
(2009) 05 KL CK 0125
In the High Court Of Kerala
Case No : WP (C) . No. 4866 of 2007 (D)

Chithara Grama Panchayat	Vs	APPELLANT
State of Kerala and Others		RESPONDENT

Date of Decision : 22-05-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 2A
Constitution of India, 1950 — Article 227

Citation : (2009) 05 KL CK 0125

Hon'ble Judges : S.S. Satheesachandran, J

Bench : Single Bench

Advocate : V.N. Achutha Kurup, for the Appellant; B. Mohanlal, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Satheesachandran, J.—This writ petition is filed by the local authority, Chithara Grama Panchayat under Article 227 of the Constitution of India, seeking the following reliefs:

- i. set aside Ext.P4 order as it is illegal and goes against the finding in Ext.P3 judgment;
- ii. declare that the steps taken by the Panchayat and P.W.D. Authorities to open the drainage in question are legal and in public interest to prevent stagnation of water on the public road causing traffic problems and health hazards;
- iii. issue such other appropriate writs and
- iv. award the petitioner, its cost.

The brief facts involved in the petition, for the reliefs claimed thereunder by the petitioner, can be summed up thus: The 2nd respondent filed a suit for perpetual injunction against respondents 3 to 5 before the Munsiff Court, Kottarakkara, apprehending construction of a drainage through her property, described as the

plaint schedule in the suit. In the suit, she filed an application for interim injunction, and the court, allowing that application restrained the defendants (respondents 3 to 5) from trespassing upon the plaint schedule property and committing any waste. Violating the order of injunction, the respondents and some public officials trespassed upon the property and constructed a drainage, according to the plaintiff (2nd respondent), and she moved an application under Order XXXIX Rule 2A of the CPC for proceeding against them. In the enquiry on that application, an Assistant Engineer, P.W.D. was examined as a witness and in the course of his evidence, to a query put by the Munsiff, he conceded that constructions in the property could be removed if an order is issued by the court. The learned Munsiff, thereupon issued Ext.P2 O.M., directing the Assistant Engineer, a witness examined in the above enquiry who was not a party to the suit, to remove the constructions made in the plaint schedule property in violation of the order of injunction. The present petitioner, Panchayat, challenged Ext.P2 Order before this Court, by way of a writ petition, and the judgment passed in that petition is Ext.P3. This Court, after examining the O.M. issued, found it was patently illegal and liable to be quashed. Quashing Ext.P2 O.M., this Court observed that annulling that O.M. will not fetter the trial court in passing appropriate orders on the application moved by the plaintiff for prosecution of the defendants, who are proceeded for violating the order of injunction. It was also made clear that the trial court cannot pass an order in that application against a person, who was not a party to the suit or in the order of injunction. Pursuant to passing of Ext.P3 judgment by this Court, the learned Munsiff, after completing the enquiry on the prosecution petition, arrived at the conclusion that the defendants/respondents 3 to 5 violated the order of injunction. Ext.P4 order was passed directing the defendants to restore the plaint schedule property to its original position, failing which they were ordered to be detained in civil prison for a term of one month. Impeaching the legality and correctness of that order, petitioner, who is not a party to the proceedings has filed this petition under Article 227 of the Constitution of India.

2. I heard the learned Counsel for the petitioner and also the learned Counsel for the 2nd respondent/plaintiff in the suit. While disposing of the writ petition, this Court had entered a finding that whatever construction made was not by the defendants, but by a public official, and as such, the finding entered by the learned Munsiff against that defendants under Ext.P4 order cannot be given much significance or value, is the submission of the learned Counsel for the petitioner. It is also urged that the constructions were made at the instance of the Panchayat pursuant to notice issued by the Medical Officer to avoid stagnation of water, which, then was likely to lead to epidemics like dengue fever etc., and, so much so, atleast that part of the Order passed by the learned Munsiff, to remove the constructions made should be interfered with, even if the punishment imposed against defendants is found sustainable for any reason whatsoever. The learned Counsel appearing for the 2nd respondent contended that no interference with the order passed by the learned Munsiff is called for in

the facts and circumstances of the case, where, on the materials produced, an irresistible conclusion was reached by the learned Munsiff that the order passed by the court was flagrantly violated. Finding entered by the learned Munsiff that even if the construction was made by a public official, it was at the instance of the defendants and they were actually the abettors in such violation, is amply demonstrated by the materials tendered in the enquiry on the application and it is not liable to be interfered in a writ petition in exercise of Article 227 of the Constitution of India, is the submission of the learned Counsel for the 2nd respondent. Having regard to the submissions made by the learned Counsel on both sides and taking note of the facts and circumstances involved, I find the cause espoused by the Panchayat, on behalf of the defendants in the suit, by way of a writ petition, while it was not a party to the suit or in the application for injunction, cannot at all be entertained. The learned Counsel for the petitioner has fairly conceded that the defendants, who suffered order of the punishment under Ext.P4, on the findings entered by the learned Munsiff that they had violated the order of injunction, had already preferred appeals before the competent forum, challenging the legality and propriety of that order. If at all the Panchayat was in any way affected by Ext.P4 order, whatever be the reason or grounds thereof, it too should have preferred an appeal after obtaining leave to do so before the concerned appellate forum, but, that was not done. Petitioner in the writ petition was not a party to the suit or in the application for injunction. Needless to point out, the scope of enquiry or interference under Article 227 of the Constitution of India is very limited and that extraordinary jurisdiction can be resorted to only when the proved circumstances satisfy this Court that the exercise thereunder is called for to avoid failure of justice. I am not satisfied that this is a fit case where the merits of Ext.P4 order can be questioned under Article 227 of the Constitution of India, that too by someone who is not a party to the proceedings thereunder. The learned Counsel for the petitioner submitted that the observations made by this Court in disposing the writ petition may have its effect in the appeals preferred by the defendants, and so much so, it may be made clear that it should not influence the decision in the appeal preferred by defendants, which is stated to be pending. Having regard to the apprehension expressed by the learned Counsel for the petitioner, I make it clear that the appellate court shall dispose of the appeals untrammelled by any of the observations made in this judgment, if any appeal is pending against Ext.P4 Order. Subject to the above, the petition is dismissed.