

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition Nos.44315 of 2017 & 1997 of 2018

COMMON ORDER:

W.P.no.44315 of 2017 (hereinafter referred to as the 'first writ petition') is filed seeking a writ of *mandamus* declaring the action of the 2nd respondent-Gram Panchayat, Odela Mandal, Peddapalli District, State of Telangana, represented by its Panchayat Secretary, in issuing the order, dated 18.11.2017, to the petitioner in the first writ petition, as illegal, arbitrary and unconstitutional.

1.1 The 3rd respondent in the first writ petition filed Writ Petition No.1997 of 2018 (hereinafter referred to as the 'second writ petition') requesting to issue a writ of *mandamus* declaring the action of the respondents 3 & 6 therein, that is, Secretary, Odela Gram Panchayat & the Station House Officer, Pothkapally Police Station, in not implementing the orders, dated 18.11.2017, referred to supra, as illegal, arbitrary and violative of the provisions of the Andhra Pradesh Panchayath Raj Act, 1994, and to consequently direct the said respondents 3 & 6 to demolish the unauthorized constructions made by the petitioner in the first writ petition in the premises in Survey No.426 situated at Odela village & Mandal, Peddapalli District.

1.2 For convenience and clarity, the parties in these writ petitions shall hereinafter be referred to as arrayed in the first writ petition, that is, W.P.no.44315 of 2017,.

2. I have heard the submissions of *Sri M.Vijaya Kumar Goud*, learned counsel appearing for the petitioner in the first writ petition/ 5th respondent in the second writ petition; of *Sri T.Ramulu*, learned counsel appearing for the petitioner in the second writ petition/ 3rd respondent in the first writ petition,

of learned Government Pleader for Panchayat Raj & Rural Development (TS), of *Sri G.Narender Reddy*, learned Standing Counsel for the Gram Panchayat, Odela; and, of the learned Government Pleader for Home (TS) representing the Station House Officer, Pothkapally PS. I have perused the pleadings and the contents of the material documents.

3. The case of the petitioner in the first writ petition and the submissions made on her behalf, in brief, are as follows:

Merugu Ramadevi, purchased Ac.0.01 $\frac{1}{4}$ guntas of land in Sy.No.427 from one P.Rajesham, on 19.04.2004, by means of a private deed of sale (unregistered or sada sale deed). The said Rajesham sold the plots in Sy.No.427 to various persons up to 21.10.2016, that is, during the last twelve years prior to that date and executed registered documents in the names of such several purchasers. He also sold away the above said plot already sold to the petitioner in the year 2004 to some other person and by means of a registered document. Therefore, the petitioner questioned him in the presence of village elders. Then, the said P.Rajesham, by entering into an agreement, on 21.10.2016, stated that he would show the petitioner the land in Sy.No.427, equivalent to the land which was sold to her; on his failure to do so, he agreed to give in the alternative his plot in Sy.No.426, which is in the name of his wife, Pallerla Vijaya Lakshmi, that is, the 3rd respondent; and, he gave no objection to the petitioner to construct a house in the said plot of his wife in Sy.No.426. After 45 days of such agreement, when approached by the petitioner, the said Rajesham did not give a proper reply and asked the petitioner to go away. Hence, a report was lodged with the Station House Officer, Pothkapally Police Station. On that, a case in Crime no.16 of 2017 was registered, on 10.02.2017, against the said Rajesham for the offence punishable under Section 420 IPC. And, on 21.10.2016, the petitioner started construction in Sy.no.426.

4. In the above-stated background, the case of the petitioner and the further facts, events and aspects discernable from the pleadings, submissions and contents of material documents are as follows:

While the petitioner was proceeding with the construction in the circumstances stated by her, the 3rd respondent, Pallerla Vijaya Lakshmi, lodged a report, dated 26.09.2016, with the Gram Panchayat stating that she is having land in Sy.No.426 and that the said land was never sold to the petitioner, Meruru Ramadevi, the writ petitioner in the first writ petition; and requesting not to grant construction permission to her and complaining that the constructions that are being made by her are illegal and further requested to stop the said construction activity. Therefore, the office of the Gram Panchayat issued a show cause notice, dated 19.10.2016, to the petitioner. On the ground that the writ petitioner failed to give reply to the said show-cause notice, the Gram Panchayat issued subsequent notices, dated 29.10.2016, 18.11.2016, 13.12.2016, 27.01.2017, 17.02.2017, 29.03.2017, 28.04.2017, 22.05.2017, 30.05.2017 and 15.06.2017 calling upon the petitioner to show cause as to why action should not be taken with regard to the illegal constructions being made by her. As no action is being taken by the Gram Panchayat, the 3rd respondent filed W.P.No.2131 of 2017 before this Court. This Court disposed of the said writ petition by order, dated 27.01.2017, directing the Gram Panchayat to take appropriate action, within a period of one month from the date of receipt of a copy of the said order, on the representation, dated 26.09.2016, of the 3rd respondent after giving notice and an opportunity of hearing to all the stake holders including the unofficial respondents. Thereafter, the petitioner also filed W.P.No.36584 of 2017 before this Court. The said writ petition was disposed of by this Court, by order, dated 02.11.2017. Thereafter, considering the explanation, dated

