

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

WRIT PETITION No.19099 of 2008

ORDER:

The Petitioner seeks Writ of Mandamus declaring the action of the Respondent in issuing the Notice No.SCB/Bungalows/2685, dt. 05.08.2008 in respect of Bungalow No.14, Burton Road, Bolaram, Secunderabad Cantonment, Secunderabad, under Section 244(2) of the Cantonments Act, 2006, directing the petitioner to pay fine of Rs.38,00,000/- as illegal, arbitrary and against the principles of natural justice and prohibit the respondent from imposing fine and additional fine of Rs.38,00,000/-.

02. Petitioner's case in brief is that the petitioner Trust was formed in the year 1956 by its founder Sri Parasmal Jain with principles and objectives to uplift the poor and down trodden mass. Subsequently, the Trust purchased the premises bearing Bungalow No.14, Burton Road, Bolaram, Secunderabad Cantonment, Secunderabad, under a registered Sale Deed Dt.18.09.1965, which is referred as '14/A' and it is a part and parcel of the entire premises and it is an open ground. The Trust is the absolute owner of the said property and the open land is being used as a play ground for the use of Sadhana Mandir High School, which is referred to as '14/A. The petitioner trust is paying taxes in respect of the said property till date. While so, the petitioner's Trust received a Notice Dt.2.08.2007 from the respondent purporting to have been issued under Section 244 of the Cantonments Act, 2006. In the said Notice, the vendor

of the petitioner trust was referred as predecessor in title and the trust was referred to as Occupant of the premises and they were directed to restore the status of the building to its original status of “residential use only” within seven days. The Trust has given reply to the said Notice. Thereupon, the respondent did not take any action immediately including hearing of the petitioner Trust personally or giving an opportunity of being heard in the matter. The respondent after waiting for a period of one year issued the impugned Notice No.SCB/Bungalows/2685, dt. 05.08.2008, purporting to have been issued under Section 244 (2) of the Cantonments Act, 2006, in respect of Bungalow No.14, whereunder the respondent claimed a sum of Rs.38,00,000/- being due and payable by the petitioner trust and the said Notice merely stated that there being undertaken commercial activity i.e., running marriage hall/garage/workshop etc.,”. However, there is only a school that is being run in the said premises under the aegis of the petitioner trust and nothing else as contained in the Notice. In the said impugned Notice, there is no mention about petitioner giving reply to the earlier Notice. Similarly, there was no personal hearing in the matter. In fact, under Section 244(2) of the Cantonments Act, 2006, it is specifically uses the word “ on conviction” appear to have been totally ignored.

Hence, the present Writ Petition.

03. The Respondent filed counter and opposed the Writ Petition.

04. Heard both sides.

05. When the matter came up for hearing, learned counsel for the petitioner brought to the notice of this Court that the subject matter in the Writ Petition is squarely covered by the Judgment of this Court reported in ***Dinaz Noria v Cantonment Board, Secunderabad***¹, wherein under similar circumstances referring to Section 244 (2) of the Cantonment Act, the learned Judge has held thus:

“When the provisions of the Act are perused minutely, what is noticed is that in none of the provisions which prescribe for visiting any person with punishment of fine either initially or continuing the word ‘shall on conviction’ is used. Only in sub-section (2) of Section 244 of the Act, such a provision is made. When the Parliament has enacted the statute by making special reference to the word ‘conviction’, it cannot be said that the said word has not been used in the sense in which it is understood, but only the meaning that can be given to that word is that the authorities should be convinced about the violation. If that was the case, in every provision of the Act, which provides for punishment with fine and for continuing offence, it is obligatory on the part of the respondents that they should be convinced that there was violation or contravention before proceeding to impose the fine. The intention of the Legislature appears to be that since Section 244(2) of the Act prescribes for huge punishment, i.e., Rs.1,00,000/- plus Rs.10,000/- for every day in case of continuing contravention, probably it was expected that the authorities should give an opportunity to the violator and after affording adequate opportunity, there should be a finding of guilt so as to mulct the occupier with continuing violation. In determining the said aspect, if the person who is proceeded against can satisfy the authorities that there is no contravention, the authorities cannot proceed to punish, as stated in Section 244 (2) of the Act.”

Having observed thus, the learned Judge ultimately allowed the Writ Petition and directed that it was open for the respondent to proceed against the owner or occupier of the premises in question in accordance

¹ 2018 (1) ALD 331

with law, after affording an opportunity of being heard and after recording a finding of guilt, if there is material therefor.

06. Learned standing counsel for respondent has perused the above judgment and agreed that the ratio in that judgment applies with all its fours to the case on hand. Therefore, this Writ Petition is disposed of in the light of the covered judgment.

07. Accordingly, this Writ Petition is allowed and the impugned Notice No.SCB/Bungalows/2685, dt.05.08.2008 in respect of Bungalow No.14, Burton Road, Bolaram, Secunderabad Cantonment, Secunderabad, is set aside. However, it is made clear that it is open to the respondent authorities to proceed against the owner or occupier of the premises in question in accordance with law after affording an opportunity of being heard to them and after recording a finding of guilt, if there is material therefor. Pursuant to the Order dt.04.09.2008 in W.P.M.P.No.24897 of 2008, if the petitioner has deposited an amount of Rs.1,00,000/- with the respondent as directed, the respondent authorities shall refund the said amount to the petitioner within four weeks from the date of receipt of a copy of this Order. No costs.

U. DURGA PRASAD RAO, J

Date: 24.10.2018

Note: **Issue CC by 30-10-2018.**

(b/o) eha

HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO



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Dt. 24.10.2018

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