

HONOURABLE SRI JUSTICE RAJA ELANGO

**WRIT PETITIONS Nos. 24452, 21867 of 2009, 6414, 22916 of 2011,
17942 of 2012 and 10996 of 2015**

COMMON ORDER:

1. Since the issue involved in these writ petitions is one and the same, these writ petitions are heard together and are being disposed of by this common order.

2. W.P.Nos.6414, 22916 of 2011, 24452, 21867 of 2009, 17942 of 2012 are filed by the Ganapavaram Gram Panchayat, Nadendla Mandal as well as the residents of the said village respectively, challenging the inaction of the official respondents in removing the unauthorized constructions made by the Idupulapadu Cotton Mills Limited, Ganapavaram, Nadendla Mandal, whereas W.P.No.10996 of 2015 is filed by Idupulapadu Cotton Mills Limited, seeking to quash the order passed by the Commissioner, Command Area Development Authority, A.P., in March, 2015 setting aside the proceedings dated 3.11.2009 issued by the District Collector.

3. Since the issue involved in all the writ petitions is one and the same, the status of the parties will hereinafter be referred to as arrayed in W.P.No.6414 of 2011 for the sake of convenience.

4. The case of the Grampanchayat as well as the residents of the said village is as follows:

(i) The 6th respondent-Mill submitted proposals for construction of a building for establishment of Oil and Ginning Mill in Sy.Nos.203/B1, 110/A3B, 1B, 3B3, 1/3C, C3 B, 127/2A1, 112/F, 3F, 5F, 109/1A, 1B, 1C, 111/3A, 3B, 3C, 110/3B of Ganapavaram Village, Nadendla Mandal, Guntur District. When the 6th respondent started making constructions in the year 2008 without making any application to any authority, the

Grampanchayat issued notices. Then, the 6th respondent made an application on 27.5.2008 to the Grampanchayat seeking permission for construction of Oil and Ginning Mill. The Grampanchayat rejected the application of the 6th respondent vide its resolution dated 31.5.2008. On that, the 6th respondent made an application dated 11.6.2008 to the Commissioner of Industries under Single window scheme. The said authority forwarded the application to all the statutory authorities. The 6th respondent made another application dated 25.8.2008 to the Grampanchayat requesting for issuance of 'No objection certificate' and release the plans for construction of the said unit. The 6th respondent enclosed letters issued by various departments. While considering the application, it came to the notice of the Grampanchayat that the 6th respondent furnished false information by misrepresenting the facts to the authorities including Grampanchayat regarding the site plan and building plan. Though the proposed site consists of irrigation field channels, but the 6th respondent closed the said field channels. It was also noticed that the 6th respondent furnished fabricated documents viz., resolution of water users' association dated 10.7.2008 even though there was a valid resolution by the concerned association giving consent for closing of field channels and for establishment of the unit. The Grampanchayat also received representations from ryots and other public against the 6th respondent. The proposed site is located within a distance of 170 metres to the Government Hospital, 230 metres to the drinking water scheme and at a distance of 270 metres to summer storage tank located within the village and the same is with a distance of 40 metres to the human habitation locality. Having considered all these aspects, the Grampanchayat vide its resolution dated 30.8.2008 rejected to grant permission to the 6th respondent. Subsequent to the said rejection, the 6th respondent made another application to the

official respondents seeking permission for construction of mill in the same site, for which earlier it made an application. As the 6th respondent is proceeding with construction illegally, the Sarpanch of Grampanchayat, Ganapavaram made several representations to the higher authorities. The 4th respondent through proceedings dated 24.11.2008 directed the 5th respondent to take necessary action in accordance with Panchayat Raj Act. Then the 5th respondent without taking any action merely issued notices to the 6th respondent to stop the construction. On 16.1.2009, the 3rd respondent constituted a 7 member committee under the chairmanship of Chief Executive Officer, Zilla Parishad, to enquire into the matter. The committee considered the matter and submitted a report dated 4.5.2009. Almost all the members unanimously concluded that the 6th respondent is proceeding with the construction by closing field channels. The Regional Deputy Director of Town and Country Planning observed that the construction of building by the 6th respondent is illegal since they have shown in the approved BP No.107/08 as proposed whereas on the ground the constructions are already in existence and the mill is being run since 3 to 4 years. It is further observed that the construction is contrary to the approved indicative land use plan for Ganapavaram Grampanchayat. Upon considering all the reports submitted by the members, the chairman through proceedings dated 4.5.2009 submitted a report to the 3rd respondent to the effect that the 6th respondent made illegal constructions. Further, it discloses that the 6th respondent made applications with false representations, certificates and lay out plans. Even though report was submitted in the month of May, 2009, respondents Nos.2 to 5 have not taken any action for removal of unauthorized constructions.

