

WA.1143/2024

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2024:KER:85308

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. NITIN JAMDAR

&

THE HONOURABLE MR. JUSTICE S.MANU

TUESDAY, THE 5TH DAY OF NOVEMBER 2024 / 14TH KARTHIKA, 1946

WA NO. 1143 OF 2024

[AGAINST THE ORDER/JUDGMENT DATED 25-07-2024 IN WP(C)
NO.25929 OF 2024 OF HIGH COURT OF KERALA.]

APPELLANT/PETITIONER:

MANOHARI R., AGED 73 YEARS,
W/O. LATE RAMRAJ RAMRAJYA,
TELGU STREET, CHITTUR (PO),
PALAKKAD PIN-678101.
PARTNER, M/S. CREATIVE CABLE TV NETWORK
SOHAR COMPLEX, MAIN ROAD,
CHITTUR, PIN - 678101.

BY ADVS. SRI. BINOY VASUDEVAN,
SMT. K.V.RAJESWARI,
SMT. RINCY KHADER,
SRI. SREEJITH SREENATH.

RESPONDENTS/RESPONDENTS:

- 1 THE DEPUTY TAHSILDAR (REVENUE RECOVERY),
TALUK OFFICE, MINI CIVIL STATION,
CHITTUR (PO) PALAKKAD, PIN - 678101.
- 2 THE VILLAGE OFFICER,
CHITTUR VILLAGE CHITTUR (PO),
PALAKKAD, PIN - 678101.
- 3 THE KERALA STATE ELECTRICITY BOARD LIMITED,
REPRESENTED BY ITS CHAIRMAN,
HAVING ITS REGISTERED OFFICE AT VYDYUDI BHAVANAM
PATTOM (PO) THIRUVANANTHAPURAM, PIN - 695004.



- 4 THE EXECUTIVE ENGINEER,
KERALA STATE ELECTRICITY BOARD LIMITED,
OFFICE OF THE EXECUTIVE ENGINEER,
ELECTRICAL DIVISION, CHITTUR (PO),
PALAKKAD DISTRICT, PIN - 678101

- 5 M/S. ASIANET SATELLITE COMMUNICATIONS PRIVATE
LIMITED,
REPRESENTED BY ITS SENIOR GENERAL MANAGER,
HAVING REGISTERED OFFICE AT THIRD FLOOR,
CENTRE PLAZA, VAZHUTHACAUD,
THIRUVANANTHAPURAM, PIN - 695014.

BY ADVS.SRI. SAJI VARGHESE T.G.
SMT. MARIAM MATHAI (M-92)
BY ADV. SRI. B. PRAMOD, SC,
BY SENIOR GOVERNMENT PLEADER SRI.V.TEKCHAND.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON
05.11.2024, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



JUDGMENT

Nitin Jamdar, C.J.

Being aggrieved by summary dismissal of the writ petition as not maintainable, the Petitioner has filed this appeal under Section 5 of the Kerala High Court Act, 1958.

2. The Appellant/Original Petitioner had challenged Exhibit-P5 notice dated 18 June 2024 issued under Section 7 of the Kerala Revenue Recovery Act, 1968 by filing W.P.(C) No.25929 of 2024. The notice was issued by the Deputy Tahsildar (Revenue Recovery) – Respondent No.1, wherein the Village Officer, Chittur Village, Chittur Taluk was authorised to seize movable property of the Appellant for the defaulted amount of ₹1,10,096/- with interest due to the Kerala State Electricity Board (KSEB).

3. In the petition, the Petitioner had raised an issue regarding the correctness of the methodology of recovering the amount due to KSEB as arrears of tax. According to the Petitioner, unless there is an adjudication of the issue, the said amount cannot be unilaterally recovered as arrears of tax. The Petitioner has also contended that she had not entered into any contract with Respondent Nos.3 and 4 and it was only a firm running Cable TV Network as a franchisee of Respondent No.5 and the only contract that the Petitioner had was with the Respondent No.5.

4. The impugned judgment, which is a short order, reads thus:



“The present writ petition has been filed seeking the following reliefs:

“(i) Issue a Writ of Certiorari or other appropriate Writs, orders or directions to call for the records leading to Exhibit P5 notice issued under Section 7 of the Kerala Revenue Recovery Act and to quash the same;

(ii) To issue a Writ to declare that, the Revenue Recovery proceedings cannot be initiated to recover amounts which are disputed by a party.

(iii) Render such other orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

2. This Court is of the considered view that against the demand notice in Ext.P5 issued under Section 7 of the Kerala Revenue Recovery Act, the writ petition is not maintainable. Therefore, the same is dismissed leaving it open to the petitioner to take recourse to any other remedy as may be available to him under the law.”

(emphasis supplied)

5. The writ petition is dismissed as not maintainable. There is a difference between entertainability and maintainability of a writ petition. Even if alternate remedy is available to the Petitioner, that cannot be a ground to hold the writ petition under Article 226 of the Constitution of India against an administrative authority as “not maintainable”. The powers under Article 226 of the Constitution of India can be exercised even if there exists an alternate remedy, however, it is in restricted circumstances, within well defined parameters. As a matter of settled judicial practice, the jurisdiction under Article 226 of the Constitution of



India is not exercised if there is an alternative efficacious remedy available and in such circumstances, the writ court may decline to “entertain” the writ petition. There is, therefore, a difference between maintainability and entertainability of a writ petition.

6. A review of case law on the subject on this distinction was taken by the Hon’ble Supreme Court in the case of *M/s. Godrej Sara Lee Ltd. v. Excise and Taxation Officer-cum-Assessing Authority and Others* [2023 SCC Online SC 95], and it was observed as under:

“4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by Article 226 of the Constitution having come across certain orders passed by the High Courts holding writ petitions as “not maintainable” merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under Article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to Article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the High Court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the High Courts



(bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under Article 226 that has evolved through judicial precedents is that the High Courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under Article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition “not maintainable”. In a long line of decisions, this Court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the “maintainability” of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that “entertainability” and “maintainability” of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to “maintainability” goes to the root of the matter and if such objections were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of “entertainability” is entirely within the realm of discretion of the High Courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a High Court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a High Court on the ground that the petitioner has not availed the alternative remedy without, however,



examining whether an exceptional case has been made out for such entertainment would not be proper.”

(emphasis supplied)

The above dicta is clear. Therefore, the petition filed by the Appellant/ Petitioner was maintainable. However, whether the writ petition should be entertained is another question altogether.

7. Since the learned Single Judge has summarily rejected the writ petition as “not maintainable”, the impugned judgment will have to be set aside, to decide whether the writ petition should be entertained.

8. Accordingly, the judgment dated 25 July 2024 in W.P.(C) No.25929 of 2024 is quashed and set aside, and the writ petition stands restored to the file. The appeal is allowed.

Sd/-
NITIN JAMDAR,
CHIEF JUSTICE

Sd/-
S.MANU,
JUDGE

krj

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P.A. TO C.J.