

Chandrashekarappa Vs. Basavannappa and Others

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Court : Karnataka

Decided On : Aug-23-1991

Reported in : AIR1992Kant247; 1992(1)KarLJ120

Judge : N. Venkatachala and;K. Shivashankar Bhat, JJ.

Acts : [Karnataka Municipalities Act, 1964](#) - Sections 2(9), 21; [Code of Civil Procedure \(CPC\), 1908](#) - Sections 24 and 27; [Motor Vehicles Act, 1939](#) - Sections 110; U.P. (Temporary) Control of Rent and Eviction Act, 1947 - Sections 7E and 48; Karnataka Civil Courts Act, 1964 - Sections 4, 6, 9, 14 and 28,

Appeal No. : M.F.A. No. 319 of 1991

Appellant : Chandrashekarappa

Respondent : Basavannappa and Others

Advocate for Def. : V.T. Rayareddy, ;Ashok B. Patil and ;H.J. Sundar, Advs.

Advocate for Pet/Ap. : S. Vijaya Shankar, Adv.

Judgement :

ORDER

Shivashankar Bhat, J.

1. The appellant was the petitioner before the lower Court who filed an election petition under Section 21 of the [Karnataka Municipalities Act, 1964](#) ('the Act' for short), whereby he challenged the election held to the town municipal council Mulgund in which the petitioner was a candidate. Respondents 1 to 4 were declared as elected to the town municipal council in the election held on 29-4-1990 and the results were declared on 30-4-1990. For the purpose of this appeal it is necessary to go into the grounds urged in support of the election petition.

2. The election petition was presented on 14-5-1990 before the Vacation District Judge, Darwar, since the Court of Civil Judge was not functioning in view of the summer vacation. Under Section 21(1) the election petition has to be filed within 15 days from the date of declaration of the result of the election. The District Judge having received the election petition, after holding that he was competent to receive the petition, transferred the same to the Court of Civil Judge, Gadag, on the reopening of the said Court after summer vacation. The contesting respondents questioned the validity of the presentation of the election petition before the Vacation District Judge and contended that the election petition was not properly presented and therefore question of its transfer to the Court of Civil Judge did not arise. The substance of the contention put forth by the said respondents was that, under the Act the election petition has to be presented to the Election Tribunal and as per Section 2(9) of the Act the 'Election Tribunal' means in respect of any area any judicial officer appointed by notification by the Government to be the Election Tribunal in respect of such area and where no such judicial officer is appointed, the Civil Judge having jurisdiction over the area within which the election has been or should have been held, (underlining is ours). According to the contesting respondents there is no notification issued by the State Government appointing any judicial officer to be the Election Tribunal and therefore the Civil Judge having the jurisdiction over the area concerned alone could function as the Election Tribunal and this statutory entrustment of the power to entertain the election petition to the Civil Judge is in the personal capacity of the Civil Judge i.e. 'as persona designate' and not as the Court of Civil Judge and therefore during the vacation when the Civil Judge was not functioning, the said power cannot be exercised by the vacation District Judge. This contention was taken up as a preliminary point and the Court of Civil Judge has accepted this contention.

Consequently the election petition was dismissed without going into the merits of the matter.

3. The sole point for consideration in this appeal is whether the Vacation District Judge was competent to entertain the election petition under Section 21 of the Act and whether the Civil Judge referred in Section 2(9) of the Act functioning as an Election Tribunal as a persona designate and not as a Court of Civil Judge. The Civil Courts in the State of Karnataka are constituted and organised under the provisions of the Karnataka Civil Courts Act, 1964 ('Civil Courts Act' for short). Section 2(b) defines Civil Court as a District Court, Court of a Civil Judge or a Munsiff's Court. Under Section 4, it is provided that there shall be a District Court for each district and as per Section 6 there shall be a Court of Civil Judge for each district. Both these sections provide for appointment of additional District Judges and additional Civil Judges with which we are not concerned here. Section 9 provides that, when more than one civil Judge is appointed to the Court of Civil Judge, one of them shall be appointed as Principal Civil Judge and the arrangement of work amongst them shall have to be made by the Principal Civil Judge, subject to the orders of the District Judge, if any. Section 14 states that the District Court shall be deemed to be the Principal Civil Court of original jurisdiction within the local limits of its jurisdiction and similarly Section 16 states that the jurisdiction of the Court of Civil Judge shall extend to all original suits and proceedings of a civil nature. Section 28 provides for the vacation of the civil courts. Section 28(3) and (4), which is relevant for our purpose, are given below:

