

LEGAL OPINION

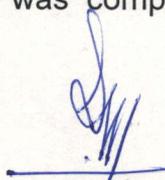
M/s Army Welfare Housing Organization
C/o Prasanna Vihar, Marine Drive, Opp. High Court,
Kochi - 682 031

Ref : Your letter dated B/03029/Legal/Mon/CHN/AWHO dated
28.02.2021 for Legal Opinion on Approach Road : AWHO SSI
KOCHI

1. You have forwarded copies of the following 4 sale deeds namely
 - (i) Sale deed dated 07.06.1991 registered as document No. 1543/1991 of SRO, Thripunithura for purchase of 73.52 Ares in Sy. No. 484 in Nadama Village, executed by M/s Good Home Pvt Ltd in favour of AWHO.
 - (ii) Sale deed dated 05.02.1992 registered as document No. 408/1992 of SRO, Thripunithura for purchase of 35.18 Ares in Sy. No. 484 in Nadama Village, executed by M/s Good Home Pvt Ltd in favour of AWHO.
 - (iii) Sale deed dated 05.02.1992 registered as document No. 409/1992 of SRO, Thripunithura for purchase of 62.37 Ares in Sy. No. 484 in Nadama Village, executed by M/s Good Home Pvt Ltd in favour of AWHO.
 - (iv) Sale deed dated 22.07.2010 registered as document No. 1912/2010 of SRO, Thripunithura for purchase of 0.135 Ares in Sy. No. 483/2 and 1.230 Ares of land in Sy. No. 484 in Nadama Village, executed by M/s Good Home Pvt Ltd in favour of AWHO.
2. You have also forwarded a copy of the sale deed dated 18.04.2018 registered as document No. 916/2018 of SRO, Thripunithura for sale of 0.699 Ares undivided share in 1 Hectare 71.07 Ares of land with a constructed area of 1810 square feet bearing Thripunithura Municipality door No. 45/454 BW (C - 21 FL 2101).



3. With reference to the right of way to the property covered by the said sale deeds you have sought for legal opinion raising 6 points by way of a questionnaire dated 09.02.2022.
- (i) Regarding the first point in the questionnaire I may state that – the ‘ right of way’ if coming within any of the categories of easements, is protected and regulated under the provisions of the Indian Easements Act, 1882.
 - (ii) Regarding the second point in the questionnaire I may state the following: Sri. B. R. Ajit representing M/s Good Home Pvt Ltd executed the sale deed No. 408/1992 of SRO, Thripunithura in favour of AWHO, making it clear in the recital portion of the said deed at page 6 that the sale consideration received by the said vendor company is “ including proportionate cost of construction of access by way of bridge already completed, connecting the total extent of land owned by the vendor with main land ”. Similar recitals are there in other sale deeds too.
 - (iii) The access to the land where the apartments named as ‘ AWHO, Chander Kunj Towers ’ are constructed is the one which starts from the main land. At the time of execution of the said sale deeds, the access was not properly laid as a road. Only subsequent to that the road was developed as a convenient access to the ‘apartments land ’.
 - (iv) The intention of the vendor company is to provide the said access as a ‘grant’. The extent of the usage of the said access and the purpose of the grant and other relevant matters and circumstances are obviously taken into account by the vendor at the time of execution of the said sale deeds.
 - (v) It was subsequent to that, as undertaken, the vendor company developed the access by laying concrete tiles, for being used as a thoroughfare by the purchaser and persons claiming under the purchaser. The laying of the road with a width of 15 Meters was completed, well before the



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execution of the said sale deeds by the Army Welfare Housing Organization to the respective purchasers. Since such a road came into existence, only subsequently the same was not specifically referred to in the description portion of the sale deeds, executed by the Vendor Company with reference to width or measurements obviously.

- (vi) The nature of the right conferred on the AWHO by the vender company is a 'grant' as indicated above, which under law is an 'easement'. The extent of usage of easement of way, is reckoned with reference to " the mode of its enjoyment " and fixed in accordance with " the probable intention of the parties and the purpose for which the rights were imposed or acquired " (please refer to Section 28 of the Indian Easements Act, 1882, under the head " Other Easements")
- (vii) Thus the way in question is at present having 15 meters width. Thus non-mentioning of the extent of the road in question specifically in the sale deeds executed by the vendor company in favour of AWHO is of no consequence at all. Since the road in question is " continuous and apparent " on ground and the same is being used by the allottees of the apartments, neither the vendor company nor anyone claiming under the said vendor can ever raise any objection or cause disturbance to the users of the road in any manner.
- (viii) Thus I may state that the rights of users of the said road in question is protected under the provisions of the Indian Easements Act, 1882.
4. This is also a complete answer to the query No. 3 as well.
5. The road in question does not assume the nature of a public way. A 'public way' is one which can be used by the members of the public as a matter of right. It also depends on the nature of user. Innumerable number of the members of



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the public has to use the way in question for attributing it the character of a public road. In the instant case the road in question is being used by specific number of persons. If the said road is having access to public places or members of the public are using it as a matter of right, the same can be termed as a public way. This is my answer to the query No. 4.

6. Regarding query No. 5, I may state that, for transferring the approach road, to the Thripunithura Municipality, the consent of the owner of the land will be required.
7. Regarding query No. 6, I may state my opinion that the resident's association is having every right to repair the said road if it requires any. Such right is protected under Section 24 of the Indian Easements Act, 1882. But such right shall not exceed beyond repairs. In other words, no alteration or modification shall be done to the said way.

I hope that my legal opinion as above would be a complete answer to your queries raised.

Dated this the 09th day of May, 2022

Yours Faithfully,



George Cherian Karippaparambil
Advocate

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