08.06.2002.

The Board has issued following notices to the petitioner for unauthorized construction at demised premises:

Sl. No.	Notices issued	Date
1.	Notice u/s 239(1) of the Cantonments Act, 2006	20.12.2013
2.	Prosecuted u/s 247 of the Cantonments Act, 2006	20.12.2013
3.	Notice u/s 248 of the Cantonments Act, 2006	22.01.2014
4.	Notice u/s 239(2) & (4) of the Cantonments Act, 2006	31.01.2014
5.	Prosecuted u/s 247 of the Cantonments Act, 2006	31.01.2014
6.	Notice u/s 248 of the Cantonments Act, 2006	28.02.2014
7.	Notice u/s 320 of the Cantonments Act, 2006	30.05.2014
8.	Notice u/s 239(2) & (4) of the Cantonments Act, 2006	23.06.2014
9.	Prosecuted u/s 247 of the Cantonments Act, 2006	23.06.2014
10.	Notice u/s 320 of the Cantonments Act, 2006	26.06.2014
11.	Notice u/s 248 of the Cantonments Act, 2006	27.08.2014
12.	Notice u/s 239(2) & (4) of the Cantonments Act, 2006	27.08.2014

13.	Prosecuted u/s 247 of the Cantonments Act, 2006	27.08.2014
14.	Notice u/s 248 of the Cantonments Act, 2006	24.09.2014

The Board may consider application submitted by the petitioner for composition of the construction at demised premises on merits alongwith factual site report of the Engineering branch.

Relevant file is placed on the table.

**24. W.P.(C) 2928/2015 & CM APPLs.5239/2015 & 5240/2015
MANISH HANS Versus DELHI CANTONMENT BOARD**

Hon'ble Mr. Justice Manmohan in its order dated 23.09.2016 challenging the sealing orders passed by Chief Executive Officer, Delhi Cantonment in respect of property bearing No.CB-219, Village Naraina, Delhi Cantt under section 249 (1) of Cantonments Act, 2006 passed orders as under:

"Though no appeal lies against the impugned sealing order, yet it is an admitted fact that the petitioners have filed appeals against the demolition orders with the General Officer Commanding-in-Chief, Western Command. Even the compounding applications filed by the petitioners are stated to be pending.

Today, learned counsel for the petitioners assures and undertakes to this court that in the event there is any unauthorized construction or encroachment, the petitioners shall voluntarily remove the same.

Keeping in view the pendency of the appeals and the compounding applications as well as the fact that common issues arise for determination in the demolition appeals as well as the present proceedings, this Court directs the appellate authority, viz. General Officer Commanding-in-Chief, Western Command as well as the Cantonment Board to decide the appeals and the compounding applications within a period of three months.

It is further directed that the appellate authority as well as the Cantonment Board shall decide the appeals and applications filed by the petitioners on merits and shall not dismiss the same on the ground of limitation."

It is pertinent to mention here that the application submitted by the petitioner for composition of illegal construction in compliance to orders passed by Hon'ble High Court of Delhi on 16.03.2016 were considered by the Board and the Board vide its resolution contained in CBR No.20 dated

11.05.2016 had resolved to obtain opinion of ASG, Govt. of India before taking final decision on the application submitted by the petitioner.

Accordingly the opinion of ASG, Govt. of India was obtained by this office which is reproduced hereunder:

OPINION OF SH. SANJAY JAIN, ADDITIONAL SOLICITOR GENERAL OF INDIA

OPINION

Date- 16.09.2016

QUERIST

Office of the Delhi Cantonment Board
Delhi Cantonment – 110010

Through

Anchit Sharma, Advocate

QUERY

1. Whether the view/ opinion of the members of the Querist regarding the sealing of properties being illegal under section 249 of the Cantonments Act, 2006 in absence of Rules describing the manner to implement the said power of sealing, is legally sustainable?

BACKGROUND FACTS (AS PROVIDED BY THE QUERIST)

1. The Querist after completing formalities of issuing notices under the relevant provisions of the Cantonments Act, 2006 sealed certain properties in Naraina, New Delhi under section 249 of the Cantonments Act, 2006 for unauthorized/ illegal construction.
2. The concerned individuals whose properties were sealed approached the Delhi High Court against the orders of sealing and during the proceedings before the Delhi High Court, the individuals/ petitioners sought permission from the court to approach the Querist for compounding the alleged illegal/ unauthorized construction.
3. The Querist in its meeting dated 11.05.2016 considered the applications of the individuals/ petitioners. A member cited decisions of the Hon'ble High Court of Andra Pradesh at Hyderabad passed in Writ Petition nos. 18838 of 2014, Writ Appeal No.44 of 2013 and writ petition no.25819 of 2012, regarding sealing of the properties being illegal.

DOCUMENTS PROVIDED

1. Letter of request for opinion with broad facts

2. Order dated 09.07.2014 passed in W.P. No.18838 of 2014 by High Court of Andra Pradesh at Hyderabad.
3. Order dated 22.01.2013 passed in Writ Appeal No.44 of 2013 by High Court of Andra Pradesh at Hyderabad.
4. Order dated 12.10.2012 passed in W.P. No.15950 of 2012 by High Court of Andra Pradesh at Hyderabad.

OPINION

1. During the meeting of the members of the Querist dated 11.05.2016, certain members expressed that in their view the *sealing of buildings by the Board under section 249 of the Cantonments act is illegal as the Central Govt. has not published rules for sealing/ de-sealing of the premises so far as provided in the Act.* He further relied on the orders of the Hon'ble High Court at Hyderabad issued in the Writ Petition nos. 18838 of 2014, Writ Appeal No.44 of 2013 and Writ Petition No.25819 of 2012.
2. Therefore, the challenge to the legality of the sealing undertaken by the Querist is on two counts, namely, a) absence of rules with regard to sealing and de-sealing; b) the grounds taken and reasoning given in the orders passed by the High Court at Hyderabad mentioned above.
3. Section 249 read as follows,

"Section 249 – Power to seal unauthorized constructions

*(1) It shall be lawful for the Chief Executive Officer, any time, before or after making an order of demolition under section 248 or of the stoppage of erection of any building, or execution of any work, to make an order directing the sealing of such erection or work or of the premises in which such erection or work is being carried on or has been completed at the cost of the offender **in such manner as may be prescribed by rules for the purpose of carrying out the provisions of this Act** or for preventing any dispute as to the nature and extent of such erection or work.*

(2) Where any erection or work or any premises in which any erection or work is being carried on, has or, has been sealed, the Chief Executive Officer may, for the purpose of demolishing such erection or work in accordance with the provisions of this Act, order such seal to be removed.

