

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal No.1021 of 2016

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letters Patent, is preferred by the respondent in W.P.No.17710 of 2012. The respondent herein filed the said writ petition seeking a mandamus to declare the action of the respondent therein (appellant herein) in not granting permission to fill the private tank owned and possessed by him in the land in Survey No.31, admeasuring Acs.2.00, of Penumarthi Village, Kakinada Rural Mandal, East Godavari District, pursuant to his application dated 14.05.2012, as arbitrary, illegal and in violation of Articles 14 and 19 of the Constitution of India.

The Learned Single Judge allowed the writ petition, and directed the appellant herein to permit the respondent-writ petitioner to fill the tank with soil and other material, and construct a compound wall around it to protect it. This exercise was directed to be done within two weeks from the date of receipt of a copy of the order, and the appellant herein was directed to pay costs of Rs.2,000/- to the respondent-writ petitioner.

Sri Ravi Cheemalapati, learned counsel for the appellant, would submit that, while the relief sought for in the Writ Petition was to declare the action of the appellant in not granting permission, to fill the private tank and to construct a compound wall, the only direction which could have been issued was to direct the appellant to consider the said application for grant of permission; instead, the Learned Single Judge had issued a mandamus directing the appellant to accord

permission for filling the tank with soil, and to construct a compound wall; and the said order necessitates interference.

On the other hand, Sri C.V.R.Rudra Prasad, learned counsel for the respondent-writ petitioner, would submit that, while the respondent-writ petitioner had made an application as early as on 14.05.2012, the Gram Panchayat had, without considering the said application, sought to justify their failure, to consider the said application, in their counter-affidavit filed before this Court; and, since the subject tank is a private tank belonging to the respondent-writ petitioner, the Learned Single Judge was justified in directing the Gram Panchayat to accord permission.

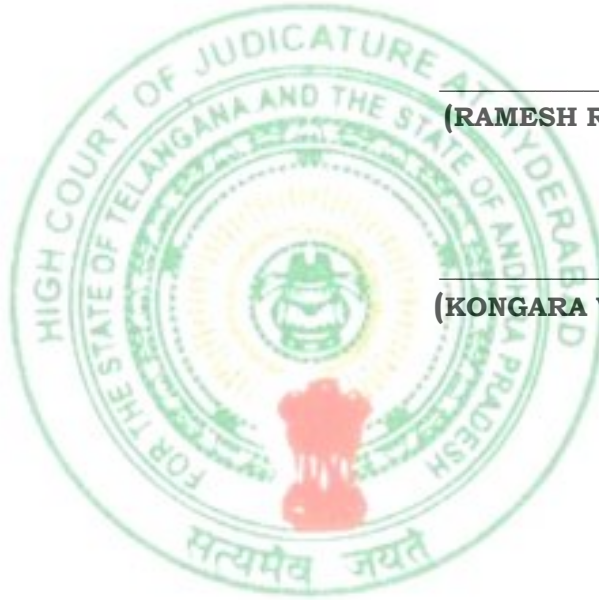
The power to grant permission, for construction of a compound wall, lies solely with the Gram Panchayat; and such power is required to be exercised strictly in accordance with the provisions of the A.P. Panchayat Raj Act and the Rules made thereunder. The inaction on the part of the appellant, to consider any such application, may have justified a mandamus being issued to them to consider the application within a specified time frame. In judicial review proceedings, under Article 226 of the Constitution of India, this Court would not don the robes of the Gram Panchayat, or the Panchayat Secretary, to grant or refuse to grant permission for construction, as these are all matters for the Gram Panchayat to decide in accordance with law.

We are satisfied, therefore, that the Learned Single Judge has erred in issuing a mandamus to the Gram Panchayat to accord permission. Suffice it, therefore, to set aside the order under appeal and, instead, direct the appellant to consider the respondent-writ petitioner's application for grant of permission at the earliest and, in any event, not later than two months from the date of receipt of a copy of this order. It is also made clear that the application of the

respondent-writ petitioner shall be considered on its merits uninfluenced by any observations made either in the order under appeal or in the order now passed by us. As the order under appeal is set aside, any observations made therein shall not disable the Gram Panchayat from considering the application made by the respondent-writ petitioner, for grant of permission, on its merits and in accordance with law.

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.

11th April, 2018
JSU



(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

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Date: 11.04.2018