

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.30939 of 2010

-

ORDER:

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

“For the reasons stated in the accompanying affidavit, the petitioner herein prays that the Hon’ble Court be pleased to set-aside the notice in letter No.GPS 97/2010, dated 2/8/2010 and consequential notice in letter no. GPS 130/2010, dated 5/10/2010 of the 1st Respondent Gram Panchayat through which directed the petitioners to register and handed over 10% of land (Ac.5.21 guntas) out of the total sanctioned lay-out land admeasuring Ac.52.13 Guntas in favour of Gram Panchayat within 3 days, failing which threatened to initiate Criminal proceedings against petitioners despite of informing the fact to the Respondents that the Petitioners have already executed the Gift Deed dated 4/11/1996 in favour of 1st Respondent Gram Panchayat conveying Ac.3.13 guntas and the acts of interfering with construction of houses in 4 plots retain by the petitioners though permissions were granted for construction of houses on 31/12/2009 and such other action being initiated as the same are contrary to the material facts on record and the said proceedings of the Respondents is violative of Article 14, 19(1) (g) and 300-A of the Constitution of India and to set-aside the same by issuance of a writ more particularly a Writ in the nature of a Writ of Mandamus or any other appropriate writ or order or direction as the Hon’ble Court may deem fit and proper in the circumstances of the case or else the petitioners herein will be put to great hardship and suffer irreparable loss.”

(Reproduced verbatim)

2. I have heard the submissions of the learned counsel for the writ petitioners and the learned Standing Counsel for the 1st respondent-Gram Panchayat. I have perused the material record.

3. The facts of the case as set out in the affidavit filed in support of the writ

petition, in brief, are as follows:

The property in an extent of Ac.52.13 guntas in Sy.Nos.205, 207 to 213 situated at Shamshabad village and Mandal of Ranga Reddy District originally belonged to one Deepak Rathi. He had executed the General Power of Attorney dated 28.08.1995 in favour of the petitioners 1 to 3 and three others. The said land was laid out into house plots after obtaining sanction from the 1st respondent-Gram Panchayat on 02.03.1977. The Gram Panchayat having examined the said layout had regularized the same by fixing the fee subject to handing over the area set apart for public purpose. The petitioners having remitted the fee of Rs.29,122/- through the Government Treasury account and having also conveyed Ac.3.13 guntas of land from out of the lay out, that is, the land set apart for public purpose, in favour of the 1st respondent Gram Panchayat, vide gift deed dated 04.11.1996, had sold all the plots except the four plots, which are retained by them for construction of houses. They had applied for building permit. The 1st respondent having levied the fee had granted permission on 31.12.2009. The petitioners intended to construct a Cinema Theatre on the said plots. In fact, the Gram Panchayat had issued 'No objection certificate' based on the recommendation of the MRO concerned; and, the District Collector had also granted permission. However, the HUDA had raised objections.

3.1 While so, the 1st respondent-Gram Panchayat, represented by its Panchayat Secretary having issued a notice in letter no. GPS 97/2010 dated 02.08.2010 and consequential notice in GPS 130/2010, dated 05.10.2010 had directed the petitioners to register and hand over 10% of the land out of the total sanctioned layout in favour of the Gram Panchayat within three days from the date of receipt of the said notice and also threatened to take appropriate legal action on failure to do so. Feeling aggrieved of the said notices, the writ petitioners had preferred the present writ petition.

4. The 1st respondent in its counter while resisting the writ petition had *inter alia* stated that it is true that the Gram Panchayat has issued the impugned notice, but, that on verification of the records, it was found that the

petitioners had executed a gift deed dated 04.11.1996 to the extent of 91,400 square yards for the purpose of roads and open places as per the layout copy available in the record, which is approved by the Gram Panchayat in the year 1977, and that the Executive Officer had accepted the gift of the land and had taken over physical possession of the said extent of land and that thereafter the development had taken place and houses were constructed by the purchasers of the plots and that the open space earmarked for Cinema Theatre was not part of the area handed over to the Gram Panchayat; and that the same was retained by the petitioners; and that the notices under question were issued to the petitioners on the premise that the said area is not earmarked for theatre and without examining earlier records available in the office; and that the petitioners ought to have represented all the facts and ought to have produced documentary evidence before the authority, which issued the notices instead of filing the writ petition.

5. In view of the pleadings and the submissions now made in line with the pleadings, it is evident that the Gram Panchayat is not disputing the pleadings of the petitioner in the writ petition and is endorsing their pleading to the effect that a gift deed dated 04.11.1996 was already executed in respect of an extent of 91,400 square yards for the purpose of roads and open place as per the layout copy, which is available in the record of the Gram Panchayat and that possession of the same was also delivered to the Gram Panchayat and that the four plots that were retained by the writ petitioners are not part of the area that was handed over to the Gram Panchayat and that the Gram Panchayat is no way concerned with the plots of the petitioners, where the petitioners intend to construct a Theatre. It is also the case of the Grampanchayat that the notices which are impugned in the writ petition were issued without verifying the records available in the office. Therefore, on the analysis of the facts, this Court is satisfied that there is acceptable merit in the contentions of the petitioners.

6. Having regard to the pleadings and the submissions, this Court is satisfied that the impugned notices are liable to be set aside.

7. In the result, the Writ Petition is allowed as prayed for. There shall be no order as to costs.

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

M. SEETHARAMA MURTI, J

28th January 2016
RAR