'28(3): Notwithstanding anything contained in this Act or in the Code of Civil Procedure, 1908 (Central Act 5 of 1908):--

(3)(a) the High Court, may, where there are more than one District Judge in any District Court, designate by notification any one of those District Judges as the Vacation District Judge for the duration of the adjournment of any District Court in any vacation or of any part thereof.

(b) where there is only one District Judge in any District, the High Court may, by notification, designate such District Judge or appoint a Civil Judge in the District as the Vacation District Judge or the Vacation Civil Judge, as the case may be, of the

District Court thereof for the duration of the adjournment of such District Court in any vacation or any part thereof,

The High Court may regulate, by special or general order work to be discharged by the Vacation Civil Judge or the Vacation District Judge.

(4)(a) The local limits of the jurisdiction of the Vacation District Judge or Vacation Civil Judge shall be the same as those of the District Court concerned.

(b) The jurisdiction of the Vacation Civil Judge shall extend to all suits, appeals and other proceedings pending in, or cognizable by any Civil Court (whether a District Court, a Civil Judge's Court or a Munsiff's Court) in the District concerned when such Court is adjourned for any vacation.'

Section 28(7) provides for the transfer of the suits, appeals and other proceedings pending in the Court of the Vacation Judge, to the concerned regular Court on the reopening of the Courts after vacation. Though Section 28(4)(b) provides for the jurisdiction of the Vacation Civil Judge as extending to all matters cognizable by any Civil Court in the District concerned when such Court is adjourned for any vacation, a specific similar provision extending such a jurisdiction to the Vacation District Judge is not enacted in the Act. We are pointing out this at this stage because one of the contentions urged by Mr. Rayareddi, learned Counsel for the contesting respondents is that in the absence such a provision, the Vacation District Judge cannot entertain a suit or any proceeding, which otherwise would have been entertainable only by the Court of Civil Judge but for the Vacation.

4. The basic question is as to the forum of the Election Tribunal. The lower Court has held that in the absence of a notification by the Government appointing any judicial officer as the Election Tribunal, the Civil Judge having jurisdiction over the area within Which the election took place, functions as Election Tribunal not by virtue of the Civil Judge's position as the Presiding Officer of the Court of Civil Judge but as the designated person to be the Election Tribunal. This idea which runs through the entire order of the lower Court is seriously challenged by Sri. Vijaya Shankar, the learned Senior Advocate for the appellant.

