

(2011) 09 KAR CK 0056

In the Karnataka High Court

Case No : Writ Petition No. 12845 of 2011

C.A. Hamsa rep. by his GPA., holder, C.A. Rafeeqe

APPELLANT

Vs

The Secretary, Gram Panchayat and The Executive Officer

RESPONDENT

Date of Decision : 19-09-2011

Acts Referred:

Karnataka Panchayat Raj Act, 1993 — Section 237 (1), 269

Citation : (2011) 09 KAR CK 0056

Hon'ble Judges : Mohan Shantanagoudar, J

Bench : Single Bench

Advocate : A.K. Subbaiah and A.S. Ponnanna, for the Appellant;

Judgement

Mohan Shantanagoudar, J.—Petitioner has sought for a direction to Respondent No. 1 to grant license in his favour for construction of orphanage home in Sy. No. 64/10 of Arji Village, Virajpet Taluk, Kodagu District. Certain consequential reliefs are also sought for.

2. It is not in dispute that the Petitioner is the owner of the land bearing Sy. No. 64/10, Arji Village, Virajpet Taluk, Kadagu District, measuring 2.54 acres. The property in question comes in the limits of Bettoli Gram Panchayat. Petitioner with an intention to construct an orphanage home in the name "Anwarul Hudda Orphanage" in the schedule property, prayed for license to construct the building to run orphanage home. It is not in dispute that the property in question is converted for non-agricultural purpose. Bettoli Gram Panchayat in its meeting held on 8.1.2010 refused the license for construction of the building, on the ground that there will be water stagnation and water will flow on the road which may result in creating problems relating to traffic movement. It is further mentioned in the said order that about 150 acres of paddy land will go waste if water is allowed to remain stagnant because of construction of the building.

3. Being aggrieved by the said order of Gram Panchayat, the Petitioner filed an appeal before the Executive Officer of Taluk Panchayat u/s 269 of the Karnataka

Panchayat Raj Act, 1993 (for short hereinafter referred to as the "Act"). The appellate authority after hearing, passed the order as per Annexure-F, dated 23.2.2010 setting aside the order passed by the Gram Panchayat and consequently, the Executive Officer has directed the Gram Panchayat to accord permission to the Petitioner for construction of the building for orphanage home. Certain conditions are imposed in the said order.

4. Before passing the order at Annexure-F, the Executive Officer of Taluk Panchayat visited the spot and satisfied himself that the public at large will not be affected if the building is constructed. The Executive Officer, in his order dated 23.2.2010 directed the Petitioner to use the building only for running orphanage and not for any other purposes. He further directed the Petitioner to construct the building on pillars to avoid stagnation of water in the area in question and nearby areas. The sum and substance of the order of the Executive Officer is that the Petitioner is directed to construct the building without affecting the public interest. The said order remained unquestioned. However, a letter came to be issued suo moto by the Executive Officer, Taluk Panchayat as per Annexure-G, dated 18.3.2010 instructing the Secretary of the Gram Panchayat not to proceed based on the order at Annexure-F, dated 23.2.2010 granting permission to the Petitioner to construct orphanage. Subsequently, the Petitioner approached the Gram Panchayat once again for grant of permission. The Gram Panchayat has passed the order by passing resolution as per Annexure-K, dated 2.2.2011 in favour of the Petitioner. Majority of the members of Gram Panchayat have expressed their opinion in favour of the Petitioner for granting permission. In spite of the same, the permission is not granted by the Gram Panchayat. Hence, this writ petition is filed.

Though the Respondents are served have remained absent.

5. The Environmental Officer of the Karnataka State Pollution Control Board, Mysore has issued an endorsement as per Annexure-J, dated 9.6.2010 to the effect that the permission of Pollution Control Board is not necessary as the total area of the building proposed to be constructed by the Petitioner is 1022.41 sq.mtrs; and that the permission is necessary only if the area of the building to be constructed is more than 2000 sq.mtrs. However, the said Officer has informed the Petitioner that the Petitioner should make appropriate arrangements for clearing the discharge and sewerage, etc. of the orphanage.

6. The order passed u/s 269 of the Act, by the Taluk Executive Officer, Taluk Panchayat, as per Annexure-F is final. Nobody has questioned the said order till this day before the appropriate authority or before the Court. Therefore, subsequent intimation issued by the Executive Officer to the Village Panchayat instructing the Secretary of the Village Panchayat not to proceed further based on the Annexure-F may not be correct. Even otherwise, the Village Panchayat has passed resolution subsequently on 2.2.2011 in favour of the Petitioner granting permission to construct the building for running orphanage as per Annexure-K. There is nothing on record to show that the said order/resolution

passed by the Gram Panchayat dated 2.2.2011 is either suspended or set aside by the Executive Officer u/s 237(1) of the Act. If it is so, the parties are bound by the order passed by the Executive Officer, at Annexure-F, dated 23.2.2010 and the resolution dated 2.2.2011 of Village Panchayat.

Accordingly, the writ petition stands disposed of, with a direction to the Respondents to abide by the order dated 23.2.2010. The Petitioner shall also comply with the conditions imposed by the Executive Officer in the said order.