

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.11961 of 2018

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioners seeking verbatim the following relief/s:

‘...to issue an appropriate Writ, order or direction, more particularly in the nature of Writ of Mandamus declaring proceedings of the Respondent Board dt.4th April 2018 bearing LR No.SCB/EB/P No.1/Vanitha CHS/834 pursuant to which the Respondent Board has directed the Petitioners to vacate 16 apartments constructed in the name of JCR Complex, Plot No.1, situated at Sy.No.50 and 51, Chitta Reddy Colony, Vanitha Co-operative Housing Society, Bowenpally, Secunderabad, within a period of 7 days, as being illegal, and arbitrary and set aside the same and pass such other order/orders as it may deem fit and proper.’

I have heard the submissions of the learned counsel for the petitioners and of the learned standing counsel for Cantonment Board appearing for the respondent. I have perused the material record.

Learned counsel for the petitioner, while drawing the attention of this Court to the letter, dated 31.05.2014, addressed by the Chief Executive Officer, Secunderabad Cantonment Board, to the 1st petitioner would submit as follows:

- ‘A reply, dated 18.06.2014, was issued to the afore-said letter. In the said reply, the 1st petitioner has expressed her preparedness to pay composition fee as may be imposed on her in respect of the subject property as per the *proviso* to Section 248 of the Cantonments Act, 2006 [‘the Act’, for short] for the additional structures raised in the year 2000. The said matter is pending

consideration before the appropriate authority. In the meanwhile, the impugned letter/notice, dated 04.04.2018, was issued. Under the said letter/notice, the petitioners were called upon, within 7 days from the date of receipt of the said notice, to vacate the property for carrying out demolition of the unauthorised construction in the subject property. It is also stated in the said letter that failing which the petitioners shall be solely responsible for the loss or damage that may happen during demolition. Therefore, the writ petition is filed.'

Learned counsel would also submit that the petitioners are having an alternative remedy of appeal under Section 340 of the Act and that in the event this Court directs the petitioners to avail the said alternative remedy, the interests of the petitioners may be protected till the disposal of such appeal by the competent appellate authority under the said Act.

Learned standing counsel, having initially stated that he has no instructions on the subject, further pointed out to this Court that the constructions are made contrary to the building permit and that during the pendency of a civil suit, the 1st petitioner proceeded with making constructions in the subject property and that, therefore, the notice impugned was issued to the writ petitioners and that the writ petition is not maintainable.

Having regard to the facts and submissions, the Writ Petition is disposed of reserving liberty to the petitioners to prefer an appeal, under Section 340 of the Act, within four (4) weeks from the date of receipt of a copy of this order. It is made clear that both the parties shall maintain absolute *status quo* as regards the subject property till the appeal, which the petitioner now undertook to file,

stands disposed of by the appellate authority in strict accordance with the procedure established by law.

There shall be no order as to costs.

Miscellaneous petitions, pending if any, shall stand closed.

M. SEETHARAMA MURTI, J

09.04.2018

Vjl

