

HONOURABLE SRI JUSTICE M. GANGA RAO

Writ Petition No.12468 of 2022

ORDER:

The petitioner has filed this Writ Petition seeking a writ of mandamus declaring the action of the official respondent Nos. 3 to 10 in constructing the Community Health Centre in new premises in R.S.No.204/2D of Ac.9-40 cents of Z.Ragampeta Village, Gandepalli Mandal instead of the existing premises of Primary Health Centre in R.S.No.196 of total extent of Ac.8-00 of Jaggampeta Village of Kakinada District as illegal, arbitrary and violative of principles of natural justice.

2. The brief facts of the case are that the petitioner claims to be the Ex-Sarpanch of Gurrappalem village of Jaggampeta Mandal, East Godavari District during the period 2013-18. There is already an existing Primary Health Centre since 1986 in Jaggampeta village and Mandal, Jaggampeta Assembly constituency of East Godavari District and one donor by name Ventrappagada Sri Rama Chandra Murthy donated Ac.0.20 cents out of nearly Ac.8-00 of land in R.S.No.196 of Jaggampeta village. The Primary Health Centre was functioning in the said premises rendering services to the Jaggampeta village people. In the year 2006, the Government had taken a decision to upgrade the Primary Health Centre to Community Health Centre and sanctioned Rs.6 crores. The decision is well supported by all the political parties. The new Government ruled by new political set up changed location of construction of new Community Health Centre to Z.Ragampeta village, which is in nook and corner of the Jaggampeta Assembly Constituency. There are no favourable survey recommendations for establishment of Community Health Centre at Z.Ragampeta village as it is located in nook and corner of the

constituency and it won't serve the people of Jaggampeta Constituency. Proceedings in Rc.No.1434/E4/2019 dated 26.10.2020 of District Coordinator of Hospital Services, East Godavari District were issued without conducting any survey by the official respondents by identifying the needy and accessible people for getting medical services in and around Jaggampeta constituency without cancelling the old proposals being held in the year 2006 for construction of Community Health Centre in the land premises of Ac.8.00 where the Primary Health Centre is located. Being aggrieved by the decision of the 1st respondent Government in locating the Community Health Centre at Z.Ragampeta village, Gandepalli Mandal of East Godavari District in an extent of land Ac.2.00 situated in R.S.No.204/2D of Ac.9.40 cents is illegal and arbitrary.

3. The 8th respondent Executive Engineer of Andhra Pradesh Medical Service Infrastructure Development Corporation, Kakinada filed counter stating that the 1st respondent Government after elaborate survey has selected the land for construction of Community Health Centre in an extent of Ac.9.40 cents situated in R.S.No.204/2D of Z.Ragampeta village of Gundepalli Mandal. The Government issued G.O.Rt.No.33 dated 24.01.2022 to construct Community Health Centre beside the National High Way, Jaggampeta and the present site is selected in the larger interest of public of both the Mandals of Jaggampeta and Gandepalli Mandals, whereas the old Primary Health Centre is in dilapidate condition and is located in remote village and not properly accessible for public transport or taking the patients of the surrounding villages of both the mandals. To reach the old Primary Health Centre, patients are suffering a lot and especially in the night time there is no transport available and taking into consideration all these aspects, the Government has

decided to construct a new building in the new premises in RS.No.204/2D of Z.Ragampeta village of Gandepalli Mandal. The petitioner filed the present writ petition without challenging G.O.Rt.No.33 dated 24.01.2022 and seeks to vacate the interim order and dismiss the writ petition.

4. Having considered the facts and circumstances of the case, considering the submissions made by the counsel and perusal of the record, this Court found that the petitioner filed this writ petition seeking a general declaration instead of challenging G.O.Rt.No.33 dated 24.01.2022 which has been issued for construction of Community Health Centre in the new premises in an extent of Ac.9.40 cents in RS.No.240/2D of Z.Rangampeta village of Gandepalli Mandal, East Godavari District. After due survey and taking into consideration the transport facilities and for serving the people of both the Mandals, the site in an extent of Ac.9.40 cents in R.S.No.240/2D has been selected for construction of Community Health Centre. The following points favours the location of the survey conducted by the respondent authorities:

