

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.17502 of 2001

ORDER:

This writ petition is filed by the petitioner seeking to issue a writ of certiorari, calling for records relating to the order passed by the 1st respondent in Cantonment Appeal No.8/99, dated 18.07.2001 in File No.13027/Appeal/DE and to quash the same.

Heard both sides and perused the record.

The case of the petitioner is that his family members, vide registered sale deed, dated 17.09.1974, jointly purchased immovable property, i.e., Tivoli Talkies Cinema Buildings without houses surrounded by compound walls, bearing Nos.221 and 221/A, situated at Bollaram Road, Secunderabad, admeasuring 26880 square yards, equivalent to 22475 square meters, as per the plan annexed to the sale deed, from its absolute owners. The Government has nothing to do with the said property as it is a private land. The petitioner was in possession and enjoyment of the said property since 1974 and proceeded with the construction of Lamba Theatre in the said premises under deemed provisions of the Cantonment Act, 1924 (for short "the Act"). The Cantonment Board has also nothing to do with the subject property. However, the Estate Officer, Cantonment Board, Secunderabad raised dispute with regard to title of the petitioner and his predecessors, based on a change in the entry in the General Land Register in the year 1956. The petitioner was issued a notice under Section 185(1) read with Section 256 of the Cantonment Act by the respondents directing him to demolish the building. Against the said notice, the petitioner preferred appeal and the same was allowed on 23.02.1981.

It is further case of the petitioner that while so, a notice in Reference No.EB/B.No.221/Bulton Rd/321/4155 was issued to the petitioner in the name of Cantonment Board, Secunderabad, dated 19.12.1998, stating that they observed that the petitioner erected/raised unauthorized structure of RCC columns with MS sheet of size 140'-0" x 58'-6", and directed the petitioner to stop the construction within 48 hours from the date of receipt of the said notice, and also directed to show cause within 3 days as to why action should not be taken against the petitioner under the provisions of the Act, and the said notice was served on the petitioner on 28.12.1998. The petitioner immediately responded to the said notice and submitted a reply on 30.12.1998 denying the contents of the notice and denied the existence of pucca RCC columns in the subject property. The Chief Executive Officer of the Cantonment Board referred the matter to the Cantonment Board for issuance of a notice under Section 185(1) of the Act. Thereafter, a notice, dated 11.03.1999 was issued under Section 185 (1) of the Act by the 2nd respondent stating that erection/re-erection of the building specified in the schedule incorporated in the notice as the building owned/occupied or taken on lease by the petitioner and his action would constitute an offence under Section 184 of the Act and the petitioner was asked to remove the unauthorized construction, within 30 days from the date of receipt of the notice. Against the same, the petitioner preferred an appeal under Section 274 of the Act before the 1st respondent. The 1st respondent/appellate authority, on consideration of the appeal grounds and comments submitted by the Junior Engineer concerned of CEO, framed four points and considered the same and passed order negating

the contentions of the petitioner and dismissed the appeal. Questioning the same, the present writ petition is filed.

The respondents filed counter denying the contentions of the petitioner. The respondents stated that the subject property is a Central Government Property, forming part of GLR Sy.No.704, for which, the Government of India is the owner and is under the management of Defence Estates Officer, A.P.Circle, Secunderabad. Neither the petitioner nor the alleged vendors or predecessors are the owners of the property. The application of the petitioner seeking permission for construction was returned within time, and hence, question of petitioner making constructions under any deeming provisions would never arise. It is further submitted that the officials of the Cantonment Board conducted inspection on 11.12.1998 and found that the petitioner was making unauthorized constructions without there being any permission to construct on the land owned by the Government and therefore, they issued a preliminary notice on 19.12.1998, but the petitioner did not respond to the said notice. In those circumstances, the matter was placed before the Cantonment Board, and vide resolution in CBR No.2(9-1), dated 13.02.1999, the Board resolved to take steps for demolition of the unauthorized structures made by the petitioner, and accordingly, they issued notice under Section 185(1) of the Act, directing the petitioner to remove the unauthorized constructions. Without complying the said notice, the petitioner preferred appeal under Section 274 of the Act on false grounds. The appellate authority considered the entire material and rightly dismissed the appeal of the petitioner, which does not call any interference.

