

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 30TH DAY OF JUNE, 2021

BEFORE

THE HON'BLE MS. JUSTICE JYOTI MULIMANI

WRIT PETITION NO.888 OF 2014 (LB-RES)

BETWEEN:

SMT. ELIZABETH,
W/O. SRI. K.P. KURIAKOSE,
AGED 61 YEARS,
R/A 'TUMBIA HOUSE',
AITHUR VILLAGE,
PUTTUR TALUK,
DAKSHINA KANNADA DISTRICT - 574 230.

... PETITIONER

(BY SRI.R.A.DEVANAND, ADVOCATE)

AND:

1. SRI. JOSE GEORGE,
S/O. GEORGE M.J.,
AGED 56 YEARS,
R/A MARDALA,
PADMEJALU,
AITHUR VILLAGE,
PUTTUR TALUK,
DAKSHINA KANNADA DISTRICT - 574 230.
2. SRI. P.V. ANDROSE,
S/O P.V. VERGESE,
AGED 52 YEARS,
R/A 'TUMBIA HOUSE',
AITHUR VILLAGE,

PUTTUR TALUK,
DAKSHINA KANNADA DISTRICT - 574 230.

3. P.V. ABRAHAM,
S/O P.V. VERGESE,
AGED 36 YEARS,
R/A 'TUMBIA HOUSE',
AITHUR VILLAGE,
PUTTUR TALUK,
DAKSHINA KANNADA DISTRICT - 574 230.
4. AITHUR GRAMA PANCHAYATH,
AITHUR SUNKADAKATTE POST,
PUTTUR TALUK,
DAKSHINA KANNADA DISTRICT - 574 230.

BY IT'S PANCHAYATH DEVELOPMENT
OFFICER.

... RESPONDENTS

(BY SRI.K.CHANDRANATH ARIGA, ADVOCATE
FOR R1 TO R3;
R4-SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES
226 AND 227 OF THE CONSTITUTION OF INDIA, SEEKING
CERTAIN RELIEFS.

THIS WRIT PETITION COMING ON FOR PRELIMINARY
HEARING IN 'B' GROUP, THIS DAY, THE COURT MADE THE
FOLLOWING:

ORDER

Sri.R.A.Devanand, learned counsel for petitioner and
Sri.K.Chandranath Ariga, learned counsel for respondent
Nos.1 to 3, have appeared in-person.

2. It is stated that petitioner is a permanent resident of Aithur Village, Kadaba Hobli of Puttur Taluk, Dakshina Kannada District and she is an Agriculturist by profession.

It is said that the petitioner has been granted by the State 04 Acres and 70 Cents of agricultural land comprising in survey No.176 (P15) of Aithur Village, Kadaba Hobli of Puttur Taluk, Dakshina Kannada District. The said property has been granted to the petitioner by the Tahasildar Puttur Taluk, Dakshina Kannada District in a grant proceedings No.AIDS/NCR.SR.327/91-92 dated 26.12.1996 by issuing Saguvali chit. It is stated that at the time of grant, there was no pathway, public road or any other kind of track prepared for use by vehicles, bullock-carts etc., running through the granted land.

After the grant, petitioner took up intensive cultivation by raising plantation crops like rubber, coconut, arecanut, pepper, banana and cashew and petitioner is deriving income from it. It is averred that to the West of

the schedule property, there exists a tar road which runs from Mardala to Kemmai Bajakerea and the width of the road is 18 feet and it has been in existence from several years. There is a connecting mud road branching out from the said main tar road to the properties of respondents. The said mud road has been formed by the Village Panchayat and the same has been used by the respondents and other Villagers to reach to their house.

The existence of any kind of road in the schedule property which is granted to the petitioner by the State has not been shown in the Village map.

As things stood thus, respondents 1 to 4 appears to have lodged a complaint against the petitioner alleging that the petitioner and her husband are obstructing from making use of the road running in the schedule property in order to reach their house. Acting on the said complaint, the Station House Office of Kadaba Police summoned the petitioner and after hearing the petitioner, it was decided to hold spot inspection and after conducting spot

inspection in the presence of petitioner and respondents 1 to 3, it was noticed and confirmed that there is no existence of public road or a pathway and it was also warned to the respondents not to give a false complaint and closed the file.

When this was the state of affairs, respondents 1 to 3 gave a complaint to the Aithru Grama Panchayat and the Panchayat held a spot inspection in the presence of petitioner and respondents 1 to 3 and noticed that there was neither a public road nor a pathway. It is stated that the Gram Panchayat despite spot inspection, on 11.06.2013 at its meeting took of the subject matter of the complaint presented by respondents 1 to 3 and decided to direct the petitioner by way of an order not to obstruct nor close public road passing through the schedule property.

Under these circumstances, left with no other alternative or efficacious remedy, petitioner has invoked

the writ jurisdiction of this Court under Articles 226 and 227 of the Constitution of India.

3. Learned Counsel for petitioner has urged several grounds. Heard the contentions urged on behalf of petitioner and respondents. Perused the Annexures with care.

While addressing the arguments, Sri.R.A.Devanand, learned counsel for petitioner urged several contentions.

In reply, Sri.K.Chandranath Ariga, submitted that there is an alternative remedy by way of statutory appeal.

Learned counsel for respondent submitted that the writ petition is filed to quash the proceedings of the Grama Panchayat i.e., the resolution of Gram Panchayat, wherein it was resolved to inform the petitioner not to encroach upon the public road.

He also submitted that an appeal lies to the Executive Officer under Section 269 of the Karnataka Gram

Swaraj and Panchayat Raj Act, 1993 (for short 'the Act'). Hence, the writ petition is not maintainable. Counsel drew the attention to Annexure-'H'.

I have carefully perused the pleadings and in particular, Annexure-'H'. It is a resolution passed by the Gram Panchayat.

It is perhaps well to observe that it has always been a principle that Certiorari will go only where there is no other equally effective and convenient remedy.

It is not in dispute that the petitioner is challenging the resolution passed by the Gram Panchayat.

Section 269 of the Act provides that any person aggrieved by any original order of the Gram Panchayat may prefer an appeal to the Executive Officer within 30 days from the date of such order.

The petitioner is challenging the order of the Gram Panchayat and she can as well pursue this remedy instead of seeking judicial review.

In ***R v Hallstrom and another, ex parte. W,*** [1985] 3 All England Law Reports 775 at 789-790, it is said as under:-

'Whether the alternative statutory remedy will resolve the question at issue fully and directly, whether the statutory procedure would be quicker , or slower, than procedure by way of judicial review, whether the matter depends on some particular or technical knowledge which is more readily available to the alternative appellate body, these are amongst the matters which a court should take into account when deciding whether to grant relief by way of judicial review when an alternative remedy is available'.

Although judicial review can provide an effective, convenient and relatively swift remedy, it should be granted in exceptional cases. But if an alternative remedy

is available, an applicant should normally be left to pursue that remedy. In my considered view, Judicial review process should not be allowed to supplant the normal statutory appeal procedure. In my opinion, prima facie the petitioner should be left to his statutory appeal in the course of which the authority concerned or the Officer can consider the general merits of the case. Therefore, the petitioner is at a liberty to pursue the alternative remedy.

Finally, I would like to quote a passage from Lord Templeman's speech:

'Judicial review is available where a decision-making authority exceeds its powers, commits an error of law , commits a breach of natural justice, reaches a decision which no reasonable tribunal could have reached or abuses its powers'.

4. Accordingly, the writ petition is **disposed of**.

**Sd/-
JUDGE**

VBS