5. Before considering the tests formulated by the Supreme Court and by other Courts to find out whether a sitting Judge of a Court functions as a persona designate instead of the Court of which he presides, in respect of any special matters under a particular statute, the content of Section 2(9) of the Act may be noticed. It contemplates the appointment of a judicial officer as the Election Tribunal. In the absence of such a notification appointing a judicial officer, the Civil Judge automatically becomes the Election Tribunal. In respect of an area within which the election took place there may be more than one Civil Judge, out of whom one will be the Principal Civil Judge and the other or others Additional Civil Judges. If the discharge of function as Election Tribunal is to be as the persona designate the problem will be as to which of the Civil Judge amongst the several Civil Judges should function as the Election Tribunal and who is the authority to entrust the work to any particular Civil Judge. The Legislature is presumed to be aware of the provisions of the Karnataka Civil Courts Act when it referred to the 'Civil Judge' in Section 2(9) of the Karnataka Municipalities Act. Equally, the legislature is presumed to be fully aware of the nature and manner in which the several Civil Judges are to discharge their functions under the Karnataka Civil Courts Act. Normally the Principal Civil Judge would allot the work to other Civil Judges functioning within the same area. The purpose behind stating that the Civil Judge shall be the Election Tribunal in the absence of appointment of any other judicial Officer by notification by the Government, is to ensure the availability of a forum to function as the Election Tribunal. The legislature obviously thought it necessary to provide for a situation, when, the State Government fails to make an appointment by notification, of any judicial officer as an Election Tribunal. The Court of Civil Judge is always available in every district. Even in case a regular Court of Civil Judge is not available the Karnataka Civil Courts Act provides for another Court to discharge the functions of the Court of Civil Judge. In other words failure of the State Government to appoint any judicial officer as an Election Tribunal will not defeat the provisions of the Act which provide for the election disputes to be resolved by a competent Election Tribunal. This intention of the legislature can be properly effectuated only if the term 'the Civil Judge' referred in Section 2(9) is understood as the Court of Civil Judge. Further the Civil Judge acting as the Election Tribunal has to follow the procedure provided by the Code of

Civil Procedure as stated in Section 24 of the Act and as per Section 27 an appeal shall lie to the High Court from an order of the Election Tribunal. These provisions read with the intention behind Section 2(9) of the Act very strongly suggest that the Civil Judge acting as the Election Tribunal, acts as a Court and not as a persona designate to discharge the particular function alone.

6. Under Section 6C of the Essential Commodities Act an Appellate forum is to be constituted by the State Government and such a forum shall be a Judicial Authority having the rank of the District Judge. The question arose whether such an Appellate Authority functioned as a persona designate or as a Court which is subordinate to the High Court. If the District Court notified as the Appellate Authority under Section 6C of the Essential Commodities Act were to be a persona designate, the order made by the said District Judge was not liable to be revised by the High Court. On the other hand if the order of the District Judge is made as a Court then the order was revisable under the provisions of the Criminal Procedure Code. The Supreme Court held that the District Judge functioning as the Appellate Authority under Section 6C of the Essential Commodities Act was not a persona designate but functioned as the Court of District and Sessions Judge. In *Thakur Das v. State of Madhya Pradesh* : 1978 CriLJ1 Supreme Court approved the decisions of the Andhra Pradesh High Court:

'While summing up its conclusions, the Court held that when a judicial authority like an officer who presides over a Court is appointed to perform the functions, to Judge and decide in accordance with law and as nothing has been mentioned about the finality or otherwise of the decisions made by that authority, it is an indication that the authority is to act as a Court in which case it is not necessary to mention whether they are final or not as all the incidents of exercising jurisdiction as a Court would necessarily follow. We are in broad agreement with this conclusion.'

The Supreme Court further observed in the next paragraph thus :

'We are accordingly of the opinion that even though the State Government is authorised to appoint an appellate authority under S. 6C, the legislature clearly indicated that such appellate authority must of necessity be a judicial authority.'

Since under the Constitution the Courts being the repository of the judicial power and the officer presiding over the Court derives his designation from the nomenclature of the Court, even if the appointment is made by the designation of the judicial officer the appellate authority indicated is the Court over which he presides discharging functions under the relevant Code and placed in the hierarchy of Courts for the purposes of appeal and revision. Viewed from this angle, the Sessions Judge, though appointed an appellate authority by the notification, what the State Government did was to constitute an appellate authority in the Sessions Court over which the Sessions Judge presides.'