Learned counsel for the petitioner would contend that the 2nd respondent had issued preliminary notice stating that the petitioner had erected unauthorized construction of RCC columns with MS sheet without indicating the premises where it is constructed. He further would contend that notice under Section 185 (1) of the Act was issued without considering the explanation submitted by the petitioner on 30.12.1998 to the preliminary notice and the authority, who issued the notice i.e., the 2nd respondent, is not competent to issue such notice under Section 185 (1) of the Act as the Executive Officer of the Cantonment Board. The learned counsel further would contend that the appellate authority has not taken into consideration all these facts raised in the grounds of appeal and simply dismissed the appeal on erroneous appreciation of fact and law.

Per contra, the learned counsel for the respondents would contend that the Cantonment Board in course of discharging its functions, found that the petitioner was making constructions in the premises of Bungalow No.221, Bolton Road, Secunderabad and hence issued a preliminary notice to the petitioner asking him to stop the construction within 48 hours and show cause as to why action should not be taken against the petitioner under the provisions of the Act for not removing the unauthorized structures. The learned counsel would further contend that on receiving explanation from the petitioner, the CEO referred the matter to the Cantonment Board along with photographs. Thereafter, a notice under Section 185(1) of the Cantonments Act was issued as per the Board resolution to remove the unauthorized constructions. The petitioner preferred appeal against the said notice. The appellate authority elaborately considered the explanation of the petitioner and contentions raised in the appeals and having framed four points for consideration of

the appeal, rightly dismissed the appeal of the petitioner, which does not call for any interference.

Learned counsel for the respondents would contend that the Cantonment Board has every power to demolish unauthorized structures erected by anybody in its property, and in support of his contention, he relied upon a judgment of the Apex Court in *Cantonment Board and another v. Mohanlal and another*¹.

The above said decision is applicable if the respondents followed due procedure in issuing notice to the petitioner. The respondents are disputing the title of the petitioner over the subject property basing on change of entry in the General Land Register of the year 1956.

In the facts and circumstances of the case, on considering rival contentions of the counsel, it is found that the respondents initially issued a preliminary notice to the petitioner for which, the petitioner has submitted his explanation. Thereafter, the Executive Officer referred the matter to the Board to issue notice under Section 185(1) of the Act. In the notice issued under Section 185(1) of the Act, no reference is made about the explanation submitted by the petitioner. As seen from the notice, dated 11.03.1999, the 2nd respondent-Executive Officer, Cantonment Board, Secunderabad has issued the said notice on his own, without any authorization of the Board. The contents therein shows that he himself issued the said notice without mentioning that he is issuing the said notice as per the resolution of the Board or on the instructions of the Board. Nowhere in the said notice mentioned about the resolution of the Board, except mentioning the reference number at the bottom of the notice. As contended by the learned counsel for the petitioner, the 2nd respondent

¹ AIR 1996 SC 1586

has no authority or power to issue notice, dated 11.03.1999, under Section 185(1) of the Act. In the notice, there is no specific mention about where the petitioner encroached and made constructions in the property of the Cantonment Board. The Cantonment Board has every power to take steps against the petitioner, if he encroaches or constructs any structures in the property of the Cantonment Board, by following due procedure, as contemplated under law. Consequently, the impugned notice, dated 11.03.1999, and the order of the appellate authority, dated 18.07.2001 are liable to be set aside.

The Writ Petition is accordingly allowed. The impugned notice, dated 11.03.1999 as well as the order of the appellate authority, dated 18.07.2001 are set aside. However, the respondents are given liberty to proceed against the petitioner, by following due process of law, if it is found that the petitioner made any unauthorized constructions in the property. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

M.GANGA RAO,J

Date: 26.06.2018
Dsr