

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION NO.15560 OF 2018

ORDER:

The petitioner challenges the intimation, dated 08.03.2018 issued by the 2nd respondent.

2. It is the case of the petitioner that the Gram Panchayat, vide its resolution, dated 22.05.2014 had decided to regularize certain constructions carried out by one Musku Ramesh Reddy, Poorna Chander Reddy and others. The case of the petitioner is also covered by the said resolution. The petitioner approached the 2nd respondent seeking appropriate orders to be passed on the application seeking regularization, as was done in the case of Musku Ramesh Reddy. However, it was rejected by the 2nd respondent stating that he is not competent to regularize or renew the building permissions with deviations.

3. A counter-affidavit is filed by the 2nd respondent stating that it is only on account of the order passed by this Court while disposing Writ Petition No.12370 of 2015 on 13.10.2015, the case of Musku Ramesh Reddy was considered and taking into consideration the submissions made therein, a direction was issued to the Panchayat Secretary, Gram Panchayat, Gupanapalli, to regularize the deviations committed by the said Musku Ramesh Reddy on par with others. However, there is no such order in case of the writ petitioner under the Andhra Pradesh Panchayat Raj Act, 1994 (for short 'the Act'). In terms of the said Act, the Panchayat Secretary, being the competent authority had not passed any order regularizing the deviations and he is justified in refusing to exercise the powers, which are vested on him.

4. Learned counsel for the petitioner re-iterates the discrimination meted out to his client, more particularly citing the case of Musku Ramesh Reddy, wherein this Court directed consideration of the application for regularization. It is his further contention that the District Panchayat Officer has exercised his powers, where as in the case, the same treatment was not given.

5. On the other hand, Mr.G.Narender Reddy, learned Government Pleader for Panchayat Raj asserts that the power that is to be exercised is vested with the Gram Panchayat and the Executive Authority is entrusted with such power for implementation of the resolutions, in terms of Section 32 of the Act.

6. Having regard to the respective submissions and on a careful perusal of intimation, dated 08.03.2018, the District Panchayat Officer had held that he does not have power to direct the regularization/renewal of building permissions with deviations. A perusal of Section 32 of the Act leaves no manner of doubt that it is the Executive Authority of the Gram Panchayat, who is entrusted with the responsibility for implementation of the resolution of the Gram Panchayat and the committee thereof. The Executive Authority is required to take into consideration the parameters of the Act and in a particular case, if the Executive Authority is of the opinion that the resolution made by the Gram Panchayat is not in accordance with any order or Rules, there is a procedure contemplated for not implementing such orders. However, it is clear that it is the Executive Authority alone, who can exercise such power. In that view of the matter, the intimation, dated 08.03.2018 cannot be found fault.

7. Insofar as the discrimination alleged to have been shown to the petitioner is concerned, a careful reading of the order, dated 27.09.2016 passed in case of Musku Ramesh Reddy, the 2nd respondent-D.P.O. having reiterated the reasons, particularly the complaint of Mr.CH.Narayan Reddy, writ petitioner in W.P.No.12370 of 2015, finally directed the Panchayat Secretary, Gram Panchayat to regularize the deviations committed in constructions by Musku Ramesh Reddy. The relevant portion of the said order reads thus:

“Therefore, keeping in view of above reasons the following orders are issued to the Panchayat Secretary, Gupanapally of Nizamabad Mandal to regularize the deviation committed in construction by Sri M.Ramesh Reddy on par with others duly following the parameters and also keep the Fire Act position in mind.”

The above quoted para does disclose that the order is made by the District Panchayat Officer. The order has to be construed as directing the Panchayat Secretary to pass appropriate orders by following the parameters that are required to be considered and take decision with respect to regularization. Be that as it may, in the present case, admittedly, it is the Panchayat Secretary, who being the Executive Authority, in terms of Section 32 of the Act, is required to exercise such power and further vested with the responsibility of implementing the resolution of the Gram Panchayat.

8. Therefore, the writ petition is disposed of with a direction to the 5th respondent to take into consideration the resolution of the Gram Panchayat and the request of the petitioner with the necessary parameters as required and pass appropriate orders with respect to alleged deviations committed by the petitioner. Such exercise shall be

completed within a period of 6 weeks from the date of receipt of a copy of this order.

9. Miscellaneous petitions, if any pending in this writ petition shall stand closed.

CHALLA KODANDA RAM, J

DATED: 03-12-2018

Hsd