(ii) Further, it is the case of the Grampanchayat that the 6th respondent after obtaining building permission from the Grampanchayat

constructed a building for locating spinning mill in an extent of Ac.9.00 and odd in Sy.No.206. Thereafter, the 6th respondent made an application to the Grampanchayat on 25.10.2007 with a request to approve the lay out plan in an extent of Ac.25.55 cents in Sy.Nos.109/1A, 109/1B, 109/1C and other survey numbers for the proposed construction of Spinning Mill. On coming to know that the 6th respondent suppressed the fact of encroachments on the NSP field channels in the application dated 25.10.2007, the Grampanchayat passed resolution dated 29.12.2007 for taking action against the 6th respondent. Further, the Grampanchayat passed a resolution that no NOC/licence or permissions should be granted to anybody for establishment of any Industry on the northern side of the Grampanchayat, and cancelled the earlier resolution dated 27.10.2007. If the oil mill is established it would cause both water and air pollution. Some of the villagers and other interested parties made a complaint on 5.6.2008 to the Grampanchayat to take appropriate action against the 6th respondent for its illegal constructions.

(iii) While so, the 6th respondent submitted an application for approval for establishing the mill to the Commissioner of Industries. The Commissioner of Industries by letter dated 11.6.2008 requested the Secretary, Grampanchayat to communicate the decision. The Grampanchayat rejected the request of the 6th respondent. The said resolution was communicated to the Commissioner, Industries Department. Then, the 6th respondent approached the R.D.O. Narsaraopet and filed an application for conversion of agricultural land into Industrial area to the extent of Ac.30.54 cents in Sy.Nos.109, 110, 111, 127 and 203 etc. The RDO without there being any enquiry, issued proceedings dated 12.8.2008 for conversion of the agricultural land into non-agricultural purpose. The 6th respondent made application on 25.8.2008 to the Grampanchayat to

give NOC. The Grampanchayat refused to issue NOC. But the 6th respondent has been proceeding with the construction activities on the ground that technical sanctions were already granted in its favour. The Grampanchayat requested the District Panchayat Officer to take action against the 6th respondent. The Mandal Surveyor was deputed to survey the land. The Mandal Surveyor surveyed the land and submitted his report stating that the construction was made by encroaching the Government field channels. The District Collector and the Commissioner, Panchayatraj sent reports to Government with a request to stall the illegal constructions made by the 6th respondent and give suitable instructions for taking necessary action. But the Government failed to act upon the said reports. Challenging the inaction, W.P.Nos.21867 of 2009 and 6414 of 2011 are filed by Grampanchayat.

(iv) While so, the 6th respondent made a representation to the Government to cancel the resolutions dated 31.5.2008 and 26.7.2008 passed by the Grampanchayat. The Panchayatraj Department issued show cause notice to the Grampanchayat. Subsequently, on the writ petition filed by the Grampanchayat, the Government withdrew the said show cause notice. W.P.No.15591/2008 was filed by Grama Paryavarana Parirakshana Samithi against the 6th respondent. The said writ petition was disposed of holding as follows:

“Insofar as the permission for construction by Grampanchayat is concerned, it is admitted by the 20th respondent that no formal permission has been granted by the 18th respondent-Grampanchayat. In the circumstances, the 20th respondent cannot proceed with the construction or pursue the oil and ginning industry without its civil works being approved by the Grampanchayat, which is a competent authority. Sri Pratap Reddy, the learned Senior Counsel for the 20th respondent states that this respondent undertakes not to proceed with the construction in any

manner whatsoever of the said respondent-industry, without necessary and relevant permissions including from the Grampanchayat, Ganapavaram. This aspect of the law is thus taken care of.

