

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.6515 of 2008

ORDER:

The Order, dated 27.02.2008, purported to have been passed by the 2nd respondent-District Collector, in exercise of the powers under Section 249(1) of the A.P. Panchayat Raj Act, 1994 (in short "the Act"), is challenged before the Court.

In the Writ prayer, yet another order, dated 09.08.2007, passed by the 2nd respondent has also been challenged, however, when the matter is taken up for hearing, learned counsel for the petitioner submits that so far as the writ prayer seeking to quash the order, dated 09.08.2007, is concerned, he does not desire to press for the same, as the relief claimed therein has worked out itself and hence he has confined his arguments as to the challenge to the order dated 27.02.2008.

The principal ground on which the Writ Petition is filed is that the impugned order is not preceded by an enquiry and a final order was made, under Section 265 (1) of the Act, finding that the petitioner had misappropriated the funds of the Gram Panchayat to a tune of Rs.4,07,969/-. Learned counsel for the petitioner asserts that the order, dated 27.02.2008, would be classified as the one made under Section 265 (2) of the Act. It is the contention of the learned counsel for the petitioner that the case is lack of a direction under Section 265(1) of the Act and therefore initiation of execution proceedings under Section 265 (2) of the Act is nullified.

Heard the learned counsel for the petitioner and the learned Government Pleader for Panchayat Raj (A.P.).

Though a counter-affidavit is filed denying the allegations of the petitioner, various alleged omissions and commissions on the part of

the petitioner and the details of the earlier and consequential proceedings were also set out in detail, but the specific assertion of the petitioner that no orders were passed under Section 265(1) of the Act, as set out in para-7 of the writ affidavit, has not been adverted to and has not been specifically answered. Even the impugned order by itself does not indicate any order having been made earlier under Section 265(1) of the Act. In those circumstances, as it is mandatory for the proceedings to be initiated in terms of Section 265 (1) of the Act, giving a finding after enquiry that, as a matter of fact, there is a misappropriation of funds on the part of the petitioner, the proceedings proposed to be initiated in terms in the impugned proceedings, dated 22.07.2008, are not sustainable.

Accordingly, the Writ Petition is allowed setting aside the impugned proceedings, dated 22.07.2008, leaving it open to the respondent authorities to initiate proceedings and complete the same in accordance with law. Further, this Court while admitting the Writ Petition, on 27.03.2008, has granted suspension with a direction to the petitioner to deposit an amount of Rs.1,50,000/- and the same has been complied with. Therefore, in the interest of justice, the 2nd respondent shall complete the proceedings duly following the procedure prescribed and by complying with the principles of natural justice, within a period of eight weeks from the date of receipt of a copy of this order. The amount deposited shall be subject to the final orders that may be passed by the 2nd respondent. No costs.

Consequently, Miscellaneous Petitions pending, if any, shall stand closed.

CHALLA KODANDA RAM, J.

Date: 25.10.2018.
Ssv