

HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.6784 of 2013

O R D E R:

This Writ Petition, filed under Article 226 of the Constitution of India, assails the notice dated 12.12.2012 issued by the Panchayat Secretary, Grampanchayat, Kanagallu Mandal, Nalgonda District – respondent No.2.

Heard the learned counsel for the petitioner, learned Government Pleader for Panchayat Raj appearing for respondent No.1, Sri Narender Reddy, learned standing counsel appearing for respondent No.2 and Ms K.Rajitha, learned counsel, appearing for respondent No.3.

The petitioner herein claims to be the absolute owner and possessor of residential plot bearing Sy.No.622, admeasuring 876.80 sq. yards situated at Kanagallu Village and Mandal, Nalgonda District. According to the petitioner, he acquired the said property by way of a registered sale deed bearing document No.9022 of 2012 dated 18.06.2012 from one Sri Palakuri Biksham. The petitioner herein submitted an application before respondent No.2 – Secretary, Gram Panchayat for grant of permission for construction of a building. Respondent No.2 – Panchayat Secretary, vide order dated 03.08.2012, granted permission in favour of the petitioner herein for construction of cellar, ground floor and compound wall. According to the petitioner, he started

construction at the time of filing of the writ petition. Respondent No.2 – Panchayat Secretary on 30.11.2012 issued a show cause notice, asking the petitioner as to why the said permission should not be cancelled. In response to the said show cause notice, on 10.12.2012, the petitioner herein submitted an explanation, stating that he is the absolute owner and possessor of the property and acquired the property by way of registered document and that the Panchayat Secretary has no power to cancel the permission granted and aggrieved parties are entitled to file an appeal. Thereafter, the Panchayat Secretary – respondent No.2 issued notice dated 12.12.2012, cancelling the permission granted earlier while asking the petitioner to stop construction work. Aggrieved by the said notice dated 12.12.2012, the present Writ Petition came to be filed.

This Court, while ordering rule nisi on 07.03.2013, passed an interim order in WPMP.No.8495 of 2013. The said order reads as under:

“The petitioner has applied for and secured a building permission from the Gram Panchayat, Kanagallu Village on 03.08.2012 for making construction of a cellar and a ground floor and compound wall. When the 3rd respondent submitted a representation for cancellation of the said permission, the 2nd respondent suspended the said building permission, through the impugned order dated 12.12.2012. The petitioner, no doubt, preferred an appeal thereagainst to the District Panchayat Officer, but however, the appeal would lie to the gram panchayat as pointed out by Sri P. Raghavendra Reddy, learned Standing Counsel.

It is relevant to note that the 3rd respondent has earlier instituted a suit, O.S No. 125 of 2010, against Sri Palakuri Bixam, who is the vendor of the petitioner herein. She also sought for an interim injunction against the said Palakuri Bixam by moving I.A No. 384 of 2010. That Application was dismissed on 20.09.2010 by the learned Junior Civil Judge, Nalgonda. Further, the 3rd respondent has claimed title to the piece of land through a gift deed executed by her husband in her favour on 01.01.2010. The recitals therein clearly disclose that the property was acquired by the donor through document No. 588 of 1991.

Sri K.Ashok Reddy, learned counsel for the petitioner has drawn my attention to the contents of the registered sale deed bearing No. 588 of 1991. It is clearly reflected therein that agricultural dry land of an extent of Ac. 0.22 guntas situate in Survey No. 623 is what has been conveyed through the said document. Therefore, prima facie, the 3rd respondent could not have raised any title dispute with regard to the land belonging to the writ petitioner and situate in Survey No. 622. Hence, interim suspension of the impugned suspension order of the building permission.

But, however, the writ petitioner shall not carry out any constructions contrary to the approved building plan and he must confine the constructions strictly in accordance with the approved building plan.”

According to the learned counsel for the petitioner, the impugned notice is illegal, arbitrary and without jurisdiction and opposed to the provisions of Andhra Pradesh Panchayat Raj Act and the Rules framed thereunder. It is further submitted that respondent No.3 herein absolutely has no right to complain against the permission granted to the petitioner.

On the contrary, it is submitted by the learned Government Pleader for Panchayat Raj for respondent No.1, Sri Narendra Reddy, learned standing counsel, appearing for respondent No.2 and Ms K.Rajitha, learned counsel, appearing for respondent No.3 that there is no illegality nor there exists any procedural infirmity in the impugned action and, in the absence of the same, the impugned action is not amenable to any judicial review under Article 226 of the Constitution of India. It is further submitted that, as against the impugned notice, the petitioner herein has an effective remedy of appeal to the Gram Panchayat and without availing the said alternative remedy, the present Writ Petition came to be filed directly before this Court. As such, the Writ Petition cannot be maintained before this Court.

Section 128 of the A.P. Panchayat Raj Act, 1994 reads as under:

128: Appeal from the order of executive authority:-

- (1) An appeal shall lie to the gram Panchayat from,-
 - (a) any order of the executive authority granting, refusing, suspending or revoking a licence or permission;
 - (b) any other order of the executive authority that may be made appealable by rules made under Section 268
- (2) A second appeal shall lie from the decision of the gram Panchayat passed in an appeal under sub-section (1) to such authority as may be prescribed whose decision thereon shall be final.

It is evident from a reading of the above provisions of law that, any person, aggrieved by an order passed by the Executive Authority, can file an appeal before the Gram Panchayat. It is further brought to the notice of this Court that the petitioner herein filed an appeal before the Divisional Panchayat Officer instead of Gram Panchayat. In fact, Section 128 of the Act prescribes appeal against orders of the Executive Authority only to the Gram Panchayat but not to the Divisional Panchayat Officer. It is also required to be noted that respondent No.3 instituted O.S.No.125 of 2010 on the file of Court of Junior Civil Judge, Nalgonda, and the said suit is also pending. It is brought to the notice of this Court that, pursuant to the interim orders granted by this Court, constructions have already been made by the petitioner.

Having regard to the above aspects and taking into consideration the submissions of the learned counsel for the petitioner and learned counsel for the respondents, this Court is of the considered opinion that ends of justice would be served if the petitioner herein is relegated to alternative remedy of appeal to the Gram Panchayat against the orders of the Panchayat Secretary, which are impugned in the present Writ Petition.

For the aforesaid reasons, the Writ Petition is disposed of, permitting the petitioner herein to file an appeal, against the notice dated 12.12.2012 issued by respondent No.2, within a period of one month from the date of receipt of a

copy of the order. If any such appeal is filed, the same be considered and appropriate orders be passed after giving notice to all stakeholders. Till the said exercise attain finality, interim suspension granted by this Court shall remain operative.

Miscellaneous Petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

A.V.SESHA SAI,J

Date: 27.12.2016
usd