21.07.2017, offered by the writ petitioner, the Panchayat Secretary, Odela Mandal, passed orders, dated 18.11.2017, referring to the earlier orders of this Court in the aforesaid writ petitions, that is, W.P.Nos.2131 of 2017 and 36584 of 2017. The operative portion of the said order, which is impugned by the petitioner in the first writ petition, reads as follows:

“Since your explanation dated 21/ 07/ 2017 and documents filed on 13/ 11/ 2017 do not reveal that you have obtained any construction permission from the Gram Panchayat and since you are making constructions in Sy.No.426 without having any construction permission, the construction being made by you is treated as illegal and without having any construction permission. On physical verification, it is found that the subject construction is made up to the slab level; and since the said construction is treated as illegal, you are hereby directed to remove the same within seven days after receipt of this order; failing which the same shall be removed in accordance with the law.”

As noted the petitioner filed the first writ petition being aggrieved of the said orders. The 3rd respondent filed the second writ petition complaining against the official respondents for their inaction in not implementing the orders, dated 18.11.2017, passed by the Secretary, Odela Gram Panchayat, against the constructions being made by the writ petitioner in the land in Sy.no.426, which according to the 3rd respondent admittedly belongs to her.

5. It is apt to note that the 4th respondent, who is the husband of the 3rd respondent also filed a counter affidavit denying the case pleaded by the petitioner and *inter alia* stating that due to his old age and under certain unavoidable circumstances he is staying with his sons at Hyderabad since last ten years and that taking advantage of his absence from the village, the petitioner made illegal and unauthorized constructions in the land/plot in Sy.No.426, which belongs to his wife, the 3rd respondent. He also pleaded about his return to the village on knowing about the same and the threats given

to him by the sub-inspector of police and the obtainment of the settlement document, dated 21.10.2016, under threat and by putting him under fear. He finally contended that the alleged document is illegal and invalid.

6. Though the petitioner in the first writ petition relied upon document stated to be a permission document and stated that she has permission from the Sarpanch to make constructions, she, however, failed to implead the Sarpanch as a party respondent to her writ petition. Since, the genuineness and validity of the Order, dated 25.10.2015, styled as Aagnyapatram, (construction permission certificate), produced by the petitioner is in dispute and, nonetheless, as the same was said to have been signed by a Sarpanch, this Court directed issuance of notices to the said Sarpanch, who is impleaded as party respondent in the second writ petition. It is stated that he is served with notice. The Sarpanch did not enter appearance and none appeared for him.

7. Be that as it may. It is pertinent to note that even as per the case of the writ petitioner, the 3rd respondent's husband, that is, the 4th respondent sold to her, under a sada sale deed/simple unregistered sale deed, certain small extent of land in Sy.No.427 of Odela village; that he later, while selling his other plots, sold away that land also to some third party; that the petitioner, therefore, questioned him before the elders; on that the 4th respondent agreed to show to the petitioner, land in Sy.No.427, which was equivalent to the land that was sold to her; that he further agreed that on his failure to do so he would permit the petitioner to make constructions in the subject land in Sy.no.426, which admittedly belongs to his wife, but not to him. The further case of the petitioner is that after 45 days of such understanding/ agreement, she approached the 4th respondent, but, he did not give proper reply and asked her to go away, that she, therefore, lodged a complaint with the police; that a crime was registered against the 4th

