

THE HON'BLE SRI JUSTICE T.VINOD KUMAR

WRIT PETITION No.22282 of 2019

ORDER:

The present writ petition is filed to declare the action of respondent No.3 in issuing the impugned notice, dated 29.09.2019, directing the petitioner to remove the structures in respect of the property, bearing House No.1-80 (actual House No.1-68), Chinchode Village, Farooq Nagar, Mandal, Ranga Reddy District, and also the debris thereof within three days from the date of receipt of the said notice, as illegal, arbitrary and contrary to the provisions of the Telangana Panchayat Raj Act, 2018 (for short, 'the Act'), and also in violation of Article 300-A of the Constitution of India.

2. Heard learned counsel for the petitioner, learned Government Pleader for Panchayat Raj appearing for respondent Nos.1 and 2 and Sri G.Narender Reddy, learned standing counsel for Gram Panchayat appearing for respondent No.3.

3. From a perusal of the impugned notice, dated 29.09.2019, it is seen that the petitioner was directed to remove the house as mentioned therein and also its debris.

4. This Court, by order dated 07.10.2019, while granting interim suspension of the impugned notice, dated 29.09.2019, directed that the petitioner should see that the premises are cleaned and kept in a habitable condition.

5. In the counter-affidavit filed by respondent No.3 on behalf of the respondents, it is stated that respondent No.1 has undertaken 30 day

action plan for taking up certain development works in the village and one of such works, is the sanitation and conservancy in the village. It is further stated in the counter affidavit that the petitioner's house is an old ancient fort (house) situated in the centre of village, which is totally in collapsed condition, wherein obnoxious material is accumulated causing health hazardous to the villagers. It is also submitted that having regard to the said programme taken up by respondent No.1 for sanitation and conservancy, the impugned notice has been issued to the petitioner to pull down the walls and clean the premises to the satisfaction of the Gram Panchayat.

6. Learned Counsel for the petitioner submits that no power is conferred on the Gram Panchayat to issue proceedings/notice to bring down any structure. Further, the provisions of Section 88 of the Act, 2018, under which the impugned notice is issued does not confer any such power.

7. In order to appreciate the contention of the petitioner, provisions of Section 88 of the Act, 2018 is to be looked into, which reads as under:

(1) If it appears necessary to improve the sanitary conditions of any area within the village, the Gram Panchayat may issue a written notice, requiring the owner or occupier of any of the lands, and houses in area, within a reasonable period to be specified in the notice,

(a) to remove a hut or privy either wholly or in part;

(b) to construct in a building, private drains therefor or to alter or to remove, any private drain thereof;

(c) to cause any land or building to be cleansed to the satisfaction of the Gram Panchayat;

(d) where any land or building contains a well, pool, ditch, pond, tank, or any drain, filth or stagnant water which is injurious to health or offensive to the neighbourhood or is otherwise a source of nuisance, to

cause the same to be filled up, cleansed or deepened or to cause the water to be removed therefrom or drained off or to take such other action as may be deemed necessary by the Gram Panchayat;

(e) to cause any land overgrown with vegetation, under growth, prickly-pear, or jungle which is in any manner injurious to health or dangerous to the public or offensive to the neighbourhood or any impediment to efficient ventilation, to be cleared of the vegetation, undergrowth, prickly-pear or jungle;

(f) to convert any step well into a draw-well.

8. A perusal of the aforesaid sub-clauses (a) to (f), indicate that no power is conferred on the Gram Panchayat directing the owner of the house to take up demolition of the building. The only power that is conferred on the Gram Panchayat under Section 88 of the Act is to direct the owner to maintain sanitation and conservancy. One of such activities, which the Gram Panchayat can direct the owner to undertake, is to cause any land overgrown with vegetation, under growth, prickly-pear, or jungle, which is in any manner injurious to health or dangerous to the public or offensive to the neighbourhood or any impediment to efficient ventilation, to be cleared of the vegetation, undergrowth, prickly-pear or jungle.

9. Having regard to the powers conferred under Section 88 of the Act, at the most the respondent authorities could issue a notice asking the petitioner to clean up the area abutting the house which is stated to be located within a land admeasuring Acs.5.00 guntas but not to bring down the ancient fort (house) itself, which on the face of it appears to be contrary to the power conferred under the Act.

10. Learned counsel for the petitioner submits that pursuant to the directions of this Court, dated 07.10.2019, the petitioner has already

undertaken steps to keep the ancient fort (house) clean and in a habitable condition.

11. In view of the above facts and circumstances, particularly having regard to the provisions of Section 88 of the Act, invoking which the impugned notice dated 29.09.2019 is issued by the respondent; this Court is of the view that the same cannot be sustained. Accordingly, impugned notice dated 29.09.2019 issued under the signature of the 3rd respondent is set aside.

12. It is however made clear that the petitioner shall take periodical cleaning of the area and continue to keep the area abutting the ancient fort (house) clean and in a habitable condition.

13. Subject to the above, the writ petition is allowed. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

JUSTICE T.VINOD KUMAR

Date:05.12.2019

GJ