

HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.12370 of 2015

Date: 13.10.2015

Between:

Ch.Narayana Reddy, s/o. Malka Reddy,
Aged 47 years, Occu: Business,
R/o. 4-112, Goopanpally, Nizamabad District.

.... Petitioner

AND

State of Telangana, rep.by its Principal Secretary,
Panchayat Raj & Rural Development, Secretariat,
Hyderabad and others.

.... Respondents

The Court made the following:

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ORDER:

This writ petition is filed seeking the following reliefs:

To issue an order or direction more particularly in the nature of writ of mandamus declaring the impugned order Memo No.5322/Pts.I/A1/2014, dated 31.03.2015 issued by the 1st respondent as illegal, arbitrary and consequently set aside the same and direct the respondents 1 to 4 to demolish the building constructed by the 5th respondent vide permit BP No.35/2011/ HBO.

2. Petitioner claims to be the resident of Goopanpalli village. According to the petitioner, having noticed that the 5th respondent is undertaking illegal construction of multi-storeyed building in Sy.No.64/AA of Goopanpalli Shivar, Gangasthan, Phase-II, Goopanpalli, Nizamabad District, he has complained to various authorities. On his persistent follow up, on 17.10.2014, the Secretary Gram Panchayat directed the 5th respondent to stop the construction and to show-cause why illegal constructions made should not be demolished. Challenging the said notice, the 5th respondent filed revision before the Government on 25.11.2014. The Government passed orders dated 31.03.2015, impugned in the writ petition, directing regularization of deviations made by the 5th respondent subject to collection of appropriate fine/ regularization fees and the revision petitioner furnishing building safety certificate from licensed Engineer.

3. By order dated 01.06.2015, this Court granted interim suspension of the Government Memo impugned in the writ petition.

4. Praying to vacate the said order, the 5th respondent filed W.V.M.P.No.1634 of 2015. When the W.V.M.P. was taken up for consideration, learned senior counsel representing counsel for petitioner, 5th respondent respectively, learned standing counsel and learned Government Pleader for Panchayat Raj, agreed for final disposal of the writ petition.

5. Heard learned senior counsel Sri L.Ravi Chander, appearing for Sri P.Bhaskar, counsel for petitioner, learned Government Pleader for Panchayat Raj (TG) for respondents 1 to 3, Sri G.Narender Reddy, standing counsel for respondent no.4 and

Sri P.Venugopal, Advocate General (AP) appearing for
Sri Ch.Siddhartha Sarma counsel for respondent no.5.

6. Learned senior counsel Sri L.Ravi Chander appearing for counsel for petitioner contended that the Government erred in entertaining the revision petition against the notice issued by the Gram Panchayat and no such revision is maintainable against such notice. No final order was passed by the Gram Panchayat and against final order passed by the Gram Panchayat, 5th respondent has remedy by way of two appeals, and without exhausting the appeals, the 5th respondent could not have directly invoked the Revisional jurisdiction of the Government.

7. Learned senior counsel further contended that in the instant case Section 121 of the Act, 1994, is not attracted. The Government erred in exercising power under Section 121 to grant regularization to the 5th respondent. Learned senior counsel further contended that question of regularization of building which is under construction does not arise. The facts noted by the Government in para-5 of the order impugned in the writ petition disclose that the building is under construction.

8. Learned Advocate General for the State of A.P., appearing for counsel for 5th respondent contended that petitioner has no locus standi. He is not a person aggrieved by the decision of the Government dated 31.03.2015. Petitioner is no way concerned with the construction of the building. According to the information available with the 5th respondent, he is not even resident of Goopanpalli; no right of the petitioner much less fundamental right is affected by the order impugned and, therefore, the writ petition is not maintainable and is liable to be dismissed on this ground alone.

9. Learned Advocate General further contended that against the cancellation of building permission on 19.05.2014, the 5th respondent appealed to the Gram Panchayat and prayed for regularization and on his appeal, Gram Panchayat passed resolution on 22.05.2014 agreeing the request of the 5th respondent to grant

regularization. Thus, once Gram Panchayat passed resolution regularising the construction made by the 5th respondent, the Secretary of the Gram Panchayat has no competence to issue such notice.

10. He further submitted that remedy of appeal is available only if final order is passed, where as even before a final order is passed, the Panchayat Secretary was administering threat to demolish the building. Having regard to the illegality in issuing the notice and threat administered contrary to the decision of Gram Panchayat, 5th respondent had no other effective remedy except to file a revision before the Government.

11. Learned Advocate General further contended that STC No.2825 of 2015 was registered against the 5th respondent by the Special Magistrate of II Class, Nizamabad. The Special Magistrate of II Class by judgement dated 21.08.2015 held that 5th respondent as not guilty.

