

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION NO.7932 OF 2015

DATED:09-11-2015

Between:

Calingapatnam Gram Panchayat

Gara Mandal, Srikakulam District

Rep. by its Sarpanch

Potnuru Krishna Murthy ... Petitioner

And

The State of Andhra Pradesh

Represented by its Principal Secretary

Panchayat Raj & Rural Development

Department

Secretariat Building, Hyderabad

and others ... Respondents

... Respondents

COUNSEL FOR THE PETITIONER: Mr. P. Veera Reddy, Senior Counsel

for Mr. Karri Murali Krishna

COUNSEL FOR RESPONDENT NOS.1, 2 and 5: A.G.P. for Panchayat Raj

(AP)

COUNSEL FOR RESPONDENT NOS.3, 4, 6 and 7: A.G.P. for Revenue (AP)

COUNSEL FOR RESPONDENT NO.8 : Mr. Ravi Cheemalapati

COUNSEL FOR RESPONDENT NO.9 : Mr. Ambati Sreenivas

THE COURT MADE THE FOLLOWING:

ORDER:

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The Sarpanch of Calingapatnam Gram Panchayat, Gara Mandal, Srikakulam District, filed this writ petition in the name of the Gram Panchayat, apprehending that the respondents are taking steps for inclusion of Survey No.146 and Uppugadda area of Survey No.201 of Calingapatnam Revenue Village, in the area of respondent No.8 by deleting the same from Calingapatnam Village.

2. Before proceeding to discuss the merits of the case, the issue relating to

maintainability of the writ petition needs to be addressed.

Mr. Ravi Cheemalapati, learned Standing Counsel for Panchayat Raj Institutions (AP), appearing for respondent No.8, has submitted that as a Secretary has been appointed to the petitioner Gram Panchayat, who is the Executive Authority under Section 30 of the Andhra Pradesh Panchayat Raj Act, 1994 (for short, 'the Panchayat Raj Act'), the Sarpanch cannot represent the petitioner.

3. Mr. P. Veera Reddy, learned Senior Counsel, appearing for the petitioner, submitted that though the Executive Authority shall be responsible for implementing the resolutions of the Gram Panchayat, the Panchayat Raj Act has not specifically conferred power on him to exclusively represent the Gram Panchayat before the Courts.

4. Under Section 30 of the Panchayat Raj Act a whole time or a part-time Executive Officer, if appointed for a Gram Panchayat, shall be the Executive Authority and in the absence of such appointment in respect of any Gram Panchayat, the Sarpanch shall exercise powers and perform the functions of the Executive Officer. Under Section 32(a) of the Panchayat Raj Act, the Executive Authority shall be responsible for implementing the resolutions of the Gram Panchayat and the Committee thereof. As rightly pleaded by the learned Senior Counsel appearing for the petitioner, the Panchayat Raj Act does not expressly confer power on the Executive Officer appointed as Secretary of the Gram Panchayat to represent the Gram Panchayat or bars the Sarpanch from representing the Gram Panchayat.

5. In *Gadde Venkateswara Rao v. Government of Andhra Pradesh*, the Supreme Court held as under:

"...[Article 226](#) confers a very wide power on the High Court to issue directions and writs of the nature mentioned therein for the enforcement of any of the rights conferred by Part III or for any other purpose. It is, therefore, clear that persons other than those claiming fundamental right can also approach the court seeking a relief thereunder. The Article in terms does not describe the classes of persons entitled to apply thereunder; but it is implicit in the exercise of the extraordinary jurisdiction that the relief asked for must be one to enforce a legal right.

