

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.21312 OF 2007

ORDER:

This writ petition, under Article-226 of the Constitution of India, is filed seeking the following relief:

“to issue a writ, order or direction, more particularly one in the nature of Writ of Mandamus, declaring the action of the respondents 1 and 2 in allowing the 4th respondent to set up Rice Mill with in the residential area in Plot Nos. 12, 13 and 14, New State Bank Colony, situated in Sy.No.64/15 of Yelamanchili, Visakhapatnam District, without taking consent of Public in the locality and without considering petitioners objections is highly arbitrary, illegal, unjust and violative of principles of natural justice and contrary to Art. 14 and 21 of the Constitution of India and contrary to the provisions of A.P. Panchayat Raj Act and the rules made thereunder and consequently direct the 1st respondent to take necessary action against the 4th respondent from setting up a Rice Mill with in the residential locality.”

The case of the petitioners, as per the pleadings in the affidavit filed in support of the writ petition, is as follows:

Petitioners 1 and 2 are the owners of house plots bearing Nos. 1, 2 and 3 in Survey No.64/15 of New State Bank Colony, near Manorama Lodge, Yelamanchili. Originally, the 3rd petitioner herein owned Ac.6.68 cents of ancestral property in old Survey No.426/3 (new 64/15). Petitioners 1 and 2 purchased Ac.1.08 cents of land in Survey No.64/15 and after making it into plots, they sold all the plots to the third parties including the 4th respondent herein, while retaining plots Nos. 1, 2 and 3 for themselves and constructed

houses in the said plots. The 3rd petitioner is the owner of plot Nos. 17 and 18 and the 4th respondent owns plot Nos. 12, 13 and 14. All the owners of the respective plots have also constructed residential houses after obtaining necessary permissions, which resulted in formation of residential colony called 'New State Bank Colony'.

In the year 2003-2004, the 4th respondent started making construction of a rice mill in the plots bearing Nos. 12, 13 and 14. The petitioners along with other residents of colony made a representation on 03.05.2003 to the District Panchayat Officer, Yelamanchili, raising objection for construction of rice mill in the residential locality and they also got issued a notice dated 29.06.2004 to the Grampanchayat, District Panchayat Officer, Divisional Panchayat Officer and also to the 4th respondent saying that such construction would cause injury to the health of the residents of the colony in view of the noise and husk which may emanate from the rice mill. The 4th respondent kept quiet for a period of three years. But, again started construction of rice mill, as such the petitioners raised objection and submitted a representation dated 20.08.2007, requesting the Authorities to stop the said construction without permission from the Authorities.

Complaining inaction on the part of the Authorities and contending that the same being arbitrary, unjust and violative of Articles 14 and 21 of the Constitution of India, the present writ petition has been filed.

A counter-affidavit is filed on behalf of the 1st respondent-Grampanchayat stating that the 4th respondent herein with a proposal to construct a rice mill in his land bearing plot Nos. 12, 13 and 14 in Survey No.64/15 of Yelamanchili Grampanchayat made an application for permission and after receiving the said application, the same was placed before the Grampanchayat and the Committee of the Grampanchayat on 28.06.2003, passed an unanimous resolution No.7, granting approval of the plan for construction of the rice mill subject to obtaining permission from all

the concerned Authorities. The said counter further states that the 1st respondent-Grampanchayat did not receive any representation, raising objections for construction of rice mill by the 4th respondent. It is further stated in the said counter-affidavit that pursuant to the permission granted by the 1st respondent-Grampanchayat, the 4th respondent obtained permission from the Pollution Control Board, Industries Department and also obtained service connection from the Electricity Department. It is further stated that after receiving the instructions from the Superior Authorities, a notice was issued to the 4th respondent to stop the construction of proposed rice mill in plot Nos. 12, 13 and 14 in Survey No.65/15 of New Bank Colony of Yelamanchili Grampanchayat.

A counter-affidavit is also filed by the 4th respondent contending *inter-alia* that he purchased an extent of 573 1/3 Sq.Yards in Survey No.64/15 of Yellamanchili Village, for the purpose of establishing a tiny rice mill and the said site is situated on the main road of Yellamanchili Town and the same is developed as Industrial-cum-Commercial area, which is surrounded by a petrol bunk, cinema hall, motor spare parts shops, gas welding shops, hotels, lodges and other commercial establishments. The said counter-affidavit further states that he was granted Grampanchayat approval by virtue of resolution No.7 dated 28.06.2003, which was communicated to him by virtue of proceedings in D.Dis.No.71/2003 dated 11.11.2003. It is further stated that he obtained necessary permission from the Department of Industries, Chief Inspector of Factories, District Medical and Health Officer, in the year 2003. It is also stated that the Regional Deputy Director, Town Planning, Visakhapatnam, also approved the plan and the District Industries Center, Visakhapatnam, by its proceedings dated 06.06.2007 issued clearance certificate also for running the rice mill. The said counter further denies the allegations made in the affidavit filed in support of the writ petition while contending that he made considerable investment.

Pleading in the manner indicated supra, it is prayed by the learned

counsel for the 4th respondent herein to dismiss the writ petition.

Heard Sri P.Rajasekhar, learned counsel for the petitioners, Sri G.Elisha, learned Standing Counsel for the 1st respondent-Grampanchayat, learned Government Pleader for Revenue for the 2nd respondent, Sri V.Raghu, learned counsel for the 3rd respondent and Sri M.S.R.Subrahmanyam, learned counsel for the 4th respondent.

A perusal of the respective pleadings of the parties available on record would clearly show that the grievance of the writ petitioners herein precisely is that the 4th respondent is setting up the rice mill without obtaining permission, which is contrary to law. The material on record further discloses that the 4th respondent herein obtained permission from Grampanchayat and also Clearance from the various Departments such as Industries Department, Department of Factories, Medical and Health Departments and Town Planning Department. A copy of the representation dated 20.08.2007, which bears no signature of the persons mentioned therein also says that the 4th respondent is establishing running rice mill against law. As per the counter-affidavit of the 1st respondent, no such representation is received by it. In fact, no reply is also filed by the petitioners herein contraverting the said averment. In fact to establish that such a representation was sent to the Authorities mentioned therein, neither the postal receipts nor any acknowledgments were filed before this Court. In these circumstances, this Court is neither inclined nor persuaded by the submissions of the petitioners to grant relief as prayed for.

For the aforesaid reasons and having regard to the facts and circumstances of the case, the writ petition is dismissed. However, this order will not preclude the petitioners from submitting representations for redressal of their grievance before the appropriate Authorities. No order as to costs.

Miscellaneous petitions if any, pending in this writ petition shall stand

closed.

Date: 31.12.2013
pab

A.V.SESHA SAI, J