

HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITION No.1817 OF 2010

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner to issue a writ of certiorari calling for the records relating to order, dated 16.01.2010, passed by the 2nd respondent in the appeal filed by the petitioner, confirming the notice, dated 08.11.2004, vide EB/P.No.1&2/Arihant Avenue/1863/4272 of the 1st respondent, and quash the same.

The case of the petitioner is that he is the owner of plot Nos.1 and 2, GLR Sy.No.622, Arihant Avenue, Tarbund, Secunderabad Cantonment. In order to construct a residential house in the said plots, he submitted an application on 23.10.2003 to the 1st respondent for sanction of building construction permission. The 1st respondent accorded sanction vide Board Resolution CBR No.5(30), dated 06.05.2004. Accordingly, he started construction. When the construction is going on, the 1st respondent issued a preliminary notice, dated 08.07.2004, to the petitioner alleging that he proceeded with the construction by deviating the sanctioned plan and to submit his explanation. On 08.11.2004, the 1st respondent issued final notice under Section 185 (1) of the Cantonment Act, 1924 directing the petitioner to remove the alleged deviations. The petitioner filed an appeal before the 2nd respondent and the appeal was dismissed by the 2nd respondent on 16.01.2010. Hence, the petitioner filed this writ petition.

The respondents filed counter affidavit admitting sanction of building construction plan to the petitioner. On routine inspection the concerned area Assistant Engineer reported on 05.07.2004 that the petitioner is making construction in violation of the sanctioned plan and further making construction by clubbing Plot No.1, which is

contrary to the sanctioned plan and therefore, they issued preliminary notice on 08.07.2004, but when the petitioner failed to submit his explanation, a final notice under Section 185(1) of the Cantonments Act 1924 was issued on 08.11.2004.

While arguing the matter, learned counsel for the petitioner submitted that the Cantonments Act, 2006 provides for compounding the issue under Section 248 of the Cantonments Act 2006, and the petitioner has also made a representation on 08.12.2009 to the 1st respondent to permit him to compound the issue, and the said representation is pending.

Admittedly, the petitioner made some deviations to the plan sanctioned by the 1st respondent. For compounding the same, he made an application to the 1st respondent, and prior to taking any decision by the 1st respondent, the petitioner approached this Court. Therefore, this Court is of the view that the respondents can be directed to consider the application of the petitioner within a stipulated period.

Accordingly, the Writ Petition is disposed of directing the respondents to consider the representation, dated 08.12.2009, made by the petitioner in view of Section 248 of the Cantonments Act, 2006 and pass appropriate orders within a period of six months from today. Till the disposal of the said representation, the interim stay granted by this Court on 02.02.2010, shall continue.

There shall be no order as to costs. The miscellaneous petitions pending, if any, shall stand closed.

RAJA ELANGO, J

March 09, 2015.

CTL