

HON'BLE SRI JUSTICE S.V.BHATT

W.P. No.31242 OF 2012

ORDER:

Heard Mr.O.Manohar Reddy for petitioner, the learned Government Pleader (Panchayat Raj) for respondent Nos. 1 to 4, Mr.Seshadri for respondent No.5 and Mr.Nimmagadda Satyanarayana for respondent No.6.

The petitioner prays for Mandamus declaring proceeding Roc. No.654/2012 (Pancht) A3, dated 20.07.2012 as illegal, arbitrary and unconstitutional.

The issue arises under the Gram Panchayat Act, 1964 read with Panchayat Raj Act, 1994, G.O.Ms.No.377, Panchayat Raj (SII) Department dated 12.10.1973 and G.O Ms.No.67, PR&RD (Pts.IV) Department dated: 26.02.2002. The issue for consideration is whether the layout approved and sanctioned in favour of petitioner by 5th respondent under G.O.Ms.No.377 dated 12.10.1973 is valid or the petitioner is required to take layout sanction in terms of G.O.Ms.No. 67 dated 26.02.2002 or not?

The circumstances relevant for disposing of the writ petition are as follows:

The petitioner is a society of Teachers of Prakasam District. At the request of petitioner, the Government acquired an extent of Ac.15-09 cents in Survey Nos.10 to 15, 15/1, Bestavaripeta Village, Giddalur Taluq, Prakasam District under the Land Acquisition Act, 1894. The acquisition was completed with the passing of Award No.14/86 dated 23.09.1986. On 05.10.1988, the petitioner applied to

5th respondent Gram Panchayat for approval of layout an extent of Ac.10-09 cents as house-sites. On 04.10.1988, the petitioner paid the fee required for this purpose. According to petitioner, the 5th respondent Gram Panchayat through resolution No.33 dated 18.02.1989 accorded approval to the layout applied for by the petitioner. It is further stated that the layout was to be approved by the Director of Town and Country Planning and presumably in the case on hand, the 5th respondent granted approval after receiving sanction from the competent authority. Thereafter, all the formalities are completed and according to the petitioner, an extent of Ac.10-09 cents is a layout sanctioned and approved by respondent No.5 in accordance with the procedure under G.O.Ms.No.377 dated 12.10.1973. In other words with various steps initiated by petitioner and finally approved and accepted by 5th respondent a layout of Ac.10.09 cents was developed and operated for the benefit of members of petitioner society.

While matters stood thus, the 6th respondent on the assumption that the layout now operated by petitioner of an extent of Ac.10-09 cents in the survey numbers referred to above is without sanction or approval, complained before the Hon'ble Lok Ayuktha. The Lok Ayuktha called for remarks/information from respondents 2 to 4. From the references referred in the proceeding dated 20.07.2012, it appears a report was called for from the District Panchayat Officer and the Divisional Panchayat Officer. Finally the proceeding impugned in the writ petition was issued calling upon

petitioner to comply with the requirements of G.O.Ms.No.67 dated 26.02.2002.

The sum and substance of the impugned proceeding is that the layout now operated in Survey Nos.10 to 15, 15/1 is not in accordance with G.O.Ms.No.67 dated 26.02.2002 and further calls upon the petitioner to comply with the requirements of G.O. Ms. No.67. The petitioner challenges the proceedings dated 20.07.2012.

Mr.O.Manohar Reddy reiterates the stand in the writ affidavit and contends that the petitioner on 04.10.1988 paid layout development fee in accordance with G.O.Ms.No.377 dated 12.10.1973. According to him, the layout substantially conforms to the requirements of the law then existing for the approval was granted on 18.02.1989 by Gram Panchayat after obtaining clearance from the Director of Town and Country Planning. By 27.02.1989, the other formalities such as laying the roads etc. were also completed. Therefore, the layout is a sanctioned layout. On 26.02.2002, G.O.Ms.No.67 was issued and it does not have retrospective operation to direct the petitioner to comply with the requirements of G.O.Ms.No.67 dated 26.02.2002. He further contends that the respondents conducted enquiry issued proceeding impugned in the writ petition on account of the fact that the complaint is filed by respondent No.6 before the Hon'ble Lok Ayuktha which according to him is not maintainable. To report compliance before Hon'ble Lok Ayuktha, the respondents have issued proceeding impugned in the writ petition. According to him, the procedure in G.O.Ms.No.67 dated 26.02.2002 does not have

retrospective operation and the subject layout was sanctioned and approved as per the rules in vogue. Therefore, the proceeding impugned is liable to be set aside as illegal and without jurisdiction.

Counter affidavit of 5th respondent does not dispute the basic documents on which the petitioner is relying upon to contend that the subject layout was sanctioned and approved under G.O.Ms.No.377, but tries to explain how these documents cannot be treated as concluding that a sanctioned layout is in operation. To conclude this aspect of the matter, it is suffice to note that the 5th respondent is not the authority who has issued proceeding impugned in the writ petition. Therefore, the allegations stated by the 5th respondent in the absence of denial of the primary documents on which the petitioner is relying upon are not necessary, hence, not adverted.

The learned Government Pleader for Panchayat Raj after perusing the proceeding impugned in the writ petition and also the fact that the 3rd and the 4th respondents have not filed counter affidavit, submits that in the circumstances alleged by the petitioner, he is unable to sustain the impugned proceeding and on the question of retrospective operation of G.O.Ms.No.67 dated 26.02.2002, he states that these rules cannot be treated as having retrospective operation and also affect the layouts sanctioned and approved by the competent authorities prior to 26.02.2002. The statement of Government Pleader is placed on record.

I have perused Exs.P1 to P7 filed along with the writ affidavit and prima facie I am satisfied that the layout was sanctioned under

G.O.Ms.No.377 dated 12.10.1973, the Gram Panchayat has accepted the common areas, road etc. from the petitioner society and further G.O.Ms.No.67 cannot be given retrospective effect. Further once the layout was developed, the roads, common areas are accepted from the developer of the area, the respondents cannot once again call upon petitioner to conform to the requirement of G.O.Ms.No.67 dated 26.02.2002. For the above reasons, the impugned proceeding is set aside.

The writ petition is ordered. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

Date: 30.01.2017
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S.V.BHATT,J