(3) No person shall remove such seal except-

(a) Under an order made by the Chief Executive Officer under subsection (2); or

(b) Under an order of an appellate authority in an appeal made under this Act.

(4) Any person who contravenes the provisions contained in subsection (3) shall be punishable with imprisonment which may

extend to six months or with fine which may extend to twenty thousand rupees, or with both."

4. At the outset, it is pertinent to discuss the legal position with regard to enforceability of a statute in relation to which the Rules have not been framed. The following judgements are useful and relevant for an analysis of the legal question under consideration.

a. This legal question has been discussed and adjudicated upon by the Hon'ble Apex Court, in the judgment passed in the matter of **Mysore State Road Transport Corporation Vs. Gopinath Gundachar char** [AIR 1968 SC 464] wherein it was held as follow,

*"Bearing in mind this statement of law, let us consider whether the appellant had the power to appoint officers and servant and to lay down their conditions of service in the absence or regulations framed under s. 45(2)(c) of the Road Transport Corporation Act, 1950. The appellant is an autonomous Corporation incorporated under the Act for the purpose of operating road transport services in the State and extended areas. **For the proper discharge of its functions. It is necessary for the Corporation to appoint officers and servants. Section 14(2) expressly confers upon on the Corporation the incidental power to appoint such officers and servants as it considers necessary for the efficient performance of its functions. Section 19(1)(c) empowers it to provide for employees suitable conditions of service. Section 14(3) provides that the conditions of appointment and service and the scales of pay of its officers and servants shall be such as may subject to the provisions of s. 34 be determined by regulations made under the Act. Section 45(2)(c) empowers the Corporation to frame regulations with the previous sanction of the State Government prescribing the conditions of appointment, service and scales of pay of the officers and servants. If the State Government issues any directions under s. 34 relating to the recruitment and conditions of service of the employees, the Corporation must obey those directions. The con-joint effect of Section 14(3(b), 34 and 45(2)(c) is that the appointment of officers and servants and their conditions of service must conform to the directions, if any, given by the State Government under s. 34 and the regulations, if any, framed under s. 45(2)(c). But until such regulations are framed or directions are given the Corporation may appoint such officers or servants as may be necessary for the efficient performance of its duties on such terms and conditions as it think fit. There is necessarily a time-lag between the formation of the Corporation and the framing of regulations under s. 45(2)(c). During the intervening period, the Corporation must carry on the administration of is affairs with the help of officers and servants. In the absence of clear words, it is difficult to impute to the legislature the intention that the Corporation would have no power to appoint officers and servants***

and fix the conditions of service unless the regulation under s. 45(2)(c) are framed."

- b. This point of the law was further discussed and amplified in the judgment in **Surinder Singh v. Central Govt.**, [(1986) 4 SCC667], wherein it was held as follows,

*"6. The High Court has held that the disposal of property forming part of the compensation pool was "subject" to the rules framed as contemplated by Section 8 and 40 of the Act and since no rules had been framed by the Central Government with regard to the disposal of the urban agricultural property forming part of the compensation pool, the authority constituted under the Act had no jurisdiction to dispose of urban agricultural property by auction-sale. Unless rules were framed as contemplated by the Act, according to the High Court the Central Government had no authority in law to issue executive directions for the sale and disposal of urban agricultural property. This view was taken, placing reliance on an earlier decision of a Division Bench of that court in Bishan Singh v. Central Government. The Division Bench in Bishan case took the view that since the disposal of the compensation pool property was subject to the rules that may be made, and as no rules had been framed, the Central Government had no authority in law to issued administrative directions providing for the transfer of the urban agricultural land by auction-sale. **In our opinion the view taken by the High Court is incorrect. Where a statute confers powers on an authority to do certain acts or exercise power in respect of certain matters, subject to rules, the statute expressly provides for the same. In the exercise of power conferred by the statute does not depend on the existence of rules unless the statute expressly provides for the same. In other words framing of the rules is not condition precedent to the exercise of the power expressly and unconditionally conferred by the statute. The expression "subject to the rules" only means, in accordance with the rules, if any. If rules are framed, the powers so conferred on authority could be exercised in accordance with these rules. But if no rules are framed there is no void and the authority is not precluded from exercising the power conferred by the statute."***

- c. The judgment in the matter of U.P. State Electricity Board Lucknow Vs. City Board, Mussoorie and Ors. [1985 SCC (2) 16] again highlighted the above legal position in the following manner,

"The first contention urged before us by the City Board is that in the absence of any regulations framed by the Electricity Board under Section 79 of the Act regarding the principles governing the fixing of Grid Tariffs, it was not open to the Electricity Board to issue the impugned notifications. This contention is based on Sub-Section (1) of Section 46 of the Act which provides that a tariff to be known as the and Tariff shall in accordance with any regulations made in this behalf, be fixed from time to time by the Electricity Board. It is urged that in the absence of any

regulations laying down the principles for fixing the tariff, the impugned notifications were void as they had been issued without any guidelines and were, therefore, arbitrary. It is admitted that no such regulations had been made by the Electricity Board by the time the impugned notifications were issued. The Division Bench has negated the above plea and according to us, rightly. It is true that Section 79(h) of the Act authorises the Electricity Board to make regulations laying down the principles governing the fixing of Grid Tariffs. But Section 46(1) of the Act does not say that no Grid Tariff can be fixed until such regulations are made. It only provides that the Grid Tariff shall be in accordance with any regulations made in this behalf. That means that if there were any regulations, the Grid Tariff should be fixed in accordance with such regulations and nothing more. We are of the view that the framing of regulations under, Section 79(h) of the Act cannot be a condition precedent for fixing the Grid Tariff."

