

**THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI**

**Writ Petition No.19139 of 2012**

**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 proceedings in Rc.No.2/2012, dt.20.06.2012 issued by the 1<sup>st</sup> respondent thereby insisting the petitioners to demolish compound wall constructed in the petitioners' site as illegal, irregular, irrational and violative of provisions of Andhra Pradesh Panchayatraj Act, 1994 and rules framed thereunder and offends Articles 14, 21 and 300-A of Constitution of India and consequently direct the 1<sup>st</sup> respondent to decide their application for permission in accordance with law without undertaking demolition of their construction in the site of Ac.0.06 cents in D.No.295/4 of Gavinivaripalem Village, Chirala Mandal of Prakasam District and pass such other order or orders...'**

[Reproduced verbatim]

2. I have heard the submissions of the learned counsel for the writ petitioners, the learned Standing Counsel appearing for the 1<sup>st</sup> respondent and the learned counsel appearing for the unofficial respondents 2 and 3. I have perused the material record.

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

The 2<sup>nd</sup> petitioner is the absolute owner and possessor in enjoyment of an extent of a site of Ac.0.06 cents bearing D.No.295/4 of Gavinivaripalem Village in Chirala Mandal of Prakasam District. The 1<sup>st</sup> petitioner, who is originally the owner of Ac.0.22 cents in the same 'D' number, having got the same from his ancestors, had settled the above said Ac.0.06 cents in favour of the 2<sup>nd</sup> petitioner by virtue of a registered settlement deed dated

03.05.2012 and delivered possession of the said site to the 2<sup>nd</sup> petitioner on the said date. The 2<sup>nd</sup> petitioner having intended to construct a terraced house in Ac.0.03 cents out of the said Ac.0.06 cents of site had got prepared an application and plan for permission and approval and had submitted the same to the 1<sup>st</sup> respondent Gram Panchayat on 18.05.2012. When no orders are being passed on the said application of the 2<sup>nd</sup> petitioner inspite of his repeated requests, the 2<sup>nd</sup> petitioner had submitted an application dated 19.06.2012 to the 1<sup>st</sup> respondent to inform about the permission and approval. The 2<sup>nd</sup> petitioner had also got issued a legal notice dated 20.06.2012 in reply to a notice dated 15.05.2012 issued by the Panchayat Secretary of the Gram Panchayat. In the said notice, it is stated that the 2<sup>nd</sup> petitioner is constructing a house without permission and approval of a building plan from the Gram Panchayat and that the constructions including a compound wall are being made in the operational area of Gavinivaripalem village and that he is required to obtain approval of the building plan and permission for construction as per the Rules and that, therefore, he is called upon to apply for and secure permission within three days from the date of the receipt of the said notice. Thereafter the 1<sup>st</sup> respondent had issued the proceedings/final notice dated 20.06.2012 *vide* RC.No.2/2012 stating that under a document executed on 16.02.2009, on Rs.20/- non judicial stamp paper, 6 yards width of site was given by the residents of the locality for formation of a road and that consent was given in the presence of Sarpanch, the Panchayat Secretary and others for the development of a road between the houses of Nakkala Polaiah and M. Thirupalu and that the Gram Panchayat had proposed to spend Rs.50,000/- for development of the road and had passed a resolution dated 16.08.2010 and that in that proposed site for road, the 2<sup>nd</sup> petitioner had started making construction of a house without obtaining any permission for construction and that, therefore, he is required to stop such constructions and that otherwise action would be taken and that in that regard a notice was already issued on 15.05.2012, but he did not issue any reply and that in the orders dated 14.06.2012 in WP.No.16693 of 2012,

