

In the High Court for the State of Telangana

WRIT PETITION No.8346 of 2019

Between:

Vanga Raghava Reddy.

... Petitioner

and

The State of Telangana and others.

...Respondents

Date of Judgment Pronounced:18.04.2019

Submitted for Approval:

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

1. Whether Reporters of Local newspapers
may be allowed to see the judgments? Yes/No
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? Yes/No
3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment ? Yes/No

CHALLA KODANDA RAM, J

*** THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

+ WRIT PETITION No. 8346 of 2019

% Dated 18.04.2019

Between:

#Vanga Raghava Reddy

... Petitioner

and

The State of Telangana and others.

...Respondents

! Counsel for the petitioner : Sri P. Janardhana Reddy.

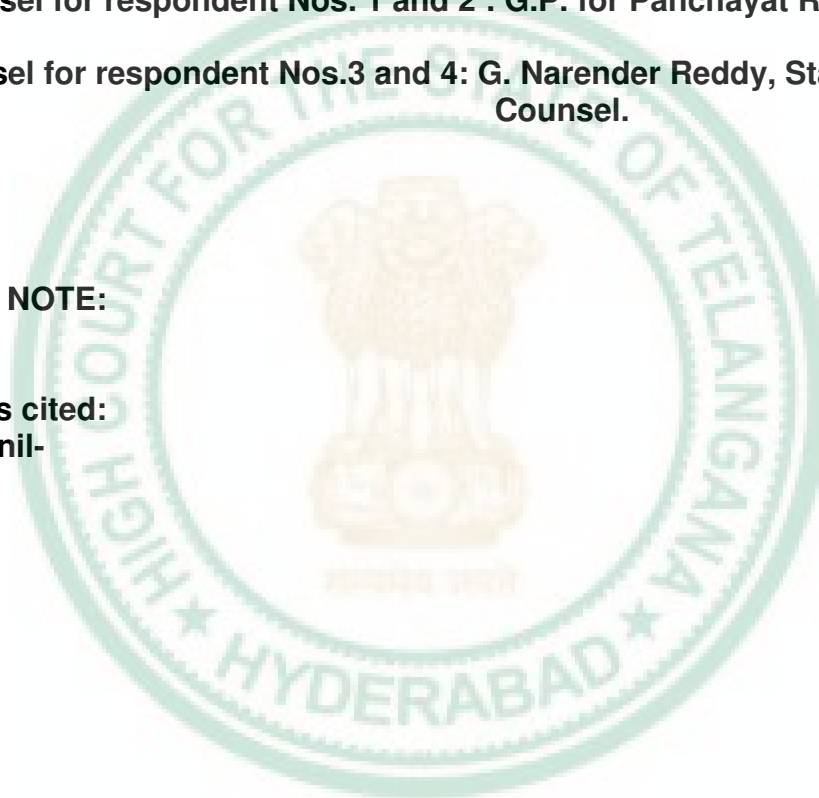
^ Counsel for respondent Nos. 1 and 2 : G.P. for Panchayat Raj.

^Counsel for respondent Nos.3 and 4: G. Narender Reddy, Standing Counsel.

<GIST:

>HEAD NOTE:

**? Cases cited:
-nil-**



THE HONOURABLE SRI JUSTICE CHALLA KODANDA RAM**W.P.No.8346 of 2019****ORDER**

Heard learned counsel for the petitioner, learned Government Pleader for Panchayat Raj for the 1st and 2nd respondents and Sri G. Narendra Reddy, learned Standing Counsel for the 3rd and 4th respondents.

2. This writ petition is filed seeking to declare the action of the 4th respondent in issuing the final notice/resolution vide Rc.GP/NP/2019 dated 16.04.2019 for demolition of the compound wall of the petitioner, as illegal and arbitrary.

3. The true translation of the impugned notice dated 16.04.2019 reads as under:

“I submit that with you Sri Vanga Ragavareddy s/o.Vanga Jagareddy garu, inform you that why you grama kantam C.C. road parallel wall construction has done by you so by law it is illegal said that GP meeting also in front of all the people said all the people gave acceptance to demolish the wall, so notice, within one week, for demolition with grama panchayat members CC road with the wall is blocking on road informed to remove notice was issued to you”.

The said notice was signed by the Sarpanch, Grama Panchayat, Nanji Nagar, Shamshabad, Ranga Reddy District.

4. Learned counsel for the petitioner contended that in terms of the provisions of the Telangana State Panchayat Raj Act, 2018 (for short ‘the Act’) read with Telangana Panchayat Raj (Duties and Responsibilities of Panchayat Secretary) Rules, 2018, notified in G.O.Ms.No.108 dated 26.09.2018, the Sarpanch is not competent to

issue notice to the petitioner directing him to remove the alleged compound wall constructed by him and such power is entrusted with the Panchayat Secretary appointed under Section 42 of the Act. Learned counsel has drawn the attention of this Court to the rules made in G.O.Ms.No.108 dated 26.09.2018, as per which, the Panchayat Secretary alone has been entrusted with various functions and also to take necessary steps with respect to the alleged violations. He would further submit that the Sarpanch being a political person is not entrusted with the executive powers with respect to the affairs of the Gram Panchayat. He would further submit that the powers entrusted with the Sarpanch are limited under Section 32 of the Act and no power is entrusted with the Sarpanch to initiate action as was done in the present case.