In the light of the undertaking on behalf of the 20th respondent, the writ petition is disposed of in its terms duly observing that there shall be no further construction whatsoever by the 20th respondent no operationalization of the industry of the said respondent, without obtaining necessary permission from the Grampanchayat, Ganapavaram.”

Thereafter, the 6th respondent filed a revision petition to the Government challenging the intimation dated 4.10.2008 of the Panchayat Secretary rejecting the NOC to the 6th respondent. In the revision, memo dated 13.7.2011 was issued to the Grampanchayat, under which, the Panchayat Secretary, Ganapavaram Grampanchayat was directed to release the relevant plans approved by the Director of Town and Country Planning, Hyderabad to the 6th respondent herein after raising a demand notice and collecting construction and lay out fee and to impose a penalty on the constructions taken up by the 6th respondent without following the provisions of G.O.Ms.No.67. Challenging the said memo dated 13.7.2011, W.P.No.22916 of 2011 was filed. At the same time, the said memo dated 13.7.2011 was challenged by some of the villagers of Ganapavaram village by way of filing W.P.No.17942 of 2012.

(v) Challenging the resolution dated 10.7.2008 alleged to have been passed by the Water Users' Association, Ganapavaram and the change of alignment of field channels, W.P.No.24452 of 2009 was filed by the adjacent land owners of the 6th respondent. It is stated that the Water Users' Association No.175 has no jurisdiction to pass a resolution facilitating the 6th respondent to construct the Industry without obtaining permissions from the Government.

5. The District Panchayat Officer filed a counter stating as follows:

The 6th respondent submitted application for construction of Ginning, Spinning and Oil Mills in Sy.Nos.203/B1, 110/A3B, 1B, 3B3, 1/3C, B/3C, C, 3, B, 127/2A1, 2A2, 2B, 127/1, 112/1F, 3F, 5F, 109/1A, 1B, 1C, 111/3A, 3B, 3C, 110/3/B through the State Single Window Hyderabad. The same was forwarded to the Panchayat Secretary, Ganapavaram Grampanchayat vide letter dated 10.6.2008. The 6th respondent has got approvals from all other authorities except the Grampanchayat, which is required under Section 120 of A.P. Panchayatraj Act. 26 S minor was not encroached or occupied by any one and the land in question is intact as stated by the Executive Engineer, NSJC, O & M Division, Lingamguntla in his letter dated 24.1.2009. Some part of the field channel alignment of existing 3P and 4TE are encroached within the limits of the 6th respondent-Mill and the rest of the alignments are within the area of ayacutdars. The president of Water Users' association of 175 Ganapavaram passed resolution and made alternative arrangements to supply water to the rest of ayacutdars leaving the cotton mill area alone. The maintenance of field channels is to be done by ayacutdars. No trees are damaged or occupied. The Grampanchayat has many industries in its jurisdiction and all the industries, which were established previously, got technical approvals from the departments concerned including A.P. Pollution Board. In this matter, the District Collector constituted a committee to study the issues as to whether the construction of the building by the cotton Mills in question is as per rules and whether required permissions are obtained and whether the irrigation channels are affected by construction of building and the other aspects such as pollution etc., connected with the issue. The matter was examined by the committee and a report was submitted to that effect. The State Single Window committee examined the observations of the

Committee and issued clearance certificate to release the plans for running of the cotton mill in question. After getting the approvals of the technical authorities, the 6th respondent constructed the buildings in the said survey numbers. The 6th respondent took up construction of building in the proposed site since 3 to 4 years anticipating permission from Grampanchayat. A construction taken up anticipating Grampanchayat permission need not be demolished as long as the construction is in accordance with the relevant rules. As per the instructions of the Government vide memo dated 13.7.2011 the approved plans of the 6th respondent were released on 1.8.2011 by collecting fee along with the penalty for violating the rules issued in G.O.Ms.No.67, PR & RD Department, dated 26.2.2002.

