

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (C) No. 2956 of 2019

M/s Panna Rice Industries Through Proprietor Smt. Smita Rathi W/o Shri Bhawarlal Rathi, Aged About 38 Years, R/o Village Amadi, Post- Amadi, Tehsil and District- Dhamtari, Chhattisgarh.

---Petitioner(s)

Versus

- 1.** State of Chhattisgarh Through The Secretary, Department of Panchayat and Rural Development, Mantralaya, Mahanadi Bhawan, Nava Raipur, District- Raipur, Chhattisgarh.
- 2.** The Collector Balod at Collectorate Balod District- Balod, Chhattisgarh.
- 3.** Gram Panchayat Devkot, Through Secretary, Gram Panchayat Devkot, Tehsil Gurur, District- Balod, Chhattisgarh.
- 4.** Secretary Gram Panchayat Devkot, Tehsil Gurur, District- Balod, Chhattisgarh.
- 5.** Gram Sabha, Gram Panchayat Devkot, Tehsil Gurur, District- Balod, Chhattisgarh.

---Respondents

For Petitioner	:	Shri Ashish Surana, Advocate.
For State	:	Shri Ishan Verma, Panel Lawyer.
For Respondents 3&5	:	Shri R.K. Pali, Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

22.01.2020

- 1.** Challenge in the present Writ Petition is to the communication and resolution dated 21.08.2019 (Annexure P/1 and P/2 respectively) passed by the Gram Sabha of Gram Panchayat, Devkot, Block Gurur, District Balod.
- 2.** The substantial relief sought for by the petitioner in the present writ petition is for quashment of the said resolution and communication of the Gram Sabha dated 21.08.2019. So far as relief Nos. 10.3 and 10.4 in the relief clause is concerned, the petitioner submits that those have become inconsequential now as the property has already been diverted.
- 3.** The only issue now is whether the action on the part of respondents No.3&5 in issuance of Annexure P/1 was proper, legal and justified or not.

4. Learned counsel appearing for the respondents No.3&5 submits that the need for issuance of Annexure P/2 arose because the Gram Panchayat, in an illegal manner had passed a resolution at the first instance on 08.08.2019 granting No Objection to the petitioner and when this fact was known by the Gram Sabha, Annexure P/2 was required to be passed.
5. On a query put to the counsel for the respondents No.3&5 as to whether there is any requirement under law which requires issuance of NOC of the Gram Panchayat or for that matter Gram Sabha for establishment of industries or factory, he fairly concedes that there is no such requirement under law.
6. The only provision of law governing the field under the Gram Panchayat and Chhattisgarh Panchayat Raj Adhiniyam, 1993 (in short, the Adhiniyam, 1993) is Section 54 which empowers the Gram Panchayats as to public health facilities and safety. Under the said provision of law i.e. Section 54 of the Adhiniyam, 1993, the Gram Panchayats have been empowered to regulate the Factories, Industrial units and Workshops, Slaughter Houses, Supply of Water etc. Under the said provision of law, the State Govt. invoking the powers conferred upon them under Section 95 of the Adhiniyam, has framed certain Rules such as :
 - (a) Gram Panchayat (Regulation of Slaughter House) Rules, 1998;
 - (b) Gram Panchayat (Regulation of Offensive or Dangerous Goods Trades) Rules, 1998;
 - (c) Gram Panchayat (Power relating to removal of structures and trees) Rules, 1999; and
 - (d) Gram Panchayat (Sanitation, Conservancy and Prevention and Abatement of Nuisance) Rules, 1999.
7. None of these rules prohibits establishment of a Rice Mill. Neither does any of these rules deal with regulating of the Rice Mill. Still, this court is of the opinion that it is well within the powers of the Gram Panchayat to take

appropriate steps ensuring the public health facilities and safety of the villagers in each of the Gram Panchayats under Section 54 of the Adhiniyam, 1993. But, that does not mean that the Gram Panchayats or for that matter Gram Sabha could prohibit somebody from starting his own industry, factory or trade on his/her self acquired property free from all encumbrances. If at all if the Gram Panchayat or for that matter the Gram Sabha finds that the industry which the petitioner intends to start or the factory which the petitioner intends to establish would create a pollution problem to the villagers, the Gram Panchayat has got all the powers for regulating the said pollution problem by framing appropriate guidelines or by imposing appropriate tax or even levy of penalty for any dangerous smokes emitted from the factory or industry which the petitioner intends to establish.

8. The provisions of the Adhiniyam, 1993 does not provide any such provision by which the Gram Panchayats or Gram Sabhas could restrict somebody from establishing his or her business, trade or industry at a particular village on his/her own self acquired property.
9. Given the said facts and circumstances of the case, this court is of the opinion that the resolution dated 21.08.2019 (Annexure P/2) passed by the Gram Sabha does not seem to be justified in the teeth of the provisions of the Adhiniyam, 1993 and in any of the rules framed under the said Adhiniyam. The said resolution (Annexure P/2) and the communication (Annexure P/1) stand set aside/quashed with consequence to follow.

10. The writ petition accordingly stands allowed.

Sd/-

(P. Sam Koshy)
Judge