respondent for the offence punishable under Section 420 IPC; and, hence, on 21.10.2016, she started making construction in the plot in Sy.no.426. Even according to her own submissions, the 4th respondent stated no objection for the petitioner making constructions in the plot belong to his wife, the 3rd respondent. She is not having regular registered sale deed in respect of the plot/ land in Sy.No.427. Further, for the plot/ land in Sy.No.426 in which she is making constructions, she did not admittedly did obtain a registered sale deed either from the 4th respondent or the 3rd respondent or both of them. She, however, produced a permission certificate, dated 25.10.2015, along with her material papers in support of her contention that the Secretary of the Gram Panchayat issued the order/ Permission certificate for making construction in plot in Sy.no.426. However, the genuineness of the said certificate is disputed by the 3rd respondent stating that various grounds including the ground that the day, that is, '25.10.2015' on which the said permission certificate was allegedly issued is a Sunday and hence, it is not possible for issuance of such a certificate by the office of the Gram Panchayat. All the same, it was also urged by the 3rd respondent and her husband, the 4th respondent, urged that the alleged permission even if true is liable for cancellation since the petitioner has no document of title in respect of the subject property and as she has no right, title and interest in the property over which she made unauthorized constructions, and, hence, the same are liable to be removed in the facts and circumstances of the matter.

8. The proceedings of the Panchayat Secretary, dated 18.11.2017, and also the very contentions of the petitioner would make it manifest that she has no registered sale deed in respect of the property in Sy.no.426 of Odela village over which she is admittedly making the constructions. The said orders or proceedings on a plain perusal also indicate that no permission is accorded and

that the constructions that were made are illegal and unauthorized since made without any permission from the Grampanchayat.

9. On one hand, the petitioner having filed the writ petition challenges the proceedings/ order, dated 18.11.2017, of the Gram Panchayat as illegal and arbitrary. On the other hand, the 3rd respondent filed the second writ petition, to direct the implementation of the very same orders.

And, in the first writ petition, this Court, on 05.01.2018, passed the following order:

“ xxx xxx xxxx
... *status quo* obtaining as on today over the subject
property shall be maintained.”

10. Learned counsel for the petitioner submits that considering the circumstances in which the petitioner is placed, she is entitled to make constructions. Whereas, learned counsel for the 3rd respondent would submit that subject property indisputably is the property of the 3rd respondent and that her husband has no manner of right to deal with the property. He would also submit that even assuming for a moment that the alleged agreement arrived at between the petitioner and the 4th respondent is true, yet, as the petitioner has no right, title and interest in the property in Sy.No.426, which exclusively belongs to the 3rd respondent and as the alleged permission certificate on which the petitioner is relying upon is a forged document, the constructions which are being made are liable for demolition and that the petitioner is liable for prosecution for producing a forged document (permission certificate) before this Court.

11. On the analysis of all the facts and submissions, this Court is of the considered view that the Secretary, Gram Panchayat/ 3rd respondent, before proceeding further in the matter, has to take a fresh considered decision in the matter, as per the procedure established by law, as regards the *prima facie*

right of the petitioner to make any construction in the land/ plot in Sy.no.426 and also the question as to whether the constructions that were made by her are with or without valid permission in view of the rival contentions as to the genuineness of the Order (Aagnyapatram/permission certificate), dated 25.10.2015. Hence, this Court is refraining from expressing any opinion on the merits of the contentions of the parties.

12. In the result, both the writ petitions are disposed of, directing the Secretary, Gram Panchayat, Odela, to examine, afresh and in detail, the whole matter and take a considered decision, uninfluenced by observations, if any, in this order, with regard to the legality or otherwise of the constructions that were made by the petitioner in the land/ plot in Sy.No.426 of Odela village, however, after giving an opportunity of hearing to the parties of both the sides and then proceed further in the matter and take necessary and appropriate follow up and consequential action/s, in accordance with the procedure established by law. Nonetheless, parties of both the sides shall maintain absolute *status quo* as earlier directed in the interim orders of this Court without undertaking any activity in the subject property in Sy.no.426. And, it is also made clear that the petitioner shall not proceed further with any construction activity in the subject property till the said Secretary completes the necessary exercise in the above regard. The Secretary shall, however, complete the necessary exercise within three weeks from the date of receipt of a copy of this order. It is needless to state that in the event it is found that the Order, dated 25.10.2015, styled as 'Aagnyapatram', (construction permission certificate), produced by the petitioner is not genuine, then the Secretary, by following the procedure established by law, shall take necessary steps and initiate necessary and appropriate legal action against all the persons concerned and responsible for bringing it into existence.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, in these writ petitions shall stand closed.

JUSTICE M. SEETHARAMA MURTI

09.07.2018
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