

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (M/S) No.2703 of 2016

Balbeer Singh

....Petitioner

Versus

Landour Cantonment Board and another

....Respondents

Mr. Shobhit Saharia and Mr. Ankush Negi, Advocates for the petitioner
Mr. B.S. Adhikari, Advocate for the respondent no.1

Hon'ble V.K. Bist, J.

1. The petitioner is aggrieved by an order dated 13.07.2016 passed by appellate authority – Lieutenant General, General Officer Commanding-in-Chief under Sections 340 and 343(3) of The Cantonments Act, 2006. Initially the petitioner was served a notice by the Cantonment Board under Section 248(2) of the Cantonments Act, 2006 for demolition of construction, which according to the Cantonment Board, is unauthorized, as no sanction was taken by the petitioner prior to raise such construction. Thereafter, the petitioner has filed a civil suit in which temporary injunction application was allowed by the court concerned. Consequently, aggrieved by the said order, Landour Cantonment Board preferred an appeal, which was ultimately allowed by the appellate court on the ground that the petitioner had a remedy to file an appeal under Section 340 of the Cantonments Act before the Cantonment Board, which reads as under:-

“340. Appeals from executive orders – (1) Any person aggrieved by any order described in the third column of Schedule V may appeal to the appellate authority specified in that behalf in the fourth column of the said Schedule.

(2) The Central Government may, for the purposes of expeditious disposal of the pending

appeals, by notification in the Official Gazette, amend Schedule V so as to designate additional appellate authority in the fourth column of the said Schedule.

(3) No such appeal shall be admitted if it is made after the expiry of the period specified in that behalf in the fifth column of the said Schedule.

(4) The period specified as aforesaid shall be computed in accordance with the provisions of the Limitation Act, 1963 (36 of 1963), with respect to the computation of periods of limitation thereunder.”

2. Now the petitioner has availed the remedy, as stated above, and their appeal has been dismissed by the authority concerned vide order dated 13.07.2016, which is presently under challenged in this writ petition.

3. The contention of the counsel for the Cantonment Board is that the property in question is on the Defence land on which no kind of construction can ever be allowed.

4. The case of the petitioner, on the other hand, is that the construction has been raised not on the land of the Cantonment Board but on their private land for which permission was sought as far back as in the year 2002. The land is approximately 489 sq.ft., on which the petitioner constructed a residence and demolition of which would entail hardship to him.

5. Before going further in the matter, it is also relevant to quote Section 250 of the Cantonments Act, which reads as under:-

“250 Courts not to entertain proceedings in certain cases (1) After the commencement of this Act, no court shall entertain any suit, application or other proceedings in respect of any order or notice unless an appeal under Section 340 is preferred and the

same is disposed of by the appellate authority under sub-section (3) of section 343 of this Act.

(2) Notwithstanding anything contained in sub-section (1), every suit, application or other proceedings pending in any court immediately before the commencement of this Act shall continue to be dealt with and disposed of by that court as if the said section has not been brought into force.”

6. A bare reading of the aforesaid provision shows that there is an embargo under Section 250 of the Cantonments Act, which will not be applicable as of now, as the petitioner has already exhausted his remedy under the Cantonments Act and now the petitioner has an equal and efficacious remedy for filing a civil suit. For this reason, this Court does not deem it fit and proper to interfere in the matter.

7. Considering the above facts of the case that the petitioner has remedy, purely in the interest of justice, in order to enable the petitioner to avail the appropriate remedy, for a period of 30 days from today both the parties shall maintain status quo on the property in dispute.

8. With the aforesaid observation, the writ petition is disposed of.

(V.K. Bist, J.)
30.09.2016