this Court directed to stop the constructions being made by the 2<sup>nd</sup> petitioner and that, therefore, the final notice was issued. Nevertheless, the Panchayat has no manner of right, title and interest or possession over the land of the petitioners. The Panchayat did not pass any order on the application for permission and approval of plan submitted by the 2<sup>nd</sup> petitioner and is dodging only to facilitate the provision of the road through the site of the 2<sup>nd</sup> petitioner by the unofficial respondents 2 and 3. The 1<sup>st</sup> petitioner did not execute any deed giving any site for formation of road. Any such document must be one created and forged by the respondents 2 and 3. There is no road of 6 yards width between the houses of N. Polaiah and M. Thirupalu and no such resolution was also passed by the Gram Panchayat for development of the road. The constructions made by the 2<sup>nd</sup> petitioner are well within his site. The 3<sup>rd</sup> respondent filed a suit OS.103 of 2012 on the file of the learned Principal Junior Civil Judge, Chirala against the writ petitioners for perpetual injunction and that suit is pending. In the circumstances and in view of the insistence of the 1<sup>st</sup> respondent to remove the constructions without deciding on the application for approval of the plan and permission for construction of a house in the site of the 2<sup>nd</sup> petitioner, the writ petition is filed to declare the proceedings/final notice dated 20.06.2012 in RC.No.2/2012 issued by the 1<sup>st</sup> respondent as irregular, irrational and violative of the provisions of the A.P Panchayat Raj Act, 1994 and that the said course adopted by the 1<sup>st</sup> respondent offends Articles 14, 21 and 300A of the Constitution of India.

**4.** The case of the 1<sup>st</sup> respondent, as stated in the counter affidavit, is this:

The population of the Gavinivaripalem is 8,000 and the said village is nearer to Chirala Municipality. Under MGNREG scheme, the Government granted funds for laying CC roads in identified villages. The erstwhile committee of the Gram Panchayat had identified places to lay roads and forwarded proposals to the authorities concerned. The 1<sup>st</sup> petitioner and other neighbours came forward voluntarily and donated land in an extent of 6 yards width existing in front of their residential houses for laying road by the

Gram Panchayat. To that effect the 1<sup>st</sup> petitioner and others had executed a deed of agreement on a non judicial stamp paper of the value of Rs.20/- in favour of the Gram Panchayat. Thereafter, the Gram Panchayat passed a resolution for laying the road in the land donated by the 1<sup>st</sup> petitioner and others and forwarded the proposals to the authorities concerned. The 2<sup>nd</sup> petitioner is making construction of a house without leaving the space in front of his house, which is part of the land donated voluntarily to the Gram Panchayat for laying the CC road. No permission and approval of the plan were obtained for construction of the residential house by the 2<sup>nd</sup> petitioner. The petitioners had also constructed a compound wall obstructing the passage of pedestrians and bullock-carts. The neighbours requested the petitioners to maintain the required place while making constructions, but the petitioners paid a deaf ear to such requests of the neighbours. Having issued a notice dated 15.05.2012 to the 2<sup>nd</sup> petitioner, for proceeding with making constructions in the site belonging to the Gram Panchayat without applying for permission and obtaining approval of a plan, the final notice was issued. The neighbours of the petitioners earlier filed WP.No.16693 of 2012 before this Court by impleading the petitioners herein and the unofficial respondents 2 and 3 as parties to the said writ petition. The said writ petition was disposed of by an order dated 14.06.2012 directing the 1<sup>st</sup> respondent to conduct enquiry and pass appropriate orders within four weeks on the representation of the writ petitioner in the said writ petition. After issuing the notice dated 15.05.2012 the petitioners submitted an application dated 30.05.2012 seeking permission for construction. The said application was verified and rejected on 13.06.2012 on the ground that the application was incomplete and required information was not furnished. The said rejection order was already communicated to the petitioners on 21.06.2012. Thus, the land encroached by the petitioners is the land belonging to the Gram Panchayat. As per the Government Orders in GOMs.No.188 dated 21.07.2011 the Executive Officer of the Gram Panchayat is obliged to protect the Gram Panchayat lands by following the due process of law. The CC road, which is proposed to be laid, provides connectivity to the burial ground and the main

road. Since the 1<sup>st</sup> petitioner and others voluntarily came forward and donated the land to the Gram Panchayat to lay the road for public purpose, the petitioners cannot go back and say that no land is donated.

5. The 3<sup>rd</sup> respondent filed a counter affidavit on behalf of the respondents 2 and 3 *inter alia* stating that the 1<sup>st</sup> writ petitioner executed a deed in favour of the Gram Panchayat and delivered some portion of his property to the Gram Panchayat for public purpose and that the respondents 2 and 3 had also given some portions of their properties to the Gram Panchayat for providing ingress and egress to the villagers and that except the way in question, there is no other way in the village to reach the burial ground and that the 3<sup>rd</sup> respondent had already filed OS.No.103 of 2012 against the writ petitioners herein and that in the meanwhile *status quo* orders were obtained from this Court by suppression of material facts.

