

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.NO.36402 OF 2017

O R D E R

Aggrieved by the resolution dated 1.09.2017 passed by the 1st respondent – Gram Panchayat in proposing to construct new Gram Panchayat building in the place of old panchayt building in the subject land in an extent of Ac.00.03 cents situate between the old panchayat building on the northern side and Anganwadi Building on the southern side in Sy.No.365 of Balusulagoyyapalem village, Veeravasaram mandal, West Godavari District, the present writ petition is filed.

The case of the petitioners is that they are using the subject land as thrashing floor and also as ingress and egress to their fields and that if the new panchayat building is constructed, it will affect the above said activities. Hence the writ petition.

The 1st respondent – Gram Panchayat filed counter affidavit and disputed the averments of the petitioners that the subject land is being used as thrashing floor and as ingress and egress to their lands. The impugned resolution is passed only to construct a new Gram Panchayat building in the place of old building and moreover it is the prerogative of the Gram Panchayat where to construct its building by passing a resolution and the petitioners cannot have any objection. The petitioners have alternative road to reach their fields. It is stated that the petitioners cannot invoke the writ jurisdiction for seeking the relief of easementary and customary rights. With these averments, the writ petition is sought to be dismissed.

Petitioners filed reply, denying the averments made in the counter affidavit and reiterating the writ averments.

The learned counsel for the petitioners reiterating the writ averments would submit that the Gram Panchayat has no jurisdiction to pass a resolution for construction of Gram Panchayat building in the subject land, which is being used by the petitioners as thrashing field and as ingress and egress to their fields. He submits that thrashing floors, burial grounds and other such places of public utility, would vest in Government under Section 58 of the Andhra Pradesh Panchayat Raj Act, 1994 and only poramboke lands, which are not required for any specific purpose, would be in the custody of the Gram Panchayat. The learned counsel also sought for a direction to appoint an Advocate Commissioner to find out whether the subject land is being used for the activities stated by the petitioners.

On the other hand, learned Standing Counsel for the 1st respondent – Gram Panchayat submits that this court cannot decide easementary rights under writ jurisdiction and more so, when the petitioners have not produced any documentary evidence in support of their case that the subject land is being used as thrashing floor and for access to their fields. In view of these disputed questions of fact, where the petitioners are seeking customary rights, writ petition cannot be entertained. He submits that it is for the Revenue authorities to determine what extent can be left for the needs of the village and it is not open for the courts to consider the same. In support of his contention, the learned counsel relied on the judgment of a learned single Judge of this court reported in *STATE OF ANDHRA PRADESH v. LAKSHMAYYA*¹.

¹ AIR 1963 AP 67

Except making statement in the writ affidavit, petitioners have not filed any documentary evidence to show that the subject site, where the Gram Panchayat building is proposed to be constructed, is being used as thrashing floor and as ingress and egress to their fields. The statement made by the petitioners in the writ affidavit has been categorically denied by the 1st respondent – Gram Panchayat in the counter affidavit. In view of these disputed questions of fact and moreso, the relief claimed in the writ petition is in the nature of declaring easementary rights, writ petition cannot be entertained.

In the judgment relied on by the learned Standing Counsel for the 1st respondent (1 supra), the question that fell for consideration was *“whether the civil courts can adjudicate, upon the reasonableness, or whether it is the Revenue authorities alone that can determine what extent can be left for the needs of village”*. Considering the said issue, this court held asunder:

... The question for what purposes it can be used, is not for the courts to determine but for the Revenue Authorities. Walsh J., preferred to follow the decision of Wallace J., in S.A.No.692 of 1926 (Mad) who also made observations to the same effect. Venkata Subbarao, J. in *Ramaswami Iyer v. Secy. Of State*, AIR 1831 Mad 213, on the otherhand, held that what is the reasonable amount of land to be left for the purpose required, can be decided by the civil courts which observation was stated to be obiter by Walsh J. It is true that where public have not acquired any rights on Government land to what use the Government will put the land will not be open for the courts to consider. It is certainly for the Revenue authorities to determine that matter.”

As per the above judgment of this court, it is clear that it is for the Revenue authorities to determine what extent of land can be left for the needs of village and it is not open for the courts to consider.

In view of the disputes questions of fact, and the law laid down by this court in the above cited decision, I do not find any merit in the present writ petition and the same is accordingly dismissed.

Miscellaneous petitions pending if any, shall stand closed. No order as to costs.

A. RAJASHEKER REDDY, J

DATE: 12—12—2017

AVS

