

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.11736 of 2017

ORDER:

Heard learned counsel for the petitioner and also the learned Government Pleader for Panchayat Raj, Municipal Administration and Revenue respectively for respondent Nos.1 to 6 and Sri Ravi Cheemalapati, learned standing counsel, for respondent Nos.7 & 8 and perused the prayer in the writ petition with the supporting affidavit and other material on record including the impugned proceedings dated 20.03.2017 of the Panchayat Secretary addressed to the petitioner.

The prayer in the writ petition reads as follows:

“To issue an appropriate writ, order or direction more particularly one in the nature of writ of mandamus declaring the action of the 8th respondent in issuing the impugned letter dated 20.03.2017 applying the G.O.Ms.No.12 as illegal, arbitrary and contrary to the directions and proceedings of the 3rd respondent dated 10.03.2017 and violative of the rights guaranteed under the Constitution of India, set aside the impugned letter dated 20.03.2017 and consequently direct the 8th respondent to sanction the building permission without applying the G.O.Ms.No.12, dated 08.02.2016 in respect of the subject property in an extent of 1218.76 sq. meters, in TS.No.451, situated at Hukumpeta Village, Rajamahendravaram Rural Mandal, East Godavari District by applying the condition Nos.1, 11 and 19 along with other conditions of proceedings of the 3rd respondent dated 10.03.2017 and to pass such other order or orders.”

As per the impugned proceedings, it is a requirement to pay in addition to what the amount already paid of Rs.2,35,599/-, the balance payable is Rs.20,22,017/- inclusive to comprise Rs.21,12,594/- which is pursuant to G.O.Ms.No.12 apart from building construction charges of Rs.90,577/- and road widening

purpose as per master plan the area of 149.94 square meters site to be registered in favour of Panchayat and so far as mortgage of 224.58 square meters of the built up area concerned to execute gift registered deed. Among the 4 conditions for compliance in the impugned proceedings of the Panchayat dated 20.03.2017 supra, the writ petition impugnement is mistaken mention of mortgage deed as gift deed in clause No.4 and non-liability to pay any amount comprise more than Rs.2,35,599/- already paid and the said demand is illegal including as per G.O.Ms.No.12 to the said claim.

It is the contention of the petitioner from the writ petition affidavit in support of the above that having collected the amount, the question of again demand, lay out approval made way back at the time of application for construction permission in raising that issue, that was already meted with and complied and approval given apart from doctrine of estoppel that applies.

Whereas it is the submission of the learned Government Pleaders and also the learned standing counsel for the Panchayat Raj that there is clear mention of it is outcome of a mistaken calculation as if it is for a single plot as the area construction, however it is a lay out approval for several plots and the G.O.Ms.No.12 clearly speaks what is the amount payable and as such by inadvertence any amount mentioned by miscalculation that is not end all or be all and any application of doctrine of estoppel also does not arise and thereby the petitioner is liable to pay.

Here once the lay out approval pursuant to G.O.Ms.No.12 is for the lay out for commercial purpose clearly speaks not for

individual plot approval the percentage of charges to be paid and any amount initially paid at best to be deducted, to be payable a belated noticing of the inadvertence on the part of the officials on which neither Panchayat nor Government shall not suffer.

Having regard to the above and to sub-serve the ends of justice, it is just to permit to pay in installments rather than saying not liable to pay. Needless to say mistaken mention of gift deed rectified as mortgage deed if at all to execute so far as construction concerned.

Accordingly and in the result, the Writ Petition is partly allowed while holding that the petitioner is liable to pay the demanded amount excluding what is already paid, however by granting time and with the directions to pay half of the amount preferably within two (02) months from the date of receipt of a copy of this order and it is on such payment of half of the amount, the plan to be released and the petitioner is to be permitted to proceed with the construction, for remaining half of the amount concerned it is payable within four (04) equal bimonthly installments and it is also made clear that any non-payment of any of the respective four installments supra, further construction can be stopped. It is also made clear that any execution of gift does not arise, but for mortgage for the additional floor construction to obtain.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 30.06.2017
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