

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.817 of 2008

ORDER:

This writ petition under Article 226 of the Constitution of India is filed seeking the following relief/s:

'to issue a writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the respondent no.4 for granting permission for construction of the house in Door No.4-56 in the land of Government situated in Satyanarayanapuram village, Varni Mandal, Nizamabad District in his proceedings GP/08/2007 dated 7.7.2007 as illegal and arbitrary, without jurisdiction violating of principles of natural justice and also contrary to the conditions and principles laid down in G.O.Ms.No.67(PR & RD) dated:26.2.2002 and also contrary to the section 268 and 32 of the A.P.Panchayat Act, 1994 and also Article 300-A of the Constitution of India and consequently direct the respondents 1 to 4 to take steps to stop the construction of the house and shops and by taking the possession from the 5th respondent and pass such other order or orders.'

[Reproduced verbatim]

2. I have heard the submissions of the learned counsel for the writ petitioner, the learned Government Pleader for Panchayat Raj appearing for the respondents 1 to 3, the learned Standing Counsel appearing for the 4th respondent and the learned counsel appearing for the 5th respondent. I have perused the material record.

3. The case of the writ petitioner as set out in the writ petition and as per the submissions made on his behalf, in brief, is as follows:

The land in Sy.nos.345/1 and 344/1 of Satyanarayanapuram Village is a Government land. That land is located at a road leading from Banswada to Nizamabad. The Gram Panchayat was bifurcated and separated from Varni

Revenue and Panchayat. There is Government land at the Banswada and Nizamabad roads. In the said land, 30 years back, the Government Veterinary hospital was constructed. Adjacent to that land, there is also some Government land and the same was occupied by some persons. They used to pay tax. After those persons had vacated the said occupied portion of the land in the year 1977, the Satyanarayanapuram Gram Panchayat building and six shops were constructed. Some more constructions were also made behind the said building. In the year 2002 a first floor consisting of two guest houses, a meeting hall and a room for the President were constructed over the existing Gram Panchayat Office. There is also a proposal by the Gram Panchayat and the villagers to construct a telephone exchange building, post office building, police station building etcetera in the remaining land after evicting the occupants, who are in possession of the surplus land by following the procedure, which was earlier followed at the time of constructing Satyanarayanapuram Gram Panchayat building. Out of the above land, some land was allotted to the people from minorities. They have constructed two shops and a Darga in the allotted land. After separation of Satyanarayanapuram village from the revenue village of patha Varni, the then second President by name Yalati Subba Rao had permitted the mother of the 5th respondent to construct a residential hut in the land adjacent to the Masjid as she was attending to the cleaning of the Masjid. When she had failed to perform her duties properly a dispute had arisen between her and the Masjid committee. The said dispute was settled in the presence of the then second Ex-Sarpanch of the said village and a deed of settlement dated 22.09.1988 was executed amongst the Gram Panchayat, the Masjid committee and the mother of the 5th respondent. She has been continuing in possession of the hut and paying tax in respect of the said

property to the authorities. In the settlement deed it was stated that she has to enjoy the property during her life time. No right either vested or contingent is created in her favour over the said property. Subsequently, the 5th respondent had made an application for grant of permission for construction of a pucca building and shops as if she is the owner of the property and that she and her mother are in possession of the same since last several years and are paying taxes. The said application was placed before the Gram Panchayat. The Gram Panchayat in a meeting presided over by the then President had rejected the application for grant of permission for construction of pucca building *vide resolution* dated 14.08.2006. The 5th respondent then made an application to the District Panchayat Officer and Divisional Panchayat Officer. The said Officers made a recommendation to enquire into the matter. However, the same was also rejected by the Gram Panchayat stating that the land is a Government land. In August, 2006 the new elected body of the Gram Panchayat has taken over the administration. The Gram Panchayat without considering the earlier resolution and without conducting an enquiry in a proper manner and basing on the recommendation of the District Panchayat Officer and Divisional Panchayat Officer (respondents 2 and 3) had issued a direction *vide memo* 28/2007 dated 2.7.2007 to the Gram Panchayat to grant permission to the 5th respondent for construction of a building in door no.4-56 situated in Satyanarayanapuram village pursuant to the representation dated 06.05.2007 of the 5th respondent. The said memo was issued without considering the real facts and the earlier resolution of the Gram Panchayat. When objections are called for, one Velegupdi Gopal, who is residing at a place adjacent to the Government land, had filed his written objections dated 25.11.2006 stating that the land belongs to the Panchayat and that the 5th respondent is trying to

