

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.19331 of 2012

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ORDER:

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This writ petition is filed seeking the following relief/s:

“For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon’ble court may be pleased to direct the respondent 1 to 4 to stop illegal construction of Masjid by the 5th respondent in Sy.No.106 situated at Indanpally Village, Jannaram Mandal, Adilabad District, which is a Assigned land, by declaring the actions of the 5th respondent doing so without getting permission, as illegal contrary to law in consequence thereof to direct the respondents 1 to 4 to remove the constructions by issuing a Writ of Mandamus or any order or directions as this Hon’ble court may deems fit and proper in the circumstances of the case”.

(Reproduced verbatim)

2. I have heard the submissions of the learned counsel for the writ petitioners, the learned Standing Counsel appearing for the 1st respondent, the learned Government Pleader for Panchayatraj and Rural Development appearing for the 2nd respondent, the learned Government Pleader for Revenue appearing for the respondents 3 and 4, and Sri Nazeer Khan, learned counsel appearing for the 5th respondent. I have perused the material record.

3. The case of the writ petitioners, as stated in the affidavit filed in support of the writ petition, in brief, is this:

The petitioners are the residents of Indanpally village of Jannaram Mandal of Adilabad District. They belong to BC community. The petitioners and others had constructed their houses in a colony and their colony is very near to a hill area. While so, the 3rd respondent-Tahasildar had given Lavoni pattas to the petitioners and others in respect of certain extents of lands in Sy.No.106 of the said village. The said lands in the said survey number are

situated at the foot of a Hill; and, therefore, the said area is a low lying area. During rainy season, the rain water that flows down from the Hill enters into the colony of the petitioners and gets drained out through the drainage area, which is a small area and an insufficient place. In the vicinity of the colony, a High School, Anganvadi School-cum-Centre, Gram Panchayat Office and a Government Primary School are located. Some times, during rainy season, the water that comes down from the Hill enters even the Gram Panchayat building and the houses of the petitioners in the said colony. While so; the 5th respondent along with his community people in the village had started construction of a masjid at the place, where the drainage pipelines are located. He had not obtained any permission from the Gram Panchayat for the construction of the Masjid. However, the respondents 1 and 2 did not question the said construction activity of the 5th respondent, that is, the construction of the Masjid without obtaining necessary permission from the Gram Panchayat and the revenue authorities. The land was not assigned by the revenue authorities to the 5th respondent for construction of the masjid. The Village Revenue Officer, who is the custodian of the public property in the village, did not take any action against the 5th respondent. The 5th respondent had started construction over the drainage pipelines in a hurried manner. Had the 5th respondent applied for permission for construction of the Masjid, the official respondents would not have accorded any such permission for construction in the said land. It is the responsibility of the official respondents to see that the drainage system is properly maintained. The Village Revenue Officer is statutorily obliged to protect the Government land. In spite a complaint made by the petitioners to the said official respondents, no action was taken against the 5th respondent. If the masjid is allowed to be constructed in the place, where the drainage system is located, the houses of the petitioners in the colony get sub-merged/inundated in the water that gets collected at that place during the rainy season and the same will affect the rights of the petitioners guaranteed under Articles 20 and 21 of the Constitution of India. In fact, the petitioners made representations dated 02.02.2012 and 02.04.2012 to the official respondents, but no action was

taken. Hence, the present writ petition is filed.

4. The averments in the counter affidavit of the 1st respondent, the then Panchayat Secretary filed on behalf of the 1st respondent, in brief, are as follows:

It is true that the 5th respondent started construction of Masjid in Sy.no.106, which is a Government land. Immediately, the said construction was stopped at the pillar level itself. The Gram Panchayat is not aware of granting of the pattas to the petitioners in the land in Sy. no.106. But, the petitioners are having their own houses in the land in Sy. No.106. They are also paying the house taxes regularly. It is true that due to construction of the masjid by the 5th respondent, the drainage system gets blocked. It is also true that no permission is obtained for construction of the masjid by the 5th respondent. Even prior to the receiving of notices in this writ petition, the unauthorized construction was stopped. Therefore, it is not correct to state that no action is taken by this respondent. The writ petition is devoid of merit.