(Underlining is ours)

In Mrs. Noreem R. Srikantaiah v. Dasarath Ramaiah : AIR1985 Kant208 the question was whether the District Judge who was appointed as the Tribunal under Section MO of the [Motor Vehicles Act, 1939](#), functions as persona designate or functions as a Court. The Division Bench disagreeing with the earlier two views expressed by two learned single Judges, held that the District Judge functioned as the Court of District Judge and not merely as a persona designate. It was pointed out that the distinction between a Court and a Tribunal 'is indeed fine though real' and all Courts are tribunals but the converse need not necessarily be true. The Bench noticed that it has never been established as to what distinguishes them. Some of the relevant tests were brought out by another earlier Division Bench of this Court in Ganesh Rao v. Sarphina D'Souza Bai : AIR1976 Kant4 the Bench observed thus :

'In Central Talkies Ltd. v. Dwaraka Prasad : 1961 CriLJ740 , Hidayatullah, J. (as he then was) who spoke for the Court, said that a persona designate is 'a person ascertained as a member of a class, or as filling a particular character'. His Lordship quoted with approval the observations of Sewhabe, C. J. in Parathasarathi Naidu v. Koteswara Rao. MR 1924 Madras 561 (FB) that persona designate are 'persons selected to act in their private capacity and not in their capacity as Judges'.

In construing the expression 'the Munsiff exercising jurisdiction' under Sec. 7E of the U. P (Temporary) Control of Rent and Eviction Act, 1947, Desai, C. J., who

delivered the leading opinion of the Full Bench in *Chatur Mohan v. Ram Behari* : AIR1964 All562

'I am not enamoured of the distinction made between 'a Munsiff and 'a Court of Munsiff' and of the argument based upon it to the effect that 'a Munsiff' acts as a persona designate, whereas 'a Court of Munsiff' acts as a Court constituted under the Bengal, Agra and Assam Civil Courts Act.....When the Legislature referred in S. 7E to the 'Munsiff having jurisdiction', it does not seem to have meant the person presiding over a Court of Munsiff as distinct from the Court and to have referred to the fact of his presiding over the Court simply to describe him. He seems to have been selected on account of his presiding over a Court of Munsiff.'

The above observation will, in our opinion, apply with equal force to the expression 'the Dist. Judge having jurisdiction over the area in which the premises are situate' occurring in S.4S of the Act. Though the term 'Dist. Judge' has been used in S. 48 of the Act, the appeal provided thereunder is in reality to the Court of the Dist. Judge.

As pointed out by the Supreme Court in *National Sewing Thread Co. Ltd. v. James Chadwick N. Bros.* : [1953]4SCR1028 , where a new jurisdiction is given to an established Court without more, it imports that the ordinary incidents and the ordinary rules of procedure of that Court are to attach to exercise of such jurisdiction also.'

Applying the test referred by the Chief Justice Sri Schwabe to the instant case it can be safely said that the Civil Judge is not selected to act as an Election Tribunal in his private capacity but in his capacity as a Civil Judge.

7. The omission of the words 'Court of in Section 2(9) of the Act while referring to the term 'the Civil Judge' is absolutely insignificant. Without the presiding officer of a Court, there cannot be a Court at all. The life and soul of a Court is its presiding officer. The term 'Court of Civil Judge' will be entirely meaningless without the Civil Judge presiding over the said Court. The functions discharged by the presiding officer of the Court while presiding over the Court, are the functions of the said Court. The distinction between Court and the Judge presiding over it, sought to be

made out by the learned Counsel for the contesting respondents therefore will have to be rejected.

8. Mr. Rayareddi, contended that there is no provision similar to Section 28(4) of the Civil Courts Act wherein a Vacation District Judge could discharge the functions of the Court of Civil Judge. An identical contention was considered by a learned Judge of this Court (Malimath, J. as he then was) in Lokappa v. Narayana, (1973) 1 Mys LJ 16 : (AIR 1973 Mysore 197). It was held there that (at P. 198 of AIR):