get the property mutated in her name as if her mother/father is the owner and that she is further trying to obtain permission for construction of building and grab the property and that, therefore, permission should not be granted. The Masjid committee had also filed written objections dated 28.01.2007 stating that the mother of the 5th respondent is only permitted to stay in the land and that on her demise her family members can continue to stay in the same property and for the said course, the Masjid committee has no objection, but, it has got objection for the 5th respondent claiming ownership and obtaining permission for construction of pucca building. This writ petitioner had also made a representation dated 18.01.2007 to the respondents 1 to 3. However, without following the procedure and without taking any action on the representations and under political influence, the Panchayat had passed orders in favour of the 5th respondent. Basing on such permission, the 5th respondent instead of constructing a building as per plan is raising three commercial shops. The efforts of the writ petitioner to stop such illegal constructions were in vain. Hence the writ petition is filed.

4. The Secretary of the 4th respondent Gram Panchayat filed a counter affidavit *inter alia* stating as follows: 'In spite of making efforts to find out the relevant records the same could not be traced. Therefore, the 4th respondent is not in a position to answer the allegations as to whether the place in respect of which permission was granted in favour of the 5th respondent is gram khantam land or not and whether or not there are any resolutions passed earlier to grant or not to grant permission to 5th respondent for construction of any house. The 4th respondent is not aware of any settlement dated 22.09.1988 amongst the Gram Panchayat, the Masjid committee and the mother of the 5th respondent. The 5th respondent was accorded permission *vide*

orders dated 07.07.2007 in GP.8/2007 to construct a residential house in the place of old house no.4-56 in Satyanarayanapuram village, Varni mandal in pursuance of the memo dated 02.07.2007 in 28/2007 issued by the 2nd respondent stating that the mother of the 5th respondent has been continuously staying in the said house and that there is a registered document in the name of the 5th respondent and that the Gram Panchayat has accepted the possession of the 5th respondent by a resolution; hence, the Secretary was directed to grant permission according to law. The then Secretary of the Gram Panchayat had accordingly granted permission to the 5th respondent to construct the house. There is no record in the office of the 4th respondent to verify and state whether the subject land where the permission for construction of house was granted to the 5th respondent is a Government land or not. The 5th respondent under the guise of the permission granted for residential house is illegally constructing shops for commercial use. This respondent is initiating steps for taking action against the illegal constructions that are made by the 5th respondent.

5. The case of the 5th respondent in whose favour permission for construction of building in the subject land was granted is as follows:

The Darga is situated since times immemorial in Sy.No.344/1, which is a Khariz Khata land. The said land is situated by the side of the main road leading from Nizamabad to Varni. This respondent's father-Mohd.Sharfuddin had rendered service to the said Darga, during his life time. The visitors of the said Darga used to pay him some amount for his sustenance. In the year 1955, he had erected a hut by the side of the Darga and it was assigned house no.4-56 by the Gram Panchayat, Satyanarayanapuram and was assessed to property tax. The

father of this respondent paid taxes. After his death, this respondent's mother continued in possession of the said hut and paid taxes. Thereafter, this respondent being the daughter has been paying property tax to the Panchayat. After the death of the father, the mother of this respondent had rendered services in the Darga. This respondent's brothers had left the village in search of livelihood. This respondent being the only daughter had taken care of her mother during her old age and till her death in the year 2005. After the marriage of this respondent, she is residing with her husband in the same hut. Thus, this respondent's mother was in continuous uninterrupted possession of the said hut to which she had succeeded after the death of her husband. Thus, the parents of this respondent were in possession of the property for more than 30 years to the knowledge of one and all and had acquired title by adverse possession. As there are no agricultural lands in and around the Darga, during the past 20 years, several pucca constructions had come up in and around that area. The mother of the respondent during her life time had transferred her property by virtue of registered sale deed dated 04.07.2001 in favour of this respondent. This respondent filed an application for mutation of the property in her name in the Gram Panchayat records. By proceedings dated 15.11.2006 the property was mutated in the name of this respondent in the Gram Panchayat showing her as owner of the property. The same was known to the Masjid Committee of the Darga and also all the villagers. The writ petitioner, who worked as a Sarpanch of the village for two terms had developed grudge against the family of this respondent and other Muslim community people, who had not supported his candidature in the elections and had started creating troubles. The present writ petition is filed to see that this respondent is evicted from her property on one pretext or the other. The writ petitioner, during his tenure as Sarpanch had rejected this