- d. The above decisions of the Hon'ble Supreme Court have been followed and referred to, in the recent decisions rendered by it. In the matter of **Orissa State (Prevention and Control of Pollution) Board Vs. Orient Paper Mills and Anr. [(2003) 10SCC421]**, the Hon'ble Supreme Court evaluated the above question in context of section 19 under Air (Prevention and Control of Pollution) Act, 1981. The relevant extracts from the said judgment are extracted below,

"14. The question for consideration is, as to whether, as long the manner is not prescribed under the Rules for declaration of an area as Air Pollution Control Area, a valid Notification under Section 19 (1) of the Act can be published in the Official Gazette or not.

15. So far the statutory provision is concerned, the Act under Section 19 vests the State Government with power to notify any area, in an official gazette, as Air Pollution Control Area, but to say that exercise of such power is solely dependent upon framing of the rules prescribing the manner in which an area may be declared as air pollution control area, does not seem to be correct. Section 19 of the Act would read as follows by omitting the words " in such manner as may be prescribed"...

*21. In one of the cases decided by this Court, to be referred later in this judgment, **"as may be prescribed" has been held to mean that "if any". It is thus clear that such expression leave the scope for some play for the workability of the provision under law.** The meaning of the word "as" takes colour in context with which it is used and the manner of its use as prefix or suffix etc. There is not rigidity about it and it may have the meaning of a situation of being in existence during a particular time or contingent, and so on and so forth. **That is to say something to happen in a manner, if such a manner is in being or exists, if it does not, it may not happen in that manner. Therefore, the reading of the***

provision under consideration makes it clear that manner of declaration is to be followed 'as, may be prescribed' i.e. "if any" prescribed.

22. Thus, in case manner is not prescribed under the Rules, there is not obligation or requirement to follow any, except whatever the provision itself provides viz. Section 19 in the instant case which is also complete in itself even without any manner being prescribed as indicated shortly before to read the provision omitting this part "in such manner as may be prescribed". Merely because of absence of Rules, the State would not be divested of its powers to notify in official gazette any area declaring it to be air pollution control area. In case, however, the Rules have been framed prescribing the manner, undoubtedly the declaration must be in accordance with such rules...

...Once the manner is prescribed under the rules undoubtedly the declaration of the area has to be only in accordance with the manner prescribed but absence of Rules will not render the Act inoperative. The power vested under Section 19 of the Act, would still be exercisable as provided under the provision i.e. by declaring an area as all pollution control area by publication of notification in the official gazette. **Non-framing of Rules does not curtail the power of the State Government to declare any area as air pollution control area by means of a notification published in the official gazette. The part of the provision "in such manner as may be prescribed" would spring into operation only after such manner is prescribed by framing the rules under Section 54(2)(k) of the Act.**

e. Again, following the earlier precedents, in the case of Jantia Hill Truck Owners Association v. Shailang Area Coal Dealer and Truck Owner Association and others, [(2009) 8 SCC 492], the same issue was adjudicated upon in the context of motor vehicles and the Hon'ble Court held as follow,

*"The provisions of the Act mandate that the unladen weight and laden weight must be determined. Indisputably, weighing devices had to be provided for the said purpose. **It is true that for the said purpose Rules may have to be framed. It is, however, a well settled principle of law that even in a case where the statute provides for certain things to be done, subject to Rules, any action taken without framing the Rules would not render any action invalid. If a statute is workable even without framing of the Rules, the same has to be given effect to. The law itself except in certain situations does not envisage vacuum.**"*

f. Another important decision in this line of arguments is that given by the Division Bench of Patna High court in the matter of **Pawan Kumar Purbey vs The State of Bihar &Ors [LPA no.1564 of 2009 decided on 15 April, 2010]**. The judgment authored by the then Chief Justice of

Patna High Court, Mr. Justice Deepak Mishra, very aptly elucidates on the workability aspect of a statutory provision in the absence of rules as follows,

*“26. From the aforesaid enunciation of law, it is clear as crystal that **if the provisions of the Act can be given effect to, non-framing of the rules would not vitiate the act. The acid test is the workability of the provisions...**”*

27. On a scrutiny of the scheme of the Act, we are of the considered opinion that it cannot be said that without laying down of the procedure for conduct of business in a special meeting under the rules, the provision as engrafted under Section 25 and 51 of the Act cannot really be effectively carried out. The procedure to be adopted has to be fair. Appreciating the scheme of the Act in entirety, we notice that the Chief Councillor has been empowered to convene a meeting of the Municipality. In fact, Section 48 of the Act adequate guidance and safeguard. It is a well settled proposition of law that a statute has to be read as a whole to understand its object and purpose. On a reading of the provisions in entirety, we are of the considered view that a vote of no confidence can be mooted and carried out without framing of the rules and, hence, the provisions of the statute are workable.”

5. From a perusal of the above judgments, the legal position may be summarized thus,
 - a. Where a statute confers powers on an authority to do certain acts or exercise power in respect of certain matters, subject to rules, the statute expressly provides for the same.
 - b. The use of the phrase in statutory provisions, “as may be prescribed” has been held to mean that “if any”. It is thus clear that such expression leaves the scope for some play for the workability of the provision under law. The part of the provision “in such manner as may be prescribed” would spring into operation only after such manner is prescribed by framing the rules under the Act.
 - c. Even in a case where the statute provides for certain things to be done, subject to Rules, any action taken without framing the Rules would not render any action invalid. If a statute is workable even without framing of the Rules, the same has to be given effect to. The law itself except in certain situations does not envisage vacuum.
 - d. The process followed to give effect to the provision should be fair and just.
6. The above judgments have to be necessarily distinguished from the cases where the courts have held that the statutory powers could not be exercised without the framing of rules, for example, in taxing statutes where the rules

were to prescribed the maximum of statutory levy, in which situation the power of imposing the levy itself was found to be lacking. Reference may be had to the case of Consumer Online Foundation, etc. Vs. Union of India (UOI) and Ors.,etc [2011(5)SCC 360].