5. On the other hand, learned Standing Counsel, by making a reference to Sections 90 and 92 read with Section 114 of the Act, would submit that the Gram Panchayat has been entrusted with the power to grant permission and also to take steps for removal of the encroachments and unauthorized constructions, thereby, it cannot be said that the Sarpanch is not entitled to issue the impugned notice. He would further submit that the Sarpanch has issued impugned notice for implementation of the unanimous resolution of the members of the Gram Panchayat.

6. Having regard to the respective submissions, the question that arises for consideration is, whether the Sarpanch is entitled to issue the impugned notice or direction on behalf of the Gram Panchayat to

remove the encroachments, by exercising power under Sections 90 and 92 of the Act and if so, who is the executive authority for implementation of the resolution.

7. To answer the said query, it is necessary to look into the provisions of the Act. Section 4 of the Act describes the constitution of Gram Panchayats for villages and their incorporation. Section 4(3) of the Act states that every Gram Panchayat shall be a body corporate by the name of the village; and Section 4(2) of the Act specifically states that the administration of the village shall vest in the gram panchayat, but the gram panchayat shall not be entitled to exercise functions expressly assigned by or under this Act or any other law to its Sarpanch or executive authority, or to any other local authority, or other authority. In other words, with respect to the functions that are assigned to a Sarpanch or any other local authority or other authority under the act or any other law, the Gram Panchayat is not entitled to exercise such functions.

8. In the present case on hand, under Section 42 of the Act, a Panchayat Secretary shall be appointed by the Commissioner for every Gram Panchayat and that various duties and responsibilities of Panchayat Secretary have been set out under Section 43 of the Act. For the purpose of the present case, Section 43(5)(v) to (viii) are relevant. They read as under:

(i),,,,,,,,,,

(ii).....

(iii)....

(iv)....

(v) take up immediate measures in case of any outbreak of seasonal or communicable diseases and ensure medical assistance to the affected people;

(vi) take up plantation as per local needs in and around the Village and ensure minimum eighty five percent survival of them. He shall maintain register on the plantation and their survival;

(vii) maintain a register of assets movable and immovable and take all measures for protection of the Gram Panchayat lands and assets. He shall also get all the Gram Panchayat lands registered on the name of Gram Panchayat;

(viii) take steps for removal of all encroachments in the Gram Panchayats on public places;

Likewise, the Panchayat Secretary is also required to implement the resolution of the Gram Panchayat. The Rules framed are only for limitation of the functions of the Panchayat Secretary.

9. Further, as per Sections 90 and 92 of the Act, certain powers are required to be exercised by the Gram Panchayat. In other words, the scheme of the Act and the Rules, for the purpose of this case, would make it clear that while the Gram Panchayat is the body corporate by the name of the village and the Sarpanch is a person heading the Gram Panchayat with a power to pass resolutions and to carry on functions entrusted to the Gram Panchayat and the said functions are required to be implemented by the Panchayat Secretary. In the present case, as the petitioner has allegedly constructed a compound wall, the same is required to be removed and such removal is within the power of the Gram Panchayat. The method and manner to enforce the resolution vests with the Panchayat Secretary, particularly, in terms of Section 43(5)(v) to (viii) of the Act, which is referred to supra.

10. In the present case, the challenge of the petitioner is only with respect to the Sarpanch issuing the notice directing him to remove the compound wall within seven days. The decision taken in the Resolution of the Gram Panchayat *per se* that the compound wall that was illegally constructed is required to be removed cannot be found fault and it is also not the case of the petitioner that the Resolution is bad in any way. As the objection only being the Sarpanch issuing the notice and as, admittedly, there is a Panchayat Secretary posted with the Gram Panchayat and as the duty of implementation of Resolutions of the Gram Panchayat is with the Panchayat Secretary, the Writ Petition is disposed of leaving it open to the Panchayat Secretary to implement the Resolution of the Gram Panchayat, as it is not normal function of the Sarpanch to implement the Resolutions of the Gram Panchayat.

11. Hence, to the extent of the notice directing the petitioner to remove the compound wall constructed obstructing the free flow, is set aside, leaving it open to the Gram Panchayat to enforce the same through the Panchayat Secretary, within seven days, from the date of receipt of a copy of this order.

12. Accordingly, the Writ Petition is allowed. No order as to costs.

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

18th April, 2019

CHALLA KODANDA RAM, J

sj

LR copy to be marked.

