

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

W.P.No.35657 of 2015

ORDER:

Heard Sri Srinivasa Yadav, learned counsel for the petitioner and the learned Government Pleader for Irrigation and Common Area Development, appearing for the respondents.

2. Petitioner has filed this Writ Petition to declare the action of 2nd respondent in obstructing the pathway earmarked on road side for ingress and egress to his properties and closing the valuable right of easement of the petitioner vide proceedings dt.17-12-2014 of 4th respondent.

3. Petitioner claims to be the owner, pattedar and possessor of land in Sy. No.520/1 admeasuring Ac.1.44 cts situated in Kaikaluru village and Mandal having pattedar pass book and title deeds vide document No.536 issued by the Tahsildar, Kaikalur Mandal. He also claims to have a house bearing No.9-121/A admeasuring 1000 sq. yds for which he is paying house tax. He claims that the said house is adjacent to the Kaikaluru-Korukallu road which is a 40' wide road. He claims that the said property is his ancestral property and he is in peaceful possession and enjoyment of the said house and cultivating the land for the last five decades.

He alleges that the officials of the irrigation department who has nothing to do with his land or house were trying to remove fencing erected by the petitioner and were trying to block the way since they wanted to extract amounts in illegal manner under threat.

4. Petitioner had filed a representation dt.15-09-2014 before 4th respondent objecting to the obstruction of access to his land and by order dt.12-11-2014 in W.P.No.34091 of 2014, this Court directed 4th respondent to consider the representation and thereafter, 4th respondent had passed the impugned order.

5. In the impugned order, 4th respondent had stated that no house exists in the land claimed by the petitioner and that if the petitioner approaches the Gram Panchayat of Kaikalur, the said Gram Panchayat itself would provide a passage to the petitioner's property. It was also stated that land belonging to the Irrigation Department exists to the east of the land of the petitioner in which houses are required to be built for irrigation department employees, and that if the petitioner tries to occupy the land belongs to the irrigation department and obstructs the construction of houses for the irrigation department staff therein, legal proceedings would be taken against the petitioner.

6. Learned counsel for the petitioner contends

that the action of the respondents in obstructing access to his house violates the fundamental rights of the petitioner guaranteed under Articles 14, 19, 21 and 300-A of the Constitution of India. He also placed reliance on the judgment of the Supreme Court in **Real Estate Agencies Vs. State of Goa and others**^[1].

7. Learned Government Pleader appearing for the respondents contends that the order dt.17-12-2014 of 4th respondent gives adequate reasons and that in any event, the contentions raised by the petitioner are disputed questions of fact which cannot be conveniently decided in writ proceedings under Article 226 of the Constitution of India.

8. I have noted the submissions of both sides.

9. In **Real Estate Agencies** (supra), the Supreme Court no doubt observed that adjudicatory jurisdiction under Article 226 of the Constitution of India would permit adjudicating even disputed questions of fact although normally the High Court under Article 226 of the Constitution of India would not entertain such a dispute where contested questions and conflicting claims of the parties need to be decided. In that case, the petitioner therein had claimed title to the land in question on the basis of the deed of indenture dt.16-11-1977, the order of the Bombay High Court in Suit

No.1/B of 1981 and LPA No.26 of 1983 as well as the proceedings of acquisition in respect of an area of about 625 sq. m out of the open space in question. The respondent State did not claim any title to the land but had contended that by virtue of the judgment of the Supreme Court in **Chet Ram V Ashist Vs. MCD**^[2], the petitioner had ceased to hold the normal attributes of ownership of immovable property in respect of the land in question and its position was more akin to that of a trustee holding the land for the benefit of the public at large. The Housing Society which was the 5th defendant therein claimed an easementary right of enjoyment of the open space. The 2nd respondent-Municipal Corporation, Panaji, claimed that the land has vested in it without indicating any basis for such a claim. In those circumstances, the Supreme Court observed that it was incumbent on the High Court to undertake deeper probe in the matter in order to find out whether the claim of the Corporation had any substance or had been so raised merely to relegate the petitioner to a more 'lengthy, dilatory and expensive process' that is inherent in a civil suit. The Supreme Court further observed that the High Court has to satisfy itself that there was actually a serious dispute between parties on the question of ownership or title and only in those circumstances, the High Court would be justified to relegate the petitioner to the civil court to seek his remedies by way of a suit.

10. In the present case, the basis of the claim of the petitioner is the existence of a house in the subject land in support of which he has filed certain documents. The very existence of the house is disputed by 4th respondent. The 4th respondent had mentioned that to the east of the land claimed by the petitioner, there is a proposal by the Irrigation Department to dig pits for erecting poles and for constructing quarters to the irrigation department personnel and that the petitioner is trying to occupy the said land of the irrigation department and obstruct this proposed activity of the irrigation department. The rights of the easement being claimed by the petitioner would have to be established on the basis of an oral and documentary evidence which is to be adduced and this Court under Article 226 of the Constitution of India is not the appropriate forum where this exercise can be done.

11. No material is placed by the petitioner that he was having access to his property from the land belonging to the respondents. Therefore, the above decision of the Supreme Court where substantial material was placed before the Court in support of the plea of the petitioner therein, cannot come to the aid of the petitioner.

12. In this view of the matter, the Writ Petition is dismissed granting liberty to the petitioner to approach the

competent civil court for appropriate relief. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 26-11-2015
kvr

[\[1\]](#) (2012) 12 S.C.C. 170

[\[2\]](#) (1995) 1 S.C.C. 47