7. In context of Section 249 of the Act, which is under consideration, it is pertinent to note that the said provision is to prevent mischief and is in the interest of maintaining discipline in the society by preventing deviations from the bye-laws and building norms. To render such a power un-exercisable for lack of rules, which are supposed to prescribed the procedure, will defeat the purpose of the Act. Further, the provision can be made workable by following the principles of natural justice even when a specific procedure has not been prescribed. However, once rules are framed and a procedure is prescribed then the same shall have to be followed.
8. At this instance, it will be appropriate to analyse the orders passed by the High Court at Hyderabad and evaluate the applicability of those orders in the present facts and circumstances,
 - a. Order dated 09.07.2014 passed in W.P No.18838 of 2014
 - i. The said petition was filed seeking issuance of a writ of mandamus or any other appropriate declaring the action of the Cantonment Board in sealing the petitioner's property for want of a trade licence u/s 277 of the Act, being arbitrary and violative of principles of natural justice and further declare that no trade licence is necessary for the activity of the petitioner.
 - ii. The Hon'ble Court observed that a notice u/s 248(1) of the Act was issued on 25.06.2014, which notice was served on the petitioner on 04.07.2014. While the order u/s 249 of the Act directing sealing of the entire premises of the petitioner under a panchanama was also issued on 05.07.2014. Another notice dated 02.07.2014 was also issued u/s 277 for lack of a trade licence as required under the Act, giving only 48 hours to respond to the said notice. It was further observed that the basic grievance of the petitioners was that at no stage were they heard and permitted to submit any explanation against the proposed action of the respondent.
 - iii. The Hon'ble Court ordered removal of seal from the petitioner's premises while imposing condition on the petitioner not to tamper with the premises while the explanation with respect to the notice issued to them was submitted and considered. Also, the notice issued u/s 277 was stayed.
 - iv. Thus, from a perusal of the above order it emerges that the Hon'ble Court was pleased to issue interim orders keeping in view the fact that the Cantonment Board had issued the order of sealing in a hasty manner and without giving the petitioner any reasonable opportunity to present their case.
 - v. This case is still pending in the Hon'ble High Court at Hyderabad.
 - b. Order dated 22.01.2013 passed in Writ Appeal No.44 of 2013

- i. The writ petition was filed seeking a writ of mandamus to declare the action of the Cantonment Board of sealing the premises of the petitioners as arbitrary and unsustainable. The case of the petitioner was that against the notice issued u/s 248 (1) of the Act, they filed an appeal before the Appellate authority under section 340 of the Act. Section 342 of the Act provides for suspension of action, against which an appeal has been filed.
 - ii. In view of the Cantonment Board's action of sealing the premises while the appeal was pending, the sealing was held illegal. The appeal was accordingly disposed off.
 - iii. The review petition against the said order of the Division bench was also dismissed.
 - iv. Therefore, it is clear from the order that the same pertains to the automatic stay of an order passed u/s 248(1) when an appeal has been filed with the appellate board.
- c. Order dated 12.10.2012 passed in W.P. No.15950 of 2012
- i. The Hon'ble High Court directed the petitioners to deposit a sum of Rs.5,00,000 before the respondent cantonment board and on such deposit the respondent was directed to open seal and handover the subject property to the petitioners. The said order was made subject to the final outcome of the writ petition.
 - ii. From a perusal of the above order no reasoning emerges for granting a conditional stay in favour of the petitioner.
9. From a perusal of the three orders cited by the member of the Querist, the following position is obtained: -
- i. The said order have not taken into account the law as discussed above, which would govern the field in cases, where the Rules though contemplated in the main Act have not been yet framed/ notified.
 - ii. The said orders do not take note of the legal position that a power emanating from the statutory provisions of an enactment cannot be constructed as incapable of being exercised for want of the rules and that in all such cases, where guidelines or procedure, which normally the rules would have supplied, the void can be filled up by resorting to a fair procedure and following the principles of natural justice.
 - iii. The said orders are merely interim orders.
 - iv. None of the orders amounts to a verdict that a municipality is powerless to effect sealing of premises bearing unauthorized construction, merely because the rules have not been framed.
10. Further the legal position with regard to following principles of natural justice as a pre-requisite while sealing a property is very clear. The said legal position has been highlighted in the case of **Ahuja Property Developers (P) LTD. Vs.**

Municipal Corporation of Delhi [Manu/de/0485/1990], rendered in the context of section 345A of the Delhi Municipal Corporation Act which is *parimateria* to section 249 of the cantonments Act, as follows,

*“(12) Section 343 provides for orders being passed for demolition of stoppage of building and works inter alias on the ground that they have been completed without or contrary to the sanctioned plan. Section 344 provided for an order being passed stopping the construction of a building or works in certain circumstances. Section 345A, makes a reference to section 343 and section 344 in inter alias provides that action under 345A can be taken for sealing any building before or after making an order of demolition under section 343 or passing an order under section 344. It is clear, therefore, that the action under Section 345A can be taken only if the authorities are satisfied that the condition as mentioned under section 343 & 344 exist. **It is true that under Section 345A, there is no provision for any show cause notice being given before any action is taken by the authorities under that provision. In as much as the sealing of a property may of act civil right we would read into Section 345A, the principles of normal Justice which would required a show cause notice being issued, for however small duration it may be before any action u/s 345A is taken, the respondent should issue a show cause notice and given an opportunity to the builder to explain as to why the property should not be sealed. Though the said notice may be of a short duration. Be that as it may we cannot appreciate the contention of the learned counsel for the petitioner that Section 345A contains arbitrary powers. As we have already observed the said provision is attracted when an order under section 343 or 344 can be made. The order which is to be passed under Section 345 A, is by way of an interim arrangement so that further mischief or damage cannot be done. It is to prevent the use of the building which has been constructed in violation of the law.”***

11. Considering the consequences of an exercise involving sealing a property, it is pertinent that a show cause notice be issued to the individuals concerned so that an adequate opportunity is given to them to represent their case.
12. In view of the above analysis, it is opined that the statutory power under Section 249 can be exercised even in the absence of Rules and the said power should be exercised, following the principles of natural justice in a reasonable manner.
13. I am also informed that property owners have approached the Querist seeking compounding of unauthorized construction. In this regard, it is needless to say that the power of the Querist to compound certain portions of an unauthorized construction within permissible limits, in accordance with building bye-laws applicable to the local area, remains un-eclipsed.