6. The 1st respondent-Government of A.P filed a counter affidavit with the following averments:

The Grampanchayat, Ganapavaram has many industries in their jurisdiction. All the industries, which were established previously, got technical approvals from the concerned departments including A.P. Pollution Board. The National Highway No.5 is passing through the middle of the jurisdiction of the Grampanchayat and the main village is situated on the western side of the National High Way No.5. There are also two major colonies at the eastern side of the village. Due to frequent access of transportation and other infrastructure facilities, the village is industrially developed. Major Industries are situated on both sides of the National High Way. The 6th respondent submitted proposals for construction of Oil, Ginning and Spinning Mill on the northern side of the High Way. The 6th respondent submitted application for construction of the Mill in S.Nos.203/B1, 110/A3B, 1B, 3B3, 1/3C, B/3C, C, 3, B, 127/2A1,

2A2, 2B, 127/1, 112/1F, 3F, 5F, 109/1A, 1B, 1C, 111/3A, 3B, 3C, 110/3/B through the State Single Window Hyderabad. The same was forwarded to the Panchayat Secretary, Ganapavaram Gram Panchayat vide letter dated 10.6.2008. The Panchayat Secretary was asked to issue NOC for establishment of Industry as per the guidelines issued in Single Window Act. Before issuing NOC, the concerned departments i.e., A.P. Pollution Board, Industrial Department, District Health Officer, Revenue Divisional Officer, Grampanchayat, Ganapavaram are bound to verify the physical conditions of the land. It is a fact that the 6th respondent has got approvals from all other authorities except the Grampanchayat. The matter was examined by the District Single Window Committee along with the technical authorities to study the issues as to whether the construction of the building by the cotton Mills in question are as per rules and whether required permissions are obtained, whether the irrigations channels are affected by construction of building and the other aspects such as pollution etc., connected with the issue. The State Single Window committee examined the observations of the committee and issued clearance certificate to release the plans for running the industry in question. After getting the approvals of the Technical authorities, the 6th respondent constructed the buildings in the said survey numbers. The 6th respondent filed revision questioning the proceedings issued by the Grampanchayat on 4.10.2008 communicating its decision of rejection for release of the approved plans through its resolutions dated 31.5.2008, 25.6.2008 and 26.7.2008. The Government disposed of the revision vide its memo dated 13.7.2011. Therefore, there are no merits in the case of the Grampanchayat and thereby the writ petitions filed by the Grampanchayat and its villagers are liable to be dismissed.

7. The Panchayat Secretary of the Grampanchayat-5th respondent filed a counter-affidavit stating that there is no recommendation made by the Commissioner of Industries for taking action against the 6th respondent. As a member of the committee, the General Manager of District Industries Center, Guntur, has recommended that the unit has got approval of consent for operation from A.P. Pollution Control Board to establish the unit and also recommended the affluent treatment process and removal of solid waste. In the report submitted by the General Manager no where it is stated that the action has to be taken against the 6th respondent for removing the unauthorized constructions. Though the correspondents between the Grampanchayat and the 6th respondent was in progress, the 6th respondent raised constructions without obtaining permissions from the concerned authorities. In those circumstances, the Panchayat Secretary issued notice to the 6th respondent to stop illegal constructions immediately. The 6th respondent filed a revision before the Government seeking a direction to declare the proceedings dated 4.10.2008 issued by the Panchayat Secretary and to give a direction to release the approved plans for construction of ginning and oil mill. In view of the said revision this respondent has not taken any further action. The petitioner already filed a representation before the Government on 31.12.2009 seeking a direction to take proper action against the 6th respondent and the same is pending. Pursuant to the resolutions passed by the Grampanchayat, the then Secretary has issued notices to the 6th respondent and therefore, it cannot be said that this respondent is not acting as per resolutions.

