

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.5858 of 2012

**ORDER:**

This writ petition is filed seeking the following relief/s:

*‘....to issue a Writ or direction preferably writ of mandamus declaring the inaction of the respondent nos.1 to 3 in taking steps to stop the construction of Gramapanchayat building by the respondent no.5 in new place i.e. near Chintalavagu in between Dharmavaram (v) South Kondayapalem (V) instead of commencing construction in the main village i.e. North Kondayapalem (V) Varikuntapadu (M) of Nellore District as per the resolution of the Gramapanchayat dt.26-6-2010 despite enquiry ordered by the respondent nos.1 and 2 vide proceedings dt.9-1-2012 and dt.6-2-2012 as illegal, arbitrary and violative of principles of natural justice and consequently direct the respondent nos.1 to 3 to complete the enquiry and further direct the respondents not to allow any construction in the new site and pass such other or further orders....’*

[Reproduced verbatim]

2. I have heard the submissions of the learned counsel for the petitioner, the learned Government Pleader for Panchayat Raj appearing for the 3<sup>rd</sup> respondent and the learned Standing Counsel appearing for the 5<sup>th</sup> respondent. I have perused the material record.

3. The case of the petitioner is this: ‘The Gram Panchayat had passed a resolution dated 26.06.2010 to construct Gram Panchayat building in an extent of Ac.0.05 cents in Sy.No.61, which is located in central place of the village and which suits the convenience of the villagers of the village and also the villagers of the hamlet villages. Due to political reasons, after completion of tenure of the Panchayat Committee, the Special Officer of the Panchayat had shifted the place of construction of the proposed Gram Panchayat building to another place, which is not convenient, by ignoring the said resolution. If such construction is permitted, it would amount to wastage of public money. In view of the subsequent proposed action, the petitioner and others had submitted representation to the 1<sup>st</sup> respondent on 08.01.2012.

The same was forwarded by the 1<sup>st</sup> respondent with an endorsement to the 2<sup>nd</sup> respondent. In turn the 2<sup>nd</sup> respondent by a letter had directed the 3<sup>rd</sup> respondent to conduct an enquiry within ten days and submit a report. After fixing dates for spot inspection, no enquiry was conducted and it was informed that the enquiry had been adjourned; however, during the pendency of such enquiry the 5<sup>th</sup> respondent had commenced the construction of the Panchayat building at the new place. There is no justification on the part of the Panchayat in commencing such construction in the absence of an elected body. Hence, the writ petition is filed.

4. The 3<sup>rd</sup> respondent-Divisional Panchayat Officer had filed a counter affidavit *inter alia* stating that it is true that the Panchayat by resolution no.3 dated 26.06.2010 had resolved to construct the Gram Panchayat building in a site of an extent of Ac.0.05 cents in Sy.no.61, which is said to be by the side of the site of one Ch.Kasi Rao, but, in fact going by the adangal and village map, the house of one Ch.Kasi Rao is in Sy.No.51-1 and that the said land in the said survey number is classified as 'metta' (dry land) which is of an extent of Ac.0.88 cents and that out of the said extent, a patta was granted in respect of Ac.0.22 cents to one J.Chengaiyah and that in the remaining area there are houses of villagers and that, therefore, the said Chengaiyah is in occupation of the land, which is proposed for the construction of the Gram Panchayat building *vide* resolution dated 26.06.2010 and that though the said villager had expressed willingness to vacate the property which is in his occupation, he did not vacate the same and that the site originally proposed is not sufficient to complete the construction of the Gram Panchayat building as the same is not suitable for construction of the building as per the standard plan annexed to the guidelines for construction of Gram panchayat building *vide* GOMs.No.220 PR & RD (RD-II) Department dated 11.06.2010 and that as per the resolution of the Gram Panchayat some villagers have donated the land of an extent of 242 Square yards = Ac.0.05 cents in Sy.No.6-2B and that the said site is best suited for construction of the proposed Gram Panchayat building and that when a representation is submitted the same was forwarded on 09.01.2012 to conduct enquiry and that after prior notice an enquiry was