Opinion is rendered accordingly.

Sd/-
Sanjay Jain

As regards issue of disposal of appeal preferred by the petitioner u/s 340 of the Cantonments Act, 2006 is concerned the Cantonment Board is not the competent authority to decide the appeal under the provisions of Cantonments Act, 2006. The competent authority to decide upon appeal is the GOC-in-C, Western Command. As regards issue as to whether the construction undertaken by the petitioner at the demised property can be compounded or not that can only be decided on merits as to whether the construction existing at site false within the ambit of building bye laws notified by the Govt. of India in Gazette notification dated 08.06.2002. As a matter of rule for any composition of illegal construction the applicant is required to submit building plans in the prescribed Performa and with all documents as provided in the building bye laws notified by the Govt. of India. Whereas, the petitioner has submitted a simple request letter for composition of unauthorized construction without any building plans and mandatory certificates/ documents required in this regard. As such the application for composition of unauthorized construction submitted by the petitioner is incomplete and does not satisfy requirement of building bye laws notified by the Govt. of India.

In the absence of any building plan submitted by the petitioner, from the office record, it is seen that Sh. Manish Hans undertook construction on a plot measuring 22' x 40' i.e. on a area of plot measuring 97.78 sq.yds or 81.78 sqmt. As per sale deed dated 06.06.2014, the petitioner purchased the demised property measuring 100 sq. yrds. The sale deed also provides that the petitioner purchased demised property which was vacant land.

As per building bye laws notified by Govt. of India, Ministry of Defence dated 08.06.2002 the provisions of set back, FAR & maximum ground coverage permissible is given hereunder: -

TABLE '2'

S. No.	Plot Size (Sq.mt.)	Front	Min Set Back		
			Rear	Side (1)	Side (2)
1.	Upto 60	0	0	0	0
2.	Above 60 and upto 150	3	0	0	0

3.	Above 150 and upto 300	3	3	0	0
4.	Above 300 and upto 500	3	3	3	0
5.	Above 500 and upto 1000	6	3	3	3
6.	Above 1000 and upto 2000	9	3	3	3
7.	Above 2000 and upto 4000	9	6	6	6
8.	Above 4000 and upto 10,000	15	6	6	6
9.	Above 10,000	15	9	9	9

TABLE '3'**Floor Area Ratio**

S. No.	Area of Plot (in Sq.mt.)	F.A.R.
1	Below	225
2	Above 32 to 50	225
3	Above 50 to 100	225
4	Above 100 to 250	200
5	Above 250 to 500	150
6	Above 500 to 1000	150
7	Above 1000 to 1500	100
8	Above 1500 to 2250	100
9	Above 2250 to 3000	100
10	Above 3000 to 3750	100
11	Above 3750	100

TABLE '4'

S. No.	Area of Plot (in Sq.mt.)	Maximum Ground Coverage (%)
1	Below	75
2	Above 32 to 50	75
3	Above 50 to 100	75
4	Above 100 to 250	66.66

5	Above 250 to 500	50
6	Above 500 to 1000	40
7	Above 1000 to 1500	33.33
8	Above 1500 to 2250	33.33
9	Above 2250 to 3000	33.33
10	Above 3000 to 3750	33.33
11	Above 3750	33.33

Following observations are brought out:

- i. The petitioner has constructed building on area measuring 97.78 sq.yds or 81.78 sqmt. At the time of sealing of the property u/s 249(1) of the Cantonments Act, 2006 the petitioner had laid basement floor roof, ground floor roof & construction was progressing at first floor. The construction was carried out by the petitioner without obtaining sanction of building plans as required under the provisions of Cantonments Act, 2006.
- ii. As per building bye laws maximum permissible ground coverage is 75% whereas the petitioner has covered area measuring 97.56% in violation of permissible ground coverage.
- iii. As per building bye laws maximum FAR is 225 whereas the FAR constructed at ground floor is 97.56 and same area was under construction at first floor.
- iv. As per building bye laws set back of 3 mtr in the front of the plot was required free of construction whereas the petitioner has constructed building leaving 0.30 mtr set back.

The construction existing at site does not comply with the existing building bye laws notified by Govt. of India in Gazette notification dated 08.06.2002.

The Board has issued following notices to the petitioner for unauthorized construction at demised premises:

Sl. No.	Notices issued	Date
1.	Notice u/s 239 (1) of Cantonments Act, 2006.	23.08.2014
2.	Prosecuted u/s 247 of the Cantonments Act, 2006	23.08.2014
3.	Notice u/s 239 (2) & (4) of the Cantonments Act, 2006	16.09.2014
4.	Prosecuted u/s 247 of the Cantonments Act, 2006	16.09.2014
9.	Notice u/s 248 of the Cantonments Act, 2006	24.09.2014
10.	Notice u/s 239 (2) & (4) of the Cantonments Act, 2006	06.10.2014
11.	Prosecuted u/s 247 of the Cantonments Act, 2006	06.10.2014
12.	Notice u/s 248 of the Cantonments Act, 2006	20.11.2014

13.	Notice u/s 248 of the Cantonments Act, 2006	20.11.2014
14.	Notice u/s 320 of the Cantonments Act, 2006	18.03.2015
15.	Notice u/s 320 of the Cantonments Act, 2006	18.03.2015

The Board may consider application submitted by the petitioner for composition of the construction at demised premises on merits alongwith factual site report of the Engineering branch.

Relevant file is placed on the table.