1. The present constructing site is only 1.20 KM away from the Jaggampeta bus stand.
2. The present constructing site is abutting to National Highway 5.
3. Well Public Transport is available for the patients to reach the hospital.
4. Round the clock private vehicle movement will be available on Highway.
5. The National Highway is passing through the Jaggampeta town. In case of any accidents occur on the highway this newly constructing CYHC will be very much accessible.
6. The District Hospital is 35 KM away from Jaggampeta and the Govt. General Hospital, Kakinada is 36 KM away and are located on national highway and State Highway respectively.
7. If any of the patient needs higher centre treatment both GGH, Kakinada and Dist. Hospital, Rajahmundry can be accessible through State Highway and National Highway.
8. And accessible two Mandal people i.e., Jaggampelta and Gandepalli.

In the counter it is specifically pleaded that the existing Primary Health Centre is in a dilapidated condition. In the larger interest of public only the present site is selected and a decision is taken by the Government and issued G.O.Rt.No.33 dated 24.01.2022.

5. Sri R.K.Acharyulu, counsel appearing for the petitioner would contend that in the year 2006 itself the then Government proposed for construction of 30 bedded Community Health Centre at Jaggampet village and mandal headquarters as it is the centre of the assembly constituency. In view of change of the Government and in the present regime, the Government has taken a decision to shift the place of construction of Community Health Centre to Z.Rajampeta village of Gandepalli Mandal and contends that the Z.Rajampeta village won't serve the people in the constituency as it is nook and corner of the assembly constituency and it is far away from many village of Jaggampeta village. The decision to construct Community Health Centre at Z.Rajampeta village is politically motivated and the place is arbitrarily selected. The selection of site and construction of Community Health Centre at Z.Rajampet village is illegal and without any proper survey. The said of contention of the counsel for the petitioner is unsustainable in view of the averments of the counter filed by the 8th respondent which are not in dispute. The averments made in the counter are not disputed by way of any reply.

6. Sri Ponnayolu Sudhakar Reddy, learned Additional Advocate General would contend that the petitioner has not challenged G.O.Rt.No.33 dated 24.01.2022 issued by the Government for shifting the location of existing 30 bedded Community Health Centre, Jaggampeta to new location beside National Highway and without challenging the same, the present writ petition is filed and the same is

liable to be dismissed and it is the executive decision of the Government taking into consideration all the issues, that too, in the public interest only. It is for the Government to locate the Community Health Centre at Z.Ragampeta village taking all the issues into consideration. The executive power is being extremely broad based and based on diverse consideration and the same cannot be challenged under Article 226 of the Constitution of India. In support of his contention, he placed reliance on the decision of the Hon'ble Supreme court in ***B.N.Shankarappa Vs. Uthanur Srinivcas and others¹***, regarding selection of Mandal Headquarters wherein it was observing following the decision in ***J.R.Raghupathy Vs. State of Andhra Pradesh and others²***, that the ultimate decision as to the place or location of Mandal Headquarters is left to the Government to decide conferment of discretion upon the concerned authority in that behalf must necessarily leave the choice to the discretion of the said authority and it would not be proper for the courts to interfere with the discretion so exercised. This Court in the case of ***Sura Chinna Veera Reddy Vs. The Government of Andhra Pradesh³*** wherein it is held that indeed it is without doubt that the Government as the executive authority has the power to direct shifting of the Primary Health Centre by issuing the Government Order under the provisions of Article 162 of the Constitution of India, inherently vests such authority in the Government.

5. In view of the above discussion, there is no legal force in the contention of the petitioner and the Government has got every discretion to establish the Community Health Centre at a particular place, which cannot be interfered with by this Court. In the absence

¹ (1992) 2 SCC 61

² 1988 (4) SCC 364

³ 1994 SCC OnLine AP 106

of any violation of statutory provisions and breach of guidelines, the decision of the Government to change the location of Community Health Centre is not suffered by any arbitrariness. Accordingly, the writ petition is devoid of merits and is liable to be dismissed and is accordingly dismissed. The interim order granted by this Court on 28.04.2022 stands vacated. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

Date: .08.2022

CSR

M. GANGA RAO, J

HON'BLE SRI JUSTICE M. GANGA RAO

WRIT PETITION No.12468 OF 2022

DATE: - 08-2022

CSR