

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

WRIT PETITION No.1398 OF 2017

ORDER:

This writ petition, filed under Article 226 of the Constitution of India, challenges the notice bearing No.GP/85/2016, dated 25.07.2016, issued by the 2nd respondent – Gram Panchayat.

2. Heard the 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 - Gram Panchayat.

3. According to the petitioner, he is the absolute and lawful owner and possessor of the house bearing No.12-63, Block No.13, admeasuring 300 square yards situated at Atmakur Mandal, Mahaboobnagar District, having purchased the same in the year 1996 vide registered sale deed bearing document No.751/96, from one Smt.M.Prameela Devi, w/o. M.Krishnaiah. It is further stated that ever since petitioner herein has been in possession and enjoyment of the same. It is further averred in the writ affidavit that the petitioner herein obtained the construction permission for construction of ground floor in respect of the above said house vide file No.124/99, dated 23.03.2000 and regularly paying the property tax.

4. Reiterating the averments in the writ affidavit, it is submitted by the learned counsel for the petitioner that due to certain political reasons and the consequential pressure exerted on the 2nd respondent, the 2nd respondent – Executive Officer of the Gram Panchayat, issued a notice bearing No.GP/85/2016, dated 25.07.2016, asking the petitioner to remove the constructions on the ground that the petitioner herein made illegal constructions. It is further submitted by the learned counsel for the petitioner that the said notice dated 25.07.2016 is highly illegal and is a result of the arbitrary action on the part of the 2nd respondent. It is further submitted that the Surpanch of the Gram Panchayat also addressed a letter on 08.10.2016 to the District Panchayat Officer, stating that the petitioner herein did not make any illegal constructions. It is further submitted by the learned counsel for the petitioner that the impugned action is violative of Articles 14 and 300-A of the Constitution of India and opposed to the very spirit and object of the provisions of the A.P.Panchayat Raj Act, 1994.

5. On the contrary, it is submitted by the learned Government Pleader and the learned standing counsel for the 2nd respondent – Gram Panchayat that in view of the availability of alternative remedy of appeal to the Gram Panchayat, under Section 128 of the A.P.Panchayat Raj Act, 1994, the petitioner herein cannot maintain the present writ

petition directly before this Court. Section 128 of the A.P.Panchayat Raj Act, 1994 reads as under:

“128. Appeal from the order of executive authority:— (1) *An appeal shall lie to the gram panchayat from,—*

(a) any order of the executive authority granting, refusing, suspending or revoking a licence or permission;

(b) any other order of the executive authority that may be made appealable by rules made under Section 268.

(2) A second appeal shall lie from the decision of the gram panchayat passed in an appeal under sub-section (1) to such authority as may be prescribed whose decision thereon shall be final.”

6. In view of the availability of alternative remedy as mentioned supra, this Court deems it appropriate to dispose of the present writ petition with a liberty to the petitioner herein to avail the said alternative remedy.

7. For the aforesaid reasons, writ petition is disposed of, permitting the petitioner herein to file appeal under Section 128 of the A.P.Panchayat Raj act, 1994, against the notice bearing No.GP/85/2016, dated 25.07.2016, within a period of one month from the date of receipt of a copy of this order. If any such appeal is filed within the time stipulated above, the same be considered and appropriate orders be passed by the Appellate Authority, in accordance with law, after giving notice and opportunity of being heard to the petitioner herein.

Till such exercise attains finality, *Status quo* as regards the subject constructions shall be maintained.

8. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. No order as to costs.

A.V.SESHA SAI, J

17.01.2017
SS

*Note: issue C.C. by tomorrow.
B/o.SS*