5. The averments in the counter affidavit of the 3rd respondent, in brief, are as follows:

The land in Sy.No.106 of Indanpally village of Jannaram Mandal is a Government land. It is true that the 5th respondent had started construction of a masjid in the land in the said survey number, which is a Government land. The total extent of land in the said survey number is Ac.1794.20 guntas and out of the said extent, an extent of Ac.65.22 guntas of land is allotted for assignment for house site purposes. Land in an extent of Ac.0.22 guntas is proposed for IKP Godown and another extent of Ac.0.03 guntas is the existing Masjid area. The people of the muslim community have constructed a temporary structure/hut viz., Jama Masjid [mosque] 15 years back. The then Mandal Revenue Officer, Jannaram, vide Rc.No.A3/1102/2003 dated 24.05.2003 had also earmarked an extent of Ac.0.04 ½ guntas in Sy.No.106 for the purpose of Jama Masjid. The 2nd petitioner and 31 others had filed a representation to stop the construction of Jama Masjid on the plea that the

land in Sy.no.106 is situated at the foot of the Hill and that it is a low lying area and that in the rainy season, the water that comes down from the Hill and the surrounding areas enters into the colony of the petitioners and further flows towards the drainage area. There is no permanent drainage system in the village; but, the water that gets collected in the rainy season will join the vagu and does not stagnate in the colony as contended by the petitioners. The 5th respondent is constructing the Masjid in the assigned land allotted to the petitioners and others for house sites without obtaining permission of the Gram Panchayat is not correct. The land in Sy. no.106 in an extent of Ac.0.03 guntas has been earmarked in the year 2003 by the then Mandal Revenue Officer, Jannaram and the muslim community people had already occupied the said land and had constructed temporary masjid 15 years back. Now, on the same piece of land, the muslim community people are constructing permanent structure; and, for which the village elders committee had passed resolution on 26.12.2011. The permanent masjid is being constructed in the place of the temporary masjid. The masjid is not existing in the assigned land. The averments in the writ petition that if the masjid is allowed to be constructed, it would affect the rights of the petitioners and their colony gets sub-merged in the rain waters is totally incorrect. The masjid under construction is being constructed in a Government vacant land, but not on drainage pipelines. The 4th respondent had forwarded the representation dated 02.04.2012 of the petitioners for disposal and settlement of the issue between the parties. The then Tahasildar had proceeded to Indanpally village along with Mandal Revenue Inspector, Mandal Surveyor and V.R.O and had inspected the spot. The said enquiry revealed that the land in Sy. No.106 was allotted for weaker section colony and that in the existing vacant place; the muslim community people have constructed the temporary Jama Masjid structure 15 years back. The then Mandal Revenue Officer, Jannaram had issued a certificate dated 24.05.2003 in respect of an extent of Ac.0.04 ½ guntas in Sy. No.106 to Jama Masjid, which was already constructed temporarily and in existence by that time. The village elders committee had resolved on 26.12.2011, for allotment of Government 'Gairan' land in an extent of Ac.0.03 guntas to construct the new Jama Masjid building in the

place of the existing temporary mosque structure; and, then only, the muslim community people had started construction of a permanent Jama Masjid building in the existing Jama Masjid place. After the construction of the masjid by the muslim community people, the petitioners had raised objection for construction of the Jama Masjid building. Hence, the writ petition may be dismissed.

6. The averments in the counter affidavit of the 5th respondent, in brief, are as follows:

The material averments in the affidavit filed in support of the writ petition are false. The 5th respondent is the President of the masjid committee of Indanpalli village, Jannaram Mandal of Adilabad District. He had started reconstruction of the Masjid building over the old masjid place. The existing old structure has become weak; and, as the same is likely to collapse, the new structure is being constructed in place of the old structure. However, the present masjid under construction is little bigger in size. The old masjid was existing since long back, i.e., from the period of erstwhile Hyderabad State. The features of the site and the traces of the old masjid clearly establish the said fact. The village elders permitted the muslims of the village to construct the masjid. They had executed a document dated 26.12.2011 giving consent for reconstruction of the masjid. The Proceedings no.A3/1102/2003, dt.24.05.2003 of the Mandal Revenue Officer, Jannaram clearly show that an extent of Ac.0.04 ½ guntas of land in Sy. No.106 belongs to the masjid and that a mosque was constructed therein and that it is under the control of the management of the mosque. Therefore, the subject site, where the mosque is under construction, is not assigned to anybody and it is not encroached by the muslim community people. The subject property, where the mosque was being reconstructed is the absolute property of the mosque and the mosque is not being constructed on the place where the drainage system and pipelines are established as alleged in the writ petition. The construction of the mosque does not cause any obstruction to the drainage system and will not affect the drainage and flow of rain water. In view of the resolution passed by the village elders' committee, the certificate issued by the Mandal

Revenue Officer, Jannaram and the fact that the mosque of a bigger size is being reconstructed in the place of the existing dilapidated mosque and that the said site is under the control of the masjid management committee since a long time, the writ petition is devoid of merit. The masjid committee has got oral permission from the Gram Panchayat authorities and the revenue authorities and the construction of the mosque is not against any Bylaws or the Rules under the Gram Panchayat Act.

