

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.38370 of 2015

Date:25.11.2015

Between:

M.Baga Reddy Educational Society,
Hyderabad, repled by its Secretary-
M.Swathi Reddy

..... Petitioner

And:

The State of Telangana, repled., by its
Principal Secretary, Municipal Administration
And Urban Development Department,
Hyderabad and five others.

.....Respondents

Counsel for the Petitioner: Mr. B.Vijaysen Reddy
For Mr. R.Sushanth Reddy

Counsel for Respondent No.1: AGP for Municipal Admn. (TS)

Counsel for Respondent No.3: AGP for Revenue (TS)

Counsel for Respondent No.4: AGP for Panchayat Raj (TS)

The Court made the following:

ORDER:

This Writ Petition is filed for a *Mandamus* to set aside proceedings No.GPN/444/2015, dated 20.11.2015, of respondent No.5, whereby it has informed the petitioner that it is not entitled to make further constructions and that if it proceeds with such constructions, they will be removed as per law.

It is the pleaded case of the petitioner that respondent No.2 has accorded technical approval to it on 20.4.2015 for construction of a school building with a Stilt + ground + two upper floors. The petitioner further averred that on 08.7.2015, respondent No.6 has granted building permission; that on 20.11.2015, the impugned proceedings were issued, whereby the Panchayat Secretary of respondent No.5 has informed that as it has obtained the building permission from the Sarpanch of respondent No.5-Gram Panchayat, which is against law and that the building permission was cancelled, on the directions issued by respondent No.4 on 13.11.2015.

Mr. B.Vijaysen Reddy, learned counsel representing Mr. R.Sushanth Reddy, learned counsel for the petitioner, submitted that when respondent No.2 has accorded technical sanction under the provisions of the Andhra Pradesh Urban Areas (Development) Act, 1975, grant of the building permission by the Gram Panchayat is a mere ministerial act and that due to mistake, respondent No.6-Sarpanch has granted formal building permission to the petitioner, following the technical sanction given by respondent No.2, instead of by the Panchayat Secretary of respondent No.5 and that the same is a curable irregularity. He has further submitted that before cancelling the building permission, respondent No.5 has not issued any notice to the petitioner proposing such cancellation.

Mr. G.Narender Reddy, learned Standing Counsel for respondent No.5, has opposed the above submissions of the learned counsel for the petitioner and sought to support the impugned proceedings issued by the Panchayat Secretary of respondent No.5.

Before the impugned proceedings were issued, the Panchayat Secretary of respondent No.5 has issued two notices, dated 05.10.2015 and 04.11.2015, to the petitioner. In both these notices, the only allegation made was that the petitioner has been undertaking illegal constructions in Survey Nos.167 and 169 and that no reference as to the building permission obtained by the petitioner from respondent No.6, much less, any allegation is made to the effect that such permission is contrary to law.

Evidently, no show cause notice was issued calling upon the petitioner to explain why the building permission granted by respondent No.6 shall not be cancelled. Therefore, *ex facie*, the impugned order passed by the Panchayat Secretary of respondent No.5 purporting to cancel the building permission granted in favour of the petitioner cannot be sustained in law. The case, however, does not rest here, for the reason that even as per the petitioner's own showing, the Panchayat Secretary being the Executive authority is competent to consider grant of building permission. As respondent No.6-Sarpanch has granted the building permission, it is necessary for the petitioner to obtain a fresh building permission from the Executive authority of respondent No.5. Therefore, the petitioner is permitted to make an application for building permission before the Executive authority of respondent No.5 within two weeks from the date of receipt of a copy of this order. On receipt of such application, the Executive authority of respondent No.5 shall consider the same strictly in accordance with law and keeping in view the technical sanction accorded by respondent No.2 to the petitioner, take appropriate decision and communicate the same to the petitioner within two weeks thereafter. Till this process is completed, respondent No.5 shall not remove the constructions already raised by the petitioner and the petitioner shall not raise any further constructions.

Subject to the above directions, the Writ Petition is disposed of.

As a sequel to disposal of the Writ Petition, W.P.M.P.No.49385 of 2015 shall stand disposed of as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

25th November, 2015

DR