

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 16083 of 2008

ORDER:

In this writ petition, petitioner seeks to quash G.O.Rt.No.664, dated 05.05.2008, issued by respondent No.1 - Government of Andhra Pradesh, Panchayat Raj & Rural Development Department, Hyderabad.

The petitioner asserts that the land admeasuring Ac.1.19 cents in Survey No.231 of Chinna Cherukur Village, T.P. Gudur Mandal, Nellore District, is purely agricultural land; that as respondent No.6 without obtaining any approval from the competent authority, converted the said land as non-agricultural land, divided the same into some plots and sold to respondent Nos.7 to 27, the petitioner submitted a representation to respondent No.1 and respondent No.3-District Collector (Panchayat Raj Wing) Nellore District; that respondent No.1 issued a Memo, dated 06.09.2000, authorising the Extension Officer, Indukur to perform the functions of Sarpanch and initiate action against the persons who have converted the subject land into house plots without approval of the layout under Section 247 of the Andhra Pradesh Panchayat Raj Act, 1994; that pursuant to the same, notices were issued to the person-in-charge as to why action should not be taken against him; that the said person-in-charge challenged the notice before respondent No.1 and subsequently, respondent No.6 filed W.P.No.26250 of 2000

challenging the Memo, dated 06.09.2000; that this Court disposed of the said Writ Petition on 15.07.2002 directing respondent No.1 to pass orders afresh after giving notice to respondent No.6; that the Ex-Sarpanch, Chinna Cherukuru Gram Panchayat, filed Appeal Petition and on 16.12.2002, the Hon'ble Minister (PR) having heard the matter, directed respondent No.3-District Collector, Nellore to conduct fresh enquiry after giving notice to respondent No.6; that thereafter, an enquiry was conducted by respondent No.3 and based on the report, respondent No.1 issued G.O.Rt.No.499, dated 13.04.2006, holding that respondent No.6 sold the subject land without there being any approved layout and directing that the layouts be regularised by duly collecting the fee and imposing the penalty; that the same was challenged by the petitioner before respondent No.1 by filing an Appeal and that initially, stay came to be granted by respondent No.1 vide Memo, dated 22.05.2007 at the instance of impleaded respondent Nos.7 to 27 and thereafter, respondent No.1 issued the impugned G.O. setting aside G.O.Rt.No.499, dated 13.04.2006, and thereby, vacated the stay granted vide Memo, dated 22.05.2007, and therefore, the petitioner filed the present Writ Petition challenging the said G.O.

Learned counsel for the petitioner submits that respondent No.1 having come to the conclusion that an illegal layout came to be prepared by respondent No.6 and plots were sold in favour of respondent Nos.7 to 27, issued G.O.Rt.No.499, dated 13.04.2006, directing regularisation of the said plots duly

collecting the fee and imposing penalty in terms of the Rules, but, without there being any valid reason, respondent No.1 issued the impugned G.O. setting aside G.O.Rt.No.499, and therefore, such action is unsustainable and contrary to the rules.

Learned counsel for respondent Nos.6 to 27 submits that the father of respondent No.6, who is a philanthropist, has donated large extent of land in Survey No.231 of Chinnacherukur Village for construction of a School and taking into consideration the needs of the teachers and others working in the said School, he had allowed them to build houses on free of cost basis and such constructions were made during the period 1959-85 i.e., much before issuance of G.O.Ms.No.67, dated 26.02.2002. He further submits that respondent No.1 having considered the material on record and particularly the fact that the constructions came up much before the Andhra Pradesh Gram Panchayat Land Development (Layout Building) Rules, 2002 (for short 'the Rules), notified under G.O.Ms.No.67, dated 26.02.2002, came to the conclusion that the Rules have no application to the case of the petitioner and thereby, issued the impugned G.O. setting aside G.O.Rt.No.499, dated 13.04.2006, and vacating the stay order, dated 22.05.2007. He further submits that the petitioner has no locus to question the impugned G.O. as he is no way affected by the cancellation of G.O.Rt.No.499, dated 13.04.2006. He also submits that respondent Nos.6 to 27 and others are all below poverty line and had also been issued white ration cards and respondent No.1 directed them to pay huge amount towards

regularisation of the layout and that respondent No.1 had taken all these aspects into consideration while issuing the impugned G.O., as such, the impugned G.O. does not call for any interference by this Court.

