

(1995) 06 AP CK 0010

In the Andhra Pradesh High Court

Case No : Writ Petition No. 18460 of 1994

Jangala Nageswara Rao

APPELLANT

Vs

The Executive Officer, Gram Panchayat

RESPONDENT

Date of Decision : 29-06-1995

Acts Referred:

Andhra Pradesh Gram Panchayat Building Rules, 1972 — Rule 11, 12, 9
Constitution of India, 1950 — Article 14

Citation : (1995) 2 ALD 345 : (1995) 2 ALT 488 : (1995) 2 APLJ 166

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Advocate : Y. Rama Rao and A. Ravinder, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

S.R. Nayak, J.—The petitioner claims to be the absolute owner of 412 square feet of land comprised in Survey No. 144 and he has been in possession of the said land, having purchased the same by a registered sale deed, dated 5-5-1992, from the original owner. The petitioner, with an intention to put up a shop in the said land, wanted to file an application on 12-7-1994 before the respondent-Executive Officer, Gram Panchayat, Sattupalli in Khammam district. It is alleged that the petitioner went to the Office of the respondent-Executive Officer on 12-7-1994 with the application enclosing thereto the plan as per the Andhra Pradesh Gram Panchayat Building Rules, 1972, which Rules are shortly hereinafter referred to as "the Rules". It is alleged-that, to the utter surprise of the petitioner, the respondent-Executive Officer refused to receive the application of the petitioner and the plan, and that forced him to send the application enclosing the plan by Registered Post, Acknowledgment due, to the respondent-Executive Officer on 16-7-1994. The said cover has been returned to the petitioner with a postal endorsement "refused". The petitioner has produced the returned cover with the aforementioned postal endorsement along with a memo in this case. There afterwards, the petitioner, taking advantage of the deeming

provision provided under Rule 12 of the Rules, claims to have constructed the shop in the land in question. At that stage it is alleged that the Executive Officer started interfering with the petitioner's possession of the property and threatened him to demolish the construction put up by the petitioner. Under those circumstances, the petitioner filed this writ petition in this Court on 7-10-1994.

2. This Court on 24-10-1994 directed notice to the respondent before admission. The respondent was served with the notice on 29-10-1994. Despite service of notice, the respondent remains un-represented. The learned Government Pleader for Panchayat Raj submits that he has no instructions to represent the respondent-Executive Officer.

3. Even ignoring the averments made by the petitioner that he attempted to file an application on 12-7-1994 and the same was refused to be received by the respondent-Executive Officer, it is quite clear on record that the petitioner sent the application along-with the plan by Registered Post, Acknowledgement due to the Executive Officer on 16-7-1994 and the said cover has been returned to the petitioner with a postal endorsement "refused". Therefore, it should be held that the respondent-Executive Officer has deliberately refused to receive the application and the plan sent by the petitioner by Registered Post on 16-7-1994. Consequently, it should also be held that the petitioner has fulfilled the requirement of making an application enclosing the plan as required under Rule 9 of the Rules. In order to appreciate the contentions raised in this Writ Petition, it is necessary to refer to Rules, 9,11 and 12 of the Rules, which read thus:-

"Rule 9. Application to construct or reconstruct buildings:-

(1) Every person including a company, association, Society, local body or Government who intends to construct or reconstruct or alter or add to a building shall submit an application to the Gram Panchayat for the approval of the site and for permission to execute the work in the form specified in Appendix (A) with such variations as circumstances may require.

(2) It shall be accompanied by -

(i) a site plan (in triplicate) of the land on which the building is to be constructed, reconstructed or altered or added to and plan of the building to be constructed, reconstructed, added to or altered, drawn or reproduced in a clear and intelligible manner on suitable and durable paper and complying with the requirements specified in Appendix B and C respectively as far as may be necessary; and

(ii) specifications (in triplicate) complying with the requirements specified in Appendix (D) as far as may be necessary.

(3) The application as well as plan and specifications shall be signed by the owner of the site and building. They shall also be signed by a licensed surveyor in case by -laws of the Gram Panchayat require the employment of licensed surveyor in the construction, reconstruction or alteration or addition to a building.

Explanation:- (Building) in this rule shall include a wall or fence of whatever height, bounding or abutting on any public street.

Rule 11. Period within which Gram Panchayat is to signify approval or disapproval:-

Within sixty days after the receipt of any application made under Rule 9 for approval of a site and permission to execute any work or of any information or further information required under these rules or bye-laws made under the Act, the Gram Panchayat shall by written order either approve the site and building or refuse on one or more of the grounds mentioned in Rules 13 and 14.

Rule 12. Effect of delay in grant or refusal of approval or permission:-

If within the period prescribed by Rule 11, the Gram Panchayat has neither given nor refused approval of a building site, or its permission to execute any work; as the case may be, such approval or permission shall be deemed, to have been given; and the applicant may proceed to execute the work but not so as to contravene any of the provisions of the Act or any rules or bye-laws made thereunder."

4. From a combined reading of the provisions of the Rules 9, 11 and 12 of the Rules what emerges is that the Gram Panchayat is required to take a decision on the application made under Rule 9 within a period of 60 days after receipt of any application made under Rule 9 and communicate its decision in writing to the applicant either approving the plan or refusing to approve the plan. If within the period prescribed by Rule 11, i.e., within a period of 60 days, the Gram Panchayat has neither given nor refused approval of a building site, or its permission to execute any work; as the case may be, such approval or permission shall be deemed to have been given. Rule 12 has created this fiction of law. Further, Rule 12 itself provides that if the applicant does not receive any communication from the Gram Panchayat within 60 days after receipt of the application, he may proceed to execute the work, but not so as to contravene any of the provisions of the Gram Panchayat Act or any Rules or bye-laws made thereunder. It is not the case of the Executive Officer of the Gram Panchayat that in execution of the work the petitioner has contravened any of the provisions of the Gram Panchayat Act or any Rules or bye-laws made thereunder. I say so because, despite service of notice the respondent has not chosen to appear in this case and place his case before the Court. In that view of the matter, it should be held that the interference on the part of the respondent-Executive Officer with the construction made by the petitioner by taking advantage of the legal fiction created under Rule 12 of the Rules should be held to be illegal and unjustified. Therefore, the petitioner has made out a prima facie case to grant the relief sought by him in the Writ Petition.

5. In the result and for the foregoing reasons, I allow this Writ Petition declaring the action of the respondent-Executive Officer of the Sattupalli Gram Panchayat in interfering with the construction put up by the petitioner in Survey No. 144 of

Sattupalli village as illegal, arbitrary and violative of Article 14 of the Constitution of India as well as violative of the provisions of the Gram Panchayat Act and the Rules made thereunder. Further, the respondent-Executive Officer is directed not to interfere with the petitioner's possession and enjoyment of the shop constructed by him in Survey No. 144 of the Sattupalli village provided the petitioner has not contravened any of the provisions of the Act or any Rules or bye-laws made thereunder in the matter of execution of the work. No costs.