

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON' BLE SRI JUSTICE GUDISEVA SHYAM PRASAD**

Writ Appeal No.1955 of 2017

JUDGMENT: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the Learned Single Judge in W.P.No.36670 of 2017 dated 02.11.2017. The appellant herein invoked the jurisdiction of this Court to declare the construction permission issued by the Gram Panchayat in favour of the 3rd respondent as illegal and arbitrary. By the order under appeal the Learned Single Judge relegated the appellant-writ petitioner to the alternative remedy available to him. Aggrieved thereby, the present appal.

Sri J.Prabhakar, learned counsel for the appellant-writ petitioner, would submit that the appellate remedy under Section 128 of the A.P.Panchayat Raj Act is not efficacious, since an appeal lies in the first instance to the Gram Panchayat against an order passed by the Executive Officer, and the Executive Officer administers the Gram Panchayat, *albeit* under the overall guidance of the Sarpanch. We find it difficult to accept this submission since the A.P. Panchayat Raj Act itself provides for an appeal to the Gram Panchayat against the order of the Executive Authority. Since the Executive Officer would not be entitled to participate in such deliberations of the Gram Panchayat, as it is his order against which the appeal is preferred, it cannot be said that the appellate remedy is not efficacious.

Sri J.Prabhakar, learned counsel for the appellant-writ petitioner, would submit that, instead of relegating the appellant-writ petitioner to the remedy of an appeal, it would suffice if she is permitted to submit a representation to the Executive Officer under Rule 28 of the Andhra Pradesh Gram Panchayat Land Development (Layout and Building)

Rules, 2002 (for short “the Rules”) which confer power on the Executive Officer to revoke his earlier direction if it has been obtained by misrepresentation of facts or by fraudulent means.

We see no reason to prevent the appellant-writ petitioner from requesting the Executive Officer to exercise his powers under Rule 28 of the Rules. Suffice it to make it clear that, on such a representation being made, the Executive Officer shall, before he exercises his powers under Rule 28 of the Rules, put all the affected parties, including the unofficial respondents, on notice and give them an opportunity of being heard.

Sri J.Prabhakar, learned counsel for the appellant-writ petitioner, requests that a time frame be fixed for the Executive Officer to exercise his powers under Rule 28 of the Rules. The appellant-writ petitioner is permitted to file a representation, under Rule 28 of the Rules, within one week from today. The Executive Officer shall examine the representation, give the unofficial respondents an opportunity of being heard, and thereafter pass orders on the appellant-writ petitioner’s representation with utmost expedition and, in any event, not later than one month from the date of receipt of the appellant-writ petitioner’s representation.

The order of the Learned Single Judge is modified to the extent indicated hereinabove, and the Writ Appeal is disposed of accordingly. Miscellaneous petitions pending, if any, shall also stand disposed of. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(GUDISEVA SHYAM PRASAD, J)

20th December, 2017

Note: Issue C.C in three days.

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