conducted in the presence of the petitioner and that the Panchayat Secretary had given a statement dated 04.04.2012 and that after enquiry a report was submitted and that the Extension Officer, PR & RD who is also the Inspecting Officer had confirmed that the proposed site for construction of Gram Panchayat building in Sy.6-2B is suitable to all the villages of North Kondayapalem Gram Panchayat as it is situate on the main R & B road and that, therefore, as per the recommendation of the Assistant Engineer, Panchayat Raj, Varikuntapadu Mandal vide letter dated 09.11.2011 and also the confirmation certificate issued by the Assistant Engineer, Varikuntapadu mandal, the Special Officer, North Kondayapalem Gram Panchayat in his proceedings *vide* PR.No.1 dated 14.11.2011 had resolved to construct the North Kondayapalem Gram Panchayat building in Sy.No.6-2B in an extent of Ac.0.05 cents as the originally proposed site is in occupation of J. Changaiah and is not fit for construction of the proposed Gram Panchayat building and as the later proposed site in Sy.No.6-2B is having sufficient area as prescribed in the guidelines shown in the plan provided in the GO and that as the said land is within the reach of the villages and is situate in the R & B main road which is passing from Pamuru to Peddireddypalli and that accordingly, the proposed construction was made up to the level of basement and, therefore, the objections raised by the petitioner do not merit consideration.

5. The 5<sup>th</sup> respondent had also filed a counter *inter alia* stating more or less the same averments which are stated by the 3<sup>rd</sup> respondent. In the said counter affidavit filed on 01.12.2015, it is further stated that the Gram Panchayat building had been completed to an extent of more than 85% in the proposed site and that the original site proposed by resolution dated 26.06.2010 is not feasible for construction of the Gram Panchayat building.

6. At the time of hearing, the learned counsel for both the sides made submissions in line with the respective pleadings.

7. On an earnest consideration of the submissions in the writ petition and the counter affidavits of the respondents 3 and 5, the following aspects

emerge: 'The Special Officer had proposed the new site for the construction of the Gram Panchayat building as the originally proposed site is not well suited; it is not feasible to construct the proposed Gram Panchayat building in the originally proposed site, as per the guidelines shown in the plan provided in the GO; the said originally proposed site is in the occupation of one J.Chengaiyah; though there was an offer to vacate the said site, he did not vacate the said site and is continuing in possession of the same; the present proposed site is gifted to the Gram Panchayat by some of the villagers under a registered document; a report was submitted by a competent officer, who had inspected the property as per the directions given pursuant to the representation of the petitioner; and, the said report reveals that the site in Sy.No.6-2B that was later proposed is best suited and it is practicable to construct in the said site, the Gram Panchayat building as per the guidelines shown in the plan provided in the GO; the said land later proposed for the construction of the Gram Panchayat building is within the reach of the villages of the Panchayat and is situate in the R & B main road, which is passing from Pamuru to Peddireddypalli; by now the Gram Panchayat building was constructed upto the extent of more than 85% in the present proposed site.' Having regard to the above factors, this Court finds that it is in the public interest to allow the respondents to construct the proposed Gram Panchayat Building in Sy.No.6-2B. It is well settled that the exercise of jurisdiction under Article 226 of the Constitution of India is discretionary and a writ is not issued as of right or as a matter of course. (**Vide C.R.Reddy Law College Employees' Association, Eluru, West Godavari District v. Bar Council of India, New Delhi**)<sup>[1]</sup>. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has discretion to entertain or not to entertain a writ petition. But, the High Court has imposed upon itself certain restrictions in the exercise of this power. [See: **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors.** (AIR1999SC22)]. The writ petitioner herein could not establish that any substantial injustice had ensued to him on account of the shifting of the place for the construction of the building of the Gram Panchayat. As a sequel, it

must be held that no grounds much less valid grounds are made out to allow the writ petition by directing to stop the construction of the proposed Gram Panchayat building in the present proposed site and conduct an enquiry as to the suitability of the sites at this stage or to grant any other relief.

8. Having regard to the reasons, this Court finds that there is no merit in the writ petition.

9. The Writ Petition is dismissed. No costs.

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

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**M. SEETHARAMA MURTI, J**

14.12.2015  
Vjl

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[\[1\]](#) 2004(5) ALD 180 (D.B)