

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.11521 OF 2009

ORDER:

The petitioners challenge proceedings No.A3/1903/2009 dated 06.06.2009, as illegal, arbitrary and without jurisdiction.

The petitioners are owners and possessors of an extent of Ac.3.08gts. in Survey No.52 of leeja Village and Mandal, Mahabubnagar District.

On 01.03.2009, the petitioners applied to 2nd respondent for grant of building permission for construction of a ginning mill. The 2nd respondent through Gram Panchayat Resolution No.4 dated 20.03.2009 resolved to accord permission to petitioners for construction of a ginning mill. Through proceedings No.A/93/2009 dated 11.05.2009, the 2nd respondent granted permission for construction of ginning mill. The petitioners claim to have undertaken construction of ginning mill. While matters stood thus, the petitioners on 01.06.2009, complained against the 3rd respondent and her husband to 1st respondent that the 3rd respondent is interfering with the construction activity and requested for suitable directions in the matter. The 1st respondent, on the complaint filed by petitioners against 3rd respondent and her husband, called for report from Extension Officer dated 05.06.2009 and through proceedings impugned in the writ petition, passed the following order:

“The Sarpanch/Panchayati Secretary inform that the said Ref.2 the applicants says that their purchased lands, the Zinning Mill constructions doing, and requested the

Sarpanch and her husband to stop construction works and Grama Panchayati staff took tooks alleged.

In this the Dev. Officer (PP &FD) enquired, and the concern Zinning Mill file not available with Grama Panchayati and the Staff also not cooperated with him and Panchayati Secretary and others on leave went out says. He submitted the Xerox copy of said Zinning Mill permission granted by the Panchayati vide No.A/93/2009 dated 11.5.2009.

After careful observation of above all, the Zinning Mill land file in Grama Panchayati not available, the Panchayati Secretary order No.A/93/2009 dt.11-5-2009 till further orders granted immediately STAY of all further proceedings. This order shall implement Sarpanch/Secretary order issued herein.

The Divisional Panchayati Officer, Gadwal the said land verified physically and records and conduct Panchanama and submit permission file all in detail immediately.”

Hence the writ petition.

Mr.O.Manohar Reddy contends that the petitioners are required to apply to 2nd respondent Gram Panchayat for building permission. On the application filed by the petitioners, the Gram Panchayat passed the resolution and finally issued building permission dated 11.05.2009. Either the resolution of Gram Panchayat or the building permission granted on 11.05.2009 was not challenged by any person including aggrieved person before the General Body of the Gram Panchayat or before the 1st respondent. The petitioners, in spite of having permission from the 2nd respondent, were unable to proceed with the construction on account of unauthorised and illegal interference in the construction activity by the 3rd respondent and her husband. The request was to

look into the matter and take a decision. Surprisingly, on account of 2nd respondent not producing the record, granting stay of building permission dated 11.05.2009 is arbitrary, illegal and without jurisdiction. He alternatively submits that assuming that there is violation in the building permission granted by 2nd respondent, the 1st respondent cannot *suo-motu* exercise the jurisdiction of the appellate authority and either set aside the building permission or grant stay of building permission dated 11.05.2009.

The Assistant Government Pleader for Panchayat Raj places reliance upon the totality of circumstances referred in the counter affidavit. The counter affidavit does not refer to authority under which the stay order treating the representation filed by petitioners as appeal could be passed. The right of appeal is conferred by the statute and it has to be exercised in the mode and manner prescribed by the enactment. On the ground of lack of authority/ jurisdiction and also that on the representation filed by the petitioners, stay ought not to have been granted against them. The impugned proceedings are set aside.

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

Miscellaneous petitions pending if any shall stand closed.

S.V.BHATT,J

Date: 28.02.2017

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