7. The learned counsel for the parties made submissions in line with the cases urged in the pleadings. I have given earnest consideration to the facts pleaded and the submissions made.

7.1 The 5th respondent is constructing a mosque in a portion of the land in Sy.no.106 of Indanpally village is not in dispute. As per the counter affidavit of the 1st respondent-Panchayat Secretary and the admission made by the 5th respondent, no written permission or approval was obtained by the 5th respondent for the construction of the mosque in the subject place/land. The 1st respondent had categorically stated in its counter that no permission was obtained for construction of the masjid by the 5th respondent. The contention of the 5th respondent that oral permission was obtained from the Gram Panchayat for the construction of the mosque cannot be countenanced, as it does not stand the test of legal scrutiny. It is fairly submitted that an application must be made for permission and approval of construction and that written permission and approval shall necessarily be obtained from the local authority before making any construction of a building like the present mosque building in question. On this ground alone, the petitioners are entitled to the relief claimed in the writ petition is the submission of the learned counsel for the writ petitioner. Be that as it may.

7.2 It is admitted that certain extent of land in the same survey number was assigned to the petitioners and others for house site purpose and that the petitioners and others have constructed houses and are living in that colony, which is at the foot of a Hill and are also paying house taxes regularly to the

Gram Panchayat. The specific case of the writ petitioners is that the place where their houses are situated is a low lying area and that the said land of the colony is situated at the foot of a Hill and that during rainy season, the water that flows down from the Hill enters the colony and goes to the drainage area and gets drained out and that the construction of the mosque was made by the 5th respondent with the support of the people of that community over the drainage area and pipelines and that the 5th respondent did not obtain any permission or approval for construction of the mosque and that if the mosque is allowed to be constructed, it would block the drainage system and that the houses of the petitioners in the colony get inundated in rainwater that stagnates and that in the circumstances, the respondents 1 to 4 are obliged not to permit the 5th respondent to make any constructions and that they are statutorily obliged to stop the constructions undertaken by the 5th respondent without any right over the land and without any permission and approval from the Grampanchayat. The 1st respondent-Gram Panchayat in its counter had stated that it is true that due to the construction of the masjid by the 5th respondent, the drainage system gets blocked. However, the Tahasildar in his counter filed on behalf of the 3rd respondent strangely states that there is no permanent drainage system in the village and that the water that gets collected in the rainy season will join the 'Vagu' and does not stagnate in the colony and that the contention of the petitioners that the mosque is being constructed on the drainage pipelines is not correct. In the said counter affidavit of the 3rd respondent, it is stated that the land in Sy. no.106 in an extent of Ac.0.03 guntas has been earmarked in the year 2003 by the then Mandal Revenue Officer, Jannaram and the muslim community people had already occupied the land and had constructed temporary masjid 15 years back and that the permanent masjid structure is being constructed on the same piece of land by the muslim community people, pursuant to the resolution dated 26.12.2011 of the village elders in that regard and that a certificate was issued by the then Mandal Revenue Officer, Jannaram to the effect that in the land in an extent of Ac.0.04 ½ guntas in Sy. no.106 situated