respondent's application filed for grant of permission for construction of a pucca house. After formation of new body, this respondent had submitted a representation for grant of permission for construction of a house. The contention of the writ petitioner that the 3rd respondent has mechanically recommended this respondent's case to the 2nd respondent is not correct. In fact the 3rd respondent after taking into consideration all the facts and circumstances had made the recommendation, and basing on the said recommendation, the 2nd respondent had issued direction to the Gram Panchayat to accord permission for construction of a house. The Gram Panchayat had followed the due procedure under the provisions of the A.P. Panchayat Raj Act, 1994 and the instructions issued by the Government and granted permission only after calling for and over ruling the objections. This respondent is not aware of the representation dated 18.01.2007 said to have been made by the writ petitioner to the respondents 1 to 3. The proceedings issued by the 4th respondent according permission to this respondent for construction of the house are legal, valid and justified. This respondent had completed the construction in the year 2007 itself in accordance with the sanctioned plan and has been residing therein. The Gram Panchayat has also assessed the new building to tax and this respondent is paying the taxes regularly. The petitioner has got alternative remedy under Section 264 of the A.P. Panchayat Raj Act by way of revision to the Government. On this ground also, the writ petition is liable to be dismissed. In the year 2002 one Malavath Chander had filed OS.No.7 of 2002 on the file of the learned Junior Civil Judge's Court, Bodhan against this respondent's husband and the President of the Masjid Committee for declaration of title and for recovery of possession of the suit plot admeasuring Ac.0.08 guntas in Sy.No.344/1e situate at Varni Sivar. This respondent's husband

contested the suit and had filed several documents to substantiate the claim. The said suit was dismissed by judgment dated 29.04.2006. The appeal filed by the said Malavath Chander was also dismissed. Hence, the writ petition may be dismissed.

6. It is trite to mention that at the hearing, submissions were made in line with the pleadings of the parties. Though no counter is filed on behalf of respondents 1 to 3, the learned Government Pleader for Panchayat Raj, on instructions, made submissions to the following effect:

“The 5th respondent’s parents were in possession of the land for the past several years and were paying the taxes. The petitioner is neither the owner of the land nor holding the office of Sarpanch, Gram Panchayat, Satyanarayanapuram. The present body, by resolution dated 07.07.2007 had granted permission to the 5th respondent. The Gram Panchayat is not having any documentary evidence about the ownership of the land. In case, the writ petitioner is aggrieved, he ought to have filed a revision petition before the Gram Panchayat under Section 264 of the Andhra Pradesh Panchayat Raj Act, 1994. The judgment in the suit-O.S.no.7 of 2002 on the file of Junior Civil Judge, Bodhan declared that the 5th respondent is the owner and possessor of the land in Survey no.344/1. The writ petitioner ought to have approached the appellate authority by filing an appeal against the judgment in O.S.no.7 of 2007 instead of filing the present writ petition. The objections raised by Velagapudi Gopal have been taken into consideration keeping in view the judgment of the learned Junior Civil Judge, Bodhan. Further, the Gram Panchayat had issued permission leaving 1 ½ feet towards the house of Gopal and Darga. The petitioner has not made the Gram Panchayat as a party to the writ petition. The 4th respondent has to implement the resolution of the Gram Panchayat as per Section

32 of the Andhra Pradesh Panchayat Raj Act, 1994. The writ petitioner had failed to avail the efficacious remedy of filing a revision petition against the orders of the respondents 1 to 3 and had invoked the extraordinary jurisdiction of this Court erroneously. The writ petition is liable to be dismissed.”

7. I have given detailed and thoughtful consideration to the pleadings and the submissions, which are adverted to supra, in detail. It is apt to note the following facts and aspects emerge for consideration.

The case of the writ petitioner is that the subject land belongs to the Panchayat and that the permission and approval for construction of a pucca house in the subject land given by the official respondents to the 5th respondent without considering the objections in that regard is illegal and that grant of such permission merely on the ground that she has been continuing in possession of a hut thereon by paying taxes to the Panchayat is illegal, arbitrary and without jurisdiction and that the said permission granted to the 5th respondent to make pucca constructions in the panchayat property is contrary to the Government Orders, the provisions of the Panchayat Act and the Articles of Constitution of India and that the official respondents are therefore to be directed to take steps to stop the construction being made by the 5th respondent. The further grievance of the writ petitioner is that the 5th respondent having obtained permission though illegal for construction of a house had constructed house and shops in the Panchayat property and is indulging in commercial activity by misusing the permission granted to her. *Per contra*, the case of the 5th respondent is that her father rendered services to the Dargah during his life time and that the visitors to the Dargah used to pay him some amounts for his sustenance and that in the year 1955, he had erected a hut

