

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.38137 OF 2018

Date:29.10.2018

Between:

Nadikuda Kumar, S/o. Anjaiah,
Aged about 40 years, Occ: Business,
Resident of Maheswaram Village and
Mandal, Ranga Reddy District and others .. Petitioners

And

State of Telangana, Panchayat Raj
Department, Secretariat, Hyderabad,
rep., by its Principal Secretary and others .. Respondents



The Court made the following:

THE HON'BLE SRI JUSTICE P. NAVEEN RAO**WRIT PETITION No.38137 OF 2018****ORDER:**

Heard.

2. Petitioners claim to be in possession of small extents of land, which according to petitioners, classified as Gramakantam of Maheshwaram Village and Mandal, Ranga Reddy District. They erected bunks long ago and are running small businesses in the said premises. According to petitioners, whatever they earned from these businesses is the only source of their livelihood. While so, on 01.09.2018, proceedings/memo was issued by the District Panchayat Officer holding that the Sarpanch illegally granted building permissions to the lands, which do not have sanctioned layout and therefore directed the Panchayat Secretary to take necessary action to cancel the said permissions granted by the Sarpanch. On 06.10.2018, the District Panchayat Officer issued another proceedings/memo directing the Panchayat Secretary to cancel the permissions for establishing Dabbas and to remove them and report action taken.

3. To complete the narration of facts, it is appropriate to note, according to petitioners, the building permissions were granted to them on 09.04.2018 and they have already paid requisite fee by way of bank challan and amount was credited to the account of the Gram Panchayat.

4. According to learned counsel for petitioners, the proceedings/memos dated 01.09.2018 and 06.10.2018 are illegal as they were not preceded by notice and opportunity and straight

away decision is made holding that the building permissions obtained by the petitioners are illegal and they are in unauthorized occupation of the subject lands.

5. Per contra, according to learned Standing Counsel for Gram Panchayat, no meeting of the Gram Panchayat was held on 28.03.2018, whereunder the alleged resolution was claimed to have been passed and that no applications for grant of permissions for construction of building were made and the Gram Panchayat Sarpanch is not competent to grant such permissions. He would submit that the petitioners are in illegal occupation of the subject land and are running businesses without obtaining licenses and that no permissions were obtained by them to establish the Dabbas. Learned Standing Counsel further submits that the action is being taken by the Gram Panchayat for removal of the Dabbas established by the petitioners.

6. Though several contentions are urged, it is suffice to note that according to learned counsel for the petitioners the subject land is classified as Gramakantam and therefore a person in occupation of the same is entitled to develop the property, whereas learned Standing Counsel denies the said statement and holds that they are in occupation of Government land and same is illegal.

7. It is appropriate to note that the impugned decisions have the effect of evicting the petitioners from the subject places, whereas according to learned counsel for the petitioners, petitioners are in occupation of the same for more than 26 years and earlier decision dated 01.09.2018 resulted in cancellation of building permissions and therefore both the orders have penal

consequences and no such decision could have been made without affording opportunity. Though by these proceedings, the Panchayat Secretary was directed to take further steps, but as the proceedings are in mandatory terms, the role of the Panchayat Secretary is only to give effect to the decisions already taken by the District Panchayat Officer. Therefore, these proceedings are liable to be set aside on the ground of denial of prior opportunity before passing such orders.

8. The proceedings/memos dated 01.09.2018 and 06.10.2018 are set aside. As per the Telangana State Panchayat Raj Act, 2018 and the rules made from time to time, the Gram Panchayat is the competent authority. The Panchayat Secretary of the Gram Panchayat is directed to verify the record with reference to the status of land, occupation of the land by the petitioners, establishment of Dabbas, carrying on their business without permission and payment of taxes to the Gram Panchayat and if the Panchayat Secretary finds any infirmity in all these aspects or in any of them, he shall cause notice to them by specifying the infirmities, call for their objections and place the matter before Gram Panchayat. After due consideration, Gram Panchayat shall pass orders by assigning due reasons in support of its decision.

9. With reference to the building permissions, learned counsel for the petitioners fairly submits that as proper applications were not made petitioners would submit fresh applications for grant of building permissions. If that is so, the Gram Panchayat shall process the applications of the petitioners for grant of building permissions in accordance with the rules governing the building

permissions as and when such applications are made and shall take decision within two weeks from the date of receipt of such applications. If the Panchayat Secretary finds any infirmity in the applications for grant of building permissions, he shall communicate the same by way of a reasoned order. While processing the applications for grant of building permissions, the amounts already paid by the petitioners shall have to be adjusted and shall not demand any fresh amount towards processing and granting of building permissions.

10. The Writ Petition is accordingly allowed. Pending Miscellaneous Petitions, if any, shall stand closed.

Date: 29.10.2018

Note:- Issue C.C. in one week.

(B/o)
KH

P. NAVEEN RAO, J