at Indanpally village a mosque was constructed and that the said land is under the control and management of the mosque and that the Mandal Revenue Officer by proceedings in Rc. no.A3/1102/2003, dt.24.05.2003 had also earmarked an extent of Ac.0.04 ½ guntas in Sy. No.106 for the purpose of Jama Masjid. No such proceeding is produced before this Court to show that the above said extent of land is earmarked by the Mandal Revenue Officer for the purpose of Jama Masjid. However, the certificate dated 24.05.2003, which bears the number A3/1102/2003 on a perusal would show that on the above said extent of land, a mosque was constructed and the said land is under the control of the mosque management. Except the said certificate, which shows that the above said land is under the control of the mosque management, no document is produced by the respondents 3 and 5 to show that the land, where the mosque was being constructed was assigned or allotted under any valid proceedings to the mosque managing committee for construction of the mosque. As per the submissions in the counter of the 3rd respondent, the people of muslim community have constructed a temporary structure/hut, viz., Jama Masjid 15 years back and that Ac.0.03 guntas is the existing masjid area. It is not stated as to whether the above Ac.0.03 guntas is also a part of the above said Ac.0.04 ½ guntas covered by the certificate of the Tahasildar. On the contrary, the 5th respondent, the President of the muslim community, who had undertaken construction of the mosque did not advert to the extent of the area under the control and management of the mosque committee, but submits that the old mosque was in existence since the erstwhile Hyderabad State. This contention of the 5th respondent does not find support from even the pleadings of the 3rd respondent. It is not clear from the pleadings of the respondents 3 and 5 as to whether Ac.0.03 guntas of land is part of Ac.0.04 ½ guntas earmarked for jama masjid. Admittedly, no extent of land was assigned to the mosque as per the procedure established by law, as per the contentions of the official respondents and the 5th respondent as well. Under what authority, the then Mandal Revenue Officer had earmarked the said extent of land for Masjid as stated in the counter of the 3rd respondent is not

forthcoming, as no proceeding in that regard, if any, issued in accordance with the procedure established by law is produced before this Court.

8. Reverting to the submissions of the petitioners, it is their specific case that if the mosque is allowed to be constructed, their houses get sub-merged in the rain waters as the proposed mosque is being constructed in the drainage area. The 1st respondent supports the said contention of the petitioners by stating that due to the construction of the mosque, the drainage system gets blocked. However, as already noted, the 3rd respondent makes a contradictory statement by stating that the contention of the writ petitioners is not correct. In view of the contradictory statements in the counters of the official respondents, and in view of the fact that the land was not assigned admittedly to the mosque by any proceeding issued in accordance with law, and as the 5th respondent had started making the construction of the mosque, which is a permanent structure, without obtaining any permission and approval from the Gram Panchayat, the official respondents ought to have acted on the request of the petitioners and ought to have taken necessary action in strict accordance with the procedure established by law. Though the 1st respondent –Gram Panchayat had stated in its counter that immediately after receiving the notices in the writ petition, the construction activity, which was at the stage of pillar level was stopped, obviously it could not take any further action in the matter as the writ petition is pending and as the 4th respondent-Tahasildar, who is one of the of the official respondents had taken a stand, which is different from the stand taken by the 1st respondent in its counter affidavit. Had the 5th respondent applied for permission and approval for the proposed construction of the mosque over the subject site, all the issues would have been examined and considered by the Gram Panchayat before disposing of the said application for permission and approval of construction of mosque by the 5th respondent. The failure of the 5th respondent to make an application for permission and approval for construction of the proposed mosque has given raise to the controversy.

9. Having regard to the reasons, this Court finds that the 5th respondent cannot be permitted to proceed with the construction of the mosque in the subject site without obtaining necessary permission and approval of the competent authority. It is needless to mention that any permanent structure constructed without permission shall *prima facie* be deemed to be an illegal and unauthorized construction and any person making such illegal construction cannot be allowed to proceed further in the matter and that in such circumstances, the official respondents concerned are obliged under law to take necessary action by following the due procedure established by law.

10. In the result, the Writ Petition is allowed and the respondents 1 to 4 are directed to stop the further construction of the masjid in the subject land in Sy.No.106 till appropriate necessary permission and approval for construction of the mosque is obtained by the 5th respondent, in accordance with the procedure established by law. It is made clear that the 5th respondent is at liberty to apply to the Gram Panchayat for permission and approval along with a plan of the proposed construction of the mosque within a month from the date of receipt of a copy of this order; and that on receipt of such an application from the 5th respondent, the competent authority of the Grampanchayat shall consider and dispose of the said application in strict accordance with the procedure established by law after giving an opportunity to the petitioners to submit their objections, if any, for consideration. It is needless to mention that in case, no permission and approval can be accorded and that the construction already made cannot be allowed to remain for any valid reasons, the official respondents concerned shall take necessary action against such constructions as contemplated under law, however in strict accordance with the procedure established by law. No costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

M.SEETHARAMA MURTI, J

21st January, 2016
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