
(2003) 08 AP CK 0090

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4593 of 2002

Akkula Mangayamma

APPELLANT

Vs

Mandal Development Officer, Samalkot Mandal and Another

RESPONDENT

Date of Decision : 27-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 5 ALD 418

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : M. Vijaya Kumar, for the Appellant; Government Pleader for Panchayat Raj for Respondent No. 1 and D. Srinivas, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The petitioner is a resident of Thimmapuram Village, Kakinada Rural Mandal in East Godavari District. He purchased an extent of 606 Sq.yds. in Plot Nos. 1 and 2 under a registered sale deed dated 9-8-1995. The said plot forms part of layout plan No. 493/85 comprised in Sy.No. 193/4 of Thimmapuram village. It appears, in June, 1999, the second respondent Gram Panchayat constructed a wall and also laid a foundation stone for construction of a building on the northern side of the petitioner's plot leaving path way. The petitioner made a representation to the Gram Panchayat on 17-6-1999 requesting them not to cause any obstruction in using pathway. According to the petitioner, the Sarpanch of the Gram Panchayat by a letter dated 18-6-1999 informed him that the Gram Panchayat has no objection for using the open space on the northern side as pathway by the petitioner. In the month of February, 2002, the new Sarpanch who allegedly bore grudge against the petitioner is trying to shift the old foundation with a view to cause obstruction to pathway. The Panchayat, it is alleged, now laid foundation in the pathway for construction of a building. The petitioner contends that there is no need to extend basement for the building and the Sarpanch is causing obstruction to pathway. He also

alleged that the open space on the northern side of his plot does not belong to the Gram Panchayat as the owners of the layout did not execute gift deed in favour of the Panchayat. Therefore, he filed the writ petition seeking a declaration that the action of the respondent Gram Panchayat in making construction of building in the pathway is arbitrary, illegal and violate of Articles 14 and 21 of the Constitution of India.

2. This Court, while admitting the writ petition, passed interim orders on 13-3-2002 in WPMP No. 5726 of 2002 directing Gram Panchayat to make construction only in accordance with letter dated 18-6-1999 given to the petitioner, for the time being. The Gram Panchayat has filed WVMP No. 2276 of 2002 to vacate the said interim order. As the controversy is very short, with the consent of the learned Counsel for the petitioner and the learned Standing Counsel for Gram Panchayat, the matter was heard finally at the interlocutory stage and is being disposed of.

3. In the counter-affidavit filed by the second respondent, it is stated that the Director of Town and Country Planning approved layout No. 493/85 for the land in Sy.No. 193/4 situated at Padalammapuram, Thimmapuram Gram Panchayat. A part of the land earmarked for community purposes in the said layout vested in the Gram Panchayat under the provisions of the A.P. Panchayat Raj Act, 1994 ("the Act" for brevity). The petitioner purchased three plots in the said approved layout and one of the plots is adjacent to the community land. The petitioner's land is bounded by community land on northern side, 40 ft. wide Gram Panchayat road on southern side, 100 ft. wide puntha on western side. The allegation that the petitioner has only way and ingress and egress to the open space vested in the Gram Panchayat is denied. It is further stated that there exists 40 ft. wide road on southern side of the petitioner's house and 100 ft. wide puntha on the western side. The petitioner has got two ways for ingress and egress to the land.

4. The counter-affidavit further states that by resolution dated 22-8-1998, the Gram Panchayat allocated the community land situated at New Harijanpet as well as community land situated at Padalammapuram in the approved layout for construction of two new primary school buildings. The same was intimated by the executive authority of the Panchayat to the Mandal Parishad Development Officer, who in turn requested for sanction of amount for construction of school buildings. Thereafter, the District Collector sanctioned an amount of Rs. 1,50,000/- under Sarvasiksha Abhiyan Scheme.

