
(2013) 10 AP CK 0003

In the Andhra Pradesh High Court

Case No : Writ Petition No. 28236 of 2013

K.V. Narasimha Reddy

APPELLANT

Vs

Cantonment Board and Others

RESPONDENT

Date of Decision : 21-10-2013

Acts Referred:

Citation : (2014) 3 ALD 238 : (2014) 2 ALT 715

Final Decision : Dismissed

Judgement

C.V. Nagarjuna Reddy, J.—This writ petition is filed for a certiorari to quash the proceedings in 300957/Appeal/40/Narasimha Reddy/Q(L), dated 05.09.2013, of respondent No. 2, whereby he has dismissed the appeal filed by the petitioner, against the notice, dated 23.02.2007, issued by respondent No. 1 for removal of the unauthorized constructions made by the petitioner. A perusal of the impugned order shows that the counsel for the petitioner has conceded before respondent No. 2 that there was increase in FSI over and above that sanctioned by respondent No. 1 and that the building was constructed without adhering to the required set backs as per the sanctioned plan. The appellate authority recorded the following violations:

(a) That the Appellant obtained sanction for constructing residential building consisting of stilt, ground, first and second floors but constructed cellar, ground, first and second floors.

(b) That the Appellant through the encroachments increased the area of his from 400 square yards to 421 square yards.

(c) That the Appellant did not maintain marginal open space (setbacks) around the building as per orders of GOC-in-C Southern Command dated 23 July 1984.

(d) That the Appellant violated the permissible Floor Space Index (FSI) of 1.5 as laid down vide Government of India, Ministry of Defence orders dated 02 April 2003. The Appellant constructed building with FSI 3.65, while the sanctioned FSI was only 1.49.

2. Sri D. Jagan Mohan Reddy, learned counsel for the petitioner, while fairly not disputing the findings of respondent No. 2, however, drew my attention to the first proviso to Section 248(1) of the Cantonments Act, 2006 (for short "the Act"), whereunder the Cantonment Board is empowered to compound the violations by accepting such sums as it thinks reasonable, instead of requiring the alteration or demolition of any such building or part thereof. He has also submitted under the second proviso thereof, permission of respondent No. 2, who is the appellate authority is mandatory for compounding the violations by the Cantonment Board. The learned counsel argued that respondent No. 2 himself ought to have considered the petitioner's request for compounding and that he failed to advert to this aspect even though a specific ground has been raised in the appeal.

3. In my opinion, from the mere raising of a ground in the appeal, it cannot be presumed that a specific request was made by the petitioner before respondent No. 2 to compound violations. Since the power to compound is conferred on respondent No. 1-Board, the appropriate course for the petitioner is to approach it with an application for compounding the violations. If respondent No. 1 is satisfied that the nature of the violations permits such composition, then it will seek permission of respondent No. 2 under the second proviso to Section 248(1) of the Act. Since for the present this Court is concerned with the legality or otherwise of the order passed by respondent No. 2 in the appeal filed by the petitioner, the issue whether the petitioner is entitled to composition or not will not arise for consideration.

4. As this Court has no reason to interfere with the order of respondent No. 1 as confirmed by respondent No. 2 in appeal, in view of the admitted violations indulged in by the petitioner, the writ petition is dismissed, however, with liberty to the petitioner to approach respondent No. 1-Board with an application for compounding the violations. It is made clear that dismissal of this writ petition would not affect the right of the petitioner for composition, if he is otherwise entitled to the same under the provisions of the Act. As a sequel to dismissal of the writ petition, W.P.M.P. Nos. 35036 & 35037 of 2013 shall stand disposed of as infructuous.