25. PPA NO.26/2012 : SMT. MANJU TIWARI VS THE ESTATE OFFICER & ANRS.

The property bearing No.1/225/2, Sadar Bazar, Delhi Cantonment, Delhi Cantt – 10 as per office record is in the name of Sh. Raghuvir Saran. The property in question is on Sy. No.49/66 which is leased property and as per GLR entries lease of Sy. No.49/66 is in the names(s) of LalaChirangi Lal &RameshwarDass Gupta that the lease of Sy. No.49/66 stands expired on 28.03.2006. The lease has not been renewed. Smt. Manju Tiwari had undertaken unauthorized construction at the aforementioned premises without approval of the competent authority. The CEO, Delhi Cantonment Board had issued notices under provisions of Cantonments Act, 2006 for stoppage and demolition of unauthorized construction but Smt. Manju Tiwari continued with the unauthorized construction ignoring notices issued by the office. On 21.09.2012 notice u/s 5 B(1) of PPE Act was issued for unauthorized construction in leased property and the property was sealed u/s 5 C of the PPE Act, 1971.

Smt. Manju Tiwari filed a writ petition before the District Court. Ms. Ravinder Kaur, District & Session Judge, South-West District, Dwarka Court vide her order dated 07.06.2016 gave liberty to the petitioner to approach the respondent department by moving an appropriate application for compounding of alleged unauthorized construction. The order pronounced by the court are reproduced hereunder: -

Ms. RAVINDER KAUR
District & Sessions Judge
Sixth Floor,
South-West Distt, Dwarka Courts,
New Delhi

PPA No.26/2012

Smt. Manju Tiwari Vs The Estate Officer &Anrs.

07.06.2016

Present : Advocate Shri MayankSoni proxy for
Sh S C Singhal, Ld. Counsel for the appellant.
Shri Kuldeep Singh, brother of the appellant.

Shri Ravi Dahiya, Ld. Counsel for the respondents.

On 20.05.2016 the appellant moved an application seeking directions to the respondents for opening the seal and for compounding the alleged unauthorized construction in the premises which is the subject matter of the present appeal.

Copy of the said application has already been supplied to the counsel for the respondents.

I have heard the counsel for both the parties.

The counsel for the appellant has submitted that in Writ petitions bearing no.W.P(C) 8695/2014, W.P(C) 9362/2014, W.P(C) 9403/2014 and W.P(C) 2928/2015, the Hon'ble High Court vide order dated: 16.3.13 allowed the petitioners to apply for compounding of the alleged unauthorized construction without prejudice to their rights and contentions. Further the Hon'ble High Court directed the respondents to dispose of the application within period of six weeks from the date of filling of the applications. At the same time, he has also filed on record the photocopy of the proceedings before Delhi Cantonment Board, wherein the applications of the petitioners moved in terms of the order of the Hon'ble High Court dated: 16.03.16 were considered and necessary orders were passed.

The counsel for the respondents has no objection if the directions are issued to the respondents in the present case also in terms of the order of Hon'ble High Court dated 16.03.16 and the appellant approaches the respondent department for compounding the alleged unauthorized construction without prejudice to the rights of the parties.

Considering the facts and circumstances of the case, the appellant is at liberty to approach the respondent department by moving an appropriate application for compounding of the alleged unauthorized construction without prejudice to their rights and contentions within two (02) weeks from today.

Let the respondent department consider the application of the appellant for regularization after affording reasonable opportunity of hearing

to the appellant within a period of six weeks from the date of filling of application without prejudice to their rights and contentions.

The outcome of the application of the appellant for regularization be placed before this court before the next date of hearing.

Put up for further proceedings on 04.08.2016.

Copy of the order be given dasti to both the parties.

Sd/-
(Ravinder Kaur)
District & Sessions Judge
South West District
Dwarka Courts/ Delhi
07.06.2016

Accordingly Smt. Manju Tiwari submitted application for compounding of unauthorized construction and the application was received in the office on 22.06.2016 and the same has been scrutinized with regard to the provisions contained in building bye laws notified by Govt. of India vide gazette dated 08.06.2002.

TABLE '2'

S. No.	Plot Size (Sq.mt.)	Front	Min Set Back		
			Rear	Side (1)	Side (2)
1.	Upto 60	0	0	0	0
2.	Above 60 and upto 150	3	0	0	0
3.	Above 150 and upto 300	3	3	0	0
4.	Above 300 and upto 500	3	3	3	0
5.	Above 500 and upto 1000	6	3	3	3
6.	Above 1000 and upto 2000	9	3	3	3
7.	Above 2000 and upto 4000	9	6	6	6
8.	Above 4000 and upto 10,000	15	6	6	6
9.	Above 10,000	15	9	9	9

TABLE '3'**Floor Area Ratio**

S. No.	Area of Plot (in Sq.mt.)	F.A.R.
1	Below	225
2	Above 32 to 50	225
3	Above 50 to 100	225
4	Above 100 to 250	200
5	Above 250 to 500	150
6	Above 500 to 1000	150
7	Above 1000 to 1500	100
8	Above 1500 to 2250	100
9	Above 2250 to 3000	100
10	Above 3000 to 3750	100
11	Above 3750	100

TABLE '4'

S. No.	Area of Plot (in Sq.mt.)	Maximum Ground Coverage (%)
1	Below	75
2	Above 32 to 50	75
3	Above 50 to 100	75
4	Above 100 to 250	66.66
5	Above 250 to 500	50
6	Above 500 to 1000	40
7	Above 1000 to 1500	33.33
8	Above 1500 to 2250	33.33
9	Above 2250 to 3000	33.33
10	Above 3000 to 3750	33.33
11	Above 3750	33.33

Following observations are brought out:

- i. The Construction has been carried out at the demised premises covering an area of 64.68 sqmt. As per building bye laws maximum permissible ground coverage is 75%% whereas the petitioner has used 100% ground coverage.
- ii. As per building bye laws maximum FAR is 225 whereas the constructed area is with 400 FAR thus violates permissible FAR.

- iii. As per building bye laws set back of 3 mtr each is to be left on the front side of the plot whereas petitioner has constructed building without leaving any set back.
- iv. Since the lease has not been renewed after expiry on 28.03.2006, the building plans cannot be sanctioned where lease is expired.

The construction existing at site does not comply with the existing building bye laws notified by Govt. of India in Gazette notification dated 08.06.2002.

