

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.1953 OF 2016

DATED :20.02.2018

Between :

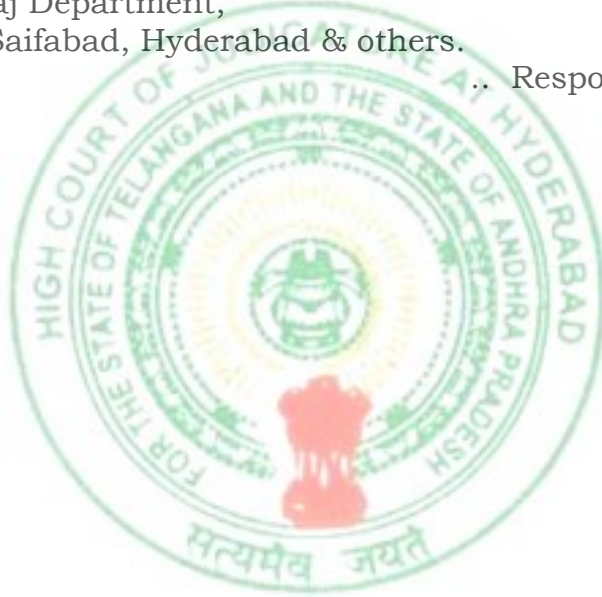
Karri Pratap Reddy S/o.Saibaba Reddy,
Aged about 27 yrs, Occu : Business,
R/o.Pasalapudi Village, Rahyavaram Mandal,
East Godavari District & others.

.. Petitioners

And

The State of Andhra Pradesh,
Rep., by its Principal Secretary,
Panchayat Raj Department,
Secretariat, Saifabad, Hyderabad & others.

.. Respondents



This court made the following :

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ORDER :

Heard learned counsel for the petitioners, learned Government Pleader for Respondents 1 to 3, Sri Ravi Cheemalapati, learned Standing counsel for Respondent No.4 and Sri A.Satya Prasad, learned Senior counsel appearing for Sri K.Aravind Kumar, learned counsel for Respondents 5 and 6.

2. Petitioners herein claim to be the villagers of Pasalapudi, Rayavaram Mandal, East Godavari District. They challenge the decision of District Collector, East Godavari District, Kakinada, dated 06.01.2016, where under, permission to construct Sai Baba temple in the village was granted.

3. Petitioners allege that when application was made for construction of building to be used as Sai Baba temple by the 5th respondent, the Gram Panchayat by its resolution dated 09.06.2015 rejected the application. Thus, once the Gram Panchayat rejected the request for construction of temple, the District Collector, could not have granted permission for construction of temple. It is contended that the Panchayat Secretary has no competence to grant building permission and it is only the Gram Panchayat which is competent to grant building permission.

4. The statutory frame work where under, the Gram Panchayat is the supreme body in the village dealing with all aspects of the village is not doubted. Therefore, the Court is not dwelling deep into those issues.

5. The only issue for consideration is whether the decision of District Collector to grant permission to construct Sai Baba temple is valid in the light of earlier decision of Gram Panchayat, refusing to grant building permission?

6. By way of amendment to Rule 26 of the Andhra Pradesh Gram Panchayat Land Development (Layout and Building) Rules, 2002, a provision is introduced where under, no site should be used for construction of building intended for public worship or religious purposes without prior approval of the Collector of the district.

7. A plain reading of the provision would make it clear that construction of building for public worship or religious purposes must have prior sanction by the District Collector. However, the rule is not clear as to when such approval should be obtained. In other words, whether the Collector should grant approval after the building permission application was processed by the Gram Panchayat or such approval is pre-requisite for submission of application to the Gram Panchayat.

8. However, the reason for introduction of this amendment is letter written by the District Collector on 18.06.2012. In this letter District Collector informs the Government that he received complaints from Gantasala village alleging construction of Church in front of a Mosque leading to religious disharmony and authorities resorted to imposing prohibitory orders under Section 144 of Code of Criminal Procedure, to maintain peace in the village. According to the District Collector, this situation arose as there was no requirement of examining the issue of construction of

building for religious purposes in law and order aspect and requested the Government to incorporate provision similar as incorporated in Building Rules governing the Municipalities.

9. In pursuance thereof the Government examined the issue and accordingly the amendment was brought out. Going by statutory mandate once building permission is granted by the Gram Panchayat, no other authority has a role to interdict the decision except by the government under Section 264 of A.P. Panchayat Raj Act, by way of review/revision.

10. In view of the background event which impelled government to make such provision, requirement of permission from the District Collector for construction of building which is intended to be utilized for religious purposes should be prior to processing of building permission application. Otherwise, it may have serious repercussions and legal complications.

11. In the case on hand, without seeking approval from the District Collector, application was made to the Gram Panchayat and the Gram Panchayat rejected the building permission application. Thereafter, an application was made to the District Collector who in turn granted permission. This procedure followed was not in tune with the statutory requirements. It appears from the record placed before this Court that the District Collector caused enquiry, afforded personal hearing before a decision was made by him. However, as noted above, this decision was after the resolution of the Gram Panchayat. However, it also appears, the District Collector was not apprised of the decision of Gram Panchayat.

12. Be that as it may, in true understanding of the statutory intendment governing the building permissions in the villages, I am of the considered opinion that a person who seeks to construct a building for religious purposes in a village, must first apply to the District Collector for in principle sanction to establish such religious institution on considering impact of such construction on law and order and after obtaining permission from the District Collector he should apply for building permission to the Gram Panchayat.

13. Having regard to this opinion, I deem it proper to grant liberty to the 5th respondent to submit application to the Gram Panchayat enclosing the decision of District Collector and to request the Gram Panchayat for review of its earlier decision rejecting the building permission application. As and when such application is made, the Gram Panchayat shall consider the said request and take appropriate decision within six (6) weeks from the date of submission of application.

14. Having regard to the history of litigation, petitioners herein may also be afforded opportunity of hearing by the Gram Panchayat before taking a decision. It is needless to observe that the Panchayat Secretary has no role to take decision independently without placing the matter before the Gram Panchayat. He can only give effect to the decision of Gram Panchayat.

15. Accordingly, the Writ Petition is disposed of. There shall be no order as to costs. All pending miscellaneous petitions stand closed.

20th February, 2018
Rds

P.NAVEEN RAO,J

