

THE HON'BLE SRI JUSTICE P.KESHA RAO

WRIT PETITION NO. 20086 OF 2008

ORDER:

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

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

“... to issue any Writ, Order or direction, preferably a Writ in the nature of Mandamus declaring the action of the respondents in highhandedly demolishing the petitioner's property situated at Plot No.74, Samrat colony, West Marredpally, Secunderabad bounded by north: Nala, South: Plot No.59, east: 30' wide road and west: Plot No.57 and part of Nala as being illegal, arbitrary, violative of Article 14 and 300-A of the Constitution of India; and consequently direct the respondent not to demolish and dispossess the petitioner in respect of the petitioner's property situated at Plot No.74, Samrat Colony, West Marredpally, Secunderabad, bounded by north: Nala, south: Plot No.59, east: 30' wide road and west: Plot No.57 and part of Nala.”

3. The specific case of the petitioner is that he is the owner of plot No.74, Samrat Colony, having purchased the same from one Pradip Kumar Nigam under a registered sale deed vide document bearing No.1425/1997 dated 30.8.1997 along with an existing house. Since the date of purchase, the petitioner has been in possession and enjoyment of the same. However, on 12.9.2008 at about 4.00 p.m., the officials of the respondent Board visited his premises and threatened to demolish the

property. Immediately on the same day, he submitted a representation stating that the property cannot be demolished.

In those circumstances, the present Writ Petition is filed.

4. In the counter affidavit filed by the respondent Board, it is specifically stated that as per the sanctioned lay out of M/s Murthy Co-operative Housing Society Limited, the dimensions of the subject plot No.74 are 56" x 45", which comes to 140 sq.yds whereas, in the sale deed executed in favour of the petitioner herein, it is mentioned as 232 sq.yds equivalent to 193.95 sq.yds which is over and above the sanctioned plot area of 140 sq.yds as per the sanctioned lay out. When the respondent Board verified, it was noticed that the owner of plot No.74 encroached upon the open Nala passing beside his plot and constructed a house. Because of the said encroachment and the construction of the house, the Board is facing difficulties since the encroachment is obstructing free flow of drain water in the open Nala and causing inundation of the locality during the rainy season. Even the photographs filed along with the counter affidavit indicate that there is encroachment of the open Nala to an extent of 18 ft. in length. When the respondent Board wanted to take appropriate action for removal of the encroachment on the open Nala by restricting the plot area of the petitioner to an extent of 140

sq.yds as per the dimensions specified in the lay out by following due process of law, the petitioner approached this Court and obtained interim orders.

5. Learned counsel for the petitioner contends that a prior notice is mandatory before resorting to demolition activity by the respondent Board. As per Section 248 of the Cantonments Act, 2006 (herein referred to as Act), the Board has no power to demolish any building after 12 months of its construction or if the construction is made beyond 12 months from the initiation of proceedings for demolition.

6. Per contra, learned Standing Counsel appearing for the respondent Board brought to the notice of this Court the provisions of Section 252 and 253 of the Act. He also submitted that Sections 252 and 253 have to be read together to the extent of removal of the unauthorized buildings over the drains and Nalas.

7. Having heard both the counsel and from the perusal of the material on record, it is seen that the writ petitioner is questioning the action of the respondent Board in demolishing his property on the ground of principles of natural justice since no notice is issued to him. It is also the case of the petitioner that since the construction in the subject property is beyond 12 months, the respondent Board has no authority in law to

demolish the same. However, Section 253 of the Act gives power to the Chief Executive Officer to take action in case of unauthorised buildings over drains, etc., which reads as under:

“Unauthorised buildings over drains, etc., --
The Chief Executive Officer, by notice in writing, require any person who has, without his permission in writing, newly erected or re-erected any structure over any public sewer, drain, culvert, water-course or water-pipe in the cantonment to pull down or otherwise deal with the same as he thinks fit.”

8. From a perusal of the above Section, it is revealed that time is not stipulated for removal of encroachments on the drains, public sewer, culvert, water-course or water-pipe in the cantonment.

9. If that be so, the contention raised by the petitioner that the respondent Board can take action within 12 months of erection or re-erection of any structure, cannot be countenanced.

10. Further, in the counter affidavit, the respondent Board has categorically stated that for removal of the encroachments, the respondent Board would follow due process of law. Since Section 253 of the Act also contemplates a notice in writing, this Court is inclined to direct the respondent Board to comply

with the procedure contemplated under Section 253 of the Act in issuing a notice and remove the encroachments.

11. Accordingly, the Writ Petition is disposed of directing the petitioner to follow due process of law while taking action for removal of the encroachments made in Plot No. 74 belonging to the petitioner.

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

P. KESHA RAO, J

Date: 31.10.2018

KPM