The Board has issued following notices to the petitioner for unauthorized construction at demised premises:

Sl. No.	Notices issued	Date
1.	Notice u/s 239(2) &(4) of Cantonments Act, 2006	23.07.2012
2.	Notice u/s 248 of Cantonments Act, 2006	23.07.2012
3.	Prosecuted u/s 247 of Cantonments Act, 2006	23.07.2012
4.	Notice u/s 239(2) &(4) of Cantonments Act, 2006	08.08.2012
5.	Notice u/s 248 of Cantonments Act, 2006	08.08.2012
6.	Prosecuted u/s 247 of Cantonments Act, 2006	08.08.2012
7.	Notice u/s 239(2) &(4) of Cantonments Act, 2006	10.09.2012
8.	Notice u/s 248 of Cantonments Act, 2006	10.09.2012
9.	Prosecuted u/s 247 of Cantonments Act, 2006	10.09.2012
10.	Notice u/s 239(2) &(4) of Cantonments Act, 2006	19.09.2012
11.	Notice u/s 248 of Cantonments Act, 2006	19.09.2012
12.	Prosecuted u/s 247 of Cantonments Act, 2006	19.09.2012
13.	Notice u/s 5-B(1) of the PPE Act, 1971	21.09.2012

The Board may consider application submitted by the petitioner for composition of the construction at demised premises on merits alongwith factual site report of the Engineering branch.

Relevant file is placed on the table.

26. WP(C) 2014/15 & CM. APPL NO.3613/2015 : ATUL AGGARWAL VERSUS UNION OF INDIA& ANR

The property bearing No.1/103, Sadar Bazar, Delhi Cantt as per office record is a Cantonment Fund property and as per rent register maintained by this office the property was rented out to Sh. S.K. Gupta. Thus Delhi Cantonment Board is landlord of property bearing No.1/103, Sadar Bazar, Delhi Cantt and Sh. S.K. Gupta is the tenant of the property. Sh. Atul Aggarwal is unauthorized/ illegal occupant of the property bearing No.1/103,

Sadar Bazar, Delhi Cantt (demised property), thus the petitioner does not have any locus standi. Sh. S.K. Gupta is tenant of the Board since 1955.

The illegal occupant Sh. Atul Aggarwal had started unauthorized construction on the demised property which is vested with the Board illegally and the respondent Board had initiated action under provisions of Cantonments Act, 2006 & PPE Act, 1971. The demised property was sealed by the respondent Board on 30.08.2013.

Sh. Atul Aggarwal had filed a Writ Petition before Hon'ble High Court of Delhi and the Hon'ble Court vide order dated 21.04.2016 directed to consider application of the petitioner for composition/ regularization of unauthorized construction and the Board shall afford an opportunity of hearing to the petitioner before deciding his application. The orders passed by Hon'ble Mr. Justice J.R. Midha dated 21.04.2016 are reproduced hereunder: -

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 2014/15 & CM. Appl No.3613/2015

ATUL AGGARWAL Petitioner

Through: Mr. Shekhar Nanavaty, Advocate

Versus

UNION OF INDIA & ANR Respondents

Through: Mr. Rakesh Kumar , CGSC for respondent No.1

Ms. Aashima, Advocate for Delhi Cantt. Board.

CORAM :

HON'BLE MR. JUSTICE J.R. MIDHA

ORDER

21.04.2016

1. Learned counsel for the respondents seeks further time to file counter affidavit. Let the same be filed within four weeks. Rejoinder within four weeks thereafter.

2. Learned counsel for the petitioner submits that without prejudice to his rights and contention, he would file an application for composition/ regularization of the construction within a period of one week from today. On such an application being filed, let the same be considered by the Board in the next meeting. The Board shall afford an opportunity of hearing to the

petitioner before deciding his application. The decision of the Board be placed before this Court on the next date of hearing.

3. List on 12th August, 2016.

4. Copy of this order be given dasti to counsel for the parties under the signature of the Court Master.

J.R. MIDHA, J.

APRIL 21, 2016/Dev

Accordingly Sh. Atul Aggarwal had submitted application for regularization/ composition of alleged unauthorized construction at property bearing No.1/103, Sadar Bazar, Delhi Cantt and the application was received in the office of Cantonment Board on 29.04.2016.

It is pertinent to mention here that Sh. Atul Aggarwal, illegal occupant had started unauthorized construction at demised premises and the Cantonment Board issued following notices under provisions of Cantonments Act, 2006. Also notice u/s 5B(1) of PPE Act, 1971 was issued to the petitioner for illegal/ unauthorized construction carried out at the demised property which is vested with the Board and the respondent is landlord of the property. Despite issue of notices under provisions of Cantonments Act the petitioner (illegal occupant) did not stop illegal construction and the property was sealed on 30.08.2013 after issue of notice u/s 5 C of PPE Act, 1971 by the Estate Officer, Delhi Cantonment.

Sl. No.	Notices issued	Date
1.	Notice u/s 239 (1) of the Cantonments Act, 2006	10.09.2012
2.	Prosecuted u/s 247 of the Cantonments Act, 2006	10.09.2012
3.	Notice u/s 248 of the Cantonments Act, 2006	10.09.2012
4.	Notice u/s 5 B of PPE Act, 1971	21.09.2012
5.	Notice u/s 239 (2) & (4) of the Cantonments Act, 2006	23.08.2013
6.	Prosecuted u/s 247 of the Cantonments Act, 2006	23.08.2013
7.	Notice u/s 248 of the Cantonments Act, 2006	23.08.2013
8.	Notice u/s 320 of the Cantonments Act, 2006	08.09.2014
9.	Notice u/s 320 of the Cantonments Act, 2006	21.02.2015

Under provisions of Cantonments Act & building bye laws notified by Govt. of India in gazette dated 08.06.2002 there is no provision to sanction building plan of a applicant who is illegal occupant/ trespasser in the Govt. accommodation.

It is pertinent to mention here that Sh. Atul Aggarwal in gross disrespect to law of land has broken seal fixed by the respondent Board in the demised property on 30.08.2013 and after breaking seal he has taken over possession of the demised property and is running business activities (commercial activities) in the residential property.

The Board may consider application filed by Sh. Atul Aggarwal and factual report submitted hereinabove in the light of orders dated 21.04.2016 passed by Hon'ble Justice J.R. Midha, High Court of Delhi note illegal action of Mr. Atul Aggarwal in damging/tempering with sealed property.