Learned Government Pleader for Panchayat Raj appearing for respondent Nos.1 to 5 submits that respondent No.1 had rightly come to the conclusion that the Rules notified under G.O.Ms.No.67, dated 26.02.2002 have no application to the case on hand, as the constructions were made much prior to 2002 and that the Gram Panchayat was collecting taxes since 1989.

The facts are not in dispute. At the outset, it may be noted that it is at the instance of the petitioner, original proceedings way back in 2000 came to be initiated resulting in filing Writ Petition No.26250 of 2000 and this Court disposed of the same directing the District Collector to enquire into the matter, as such, the argument of learned counsel for respondent Nos.6 to 27 that the petitioner has no *locus standi* to file the present Writ Petition cannot be accepted. It may be noted further that the petitioner was instrumental in bringing to the notice of the respective authorities as regards the alleged development of the subject land by respondent No.6 and selling the plots to respondent Nos.7 to 27.

The only question which falls for consideration before this Court is the validity or otherwise of the impugned G.O.,

particularly, with regard to the applicability or non-applicability of the Rules notified under G.O.Ms.No.67, dated 26.02.2002.

For the purpose of this case, Rule 13 of the Rules is reproduced as under:

“13.Status of existing Gram Panchayat/previously approved layouts:

- (1) These layout rules shall apply to all existing layouts in the Gram Panchayat areas. Those layouts that have not complied with valid approval, or having shortfall in layout development works or open spaces or road widths, etc as per these rules shall be got regularised first from the Collector, without which no building permission shall be entertained or accorded. The regularisation would be based on levy of pro rata charges for shortfall of open spaces, collection of pro rata betterment charges and development charges and improvement of the road pattern and drainage etc., which has to be borne by the owners of the plots/colony. The regularisation would be with reference to a cut of date to be notified separately.
- (2) The executive Authority shall be responsible for identifying and arresting such unauthorised layouts.

From the above, it is clear that the Rules deal with both with respect to the layouts previously made as well as existing as on the date of the notification/the Rules coming into force. The aforesaid Rule is an enabling provision, which allows regularisation of the layouts, which were made prior to the Rules coming into force, subject to the conditions as may be notified separately.

It may be noted further that neither of the parties brought to the notice of this Court that any notification was issued by fixing a cut off date with respect to the said regularisation. However, the

fact remains that respondent No.1 issued G.O.Rt.No.499, dated 13.04.2006, ordering regularisation of the layouts on payment of fee as well as penalty and respondent No.6 paid Rs.9.67 lacs towards development charges. It may be noted further that Rule 13 of the Rules contemplates issuance of a notification providing for regularisation by specifying a cut off date. As and when such notification would be issued, the propounders/beneficiaries of the said layout would be required to make an application for regularisation. There is no pleading by either of the parties or the Government that any such notification was issued. As a matter of fact, respondent No.1 does not appear to have examined the case of respondent Nos.6 to 27 as to whether Rule 13 of the Rules would be applicable or not particularly with reference to a layout/building regularisation notification. It is also not clear from the pleadings of the respective parties whether any such notification was issued, as such, the impugned G.O. to the extent of declaring that the Rules are not applicable to the layout prepared by respondent No.6 is unsustainable. In the circumstances, the matter requires reconsideration by respondent No.1. It may be noted that withdrawing G.O.Rt.No.499, dated 13.04.2006, would affect the public exchequer with regard to the collection of regularisation fee and penalty. It may also be noted that the petitioner does not have any objection with respect to the regularisation having been granted to respondent Nos.6 to 27, but his grievance is only with respect to the alleged loss to the public exchequer on account of waiver of collecting fee and penalty.

In those circumstances, the Writ Petition is allowed by setting aside the impugned G.O. and the matter is remanded to respondent No.1 for fresh consideration after providing an opportunity of hearing to both the parties.

Miscellaneous petitions, if any, pending in this Writ Petition shall stand disposed of. There shall be no order as to costs.

CHALLA KODANDA RAM, J

Dt:15.11.2018

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