

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.26105 of 2007

ORDER:

This writ petition is filed questioning impugned proceedings No.A3/1566/2007-A7, dated 22.11.2007, issued by the 1st respondent, directing the Gram Panchayat, Kothakota to cancel the permission of construction of first and second floors on the property belonging to the petitioners and to take appropriate action.

Heard Sri M.Damodar Reddy, learned counsel for the petitioners and Sri G.Narender Reddy, Standing Counsel for respondents Nos.2 and 3.

It has been contended by the petitioners that they have purchased an open plot total admeasuring 281 sq.yards in Sy.No.287 by way of registered sale deed, dated 07.10.1995. They have applied to the Gram Panchayat for permission to construct ground and first floor in their sight. The 3rd respondent Gram Panchayat by way of a resolution was pleased to grant permission to the petitioners, as sought for, in the year 1997. It has been further contended by the petitioners that they could not complete the entire construction at one go due to financial constraints, and hence, they have applied for renewal of permission on 24.04.2007 to the Gram Panchayat. After collecting necessary fee, the Gram Panchayat was pleased to renew the building permission, vide orders dated 26.06.2007, and pursuant to which, the petitioners have constructed the building as per sanctioned plan in the year 2007.

While so, Respondent No.1, at the instance of respondent No.4, had initiated proceedings and passed the impugned orders on 22.11.2007 and directed the Gram Panchayat to cancel the permission accorded in

favour of the petitioner. Challenging the same, the present writ petition is filed.

The learned counsel for the petitioners contends that the petitioners have not violated any conditions of the building permission and sanctioned plan, and they constructed the building pursuant to the permission of the Gram Panchayat and according to the sanctioned plan. The learned counsel further contends that it is only respondent No.4, who has been making false complaints against the petitioners, and respondent No.1 at the behest of respondent No.4 has issued the impugned proceedings. In support of his contentions, the learned counsel for the petitioner has relied upon a judgment of a Division Bench of this Court in *Aljapur Ganga Mohan v. District Panchayat Officer, Nizamabad District*¹ wherein it was held that against the grant of construction permission by a resolution of Gram Panchayat, the 1st respondent is not competent authority and the State Government alone is competent to nullify the resolution passed by the Gram Panchayat.

Admittedly, in the instant case, the resolution passed by the Gram Panchayat was sought to be nullified by respondent No.1, but not the State Government.

Sri G.Narender Reddy, learned standing counsel, appearing for respondents Nos.2 and 3, has contended that the petitioners have deviated the construction from the sanctioned plan. He further contended that since respondent No.1 has no jurisdiction to nullify the resolution of the Gram Panchayat, the petitioners cannot be allowed to deviate the sanctioned plan and construct illegally.

¹ 2002 (3) ALD 163 (DB)

This court, having considered the rival submissions of both the parties, is of the opinion that under Section 128 of A.P.Panchayat Raj Act, 1994, it is the State Government who is competent to nullify the resolution passed by the Gram Panchayat, but not respondent No.1. As respondent No.1 passed the impugned orders dated 22.11.2007 without any jurisdiction, the same is liable to be set aside.

Accordingly, the writ petition is allowed. The impugned orders dated 22.11.2007, issued by respondent No.1, are set aside. However, the respondents are at liberty to proceed against the petitioners, if they found any violation of sanctioned plan and conditions of the building permission on the part of the petitioners in construction of the building, by following due process of law. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed in consequence.

Date: 02.04.2018
Dsr

ABHINAND KUMAR SHAVILI, J