8. Learned Counsel appearing for the petitioners-Grampanchayat and other villagers while reiterating the grounds in the affidavits, submitted that the Seven Men Committee headed by its Chairman submitted a report and

as per the findings of the members of the Seven Men Committee, there are encroachments in 3R and 4TE Bodha Kalva and the field channels alignments of existing 3R and 4TE and the said fact was already reported to the police and the revenue authorities. He further submitted that the Government initially issued a show cause notice dated 28.1.2009 to the Grampanchayat as to why the resolutions made therein should not be cancelled and challenging the same, the Grampanchayat filed a writ petition and on that, the Government withdrew the notice given to the Grampanchayat vide memo dated 15.12.2009. The impugned memo dated 13.7.2011 will amount to review of its own order dated 15.12.2009. The 6th respondent made illegal constructions by encroaching the field channels and that there are many complaints against the 6th respondent and that the 6th respondent made illegal constructions without obtaining prior permission from the Grampanchayat and that the memo dated 13.7.2011 is illegal and arbitrary.

9. Learned Counsel for the 6th respondent-Mill submitted that the 6th respondent obtained statutory consent from the Pollution Control Board on 12.8.2008 and that 125 Industrial units are operational in the area of the same Grampanchayat, including 5 tobacco, 37 ginning and pressing, 23 spinning, 2 oil, 3 granites, 5 rice and Dhall and 50 other units and the Grampanchayat in question is an industrial area and several industries are functioning. It is further submitted that when the competent statutory authority examined the matter and issued proceedings, the Grampanchayat, which is also an authority under the same statute, cannot object the same. He further submitted that there is no obstruction to the field channels which are now re-aligned pursuant to the directions in W.P.No.1717 of 2009 and the same is approved by the Irrigation

Department. It is further submitted that the area in question was deleted from the Nagarjuna Sagar Project Ayacut long ago and still any surplus water that may be available could be drawn from the realigned field channels and that the issue of field channels cannot be sought to be reopened. It is further submitted that the 6th respondent has obtained all the requisite clearances from various authorities as observed by the Government and that there is nothing against the 6th respondent in the report of the seven men committee and that there are no merits in the writ petition.

10. As can be seen from the material on record, it is obvious that in the first instance, the 6th respondent-mill (which is shown as 8th respondent in W.P.No.22916 of 2011) was accorded permission to construct the mill and the said permission was approved by resolution dated 25.10.2007. But it is strange to note that subsequent applications filed by the 6th respondent for expanding the mill in the land situated in a contiguous land, were rejected, without there being any justifiable reasons for such rejection. From the material available on record and the impugned memo dated 13.7.2011, it is evident that there are so many industries in and around the Grampanchayat situated by the side of the National High Way.

11. It is apparent on the record that previously, the Grampanchayat accorded permission for the oil extraction industry to M/s. Sri Dhana Laxmi Cotton Rice Mill Limited, and M/s. Swathi Cotton Private Limited in the year 2008. M/s. Sri Dhana Laxmi Cotton Rice Mill Limited is located nearly one kilometer away from Grampanchayat and three sides of the said industry are surrounded by housing colonies wherein 800 families with the population of about 3,000 are living for the last 10 to 20 years. It is also apparent on the record that there is already a ginning and spinning mill in

existence adjacent to the proposed site with all the permissions from the authorities concerned. In such circumstances, there is no justification in rejecting the application of the 6th respondent, that too in spite of the permissions granted by the other statutory authorities including the Government superior to the Grampanchayat.

12. It is seen from the record that while granting permission to the 6th respondent, the matter was referred to the District Single Window Committee constituted by the District Collector in the Chair of the Chief Executive Officer, Zilla Parishad, Guntur along with technical authorities to study the issues in detail on the following aspects:

- i) Whether the construction of the buildings by M/s Idupulapadu Cotton Mills Limited, Ganapavaram and lay outs are as per rules and legal;
- ii) Whether the required permission from all the departments concerned are obtained;
- iii) Whether the Irrigation Channels are affected by construction of buildings;
- iv) Any other aspects such as pollution etc., connected with the issue.

After considering the reports of the expert committee on the above issues, the State Single Window Committee issued clearance certificate to release the plans to the 6th respondent-mill. The petitioner-Grampanchayat did not respond to the clearance certificate issued by the State Single Window Committee. When once statutory clearances were accorded by the competent Statutory Authorities and the requirements are fulfilled by the 6th respondent mill, the action of the Grampanchayat in rejecting the permission to the 6th respondent and in not releasing the plans to the 6th respondent is not justified.