'It is clear from the scheme of S. 28 that detailed provisions are made for the entertainment of suits, appeals and other proceedings and disposal of the same during the summer vacation, so that the parties who need immediate redress during the summer vacation are not put to undue inconvenience and hardship as a result of the Courts being closed during the summer vacation. In my opinion, all the sub-sections of S. 28 have to be read together in order to ascertain as to whether the Vacation District Judge has jurisdiction to entertain suits and other proceedings and pass interim orders during the summer vacation. It is not disputed that if a Vacation Civil Judge was appointed in this case, he could have entertained the suit and dealt with the interlocutory matters. The submission of Shri Savanur is that there is a lacuna in S. 28 in that no clear and specific provision has been made pertaining to Vacation District Judge, similar to the one contained in clause (b) of sub-sec. (4) of S. 28 in which clear and specific provision has been made in regard to the jurisdiction of the Vacation Civil Judge. Though there is no provision pertaining to Vacation District Judge similar to the one contained in clause (b) of sub-sec. (4), it is clear from the reading of the other sub-sections in S.28 that the Vacation District Judge can also exercise jurisdiction to entertain all suits, appeals and other proceedings pending in, or cognizable by any Civil Court in the District concerned during the summer vacation.

If the contention of Shri Savanur is accepted the appointment of Vacation District Judge under sub-sec. (3) of S. 28 would be meaningless. It is clear from sub-sec. (3) that when there are more than one District Judge in a district, one of those District Judges may be designated as a Vacation District Judge during summer

vacation.'

Thereafter the learned single Judge concluded at page 19 (of Mys LJ) : (at P. 199 of AIR) thus:

'On a consideration of the entire scheme of S. 28, I have no hesitation in holding that the Vacation District Judge has jurisdiction to entertain all suits, appeals and other proceedings pending in, or cognizable by any Civil Court in the District concerned during the summer vacation. I do not therefore, accede to the contention of Shri Savanur that the learned District Judge had no jurisdiction to entertain the suit or to make an interim order.'

This enunciation of the law has stood the test of time all these years. Vacation after vacation, several District Judges were discharging the functions of the Court of Civil Judge also. By reading the provisions of Section 28 literally this Court should not create a lacuna in the functioning of the hierarchy of Courts in the State. The very purpose of the law is to provide an appropriate forum which can be approached by the needy litigants, and this will be defeated by reading a lacuna in the Karnataka Civil Courts Act. We respectfully agree with the view expressed in the aforesaid Lokappa's case.

9. Mr. Rayareddi learned Counsel, then tried to point out some lacuna in the notification issued entrusting the powers to the vacation District Judge in Dharwar District. We have perused the notification and for the same reason as stated above, the notification conveys the idea read into the said provision in Lokappa's case and therefore the Vacation District Judge was competent to discharge the functions of the Court of Civil Judge, also. It was alternatively contended by Mr. Rayareddi that if the election petition was to be filed in the Court of Civil Judge the same can be filed on the reopening day after the vacation and this is not a matter involving any urgency and therefore the vacation Court could not have entertained the election petition. Assuming that the learned Counsel is justified in this contention, (without expressing a definite opinion) we are of the view that the filing of the election petition during the vacation because the period of limitation expired during the vacation, would, at the most be an irregularity. We find no bar anywhere against the vacation Court entertaining such an election petition. The vacation

Courts are directed 'to dispose of 'urgent matters, but there is no bar against entertaining a matter which is otherwise maintainable in the Civil Court. Therefore the Vacation District Judge was competent to receive the election petition during the vacation and thereafter transfer the same to the competent Court of Civil Judge on the reopening of the Courts.

10. In view of our conclusion that under Section 2(9) of the Act the reference is to the Court of Civil Judge as the Election Tribunal, the basic question and all other questions arising therefrom in this appeal are held against the contesting respondents. The appeal is accordingly allowed. The order of the lower Court is set aside. The matter is remitted back to the said Court for deciding the election petition on its merits in accordance with law. The parties are directed to be present before the Court of Civil Judge, Gadag, on 29-8-1991 to take note of further proceedings.

11. Order accordingly.