12. Learned standing counsel for Gram Panchayat submitted that 5th respondent did not observe the setback requirements to undertake construction of multi-storeyed building and has violated the building permission granted to him. Accordingly, on 15.04.2014, Gram Panchayat resolved to cancel the building permission accorded to the 5th respondent and launch the criminal prosecution against him and Crime No.253 of 2014 was registered on 19.06.2014. On 19.05.2014 building permission application was cancelled.

13. Having regard to the illegalities noticed, the Panchayat Secretary, who is competent authority in accordance with the Rules notified in G.O.Ms.No.67, dated 26.02.2012, validly issued notice on 17.10.2014. There is no illegality or irregularity in issuing such notice. However, Gram Panchayat could not proceed further on account of interim orders passed by the Government on 01.12.2014 and final orders in the memo impugned in this writ petition.

14. Learned Government Pleader for Panchayat Raj, justifies the order impugned in

the writ petition. According to him Section 121 of the A.P. Panchayat Raj Act, 1994 enables the Government to issue impugned directions and therefore, no illegality was committed in entertaining revision and passing orders.

15. In reply, the learned senior counsel, appearing for the counsel for the petitioner contended that petitioner is an ordinary resident of Goopanpalli. Having noticed illegal construction made by the 5th respondent, petitioner has been pursuing the matter with various authorities and Gram Panchayat caused several notices, the latest one being 17.10.2014 at his instance and without affording opportunity to petitioner, the impugned order was passed by the Government.

16. The point for consideration is whether Government erred in entertaining revision filed by 5th respondent and passing orders in exercise of powers under Section 121 of the Panchayat Raj Act, 1994?

17. Brief recapitulation of the facts is necessary for considering the controversy in the writ petition. Building permission was granted to 5th respondent on 12.9.2011 in plot Nos. 293, 294, 304 and 305 of L.P.No. 78/2002/H in survey No. 64/AA, Gangasthan Phase-II, Gupanpally, Nizambad mandal to construct ground plus 5 upper floors. The Director of Town and Country Planning has granted technical clearance. As a consequence to the permission granted, 5th respondent undertook construction of multi-storied building. The correspondence enclosed to the writ petition and material papers filed by Gram Panchayat would disclosed that since May, 2013, series of notices are issued asking the petitioner to stop construction, since Gram Panchayat has noticed deviations in the constructions made. In response to the complaints lodged by the petitioner, the District Panchayat Officer caused enquiry and issued orders and District Collector also issued orders to take action against the illegal constructions. Matter was considered by the Gram Panchayat in its meeting held on 15.4.2014 and decided to cancel the building permission. Crime No. 253/2014 was also registered in Nizamabad Rural Police station on 19.6.2014. As a consequence to the decision of the Gram Panchayat, Panchayat Secretary passed orders on 19.5.2014 cancelling the building permission.

18. It appears 5th respondent went before the Gram panchayat again on 21.5.2014

requesting the Gram Panchayat to review its earlier decision. In consequence to the said request, Gram Panchayat meeting was convened on 22.5.2014 and Gram Panchayat reviewed its earlier decision and agreed with the request of the 5th respondent to grant regularisation. Panchayat Secretary issued notice on 17.10.2014 directing the petitioner to remove the illegal constructions made in deviation of sanctioned plan. According to this notice, on four sides of the building, petitioner has not observed the set backs required to be observed in accordance with the sanctioned plan and 5th respondent was directed to remove those encroachments to make it on par with the sanctioned plan. Claiming that though 5th respondent filed representation before the District Panchayat Officer on 14.11.2014 but District Panchayat Officer failed to act upon the representation, whereas, the Panchayat Secretary was threatening to remove the illegal constructions made, petitioner filed revision before the Government praying for a direction to the District Panchayat Officer to pass orders on the petition filed by 5th respondent on 14.11.2014 by duly taking note of the resolution passed by the Gram Panchayat on 22.5.2014 by setting aside the notice issued by Panchayat Secretary on 17.10.2014. The Government initially granted stay of the orders of the Panchayat Secretary and finally by the decision impugned in the writ petition, Government directed the Gram Panchayat to regularise the building after the construction of building subject to collection of appropriate fine/ regularisation fee and furnishing building safety certificate.