13. Further, since the Grampanchayat did not respond to the clearance certificate issued by the State Single Window Committee, the 6th respondent preferred a revision before the Government-1st respondent. A perusal of the memo dated 13.7.2011 clearly shows that the case of the 6th respondent has been minutely examined in the light of not only the statutory provisions but also the geography of the village and also the existence of 128 commercial units in and around the Grampanchayat in question. The 1st respondent had also an occasion to observe that when once the permission is accorded to the 6th respondent to set up an industry, in the adjacent land, there is no reason to reject permission to a contiguous piece of land.

14. It is also seen from the Memo dated 13.7.2011 that the Director of Town and Country Planning, Hyderabad while forwarding the proposals of 6th respondent to the Commissioner of Industries, Hyderabad conveyed his approval for installation of 3978 HPEM in the proposed site under sub-section 2 of Section 120 of APPR Act, 1994 subject to the following conditions:

1. The applicant shall pay the building fee and lay out fee as per G.O.Ms.No.67 PR & RD, dt.26.3.2002 to the built up area and site area.
2. The applicant shall pay the installation charges to the G.P. as per G.O.Ms.No.16 PRD & Relief (Points III), dt.10.01.96.
3. The applicant shall provide the parking space of the 20% of built up area as shown in the plans as per G.O.Ms.No.67 PR & RD (Pts. V) dt. 26.2.2002.
4. The G.P shall release the plans only after obtaining necessary NOC's from the concerned authorities including APPCVB.
5. The G.P shall release the plans only after satisfying the ownership documents of the site under reference.
6. The G.P shall obtain Land Conversion Certificate issued by revenue authorities from the applicant, before release of plans/permission.

7. The applicant shall maintain 20'-0" from the site under reference boundary to centre of existing donka so as to form 40'-0" wide road.

15. It is also made clear in the said memo that the petitioner-Grampanchayat should release the plans only after fulfilling the condition Nos.4, 5 and 6 and in that regard, it is also further made clear that the 6th respondent mill has already complied with the conditions Nos.4, 5 and 6. Therefore, the petitioner-Gramapanchayat should not have raised any objection to release the plans. In case of review, Section 264 of APPR Act confers powers to correct the illegality or the irregularity of any orders passed under any mistake or law or ignorance of any material fact. The 1st respondent having considered the facts and circumstances in exercise of the powers conferred under 264(1) of APPR Act held that the resolutions dated 31.5.2008, 25.6.2008, 26.7.2008 passed by the Grampanchayat are not within the provisions of the A.P. Panchayat Raj Act, so that they cannot be implemented without there being necessary modifications, and thereby, reversed the proceedings of the petitioner Grampanchayat dated 4.10.2008 issued by the Panchayat Secretary.

16. In conclusion, the 1st respondent directed the panchayat Secretary Ganapavaram Grampanchayat to comply with the following directions and send the compliance report to the 1st respondent:

- (1) To release the relevant plans approved by the Director of Town and Country Planning, Hyderabad to M/s. Idupulapadu Cotton Mills Private Limited, Ganapavaram after raising a demand notice and collecting construction and lay out fee (from M/s. Idupulapadu Cotton Mills Private Limited, Ganapavaram).
- (2) The Panchayat Secretary is also directed to impose a penalty on the contructions taken up by M/s Idupulapadu Cotton Mills

Private Limited, Ganapavaram duly following the provisions of G.O.Ms.No.67 PR & RE Department, dated 26.2.2002.

It is pertinent to note that the proviso to Section 33 of the A.P. Panchayatraj Act makes it obvious that the Sarpanch shall not direct the execution of any work or the doing of any act in contravention of any order of the Government. As per the said provision, it is the obligation that is cast upon the petitioner-Grampanchayat to implement the directions issued in the above Memo dated 13.7.2011. Therefore, the very approach of the petitioner-Grampanchayat by way of filing these writ petitions would amount to contravention of the provisions of the Panchayat Raj Act.