Relevant file is placed on the table.

**27. WP(C) 6447/2014 & CM 15459/2014 : ATUL AGGARWAL
VERSUS UNION OF INDIA& ANR**

The property bearing No.1/104 & 1/105, Sadar Bazar, Delhi Cantt as per office record is a Cantonment Fund property and as per rent register maintained by this office the property was rented out to Smt. Krishna Kaushik. Thus Delhi Cantonment Board is landlord of property bearing No.1/104 & 1/105, Sadar Bazar, Delhi Cantt and Smt. Krishna Kaushik is the tenant of the property. Sh. Atul Aggarwal is unauthorized/ illegal occupant of the property bearing No.1/104 & 1/105, Sadar Bazar, Delhi Cantt (demised property), thus the petitioner does not have any locus standi. Smt. Krishna Kaushik is tenant of the Board since 1978.

The illegal occupant Sh.Atul Aggarwal had started unauthorized construction on the demised property which is vested with the Board illegally and the respondent Board had initiated action under provisions of Cantonments Act, 2006 & PPE Act, 1971. The demised property was sealed by the respondent Board on 12.10.2012.

Sh. Atul Aggarwal had filed a Writ Petition before Hon'ble High Court of Delhi and the Hon'ble Court vide order dated 16.05.2016 directed to consider application of the petitioner for composition/ regularization of unauthorized construction and the Board shall afford an opportunity of hearing to the petitioner before deciding his application. The orders passed by Hon'ble Mr. Justice J.R. Midha dated 16.05.2016 are reproduced hereunder:-

IN THE HIGH COURT OF DELHI AT NEW DELHI
W.P. (C) 6447/2014 & CM 15459/2014

ATUL AGGARWAL Petitioner
Through: Mr. AnkurGosain, Advocate

Versus

UNION OF INDIA & ANR

..... Respondents

Through: Mr. Vivek Goyal , CGSC with Mr. Prabhakar
Srivastav, Ms. Aneeta Goyal, Advs. For R-
1/UOI
Mr. Anshuman, Adv. For Delhi Cantonment
Board.

CORAM :
HON'BLE MR. JUSTICE J.R. MIDHA

ORDER
16.05.2016

1. At the request of learned counsel for the petitioner, list on 27th September, 2016.
2. Learned counsel for the petitioner submits that without prejudice to his rights and contention, he would file an application for composition/regularization of the construction within a period of one week from today. On such an application being filed, let the same be considered by the Board in the next meeting. The Board shall afford an opportunity of hearing to the petitioner before deciding his application. The decision of the Board be placed before this Court on next date of hearing.
3. Copy of this order be given dasti to counsel for the parties under the signature of the Court Master.

J.R. MIDHA, J.

MAY 16, 2016

Accordingly Sh. Atul Aggarwal had submitted application for regularization/ composition of alleged unauthorized construction at property bearing No.1/104 & 1/105, Sadar Bazar, Delhi Cantt.

It is pertinent to mention here that Sh. Atul Aggarwal, illegal occupant had started unauthorized construction at demised premises and the Cantonment Board issued following notices under provisions of Cantonments Act, 2006. Also notice u/s 5B(1) of PPE Act, 1971 was issued to the petitioner for illegal/ unauthorized construction carried out at the demised property which is vested with the Board and the respondent is landlord of the property. Despite issue of notices under provisions of Cantonments Act the petitioner (illegal occupant) did not stop illegal construction and the

property was sealed on 12.10.2012 after issue of notice u/s 5 C of PPE Act, 1971 by the Estate Officer, Delhi Cantonment.

Sl. No.	Notices issued	Date
1.	Notice u/s 239 (1) of the Cantonments Act, 2006	10.09.2012
2.	Notice u/s 248 of the Cantonments Act, 2006	10.09.2012
3.	Prosecuted u/s 247 of the Cantonment Act, 2006	10.09.2012
4.	Notice u/s 239 (1) & (2) of the Cantonments Act, 2006	17.09.2012
5.	Notice u/s 248 of the Cantonments Act, 2006	17.09.2012
6.	Prosecuted u/s 247 of the Cantonments Act, 2006	17.09.2012
7.	Notice u/s 5 B (1) of PPE Act, 1971	21.09.2012
8.	Notice u/s 320 of the Cantonments Act, 2006	08.09.2014
9.	Notice u/s 320 of the Cantonments Act, 2006	08.09.2014

Under provisions of Cantonments Act & building bye laws notified by Govt. of India in gazette dated 08.06.2002 there is no provision to sanction building plan of a applicant who is illegal occupant/ trespasser in the Govt. accommodation.

It is pertinent to mention here that Sh. Atul Aggarwal in gross disrespect to law of land had broken/ tempered the seal fixed by the respondent Board in the demised property on 12.10.2012, twice and after breaking seal he continued unauthorized construction inside the property discreetly by keeping the main door of house locked. Originally seal was fixed on the portion of stair leading to first floor and the petitioner altered the structure & converted stair case portion to kitchen discreetly and he further made stairs inside the house at alternate location. When this alteration and tempering with sealed property was revealed to the office the Estate Officer ordered sealing of new stair constructed in the house and accordingly one more seal was put in the demised premises. Now the petition is again discreetly under taking illegal construction in the house. The petitioner keeps premises locked so that the construction activity is not noticed by the department. Now after tempering with the seal put in the premises on the second time he has started making illegal construction on the first floor. The file has been sent to the legal department for initiating strict action as per law for breaking/ tempering of seal put on the property by the Estate Officer, Delhi Cantonment.

The Board may consider application filed by Sh. Atul Aggarwal and factual report submitted hereinabove in the light of orders dated 16.05.2016 passed by Hon'ble Justice J.R. Midha, High Court of Delhi & note illegal action of Mr. Atul Aggarwal in damaging/tempering with sealed property.

Relevant file is placed on the table.

28. FINANCE COMMITTEE

To consider and approve the proceedings of Finance Committee Meeting held on 24.10.2016.

29. RESUME

To note the proceedings of Special Cantonment Board Meeting held on 29.08.2016.