5. The Gram Panchayat again passed a resolution on 16-3-2002 for construction of school building in the community land in layout plan No. 493/85 in Sy.No. 193/4 duly confirming the earlier resolution dated 22-8-1998. It is also stated that the Sarpanch has no power or authority under the Act to issue permission to the petitioner for using the community land as pathway. The allegation that the Gram Panchayat is showing vindictive attitude towards the petitioner is denied.

6. Learned Counsel for the petitioner, Sri M. Vijay Kumar submits that the Gram Panchayat has no power or authority to construct school building on the land which is pathway of the petitioner. He would also submit that if the school building is constructed in the open space on the northern side of the petitioner's plot, he would be deprived of right of way which is violative of Articles 14 and 21 of the Constitution. He also submits that the Gram Panchayat cannot extend the basement raised in 1999 leaving pathway to the petitioner. He has also produced before me a sketch plan showing the position of the petitioner's land and other plots to show that the petitioner would be deprived of pathway.

7. Per contra, learned Standing Counsel for Gram Panchayats, Sri D. Srinivas would submit that after approval of layout, the portions marked for road, common places, green belt area etc., vested in the Gram Panchayat and the land earmarked for community purpose also vests in the Gram Panchayat. A resolution was passed to use this land on the northern side of the petitioner's plot for construction of school building using the funds sanctioned by the Government under the Sarvasiksha Abhiyan Scheme. By doing so; the Gram Panchayat is not violating any law and is not depriving the petitioner any right of pathway available to him. He submits that the open place on the northern side of the petitioner's plot is intended as open space and that the petitioner has got two ways on southern side and western side.

8. Though an allegation is made in the counter-affidavit that the petitioner is owner of Plot Nos. 1, 2 and 3, the same is not totally denied by the petitioner. However, registered sale deed dated 9-8-1995 shows that the petitioner purchased plot Nos. 1 and 2 from Tadimalla Venkata Narayana Rao, who in turn had purchased from Manchala Subba Rao, owner of the land in Sy.No. 193/4. Therefore, it is not known whether the petitioner also purchased Plot No. 3 or not. This fact is also not denied in the reply affidavit. Therefore, this Court has to draw inference that plot Nos. 1, 2 and 3 belong to the petitioner only.

9. It is no doubt true that either Gram Panchayat or local authority cannot make any construction in the land which is earmarked for road or street except for the purpose of providing auto stand, taxi pool and fire extinguishers and for other public utilities. Therefore, if the second respondent proposes to construct a school building on a portion of the land in the open space which is not earmarked as road, the same cannot be termed as illegal. In the absence of any material to show that the open space is meant for pathway for the owner of plot No. 1 or, owner of Plot No. 4. Indeed, the sale deed dated 9-8-1995 would show that the land on the northern side of petitioner's plot is not a road. The petitioner has only way on the western side which is 100 ft. puntha. Assuming that the petitioner is also owner of plot No. 3, he has a road on the southern side. Learned Standing Counsel placed before me a copy of the layout L.P.No. 493/85 approved by the Director, Town and Country Planning which would amply support the contentions raised by him.

10. A copy of the letter addressed by the Sarpanch on 18-6-1999 to the

petitioner is also placed before the Court which would show that the Sarpanch assured the petitioner that Gram Panchayat is not making construction opposite to the school being constructed under Janmabhoomi Programme and that there is no objection for using the public place as pathway by you. No such power inheres in the Sarpanch of the Gram Panchayat under the Act to allow a person in the Gram Panchayat to use open space vested in the Gram Panchayat as pathway. The petitioner has admittedly purchased property in August, 1995 and even if he is using the open space as pathway on the northern side, he would not get any right of easement. Therefore, the Gram Panchayat is entitled to construct school building in the open space. In any event, the question raised in this writ petition is purely a disputed question of fact and this Court is not inclined to decide the question whether the petitioner would be deprived of right of pathway. It is, however, open to the petitioner, if so advised, to go before the Civil Court and establish his easementary right in relation to the open space on the northern side of Plot No. 1

11. In the result, for the above reasons, the writ petition fails and is accordingly dismissed. The interim order dated 13-3-2002 stands vacated. No costs.