17. An another contention of the learned Counsel for the petitioner-Grampanchayat is that the revision before the Government was filed after six months and the revision petitioner i.e., 6th respondent did not file any affidavit seeking to condone the delay. In this regard, Section 264 of the APPR Act does not contemplate any time limit for filing the revision for taking up a revision. In support of his contention that even assuming that there was delay the revision need not be accompanied by any application, the learned Counsel for the 6th respondent relied upon the judgment of this Court in **G. Ramachandra Row Vs. D. Sessaiah**¹, wherein it is held thus:

“It is always open to a Court or a Tribunal to condone the delay if the person concerned is able to convince it that there were justifiable reasons for the delay in preferring an appeal or a petition.”

18. It is the further contention of the 6th respondent that the writ petitions are filed by the Gram Panchayat in the capacity of the Sarpanch by showing the Secretary as the respondent and therefore, the writ

¹ (1957 An.W.R.106)

petitions are not maintainable. Section 32 of the A.P Panchayat Raj Act envisages the functions of the Executive Authority i.e., the Secretary to the Gram Panchayat. It stipulates that the Executive Authority shall exercise and perform all the powers and functions specifically conferred or imposed on the executive authority by or under this Act and subject to all restrictions and conditions imposed by or under this Act, exercise the executive power for the purpose of carrying out the provisions of this Act and be directly responsible for the due fulfillment of the purpose thereof. In the light of the above provision, this Court is of the view that there is considerable force in the contention raised by the learned counsel for the 6th respondent.

19. For the reasons stated above, this Court is of the view that the impugned memo dated 13.7.2011 issued by the 1st respondent is in consonance with the provisions of the Panchayat Raj Act and the Sarpanch shall not direct the execution of any work or the doing of any act in contravention of the order of the Government, dated 13.7.2011 and therefore, this Court does not find any irregularity in the said memo. Thereby, it does not warrant any interference by this Court.

20. In the above circumstances, W.P.Nos.22916 of 2011 and 17942 of 2011 filed by Grampanchayat and others are liable to be dismissed. In view of the findings in W.P.Nos.22916 of 2011, W.P.Nos.6414 of 2011, 21867 of 2009 and 24452 of 2009 are also liable to be dismissed.

21. Insofar as W.P.No. 10996 of 2015 is concerned, it is filed by the Industry challenging the order passed by the Commissioner, Command Area Development Authority, in March, 2015 setting aside the proceedings issued on 3.11.2009 by the District Collector.

22. It is the case of the Grampanchayat that the establishment of the industry would cause obstructions to the field channels. It is pertinent to note that on the earlier occasion, while dealing with W.P.Nos.26933 of 2008, 1717 of 2009 and 28816/2009 together, this Court issued directions to the Government in W.P.No.1717 of 2009, and pursuant to the said directions, irrigation channels are stated to have been restored by the Deputy Executive Engineer. Since the relief sought for by the petitioners in W.P.No.1717 of 2009 is only for restoration of channels 3R and 4TE and the same has been complied with, this Court closed the said writ petition. Against the same, the Grampanchayat did not file any appeal.

23. It is to be noted that the said W.P.No:28816/2009 was filed by the Ayacutdars of 3R and 4TE of 265 Minor on identical facts challenging the orders of the District Collector, Guntur in R.C.No:3425/2009/D5, dated 3.11.2009 and the subsequent publication in Gazette No:92, dated 4.11.2009 issued by him for deleting Ac.134.05 cents from the ayacut under T.C.No:9 of WUA No:175 of Ganapavaram village, Nadendla Mandal. The said writ petition was disposed of giving liberty to file an appeal to the 2nd respondent therein-Commissioner, CADA within 30 days after giving opportunity to the petitioners therein as well as the respondents therein particularly, the 6th respondent-Mill.

24. On the appeal preferred by the appellants therein, the Commissioner, Command Area Development Authority passed the order, dated - March 2015 as under:

“The impugned order vide Rc.No:3435/2009/D5, dated 3.11.2009 and the subsequent Gazette No:92, dated 4.11.2009 deleting the ayacut to an extent of Ac.134.05 cents under T.C.No:9 WUA No:175, Ganapavaram village issued by the

Collector and District Magistrate, Guntur District are set aside as the Collector has not followed the procedure laid down in A.P.F.M.I.S (Delineation and Formation of Water Users Association) Rules, 2003.

