

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.9562 of 2011

ORDER :

Heard the counsel for petitioner, and Sri Deepak Bhattacharjee, counsel for respondent.

2. The petitioner has assailed in this Writ Petition an order styled as notice Lr.No.SCB/EB/H.No.3-16-276/3/T'giri/85/897 dt.16.04.2010 (**for short, 'the impugned order'**), communicated to petitioner by respondent rejecting petitioner's application dt.04.03.2010 for permission to make construction.

3. The petitioner contends that she is the absolute owner and possessor of H.No.3-16-276/3 in Survey No.58, situate at Trimulgherry, Secunderabad Cantonment; that she had purchased the same under a registered sale deed dt.23.08.2001 from one K. Padmabai and others; that her vendors had inherited the same from their ancestor, viz., K.M. Narsimha Rao; at the time of purchase of the said property, there was an old room in the property; petitioner had applied on 07.12.2001 to the Executive Engineer of the Cantonment Board, Secunderabad for mutation of her name enclosing the copy of the sale deed in her favour; and that on 11.02.2003, in proceeding No.Mutation/Subdiv/667, the Executive Officer of the

Cantonment Board affected mutation in her name. She contends that when she applied for permission for making construction on 03.07.2009, the same was rejected by the impugned order stating : (a) the subject land is located inside a layout which was not approved by 2nd respondent – Cantonment Board, and (b) there is no old house existing at site. The counsel for petitioner contended that due to efflux of time the old room in the building was demolished and petitioner wanted to construct a new house for her occupation and made the request for permission to make construction, but the same has been arbitrarily refused by the said impugned order.

4. The counsel for petitioner contends that when the respondent himself has accepted the sale deed executed in favour of petitioner and affected mutation of her name in the records of the Cantonment Board, Secunderabad on 11.02.2003, it is not open to respondent to raise the plea that the said house was not constructed in a layout sanctioned by it. He also pointed out that the very fact that mutation was affected in respect of premises bearing H.No.3-16-276/3 in Survey No.58 by the respondent proves that there was a structure in the land, and the action of respondent is thus contrary to law and baseless.

5. Sri Deepak Bhattacharjee, learned Standing Counsel for Cantonment Board, referred to para No.14 of the bye-laws framed under the Cantonments Act, 1924,

which states as under :

“14. Prior approval of the Cantonment Board : No building notice under section 179 of the Cantonment Act, 1924 (2 of 1924) shall be entertained until the layout is approved by the Cantonment Board and streets, drains and water supply lines and laid to the satisfaction of the Executive Officer at the cost of the applicant and handed over to the Cantonment Board by executing gift deed in favour of the Cantonment Board, Secunderabad, for maintenance. However, the Board may sanction building application in respect of such plots in a layout which are abutting on the existing main streets of Cantonment Board or public works Department or Military Engineering services if all other amenities are available.”

6. From the above it is clear that even if there was an earlier structure which was not in an approved layout permission would be given if the plot abuts existing main streets of the Cantonment Board, etc., if all other amenities are available.

7. The counsel for respondent did not give any explanation how the proceeding dt.11.02.2003 was issued by respondent affecting mutation in respect of a structure in the name of petitioner, but insisted that the location plan produced by petitioner did not show existence of a structure.

8. The counsel for petitioner then placed reliance on an order dt.13.06.2001 in O.S.No.30 of 1999 passed by the Andhra Pradesh Wakf Tribunal, Hyderabad to which the petitioner's predecessor-in-title were parties. He contended that in that litigation it was specifically asserted

that there were structures in the land which were also accepted by the Wakf Board, and that there was a finding given in para No.6 (viii) that there were structures in the land in Survey No.58 at Trimulgherry, Secunderabad Cantonment Board. He pointed out that there is a reference to this judgment of the Wakf Tribunal in the sale deed dt.23.08.2001 executed in favour of petitioner. However, counsel for petitioner could not say whether copy of this order was placed before the respondent when it considered petitioner's application for building permission.

9. In view of the material placed before this Court, the counsel for respondent fairly stated that respondent be directed to re-consider the matter, provided the petitioner produces before the respondent copy of the order of the Andhra Pradesh Wakf Tribunal in O.S.No.30 of 1999 dt.13.06.2001.

10. In view of the said submission, the impugned order dt.16.04.2010 passed by respondent is set aside; the respondent is directed to re-consider the issue in the light of Regulation No.14 and the order dt.13.06.2001 in O.S.No.30 of 1999 of the Andhra Pradesh Wakf Tribunal, Hyderabad - copy of which shall be produced by petitioner before the respondent within a period of four (04) weeks from the date of receipt of a copy of this order.

11. This exercise shall be completed by respondent

within a period of three (03) months from the date of submission of the above document by petitioner; and the respondent shall communicate the decision of Cantonment Board to petitioner.

12. It is also made clear that petitioner is at liberty to give a detailed representation with any other supporting documents to respondent for consideration by respondent within the above time stipulated.

13. Accordingly, the Writ Petition is allowed to the above extent. No order as to costs.

14. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 14-06-2016

Ndr/*