

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE N.BALAYOGI

WRIT PETITION No.38979 of 2017

ORDER: (Per Hon'ble Sri Justice C.Praveen Kumar)

1) Heard both sides and perused the record. Aggrieved by the order dated:10.04.2017 passed by the second respondent in complaint No.1126/2014/B2, wherein the said complaint was closed with a direction to the Collector, Medchal-Malkajgiri District and also to the District Panchayat Officer, Medchal-Malkajgiri District to see that disciplinary action is initiated against the Sarpanchs and Panchayat Secretaries concerned; and also to make good the shortage of 10% of public purpose land, to the Chowdhariguda Gram Panchayat, within a period of three months from the date of receipt of the order, the present Writ Petition came to be filed.

2) The averments in the affidavit filed in support of the writ petition would show that the petitioner herein claims to be the developer of agricultural land admeasuring Ac.14.00 in Sy.Nos.854 and 855 (part) situated at Chowdariguda village and Grampanchayat, Ghatkesar Mandal, Medchal-Malkajgiri District. The said land was said to have been developed into residential plots, about 30 years back, in pursuance of the approved layout issued by the then Gram Panchayat vide proceedings No.4 dated 19.11.1972. It is said that the petitioner has left 5% of the land by providing sewerage, water pipe

line etc. After providing the amenities within 5% of the left over area, the petitioner/developer sold almost all the residential plots except 9 or 10 plots, to several purchasers by way of registered sale deeds in their favour. It is said that after construction of the houses in the said layout, the plot owners formed two residential associations i.e., i) The Venkatadri Township Welfare Association ii) The Seshadri Enclave Colony Welfare Association (R-8). It is said that R-8 acquired the open space leftout by the petitioner herein and constructed a Gram Panchayat office, community building, overhead water tank etc. The averments in the affidavits also refers to execution of registered settlement deed for public charitable purpose, transferring all public amenities for better maintenance. While things stood thus, respondent No.10 is said to have lodged a complaint against District Panchayat Officer (R-4) and the Panchayat Secretary, Gram Panchayat (R-7) before the second respondent alleging that the petitioner herein has not provided the alleged 10% of the open space for public amenities in the lay out, as per the prevailing rules and caused loss to the Gram Panchayat. It is said that the said act was done in collusion with respondents 4 and 7 herein. A report was called for by the second respondent from the District Collector, Medchal, who is the third respondent herein. Pursuant thereto, the fourth respondent herein issued a memo dated 09.07.2014 directing the Divisional Panchayat Officer (R-5) to conduct a detailed enquiry and submit a detailed report. It is said that the 5th respondent

conducted a detailed enquiry and submitted a detailed report requesting the authorities to take necessary action in the matter. Basing on the said report, the impugned order came to be passed, which is said to be beyond the jurisdiction of the second respondent.

3) Counters came to be filed on behalf of the 7th respondent and also by the 9th respondent who is appearing in person. In the counter filed by the 7th respondent, it is stated that the allegation that the petitioner developed the agricultural land situated at Chowdariguda village 30 years back and made into residential plots pursuant to the approved layout issued by the then Koremula Gram panchayat, is absolutely false, for the reason that the copy of settlement deed executed by the petitioner in favour of the local body discloses that the petitioner's firm was registered in the year 2003 and the properties purchased in the above said survey numbers were through document numbers which were executed in the year 2003. Such being the position, it is pleaded that the question of developing the plots about 30 years back is false and incorrect. It is further stated that the copy of the lay-out filed by the petitioner does not contain any signature of the person who issued the same and also from which Gram Panchayat. The allegation that the Gram panchayat acquired the open land left by the petitioner as per the condition of the approved layout was denied. It is said that the Gram panchayat building and the community building were already in existence prior to the purchase of the said land by the petitioner and

the temple referred to in the affidavit were in existence long prior to the date of purchase of land by the petitioner. It is further stated that basing on the complaint given by the 9th respondent and as per the directions of second respondent, the third respondent caused enquiry and filed the impugned report, which cannot be found fault with. Having regard to the material available on record, it is said that as per the report of the third respondent, the alleged settlement deed dated 05.10.2015 which was executed by the petitioner shows that the petitioner has illegally developed the subject land after purchasing it in the year 2004 without obtaining any approved layouts and without leaving any land for public amenities thereby defeating the very object of layouts and building rules.

4) The counter filed by the 9th respondent, who is appearing in person, denied the averments made in the affidavit filed in support of the writ petition. He filed a detailed counter, referring to different annexures enclosed thereto along with the copies of the material, which is relied upon by him.

5) The question that arises for consideration is ; "Whether the Lokayuktha/second respondent has acted beyond its jurisdiction while passing the impugned order?"

6) Though various factual aspects were sought to be raised by the learned counsel for the petitioner, we are afraid the same cannot be gone into in this Writ Petition. The grievance of the

petitioner appears to be with regard to the directions given to the Collector and the District Panchayat Officer to make good the shortage of 10% of the public purpose land to the Chowdariguda gram panchayat, within a period of three months. Since the complaint is closed with such a direction, the second respondent also stated that no orders need be passed in the implead petition which was filed by the petitioner. A perusal of the material on record, more particularly the report of the Collector, show various steps taken in this matter and also its decision to take action against the persons who have violated the provisions of law. The gist of the report, more particularly, with reference to the allegations made against the Sarpanches and Panchayat Secretaries are as under:-

"1. The suitable action will be initiated against the then Sarpanches and Panchayat Secretaries, who were involved in the taking over of the old buildings and temple lands as 10% public utility lands and there by caused loss to the Gram Panchayat Chowdhariguda.

2. The owner/builder may be directed to handover the shortage of 10% of public purpose land to the Grampanchayat which can be useful to the Sheshadri Enclave residents as well as Grampanchayat Chowdhariguda."

7) In view of the said report, which refers to initiation of action not only against the panchayat secretaries but also against the sarpanches apart from directing the owner and builder to handover the shortage of 10% public purpose land to the Grampanchayat, the complaint filed before the second respondent was closed. What has been directed in the said order was reiteration of the contents in the report of the District Collector. Therefore, it cannot be said that

the second respondent has acted beyond its jurisdiction. Even assuming that the second respondent has not passed an order directing the Collector and District Panchayat Officer to make good the shortage of public purpose land to the Gram Panchayat, still the Collector basing on the information available to him can act and take steps in accordance with law with regard to the making good of the shortage of 10% of public purpose land to the Gram panchayat. There is neither bar nor any Law which prevents the District Collector from taking action, if any fraud or mischief is committed with regard to the land in issue.

8) Therefore, viewed from any angle we feel that there are no merits in the Writ Petition and the same is liable to be rejected.

9) Accordingly, the writ petition is dismissed giving liberty to the District Collector to act independently basing on the report and proceed in accordance with law uninfluenced by the observation of the second respondent. There shall be no order as to costs. As a sequel to it, Miscellaneous Petitions pending if any in this Writ Petition shall stand closed.

C. PRAVEEN KUMAR, J

N.BALAYOGI, J

Date: 21.12.2017
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