

Joy Paul Vs. Sibi Mathew

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Court : Kerala

Decided On : Jun-09-2003

Reported in : 2003(3)KLT343

Judge : K. Padmanabhan Nair, J.

Acts : [Kerala Panchayat Raj Act, 1994](#) - Sections 88

Appeal No. : O.P. No. 7135 of 2003

Appellant : Joy Paul

Respondent : Sibi Mathew

Advocate for Def. : M.C. Cherian,; Asha Cherian,; E.D. George,;

Advocate for Pet/Ap. : K.K. Chandran Pillai and; J. Vidyalakshmi, Advs.

Disposition : Petition allowed

Judgement :

K. Padmanabhan Nair, J.

1. The 1st respondent herein filed Election O.P.No. 10/2000, before the Munsiff's Court, Moovattupuzha, which is the designated Court for trial of the election dispute arising from Kavilangadu Grama Panchayat challenging the result of the election by which the petitioner in this Original Petition was declared elected. After

the trial has started, the learned Munsiff wrote a letter to the District Judge for transfer of the case from Munsiff Court, Moovattupuzha to any other court in Ernakulam District. The learned District Judge without hearing the parties transferred the election petition on the administrative side from the file of Munsiff Court, Moovattupuzha to Munsiff Court, Kolenchery. That order is under challenge in this O.P.

2. Section 88 of the Panchayat Raj Act deals with the Courts which are competent to trial election petitions.

Section 88. Court competent to try election petitions. The Court having jurisdiction to try an election petition shall be:-

(a) in the case of a Village Panchayat, the Munsiffs Court having jurisdiction over the place in which the headquarters of the Panchayat is located; and

(b)

(2) The Government shall, in consultation with the High Court notify the appropriate Courts in the Gazette.

3. The Government had issued Ext. P1 notification conferring power on the Munsiff Court, Moovattupuzha to try election dispute arising from Kavilangadu Grama Panchayat. There is no provision in the Kerala Panchayat Raj Act for transferring an Election Petition pending before one designated court to another court.

4. Learned District Judge without considering the provisions contained in Section 88 of the Panchayat Raj Act transferred the Election Petition from the Munsiff Court, Moovattupuzha to Munsiff Court, Kolanchery. In view of the provisions contained in Section 88 of the Panchayat Raj Act, to confer jurisdiction over a Munsiffs Court to try an election dispute, two conditions must be satisfied viz.:

(1) The Munsiff Court must be having jurisdiction over the place in which the Head Quarters of the Panchayat is located.

(2) The Government must have issued the notification as contemplated under Section 88(2) of the Panchayat Raj Act.

5. The learned District Judge has not considered whether the Munsiff Court, Kolencherry is having jurisdiction over the place in which the Head Quarters of the Kavilangad Grama Panchayat is situated. It has also not considered whether the Government had issued any notification conferring power on the Munsiff Court, Kolencherry to try an election dispute arising from Kavilangad Grama Panchayat. The learned counsel appearing for the petitioner has pointed out that Ext. P1 notification does not contain the Munsiffs Court, Kolencherry at all and hence that Court cannot try any Election Petition. The District Judge has also not considered whether the provisions contained in Section 24 of the Civil Procedure Code can have any application to an election dispute. The procedure adopted by the learned District Judge is also not legal and proper. Since the request was for transfer of an election petition the learned District Judge ought to have treated the request as an Original Petition and issued notice to all parties to that O.P. It is not disputed by the respondents also that no notice was issued to parties before ordering the transfer. So the order under challenge was passed without notice. So the order passed by the learned District Judge transferring the Election O.P. from Munsiff Court, Moovattupuzha to Munsiff Court, Kolencherry is without jurisdiction and the same is liable to be quashed.

In the result, the Original Petition is allowed. The order passed by the learned District Judge transferring Election O.P.No. 10/2000 from the files of Munsiff Court, Moovattupuzha to Munsiff Court, Kolencherry is hereby quashed. Munsiff Court, Kolencherry is directed to re-transfer Election O.P.No. 10/2000 to Munsiff Court, Moovattupuzha. It is clarified that this order will not be a bar for the learned District Judge to treat the request of the Munsiff as an O.P. for transfer and pass fresh orders with due notice to all parties or to pass other appropriate orders in accordance with law. Communicate a copy of the order to the learned District Judge forthwith.