The Collector and District Magistrate, Guntur District and Superintendent Engineer NSJC, Lingamguntla are directed to take necessary action for implementation of the Hon'ble Court order in approval of the alternative alignments of field channels of 3R and 4TE of 26S Minor by the competent authority. As such, the appeal is disposed of with the above directions”

25. In this regard, it is relevant to note that while disposing of W.P.No:1717/2009, this Court by order dated 26.2.2009 directed the Deputy Executive Engineer, Chilakaluripet and the Tahsildar, Nadendla Mandal to ensure that the irrigation channels 3R and 4TE of 26 S are restored within a period of 4 Weeks from the date and by virtue of the said order, the irrigation channels are stated to have been restored by the Deputy Executive Engineer.

26. The counter filed by the Deputy Executive Engineer in W.P.No:1717/2009 discloses that there are no existing field channels 3R and 4TE on the ground prior to the disputes from several years earlier and that most of the ayacut of 3R and 4TE was covered by the House sites and the Industries as per the existing position and as per the Revenue Records.

27. In the order passed by the appellate authority, it was observed that when the Ayacut of Ganapavaram village under NSP was already deleted vide G.O.Ms.No:8, dated 6.1.1964 as stated by the District Collector, why the present deletion of ayacut under 4 TE of Ganapavaram village to an extent of 134.05 acres, has arisen now. It was further observed that it appears that G.O.Ms.No:8, dated 6.1.1964 is not in force at present and as

such the Collector had deleted the ayacut and the contention of the District Collector is not correct.

28. The material on record goes to show that G.O.Ms.No:8, dated 6.1.1964 was issued by the Government of Andhra Pradesh and thereby, 89 villages were proposed to be eliminated from the ayacut of Block No:10 NS Project. There is no material on record so as to show whether the said G.O.Ms.No:8 has been challenged in any writ proceedings or set aside or superseded by the Court or the Government. In the absence of any such material, the conclusion arrived at by the Commissioner, Command Area Development Authority that it appears that G.O.Ms.No:8, dated 6.1.1964 is not in force at present and as such the Collector had deleted the ayacut, is not only based on mere possibilities and probabilities but also it amounts to arbitrariness.

29. It is obvious that in pursuance of G.O.Ms.No:8, dated 6.1.1964, the District Collector had acted upon in deleting the ayacut of Ac.134.05 cents vide his proceedings in R.C.No:3435/2009/D5, dated 3.11.2009 and the subsequent Gazette No:92, dated 4.11.2009. Therefore, the action of the District Collector in issuing the proceedings R.C.No:3435/2009/D5, dated 3.11.2009 coupled with Gazette No:92, dated 4.11.2009, is in accordance with G.O.Ms.No:8, dated 6.1.1964 and therefore, the order of the District Collector does not require any interference and consequently, the order impugned in this writ petition No:10996/2015 suffers from illegality and irregularity.

30. For the reasons stated in the foregoing paragraphs, this Court is of the view that the order impugned in W.P.No:10996/2015 suffers from illegality and irregularity and thereby, the same is liable to be set aside.

31. Accordingly, the Writ Petition Nos. 21867, 24452 of 2009, 6414, 22916 of 2011, and 17942 of 2012 filed by Grampanchayat and others are dismissed. No costs. Miscellaneous petitions pending, if any, shall stand dismissed.

32. W.P.No:10996/2015 is allowed setting aside the order of the Commissioner, Command Area Development Authority, dated ---March, 2015. Consequently, the proceedings Rc.No:3435/2009/D5, dated 3.11.2009 issued by the District Collector are restored and confirmed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.

Date: 14.09.2017
Nn



RAJA ELANGO, J

HONOURABLE SRI JUSTICE RAJA ELANGO

WRIT PETITIONS Nos. 24452, 21867 of 2009, 6414, 22916 of 2011,
17942 of 2012 and 10996 of 2015



Date: 14.09.2017

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