*'...The right that can be enforced under [Art. 226](#) also shall ordinarily be the personal or individual right of the petitioner himself, though in the case of some of the writs like habeas corpus or quo warranto this rule may have to be relaxed or modified' [As observed in *Calcutta Gas Co.(Proprietary) Ltd. v. State of West Bengal*; (AIR 1962 SC 1044, P.1047 para 5)].'*

Has the appellant a right to file the petition out of which the present appeal has arisen? The appellant is the President of the Panchayat Samithi of Dharmajigudem. The villagers of Dharmajigudem formed a committee with the appellant as President for the purpose of collecting contributions from the villagers for setting up the Primary Health Center. The said committee collected Rs.10,000/- and deposited the same with the Block Development Officer. The appellant represented the village in all its dealings with the Block Development Committee and the Panchayat Samithi in the matter of the location of the Primary Health Center at Dharmajigudem. His conduct, the acquiescence on the part of the other members of the committee, and the treatment meted out to him by the authorities concerned support the inference that he was authorized to act on behalf of the committee. The appellant was, therefore, a representative of the committee which was in law the trustees of the amounts collected by it from the villagers for a public purpose. We have, therefore, no hesitation to hold that the appellant had the right to maintain the application under [Art. 226](#) of the Constitution. This Court held in the decision cited supra that 'ordinarily' the petitioner who seeks to file an application under [Art. 226](#) of the Constitution should be one who has a personal or individual right in the subject-matter of the petition. A personal right need not be in respect of a proprietary interest : it can also relate to an interest of a trustee. That apart, in exceptional cases, as the expression 'ordinarily' indicates, a person who has been prejudicially affected by an act or omission of an authority can file a writ even though he has no proprietary or even fiduciary interest in the subject matter thereof. The appellant has certainly been prejudiced by the said order. The petition under [Art. 226](#) of the Constitution at his instance is, therefore, maintainable."

6. In a recent judgment in *Village Panchayat, Calangute v. Additional Director of Panchayat-II and others*, the Supreme Court referred to the above said judgment and following the same, held that the case instituted by the Village Panchayat, Calangute, through its Sarpanch was maintainable and that the learned Single Judge of the High Court committed a grave error in summarily dismissing the matter.

7. In the light of the above position of law, the objection raised by the learned Standing Counsel appearing for respondent No.8 has no merit and the same is rejected.

8. Coming to the merits of the case, the petitioner Gram Panchayat was bifurcated vide Notification in Roc. No.1603/95-P5, dt.9.5.1995 whereunder respondent No.8 Gram Panchayat was carved out with three villages, Mastyalesam, Vadapalem and Chinna Mastyalesam, with Sy Nos.160, 161, 201 and 205 to 221. The petitioner has, however, pleaded that though Sy. No.201 was included in the newly carved out Gram Panchayat, it has been exercising administrative control over the said survey number and that all the inhabitants of the said survey number were included in the voters' list of the petitioner Gram Panchayat.

9. It appears that respondent No.9 has approached respondent Nos.3 to 6 for inclusion of Sy. Nos.146 and 201 in respondent No.8 Gram Panchayat and that thereafter, notice dt.22.1.2015 was issued by respondent No.7 for demarcation of the boundaries in respect of Sy. Nos.146, 160, 161, 201 and 205 to 221 at the behest of respondent No.8 Gram Panchayat, and the Sarpanch of the petitioner is one among the persons along with the Sarpanch of respondent No.8, who were requested to attend the survey on 28.01.2015 at 9.00 a.m. Subsequently, another notice was issued by respondent No.5 on 23.2.2015, for identification of the above mentioned survey numbers on 25.2.2015. Feeling aggrieved by this action, the petitioner filed this writ petition.

10. On behalf of respondent Nos.1 to 5, respondent No.5 has filed a counter affidavit wherein he has *inter alia* stated that since Sy. No.201 was already included in respondent No.8 Gram Panchayat in the notification issued on 9.5.1995 which has attained finality, the petitioner cannot raise any dispute. As regards Sy. No.146, respondent No.5 has pleaded that a Draft Preliminary Notification was issued vide Reference No.556/2002, dt.6.5.2002 by the Special Chief Secretary and Chief Commissioner of Land Administration, Andhra Pradesh, Hyderabad, proposing to include certain survey numbers in various Gram Panchayats, which include Sy. No.146 in respondent No.8 and that as the petitioner has failed to raise any objection the said notification has become final.

