

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.HARILAL

TUESDAY, THE 15TH DAY OF DECEMBER 2015/24TH AGRAHAYANA, 1937

WP(C) .No. 21400 of 2007 (V)

PETITIONER(S) :

MOLLY THOMAS,
W/O.LATE P.I.THOMAS, PUTHANPURACKAL,
KALLARA NORTH P.O., KOTTAYAM.

BY ADV. SRI.M.P.MADHAVANKUTTY

RESPONDENT(S) :

KALLARA GRAMA PANCHAYATH,
REPRESENTED BY ITS SECRETARY,
KALLARA GRAMA PANCHAYATH, KALLARA (VAIKOM)
KOTTAYAM- 686 611.

R1 BY ADV. SRI.V.K.SUNIL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 15-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C) .No. 21400 of 2007 (V)

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1:- TRUE COPY OF LETTER DT.27.3.2007 SENT BY PETITIONER
TO THE RESPONDENT

Ext.P2:- TRUE COPY OF DECISION TAKEN BY THE RESPONDENT IN THE
MEETING DT.28.3.2007

Ext.P3:- TRUE COPY OF DECISION TAKEN BY THE RESPONDENT IN THE
MEETING DT.19.5.2007

RESPONDENT'S EXHIBITS: NIL

okb.

//true copy//

P.A. to Judge.

K.HARILAL, J.

W.P.(C) No.21400 of 2007

Dated this the 15th day of December, 2015.

JUDGMENT

The petitioner is aggrieved by Ext.P3 resolution passed by the respondent Panchayat and this writ petition is filed with a prayer to quash Ext.P3 as illegal and arbitrary and also to issue a writ of mandamus directing the respondent to remove all or any obstruction on the pathway which the petitioner and her family had been using continuously since the last so many years.

2. According to the petitioner, the predecessors of the husband of the petitioner were the absolute owners in possession of the land allotted to construct the Kallara public market. The above land was given by the predecessors of the husband of the petitioner by way of gift to the respondent Panchayat for its growth and development. But, before doing so, the predecessors of the husband of the petitioner had set apart a pathway having a width of 4 metres for the

ingress and egress of their family house and the pathway lies in the east-west direction to reach the road, Kallara-Kottayam PWD Road. The above pathway is in use since time immemorial, by the petitioner's family as well as other members of the neighbouring locality. The present public market is situated on the said property, which was gifted by the predecessors of the husband of the petitioner. The present public market is situated on the southern side of the above pathway, which the predecessors of the petitioner's husband set apart for the ingress and egress of the family house of the petitioner's husband. When the petitioner came to know that there was a move to close down the pathway, by constructing a compound wall, she approached the respondent expressing the clarification and the Panchayat, after considering the apprehension expressed by the petitioner, has resolved Ext.P2 resolution stating that they have not obstructed the pathway and they can use the pathway as has been used since the last so many years and if the Panchayat intends to make any change, that will be in

consultation with the petitioner only. According to the petitioner, to utter dismay, now she came to understand that on 19.5.2007 the respondent passed Ext.P3 resolution resolving to complete the construction of the compound wall in a way causing obstruction to the pathway which is being used by the petitioner and other neighbours in the locality for the ingress and egress to their properties. According to the petitioner, Ext.P3 resolution passed by the Panchayat is arbitrary, illegal and vitiated by the principles of natural justice.

3. Heard the learned counsel for the petitioner. The learned counsel advanced arguments highlighting the arbitrariness, denial of the principles of natural justice and the violation of the principles of estoppel.

4. The question to be considered is whether Ext.P3 resolution is vitiated by the arbitrariness and the denial of natural justice and equity.

5. Going by Exts.P2 & P3, it stands admitted that the said property was gifted earlier by the predecessors of the husband of the petitioner for the

development of the Panchayat and a public market was established in the said property. Indisputably, the general public of that Panchayat is indebted to the said family for the magnanimity shown by their predecessors. It is the case of the petitioner that the said gift was made leaving some portion of the property having a width of 4 metres as pathway, for the ingress and egress to the remaining property and the said fact is also not denied either in Ext.P2 or in Ext.P3. That apart, it also stands admitted that more than hundred families also have been using the said pathway for the egress and ingress to their houses. In my view, so long as the magnanimity shown by the predecessors of the said family by the gift made by them stands admitted by the Panchayat, any move from the part of the Panchayat in such a way obstructing the pathway set apart for the beneficial enjoyment of the remaining portion of the donor's property, would amount to denial of natural justice, principles of equity and fairness and the same is a compelling circumstance warranting interference of this Court,

under Article 226 of the Constitution of India, particularly when facts are not disputed by the respondent Panchayat.

6. However, the respondent ought to have taken steps to protect the said property, if necessary, in a way, without disturbing the pathway, which was provided for the beneficial enjoyment of the remaining property. In the above view of the matter, Ext.P3 is arbitrary, unreasonable and the same is liable to be set aside and I do so. The respondent is directed to remove all or any obstruction on the pathway which the petitioner and her family members had been using continuously since the last so many years. The respondent Panchayat is further directed not to make any obstruction in that pathway in future.

This writ petition is allowed.

K. HARILAL, JUDGE

okb.