

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.34640 OF 2012

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, challenges the notice bearing No.G.P/04/2012, dated 02.11.2012, issued by the Panchayat Secretary, Gram Panchayat, Rameswarpalli Village, Biknur Mandal, Nizamabad District.

2. Heard Sri Sreenivasa Rao Velivela, learned counsel for the petitioner, learned Government Pleader for Panchayat Raj for the 1st respondent and Sri G.Narendar Reddy, learned standing counsel for the 2nd respondent, apart from perusing the material available before the Court.

3. According to the petitioner, petitioner is the absolute owner of the land admeasuring Acres 2.13 guntas situated in survey Nos.117/1, 117/5A, 117/10, 117/13B, 118/1, 118/6A, 118/9B, 118/12 and 118/41B of the above said village, having purchased the same by way of registered sale deed dated 10.02.2011, bearing document No.185 of 2011. Petitioner herein submitted an application to the 2nd respondent – Gram Panchayat, for permission to construct a building for running a college. The Panchayat Secretary, vide letter No.G.P/02/2012, dated 28.01.2012, submitted proposals to the District Panchayat Officer, Nizamabad – 1st respondent herein. Thereafter, the same was

forwarded to the District Town & Country Planning Officer, Nizamabad, who in turn addressed a letter bearing No.34/2012/DTCPO/NZB, dated 19.03.2012, to the Director of Town and Country Planning, Government of Andhra Pradesh, Hyderabad, making the following observations:

1. *“The site under reference has getting access through existing 200’-0” wide N.H-44 towards western side which leads to Kamareddy and Hyderabad, and existing 30’-0” wide gravel road towards southern side.*
2. *The boundary measurements are tallying on ground as per submitted plan.*
3. *The applicant has commenced the work, ground floor and first floor roof slabs are laid as per submitted plan.*

In view of the above, I herewith forward the proposals for taking further action in the matter.”

4. While the matters stood thus, the Panchayat Secretary – 2nd respondent herein issued a notice bearing No.G.P./04/2012, dated 02.11.2012, asking the petitioner to remove the constructions within a period of five days, while referring to the memo bearing No.B5/107/2012-(P), dated 12.10.2012 of the District Panchayat Officer. Challenging the validity and legal sustainability of the said notice issued by the 2nd respondent – Panchayat Secretary, the present writ petition came to be filed.

5. This Court on 07.11.2012, while ordering notices, passed the following order:

“Heard Sri Sreenivasa Rao Velivela, learned counsel for the petitioner, Sri Zakir Ali Danish, learned Assistant Government Pleader for PR & RD and Sri K. Ramakrishna, learned counsel representing the learned standing counsel for the 2nd respondent.

The claims of the petitioner about duly applying for permission for construction and making the construction strictly in accordance with the application after waiting for a reasonable time for its approval have to be enquired into before considering whether the subject constructions are liable to be removed or otherwise dealt with.

Therefore, the respondents may not demolish the subject constructions until the next date of hearing and the petitioner shall not make any further construction and maintain status quo as on today regarding the subject construction until further orders.”

6. Responding to the notices issued by this Court, counter affidavits have been filed by the respondents 1 and 2, denying the averments made in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action.

7. According to the learned counsel for the petitioner, the impugned notice issued by the 2nd respondent – Panchayat Secretary, is highly illegal, arbitrary and violative of the provisions of A.P.Panchayat Raj Act, 1994 and the The Andhra Pradesh Gram Panchayat Land Development (Layout And Building) Rules, 2002. It is further submitted by the

learned counsel that the impugned action is also violative of Article 14 and 300-A of the Constitution of India and violative of principles of natural justice, as no show-cause notice was issued by the respondents before resorting to the impugned action.

8. On the contrary, it is submitted by the learned Government Pleader and the learned standing counsel for the respondent Gram Panchayat that since the respondents herein proceeded in accordance with law, the questioned order is not amenable for any judicial review under Article 226 of the Constitution of India.