11. Learned Senior Counsel appearing for the petitioner submitted that the Draft Preliminary Notification dt.6.5.2002 referred to in the counter affidavit was purportedly issued under sub-sections (4) and (5) of Section 3 of the Andhra Pradesh Districts (Formation) Act, 1974 (for short, 'the 1974 Act') and that the said provision applies only where boundaries of a District are sought to be amended. He has further submitted that though the Draft Preliminary Notification was issued, no final Notification was issued and that as a result of which even the said Draft Preliminary Notification has died its natural death.

12. I find merit in this submission of the learned Senior Counsel. The head note of the 1974 Act reads as under:

"An Act to provide for the formation of districts in the State of Andhra Pradesh and for alteration of areas or boundaries of the districts in the interests of better administration and development of the areas comprised therein and for matters connected therewith."

Section 3 of the 1974 Act deals with Division of the State into districts, formation of new districts and alternation of areas, boundaries or names of the existing Districts. Sub-section (4) thereof reads as under:

“The Board of Revenue may; in the interests of better administration and development of the areas and subject to such rules as may be prescribed, by notification, group or amalgamate any two or more revenue villages or portions thereof so as to form a single new revenue village or divide any revenue village into two or more revenue villagers or increase or diminish the area of any revenue village, or alter the boundaries or name of any revenue village.”

13. The learned Senior Counsel appearing for the petitioner submitted that though under the 1974 Act besides forming new districts and alteration of areas pertaining thereto, for better administration and development of the areas revenue villages can be formed or boundaries or names of the revenue villages can be altered, but, however, in the present case what is altered is not the boundaries of a revenue villages but that of the Gram Panchayats. He has relied upon Section 3(2) of the Panchayat Raj Act, which reads as under:

“3. Declaration of a village for the purposes of this Act:- (1)

(2) The Government may, by notification and in accordance with such rules as may be prescribed in this behalf—

(a) form a new village by separation of local area from any village or by uniting two or more villages or parts of villages or by uniting any local area to a part of any village;

Provided that the government shall take into consideration the financial viability of the Gram Panchayat, to be newly created before bifurcation of the said Gram Panchayat for the purpose of providing a Panchayat Secretary;

(b) increase the local area of any village;

(c) diminish the local area of any village;

(d) alter the boundaries of any village;

(e) alter the name of any village;

(f) cancel a notification issued under sub-section (1).

14. From the above noted statutory provisions, it is evident that while the provisions of the 1974 Act can be invoked for the purpose of alteration of revenue villages, whenever alteration of the villages declared as panchayats under the Panchaya Raj Act is proposed, the provisions of Section 3(2)(a) of the Panchayat Raj Act must be invoked. In the instant case, on their own showing, respondent Nos.1 to 5 have not issued any notification under the provisions of the Panchayat Raj Act and instead the provisions of the 1974 Act were invoked by issuing a Draft Preliminary Notification, which *ex facie* cannot be sustained.

15. Even otherwise, as rightly submitted by the learned Senior Counsel appearing for the petitioner, no final Notification declaring Sy. No.146 as forming part or having been transferred to respondent No.8 Gram Panchayat was issued. Therefore, the Draft Preliminary Notification relied upon by respondent Nos.1 to 5 would be of no help to claim that Sy. No.146 is included in respondent No.8 Gram Panchayat.

16. As regards Sy. No.201, though the learned Senior Counsel submitted there the petitioner has been exercising administrative control over the same, in my opinion, as it has failed to question the notification dt.9.5.1995, including the said survey number in respondent No.8 Gram Panchayat, it cannot claim any control thereon. Hence, no relief can be granted in respect of Sy. No.201.

17. For the above mentioned reasons, it is declared that demarcation of Sy. No.146 shall not affect the right and control of the petitioner over the said survey number.

18. The writ petition is accordingly allowed to the extent indicated above.

As a sequel to disposal of the writ petition, W.P.M.P. No.10476 of 2015 and W.V.M.P. No.4192 of 2015 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

09-11-2015

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