6. In the reply affidavit, the 2<sup>nd</sup> petitioner while reiterating the case pleaded had further alleged that the deed said to have been executed on a Rs.20/- non judicial stamp paper by the 1<sup>st</sup> petitioner and others donating 6 yards width of land is a fabricated and false document and that it is created for the purpose of grabbing the property belonging to the petitioners and that the respondents 2 and 3 are in collusion with the 1<sup>st</sup> respondent in order to take away the petitioners site property admeasuring 6 yards width and that in that direction the first notice dated 15.05.2012 was issued and that inspite of the fact that the plan and the application for permission for construction were prepared and submitted to the 1<sup>st</sup> respondent on 18.05.2012 and repeated requests are also made, the 1<sup>st</sup> respondent did not pass any orders and that on that a legal notice dated 20.06.2012 was got issued by denying the allegations in the notice dated 15.05.2012 issued by the 1<sup>st</sup> respondent and that the property in question is the property of the petitioners and that the 1<sup>st</sup> respondent in the present writ petition issued a letter in response to the application dated 30.05.2012 submitted by the 3<sup>rd</sup> petitioner stating that for construction of houses under Indiramma Housing Scheme no permission is

required from the Gram Panchayat.

7. The learned counsel for the parties made submissions in line with the respective pleadings, which are stated supra, in detail.

7.1 I have perused the material documents including the document said to have been executed by the 1<sup>st</sup> petitioner and others on a non judicial stamp paper of the value of Rs.20/- in favour of the Gram Panchayat in respect of 6 yards width of site including part of the site of the 2<sup>nd</sup> petitioner said to have been donated to the Gram Panchayat for formation of a road in front of the houses of the said villagers.

8. Admittedly, 6 yards width of property over which the Panchayat now intended to lay a road pursuant to a resolution passed is not a public property or the property of the Panchayat. The Panchayat is only claiming that the 1<sup>st</sup> petitioner and other neighbours came forward voluntarily and donated land in an extent of 6 yards width existing in front of their residential houses for use as a passage between the houses of N.Polaiah and M. Thirupalu and for laying road by the Gram Panchayat. The petitioners are denying execution of any such document by the 1<sup>st</sup> petitioner and are contending that it is a forged and fabricated document. The material documents filed with the reply affidavit including the letter dated 25.06.2012 furnished by the Panchayat Secretary would show that for construction of houses by the 2<sup>nd</sup> petitioner or others under Indiramma scheme, no permissions are required from the Gram Panchayat. The gift of property by the villagers was not admittedly made by executing a valid registered document is the submission of the learned counsel for the petitioners. In this writ petition, this Court is not supposed go into any factual aspects in dispute much less the controversial factual aspects and need not record any findings as to whether or not the document executed on Rs.20/- non judicial stamp paper by the 1<sup>st</sup> petitioner and others is true. The civil suit filed by the 3<sup>rd</sup> respondent is pending before a competent civil court. Therefore, the civil court is the proper forum to decide the complex issues and the factual controversy raised in the writ petition. Admittedly, the

property in question, that is, Ac.0.06 cents which is being claimed by the 2<sup>nd</sup> petitioner is his private property. Unless it is established that a portion of it, was also gifted by the 1<sup>st</sup> petitioner along with the other villagers under a valid document for formation of road as being claimed by the Gram Panchayat, it cannot be said that the 2<sup>nd</sup> petitioner is not the owner of that portion of his property that was being claimed as gifted. Since an efficacious alternative remedy was already sought for by instituting a civil suit, in the well considered view of this Court, the Panchayat cannot issue notices claiming the property as the property of the Panchayat till a final decision is made in the Civil suit on the issue in regard to the claim of the Panchayat. Further, when the 2<sup>nd</sup> petitioner does not require any permission to construct a house under the Indiramma Housing Scheme, a contention that no permission was obtained for construction of the house and hence, the construction that was made has to be removed is untenable. Therefore, this Court finds that sufficient case is made out for granting the relief, subject, however, to the result of the civil suit as such a course helps in maintaining status quo and accords protection to a construction made under a Government's beneficial social welfare scheme, till the factual issue is finally resolved in the civil suit.

9. In the result, the Writ Petition is allowed as prayed for. It is made clear that any constructions which the 2<sup>nd</sup> petitioner had already made and would be making in future in the disputed portion of the site shall be subject to the final result of the civil suit. There shall be no order as to costs.

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

---

**M. SEETHARAMA MURTI, J**

Date: 24.02.2016

Vjl