9. In the instant case, there is absolutely no dispute as regards ownership of the property, the application made by the petitioner for building permission and the letter of the Panchayat Secretary, dated 28.01.2012 and the letter dated 19.03.2012 of the District Town and Country Planning Officer, Nizamabad.

10. A perusal of the notice under challenge, in clear and vivid terms, reveals that the 2nd respondent resorted to the impugned action, obviously, as a consequence of the directions of the District Panchayat Officer, Nizamabad, vide memo dated 12.10.2012.

11. According to the learned counsel for the petitioner, the said memo dated 12.10.2012, was never communicated to the

petitioner. It is the specific case of the petitioner herein that no show-cause notice was issued by the respondents herein before resorting to the impugned action. Though in the counter affidavit filed by the District Panchayat Officer it is stated that the Panchayat Secretary issued notice on 13.02.2012, curiously the counter affidavit filed by the Panchayat Secretary is absolutely silent as to the issuance of any show-cause notice to the petitioner herein before passing the impugned order dated 02.11.2012. It is the further submission of the learned counsel for the petitioner that the said failure on the part of the respondents in serving notice before resorting to the impugned action is in total violation of the principles of natural justice.

12. Resisting the said submission, it is strenuously contended by the learned Government Pleader and the learned standing counsel for the respondent Gram Panchayat that as per Rule 33 of The Andhra Pradesh Gram Panchayat Land Development (Layout And Building) Rules, 2002, District Panchayat Officer is competent to issue instructions to the executive authority in case of unauthorized constructions for necessary action. The said provision of law reads as under:

“33. Offences and Penalties:— (1) *Any person who contravenes any of the provisions of these rules or any requirements or obligations imposed on him by virtue of these rules shall be guilty of an offence and shall be punished with a fine as*

prescribed in these rules by the District Panchayat Officer and in case of continuing offence a dally fine until the contravention is made good or removed;

- (i) take suitable actions including demolition of unauthorized works,*
- (ii) take suitable action against technical personnel, which include prosecution or debarring him from further practice up to three years;*
- (iii) Any unauthorized Tobacco barn running without a license from Tobacco Board is liable for demolition. In the alternative in consultation with Tobacco Board a fine of Rs. 30,000/- per annum may be imposed on unauthorized Tobacco barns which is recoverable under Revenue Recovery Act.*

(2) In the case of unauthorized constructions, the District Panchayat Officer or his officers may take any of the above actions and issue suitable instructions to the executive Authority or any other body for necessary action against the unauthorized construction/layout, besides taking action on the Executive Authority for allowing such unauthorized developments.”

13. Apart from the complaint as to the violation of principles of natural justice, a contention has been raised by the learned counsel for the petitioner that Rule 31 of the said Rules also cannot be pressed into service by the respondents and that the same is not relevant to the facts of the present matter. In the absence of any denial in the counter affidavit filed by the Panchayat Secretary, it has to be necessarily

construed that no show-cause notice was served on the petitioner by the respondents before issuing the impugned notice dated 02.11.2012, asking the petitioner to remove the structures.

14. It is the settled and well established proposition of law that any action on the part of the authorities which has civil consequences must necessarily be preceded by notice and opportunity of being heard to the persons likely to be effected by such action. In the instant case, the said principle is followed in breach. Therefore, on this ground alone, the impugned notice dated 02.11.2012, deserves to be set aside.

15. For the aforesaid reasons, writ petition is allowed, setting aside the notice bearing No.G.P/04/2012, dated 02.11.2012, passed by the 2nd respondent. However, this order does not preclude the respondents from proceeding in accordance with law, after giving notice and opportunity of hearing to the petitioner. It is also open for the petitioner herein to raise all his contentions, if any, such notice is issued.

16. Miscellaneous petitions pending consideration, if any, in the Writ Petition shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

02.01.2017
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