

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

W.P.NO.11733 OF 2017

ORDER

This writ petition filed under Article 226 of the Constitution of India challenges the resolution bearing No.100 dated 11.01.2017 passed by the 4th respondent – Gram Panchayat, Ravulapalem and the notice bearing ROC.No.34/2011 dated 04.02.2017 issued by the Secretary of the said Gram Panchayat as a consequence thereof.

Heard Sri O.Manohar Reddy, learned counsel for the petitioner, Government Pleader for Panchayatraj for respondents 1 to 3, Sri Ravi Chimalapati for the 4th respondent – Gram Panchayat and Sri S.Srinivas Reddy, for the 5th respondent, and perused the material available before the Court.

According to the learned counsel for the petitioner - Association, the impugned action on the part of the 4th respondent – Gram Panchayat is totally one without jurisdiction and the same is in violation of the principles of natural justice. It is further submitted that the Gram Panchayat has absolutely no power to undo its earlier resolution passed on 12.04.2007, allotting the land to the petitioner.

On the other hand, it is the submission of the learned counsel for respondents 1 to 4 that there is no illegality, or irregularity in initiating the impugned action and in the absence of the same, present writ petition is not maintainable and the petitioner is not entitled for any relief under Article 226 of the Constitution of India.

It is the submission of the learned counsel for the 5th respondent that in the year 2007, the allotment was made by the then Gram Panchayat in an illegal manner and therefore, for rectification of the same, the present impugned action is initiated. It is further submitted that the impugned action came to be initiated pursuant to the orders of the District Panchayat Officer and the objections raised by the Principal Accountant General, Hyderabad and as per G.O.Ms.No.188 Panchayat Raj and Rural Development (Pts.IV) Department dated 21.07.2011. It is further submitted by the learned counsel that in view of the availability of alternate remedy of revision to the State Government under the Section of 264 of A. P. Panchayat Raj Act, 1994, the present writ petition cannot be maintained before this court. It is also submitted by the learned counsel that there is an elaborate procedure under G.O.Ms.No.188 dated 21.07.2011 and the impugned notice may be treated as show cause notice under clause 4 of the above G.O. order and it is open for the petitioner herein to submit its explanation, explaining all the aspects.

It is further submitted by the learned counsel for the petitioner that after receipt of the impugned notice dated 4.2.2017, petitioner already submitted an elaborate representation, explaining all the realities in issue.

Order of the State Government in G.O.Ms.No.188 dated 21.07.2011 stipulates service of notice by the executive authority and opportunity of hearing to the party concerned. Clause 4(1) of the said governmental order, reads as under:

4. Eviction of encroachments:

(1) Where it is brought to the notice that any property of the Panchayat is under occupation of any persons the Executive authority (Panchayat Secretary) shall serve a notice to the party concerned and give a brief hearing before proceeding for eviction.

Having regard to the submissions made by the learned counsel for the petitioner and the Government Pleader for Panchayatraj for respondents 1 to 3 and Standing Counsel for the 4th respondent – Gram Panchayat and the learned counsel for the 5th respondent, this court is of the considered opinion that ends of justice would be served if the impugned notice dated 4.2.2017 is directed to be treated as notice under Clause 4(1) of G.O.Ms.No.188 dated 21.07.2011 and further permission is granted to the petitioner herein to submit its explanation for consideration of the Executive Authority.

For the foregoing reasons, the writ petition is disposed of directing the notice dated 4.2.2017 issued by the Panchayat Secretary to be treated as notice under Clause 4(1) of G.O.Ms.No.188 dated 21.07.2011 and the petitioner herein is permitted to submit its further explanation raising all the contentions available under law for consideration of the Executive Authority, within a period of one month from the date of receipt of a copy of this order. If such a representation/explanation is submitted within the time stipulated, the same shall be considered and appropriate action be taken in accordance with law after giving notice and opportunity of hearing to the petitioner herein.

Till the above-directed exercise is finalized, no coercive action pursuant to the impugned notice shall be taken.

No order as to costs.

Miscellaneous petitions pending if any, shall stand closed.

A.V.SESHA SAI,J

DATE:03—04—2017
AVS