19. Before answering the point for consideration, it is necessary to deal with objection of locus standi of petitioner to challenge the decision of Government. Right to life is fundamental right guaranteed to every citizen of the country. It implies right to decent living, which necessarily require provision of all basic amenities. A citizen is entitled to have decent living standards with no pollution, hygienic atmosphere and with all civic amenities. The various facets of right to life are well recognised by long line of decisions of the Supreme Court and this Court. However, direct decision which applies to the facts of this case is rendered by the Supreme Court in **DEEPAK KUMAR MUKHERJEE Vs KOLKATA MUNICIPAL CORPORATION**. Supreme Court held as under:

“8. What needs to be emphasised is that illegal and unauthorised constructions of buildings and other structures not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorised constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The reports of demolition of hutments and jhuggi jhopris belonging to the poor and disadvantaged section of the society frequently appear in the print media but one seldom gets to read about demolition of illegally/unauthorisedly constructed multi-storeyed structures raised by economically affluent people. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors.”

20. Provision of proper civil amenities and better civic facilities can arise only if housing colonies are developed in a planned manner. If there is irregularity in development of residential accommodation or contrary to the plans envisaged, buildings are constructed, it will have deleterious effect on the entire community and every person living in that area or ordinarily visiting would be an affected person. The natural resources are scarce. The infrastructure facilities are minimal. Available infrastructure facilities must be utilized in the best possible manner for the benefit of all. Proper planning of any community/village is an essential feature of proper development of the society. While planning for development of the village or any community, several aspects are taken into consideration including provision of electricity, water, road infrastructure, transportation etc. If constructions are made contrary to the plans envisaged, it will have an impact on all these facilities required to be provided and, therefore, any deviation in planning of an area or village or community or urban area, would impact everybody. In matters of this nature the scope of person aggrieved gets enlarged. Therefore, every person, who is ordinary resident of village/community or town or person who ordinarily commutes gets affected by irregular/ill planned development of the area.

21. In the instant case, petitioner has been espousing the issue of unauthorised construction made by 5th respondent and on his persistence, the Gram Panchayat initiated proceedings against which the 5th respondent filed revision before the Government which in turn passed orders impugned in the Writ Petition. Thus petitioner is a person interested/ aggrieved and this writ petition is maintainable.

22. The material brought on record by the petitioner and the respondent Gram Panchayat would disclose that as soon as the Gram Panchayat noticed that 5th respondent was undertaking illegal construction contrary to the building permission granted, notices have been issued not to undertake construction in deviation of the building permission and to stop the construction and to ensure that the setbacks are observed. The District Panchayat Officer has issued Memo on 30.04.2013 to take action on the illegal construction made by the 5th respondent without observing setbacks and without following the norms of construction. Several other orders are also issued by said Authority. The District Collector also issued appropriate directions in this regard. Though notices were issued to stop the construction, the construction was unabated. In the process of issuing notices from time to time, notice dated 17.10.2014 was issued.

23. Mandated by the orders by the higher authorities to scrupulously follow the provision of law and to take action against the illegal constructions, Panchayat Secretary directed the 5th respondent to stop the construction and not to undertake construction without observing setbacks. The 5th respondent was warned that appropriate action as warranted by the provisions of Rules, 2002 would be taken if the construction is not stopped. At this stage, the 5th respondent filed revision before Government.

24. The order impugned in this writ petition is as a result of such revision filed by the 5th respondent. Government directed to grant regularization as sought for by the 5th respondent. Government takes support from the resolution passed by the Gram Panchayat to its decision to give direction to grant regularization. Government also placed reliance on the provision contained in Section 121 to issue impugned directions.

25. The relevant provisions which have bearing on the issue in this writ petition are Sections 121, 127, 128 and 264 of the Act, 1994. It is useful to extract Section 121 which is the bone of contention in this writ petition, it reads as under:

Section 121 of the Act, 1994 read as under:

“Section 121. Construction of building:- No piece of land shall be used as a site for the construction of a building and no building shall be constructed or reconstructed and no addition or alteration shall be made to an existing building without the permission of the gram panchayat granted in accordance with the provisions of any rules or bye-laws made under this Act, relating to the use of building sites or the construction or reconstruction of buildings:

Provided that the Government may, in respect of all gram panchayats or with the consent of the gram panchayat, in respect of any particular gram panchayat or portion thereof, exempt all buildings or any class of buildings from all or any of the provisions of any rules or bye-laws made under this Act.

26. Mandate of Panchayat Raj Act and the A.P.Gram Panchayat Land Development (Layout and Building) Rules, 2002 (for short, ‘Rules, 2002’) is clear and specific. The object of the Act is to ensure orderly development of villages so that scarce natural resources are utilized properly and there is no over burden on civic infrastructure. It is also necessary to ensure provision of proper amenities to all residents of the village. Therefore, the provisions of the Act and the Rules made there under prescribed various requirements to draw layouts and construction of residential/ commercial properties.

