

(1987) 02 KAR CK 0001
In the Karnataka High Court
Case No : W.P. No. 18283 of 1983

Mallikarjuna H.V.

APPELLANT

Vs

Rajaram and Others

RESPONDENT

Date of Decision : 04-02-1987

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 — Section 56(1)(B)(Ii)

Citation : (1987) 1 KarLJ 97

Hon'ble Judges : M. P. Chandrakantharaj Urs, J

Judgement

Chandrakantharaj Urs, J.-Petitioner is a resident of Michael Palya, in Binnamangala Manavartha Kaval of Indiranagar, Bangalore-38. The said Michael Palya was situated within the jurisdiction of the Byappanahalli-village Group Panchayat (respondent-3, since substituted by Administrator after the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983, came into force) (hereinafter referred to as the "Act"). It is alleged that the 1st respondent Sri Rajaram has erected a house on the public Road obstructing through passage in respect of which complaints were made to the Assistant Commissioner, Bangalore Sub-Division, Bangalore-9, by the Secretary of Byappanahalli village Group Panchayat, Bangalore South Taluk, Bangalore at beginning of the year 1981. That was treated by the Assistant Commissioner as an Appeal filed under Section 53 of the village Panchayat & Local Boards Act (since repealed by the "Act").

After hearing the arguments on both sides, the Assistant Commissioner came to the conclusion that the construction put up by the 1st respondent Sri Rajaram is illegal and without jurisdiction. Aggrieved by that order directing the removal of the said construction, Rajaram 1st respondent went up in Revision before the Karnataka Appellate Tribunal, Bangalore, in Revision Petition No. 27/1981. That Revision came to be allowed by the Tribunal, on the ground that the Assistant Commissioner did not have power to entertain the appeal under Section 53 of

the Village Panchayat and Local Boards Act, 1959 Therefore, the present writ petition is filed under Articles 226 and 227 of the Constitution, inter alia, contending that the Assistant Commissioner had otherwise the power to direct certain mandatory duties for the performance by the Panchayat and therefore the power exercised by him is legal and with jurisdiction.

That question has become academic in view of the repealing of the Village Panchayat and Local Boards Act by the Act. Now it is stated that Byappanahalli-Village Group Panchayat forms a Mandal Panchayat within whose jurisdiction the alleged illegal action has occurred by the act of the 1st respondent Rajaram Under sub-clause (ii) of clause (b) of Section 56(1) of the "Act" duty is cast upon the Mandal Panchayat to remove obstructions and projections in public streets or places and in sites which are open to the enjoyment of the public whether such sites are vested in the Mandal Panchayat or belong to the Government but not being private property. Therefore, the petitioner should move, by procedure known to law, the Mandal Panchayat to initiate appropriate action against the 1st respondent to remove the obstruction complained of. It is only on failure of Mandal Panchayat to take action, the petitioner will get a cause of action to move this Court requiring the-Mandal Panchayat to perform its duty or move the Zilla Parishad under Section 269 to direct the Mandal Panchayat to do so.

It is only thereafter this Court would exercise the rights of parties if it is brought to this Court.

This Court while exercising the jurisdiction under Article 226 of the Constitution will not decide the questions which have become academic.

In the result, for the reasons stated above, this writ petition is disposed of subject to the observations made in regard to what the petitioner may do.

Writ petition disposed of with observations.