

THE HON'BLE SRI JUSTICE P.KESHA VA RAO

WRIT PETITION NO.7465 OF 2015

ORDER:

Heard the learned counsel for the petitioner as well as the learned Standing Counsel appearing for respondent Board.

2. The prayer sought in the Writ Petition is as under:

“....to issue a Writ of Mandamus or any other appropriate writ, order declaring the action of the Respondent in rejecting the Application of the Petitioner for construction of a building in the property bearing Plot. No. 67/A forming part of the layout in Sy.Nos.77, 78, 79, 80/1, 80/2, 81, 82/1, 82/2, 83, 91, 94 & 95, Asha Cooperative Housing Society, SBH Colony, Tirumalgherry, Secunderabad vide Proceedings Lr. No. SCB/EB/P.No.67/A/Asha Chs/Tirumalgherry/27/413, dated 2.3.2015 as illegal, arbitrary and without jurisdiction and set aside the same and further direct the Respondent to sanction the plan.”

3. The specific case of the petitioner is that he purchased Plot No.67/A forming part of the layout in Sy.Nos.77, 78, 79, 80/1, 80/2, 81, 82/1, 82/2, 83, 91, 94 and 95, Asha Cooperative Housing Society, SBH Colony, Secunderabad under registered sale deed vide document bearing No. 507/12 dated 23.3.2012 from one Dr. V.Bharati. It is also his case that his vendor in-turn purchased the same under a registered sale deed dated 25.4.2000. In fact, his vendor's vendor purchased from one P. Rangaiah under registered document No.2582 /1994. The said Rangaiah, who is the original member of the said Asha Cooperative Housing Society Limited purchased the said land under document No.2655/1989 dated 11.10.1989 from the Society. Thus, there is no dispute with regard to the title of the property. The said Society made a layout in respect of the land purchased and the same was sanctioned by the respondent Board vide CBR No. 028 (10) dated 19.12.1983.

Thereafter, the said society submitted a revised lay out wherein the subject plot was shown along with other plots. The respondent Board has sanctioned the same vide CBR.No.9 dated 8.5.1989. After purchase, when the petitioner approached the respondent and made an application dated 3.2.2015 for construction of a building, the same has been rejected vide the impugned proceedings. Against the same, the present Writ Petition is filed.

4. Learned Standing Counsel appearing for the respondent Board would submit that the Writ Petition as filed is not maintainable since there is a statutory alternative remedy available to the petitioner under Section 238 of the Cantonments Act, 2006 before the General Officer, Commanding-in-Chief, the Command, within 30 days from the service of communication.

5. However, learned counsel for the petitioner, in reply, submits that the impugned order is not an order as per law.

6. Having heard both the counsel and from the perusal of the material on record, it is revealed that the Chief Executive Officer of the respondent Board, has categorically stated in the impugned order that the revised lay out sanctioned vide CBR.No.9 dated 8.5.1989 was not confirmed by the defence lands Cantonment Ministry of Defence Southern command, Pune. In that view of the matter, this Court is not inclined to go into the aspect as to whether the petitioner enquired with the respondent Board about the confirmation of the revised lay out with the Ministry of Defence Southern Command, Pune, or not. That apart, since the impugned order is appealable under Section 238 of the Cantonments Act, which is an efficacious and alternative remedy as per the statute,

this Court is of the opinion that the Writ Petition as filed is not maintainable.

7. Accordingly, the Writ Petition is dismissed.

8. However, liberty is given to the petitioner to file an appeal against the impugned proceedings before the General Officer, Commanding-in-Chief, the Command, within four weeks from the date of receipt of a copy of this order. On such filing of an appeal, the said authority shall dispose of the same within six weeks thereafter, as per law.

Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

Date: 27.11.2018

KPM

P. KESHA VA RAO,J

