

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

WEDNESDAY, THE 25TH DAY OF FEBRUARY 2015/6TH PHALGUNA, 1936

WA.No. 383 of 2015 () IN WP(C).20345/2008

AGAINST THE ORDER/JUDGMENT IN WP(C) 20345/2008 of HIGH COURT OF
KERALA DATED 07-10-2014

APPELLANT(S) :

DEVI NAGAR RESIDENTS ASSOCIATION (REG.NO.5255/06) ,
KADAPPATHALA DEVI TEMPLE ROAD, NEAR GOLF CLUB,
KOWDIAR P.O., THIRUVANANTHAPURAM.
REPRESENTED BY ITS SECRETARY, PRABHAKARAN, S/O.DASAN,
AGED 49 YEARS, RESIDING AT NEST, T.C.NO.5/2282(1) ,
DEVI NAGAR, KOWDIAR P.O.,
THIRUVANANTHAPURAM.

BY ADV. SRI.AYYAPPAN SANKAR

RESPONDENT(S) :

1. STATE OF KERALA, REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.
2. SECRETARY, REVENUE DEPARTMENT,
GOVERNMENT OF KERALA,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.
3. SECRETARY, PUBLIC WORKS DEPARTMENT,
GOVERNMENT OF KERALA, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.
4. DISTRICT COLLECTOR, COLLECTORATE, CIVIL STATION,
KUDAPPANAKKUNNU, THIRUVANANTHAPURAM.
5. SECRETARY, TRIVANDRUM GOLF CLUB, KOWDIAR,
THIRUVANANTHAPURAM.

BY SR.GOVERNMENT PLEADER SRI.P.I.DAVIS
BY SRI.SAJU.S.A

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
25-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ASHOK BHUSHAN, Ag.CJ & A.M.SHAFFIQUE, J

W.A.No. 383 of 2015

Dated this the 25th February, 2015

JUDGMENT

Ashok Bhushan, Ag.CJ.

Heard learned counsel for the appellant and the learned Government Pleader.

2. This Writ Appeal has been filed against the judgment dated 7.10.2014 in W.P(C).No.20345 of 2008. The appellant is a registered association of residents of Kadappathala Colony situated on the eastern side of the Trivandrum Golf Club compound. The petitioner had come up in the Writ Petition seeking for the following directions:

“A. Issue a writ of mandamus or other appropriate writs, orders or directions directing respondents 1 to 4 to take effective expeditious steps for implementing Exhibit P2 High Level Committee Report with respect to the public pathway stipulated therein.

- B. Issue a writ of mandamus or other appropriate writs, orders or directions directing respondents 1 to 4 to consider Exhibits P6, P7, P9 and P10 representations and take appropriate expeditious steps for implementing the urgent measures stipulated in Exhibit P2 High Level Committee Report of the Legislative Assembly with respect to the public pathway lying along the boundary of the property occupied by the Trivandrum Golf Club.*
- C. Issue a writ of certiorari or other appropriate writs, orders or directions quashing the impugned decision of 4th respondent against implementation of Exhibit P2 High Level Committee Report as reflected in Exhibit P4 Communication, being the culmination of arbitrary and unreasonable exercise of power.”*

3. The petitioner's case in the Writ Petition was that there was a public pathway used by public in general on the eastern side of the Trivandrum Golf Club. It was further submitted that the pathway was on the

Government land and there was already a recommendation of a committee appointed by the Government for restoration of the pathway.

4. A counter affidavit had been filed in the Writ Petition, wherein the stand taken was that there being right of passage available, there is no requirement of any other pathway. The learned Single Judge, after noticing the pleas made before the Court, took the view that the issue regarding public pathway cannot be decided invoking power under Article 226 of the Constitution. It was further observed that any report of the committee can be relied on by the petitioner in appropriate proceedings claiming restoration of the public pathway.

5. Learned counsel for the appellant submits that there being already recommendation, a direction ought to have been issued to the second respondent for restoration of pathway. He further submits that the pathway exists on the Government land.

6. Be that as it may, the claim of the petitioner was refuted by filing counter affidavit, where apart from other pleadings it was pleaded that there is already way, which is being used by the public. The issues of fact were required to be adjudicated which cannot be done in a proceeding under Article 226 of the Constitution for restoration of public pathway. The remedy available to the petitioner was to institute a suit before the competent Civil Court or in a proceeding under law.

We do not find any error in the judgment of the learned Single Judge refusing to entertain the Writ Petition. The Writ Appeal is dismissed.

**ASHOK BHUSHAN
ACTING CHIEF JUSTICE**

**A.M.SHAFFIQUE
JUDGE**

vgs25/2/15