

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

WRIT PETITION No.9371 of 2012

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23.07.2015

Between:

Kodathala Katamaiah and another
...**Petitioners**

And

The State of Andhra Pradesh,
represented by its Principal Secretary,
Medical & Health Department, Hyderabad and others

...**Respondents**

Counsel for the petitioners: Mr.I.Koti Reddy

Counsel for respondent No.1: Assistant Government
Pleader

for Medical Health and Family Welfare

Counsel for respondent Nos.2 to 4: None appeared

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The Court made the following:

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ORDER:

This writ petition is filed for a *mandamus* to declare the action of the respondents in proposing to construct sub centre building at Penikalapadu Village, Muddanur Mandal, YSR Kadapa District, under agreement, dated 12.08.2011, instead of constructing the same at the place which was donated by petitioner No.2 as illegal and arbitrary.

I have heard Mr.L.Koti Reddy, learned counsel for the petitioners. None appears for respondent Nos.2 and 3, who are the contesting respondents, and also for respondent No.4.

Petitioner No.1 averred that he was elected as Sarpanch of Penikalapadu Village in the year 2006 and completed his tenure as Sarpanch in the year 2011. That prior to his election as Sarpanch, he along with the villagers requested petitioner No.2 to gift her site situated in residential area for construction of a hospital. That accepting the said request, petitioner No.2 donated her property to an extent of Ac.0.05 cents in survey No.184/2B of the said village for construction of the hospital and that accordingly, she executed gift settlement deed, *vide* document No.429/2005, dated 15.06.2005, in favour of respondent No.1 for the purpose of construction of the hospital building. Petitioner No.1 further averred that his efforts for establishment of Government hospital in the village borne fruit with the Government sanctioning the hospital building for Penikalapadu Village, *vide* sanction proceedings, dated 17.05.2011, under NRHM scheme and the tenders were also called for and respondent No.4 became the lowest bidder. That in pursuance thereof, respondent No.4 entered into an agreement with respondent No.3 for construction

of the hospital building. Petitioner No.1 further averred that to his surprise, he came to know through respondent No.4 that respondent No.3 handed over a site at the outskirts of the village for construction of the hospital building and that the said place is not convenient for the villagers who are about 3,000 in number. Petitioner No.1 further pleaded that the land donated by petitioner No.2, which is situated in the heart of the village, is very much accessible and convenient to the general public.

On behalf of respondent No.1, incharge District Medical and Health Officer, Kadapa, filed a counter-affidavit, wherein he has, *inter alia*, admitted that petitioner No.2 donated land admeasuring Ac.0.05 cents in survey No.184/2B of Penikalapadu Village by registered gift deed on 15.06.2005 in favour of respondent No.1 for construction of primary health sub centre building for providing health services to the villagers. He has further averred that the villagers were representing to the Mandal Revenue Officer and other District authorities stating that the land donated by petitioner No.2 is far away from the Village and is very inconvenient to them and that considering the said representation, the Tahsildar, Muddanur, *vide* proceedings, dated 23.11.2011, informed the Gram Panchayat that the Government has no objection for construction of primary health sub centre building in the Government land admeasuring Ac.0.05 cents in survey No.276 allotted by the Government. That the Special Officer, Penikalapadu Gram Panchayat, informed respondent No.3, *vide* proceedings, dated 01.02.2011, that the Gram Panchayat has no objection for construction of primary health sub centre building at Penikalapadu Village over the said Government land and that the villagers of Penikalapadu Village addressed a letter to the deponent requesting him to construct primary health sub centre building in the land in survey No.276 allotted by the Government and that accordingly, the deponent addressed letter, dated 24.02.2012, to respondent No.3 to construct sub centre building

over the said site. The counter-affidavit sought to justify construction of primary health sub centre building over the Government land as being in the interest of the villagers as it is more convenient, accessible and acceptable to the villagers.

No reply affidavit is filed controverting the averments contained in the counter-affidavit.

The place at which a public utility building has to be constructed falls in the executive discretion. The Courts seldom interferes with such discretion unless the discretion exercised is *mala fide* or against the public interest. The petitioners have not raised the allegations of *mala fides* against any functionary for selecting the land different from the one which was donated by petitioner No.2. The petitioners also failed to controvert the stand taken by the District Medical and Health Officer in the counter-affidavit that the Government land over which the sub centre building is proposed to be constructed is more accessible and convenient to the public. Therefore, when in the public interest, the respondents have decided to construct sub centre building over the Government land, this Court cannot interfere with such decision. However, as the land gifted by petitioner No.2 is not utilized for the purpose for which it was gifted, respondent No.1 cannot retain the same and it is bound to return it to petitioner No.2 along with the expenditure, if any, incurred by her for executing the gift deed in favour of respondent No.1.

Accordingly, while declining to interfere with the decision of the official respondents to construct sub centre building over the Government land, the District Medical and Health Officer, Kadapa, is directed to re-convey, at the Government's expenses, the land gifted by petitioner No.2 and reimburse her the expenditure, if any, incurred by her for execution and registration of gift deed in favour of respondent No.1, within a period of two months from the date of receipt of a copy of this order.

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.11851 of 2012 filed by the petitioners for interim relief shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

23rd July, 2015

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