by the side of the Dargah and the same was assigned house no.4/56 by the Gram Panchayat of Satyanarapyanapuram and was assessed to property tax and that he used to pay the property taxes and that after his death the property devolved upon the mother of the 5th respondent and that her mother had continued to render services to the said Dargah and was paying property taxes in respect of the said hut by continuing in possession of the same and that the mother of the 5th respondent had executed a registered sale deed in her favour and that after the death of her mother in the year 2005, the 5th respondent is continuing in the subject hut and that she and her husband are in possession and enjoyment of the property and that prior to her, her parents enjoyed the property for more than 30 years to the knowledge of one and all and that title to the property was acquired by prescription/adverse possession and that in recognition of her long possession the property was mutated in her name in the Gram Panchayat records by showing her as owner of the property and that the said facts are known to all the villagers and that the writ petitioner, who was a former Sarpanch had failed to approve her application for building permission and that on account of the grudge he had developed against the family of the 5th respondent and other Muslim community people for not supporting his candidature in the elections he had started creating troubles and that after formation of the new body and that on the directions of the 2nd respondent, a superior officer, the Gram Panchayat had accorded permission for construction of a pucca house and that she had completed construction of the house in the year 2007 itself in accordance with the sanctioned plan and has been residing therein and that the new building is also assessed to tax by the Panchayat and that she is paying taxes regularly and that a suit in OS.no.7 of 2002 on the file of the Court of the learned Junior Civil Judge, Bodhan filed by one Malavath Chander against

the husband of the 5th respondent was dismissed by a judgment dated 29.04.2006 and that the appeal filed by the said Chander was also dismissed and that, therefore, she is having right, title and interest in the property and that the writ petition is motivated. Be it noted that the 4th official respondent would submit that for non availability of the relevant record the Gram Panchayat is not in a position to state as the status of the property in question. However, the official respondents 1 to 4 support the case of the 5th respondent in regard to the possession of her mother and her possession for over sufficiently long period and the disposal of the suit in favour of her husband by a civil Court and the validity of the permission for construction of a pucca house by her in the subject property. They also submit that an efficacious remedy of revision is available to the writ petitioner in case he is aggrieved and that, therefore, the writ petition is not maintainable. However, insofar as the constructions made in violation of the approved plan, the 4th respondent would submit that steps for appropriate action are initiated against the 5th respondent.

8. On a critical analysis of the matter, it is manifest that even the writ petitioner is admitting that the mother of the 5th respondent was in possession of the hut in the subject property and payment of taxes by her to the Panchayat and the continuous possession of the 5th respondent of the said hut and payment of taxes by her since a long time. He would also admit that when there was a dispute earlier in regard to the subject property between the mother of the 5th respondent and the Masjid committee, the said dispute was resolved amongst the Gram Panchayat, the Committee and the mother of the 5th respondent and that as per the settlement thereon, she was permitted to continue in possession of the hut by paying taxes to the

authorities and that as per the settlement which was reduced into writing she has to enjoy the property during her life time without any rights in the property. Even the official respondents state that in recognition of her long possession and the decree of the civil Court, permission for construction of a pucca building was granted to the 5th respondent. There is no material brought on record to show that the permission accorded as per the directions of the superior officers in recognition of long possession of the 5th respondent over the subject property is illegal. Unless the contrary is proved, the Court shall presume that all official acts have been regularly performed. In the above factual and legal background the contention of the writ petitioner that the 5th respondent shall forever continue to reside in a hut without constructing a pucca house in the property which is admittedly in the possession of her family for over several decades cannot be countenanced as accepting such a contention would amount to encouraging retrograde and debilitating concept opposed to public policy.

9. Viewed thus, this Court finds that the writ petition is devoid of merit and is liable to be dismissed subject to certain observations in view of the contention that the constructions were made by the 5th respondent in violation of the permission granted for construction.

10. In the result, the Writ Petition is dismissed, however, giving liberty to the 4th respondent to take action in strict accordance with the procedure established by law in regard to the constructions, if any, made by the 5th respondent in violation of the permission and approved plan, the law, the building bye-laws and rules governing the said constructions. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this writ

petition shall stand closed.

18th April, 2016
Vjl

M. SEETHARAMA MURTI, J