27. Main provision in Section 121 emphasizes this concept in clear terms. The basic norm is no building can be constructed/ repaired/reconstructed without permission from Gram Panchayat. The procedure to grant permissions is regulated by Rules 2002.

28. The proviso appended to Section 121 has to be seen in the above back ground. This proviso vests extraordinary power in the Government to grant relaxation of rigours of application of the provisions of the Act and Rules. On a careful reading of proviso to section 121 of the Act, 1994, following parameters of exercise of extraordinary power by the Government are deducible:

- a. Government can grant relaxation of all or any of the provisions of the Act and Rules made therein to all Gram Panchayats. In this case no consultation with the Gram Panchayat is necessary.
- b. In consultation with the particular Gram Panchayat, it is permissible for

the Government to grant relaxation to the entire Gram Panchayat or portion thereof.

- c. Such wholesale relaxation/particular relaxation can be to all buildings or to class of buildings.

29. Thus, the power under proviso is to be exercised subject to fulfilment of above conditions. It thus, follows that power is not available to Government to grant any relaxation/ pass any orders in individual cases.

30. Rules 2002 deal with all aspects of layout and construction of building in Gram Panchayats. Rule 26 of the Rules vests power to sanction or refusal of permission. Rule 28 vests power to revoke the permissions granted. Provisions of the Act deal with all aspects. As noticed above, Section 121 mandates obtaining of permissions prior to construction. Section 127 deals with general provisions regarding licences and permissions. Under Section 128, against any decision of executive authority of the Gram Panchayat including the decision revoking permission granted, an appeal shall lie to the Gram Panchayat. Against the decision of the appellate authority, second appeal would lie to the next higher authorities i.e., District Panchayat Officer. The Act do not envisage filing of review/revision to the Government in individual building permission cases, at any rate directly to Government even before the appeals are exhausted. Thus, Government grossly erred in entertaining the revision at the initial stage itself. Moreover, relief granted was more than the relief prayed. On that ground also, the order impugned is liable to be set aside.

31. Section 264 of the Act, 1994 vests wide powers of review and revision in the Government. Power enables Government to call for records and examine any decision of the Gram Panchayat or its officers in respect of any proceeding to satisfy as to regularity, correctness, legality, propriety of decisions or orders passed and as a consequence, Government can modify/annul or reverse or remit for reconsideration. In the instant case, such power is not invoked. Even otherwise, power under Section 264 is a residuary power exercisable in extraordinary circumstances to deal with matters where contrary to statutory mandate or policy of the State a decision is taken affecting large section of people or such decision resulted in lot of unrest. It cannot be invoked in individual cases, more so when appellate mechanism is envisaged by the Act. There is specific reference to

provision in Section 121 in the order impugned. As seen from the prayer sought in the revision filed before the Government, revision petitioner only wanted Government to set aside the order of Panchayat Secretary dated 17.10.2014 and to direct the District Panchayat Officer to consider the representation stated to have been filed on 14.11.2014 duly taking note of Gram Panchayat order dated 22.5.2014. The revision petitioner was contending that when resolution was passed by the Gram Panchayat in his favour, the Panchayat Secretary could not have issued the orders to remove the set backs.

32. Thus, the writ petition is allowed setting aside the order impugned in the writ petition. On account of setting aside the order impugned in the writ petition matter gets relegated to the stage when the Panchayat Secretary issued notice on 17.10.2014.

33. The consequences of directions issued by Panchayat Secretary on 17.10.2014 are grave to 5th respondent.

5th respondent was claiming that his application for regularisation was favourably considered by Gram Panchayat and resolution was passed accordingly on 22.5.2014. The said decision of the Gram Panchayat is not under challenge. Against notice issued by Panchayat Secretary, 5th respondent claimed in his revision petition, that he had submitted representation to District Panchayat Officer on 14.11.2014. Having regard to the same and to give further opportunity, the District Panchayat Officer is directed to consider the said representation and to pass orders as warranted by law. Having regard to rival claims, the District Panchayat Officer shall afford opportunity to place all documents in support of the claim by petitioner and 5th respondent and shall afford personal hearing. He shall fix a date for personal hearing by intimating to both parties in advance and pass appropriate orders as warranted by law. The entire exercise shall be completed by the District Panchayat Officer within a period of four weeks from the date of receipt of copy of this order. All issues concerning the subject property are left open to be agitated by rival parties. It is also made clear that no further construction can be taken up by the 5th respondent

till orders are passed by District Panchayat Officer.

Miscellaneous petitions if any pending in the writ petition shall stand closed. There shall be no order as to costs.

_____**JUSTICE P.NAVEEN RAO**

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