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Court : Rajasthan

Decided On : Oct-16-1978

Reported in : 1978(11)WLN658

Judge : S.K. Mal Lodha, J.

Appeal No. : S.B. Civil Revision No. 156 of 1978

Appellant : Moti Ram

Respondent : Mali Ram

Advocate for Pet/Ap. : Mr. K.N. Johsi

Disposition : Application dismissed

Judgement :

S.K. Mal Lodha, J.

1. This is a revisional application under Section 115 of the Code of Civil Procedure against the order of the Munsif, Ghuru dated March 30, 1978 passed in Ejection Petition No. 7 of 1978 by which he accorded permission for amendment of the election petition to the non petitioner.

2. A few facts deserve recall here. The non petitioner filed an election petition under Rule 78 of the Rajasthan, Panchayat and Nyaya Panchayat Election Rules

1960 hereinafter referred to as 'the Rules', on March 15, 1978 praying therein that the election of the petitioner be declared illegal and the non-petitioner be declared as duly elected Sarpanch of the Gram Panchayat Khinwasar, Tehsil Chuiu. The non petitioner moved an application under Order VI, Rule 17 CPC on March 27, 1978 stating that he may be allowed to amend the citation petition by making necessary amendments it was also reasoned upto that stage notice to the petitioner has not been issued. The learned Munsif by his order dated March 30, 1978 accepted the application under Order VI, Rule 17, CPC & ordered that since notice has not been sent to the petitioner so far, now notice be issued and the amended election petition be sent with it.

3. Being aggrieved by the order dated March 30, 1978, the petitioner, has come up in revision before this Court.

4. A preliminary objection was raised by Mr. R.N. Bishnoi, learned Counsel for the non petitioner, that the revision application against the order dated March 30, 1978 is, not maintainable because the Munsif while trying an election petition under, Rule 78 of the Rules is not a court subordinate to the High Court and, therefore, his orders cannot be revised under Section 115 CPC, Mr. R.N. Bishnoi, learned Counsel, for the non-petitioner has placed reliance on *Keshri Prasad v. Bhodhroj* 1951 RLW 102 and *Keshan Deo Radhey Shyam* 1964 RLW 1. Mr. K.N. Joshi learned Counsel for the petitioner, in reply to the preliminary objection, argued that the Munsif, while, trying an election petition under Rule 78 of the Rules is not a *persona designata* and therefore his orders are revisible. Mr. K.N. Joshi, learned Counsel for the petitioner invited my attention to *Bhanwari Singh v. Dy C.M.R. Loco Shed, Western Railway, Ajmer and Anr.* ILR (1958) VII Raj 454 *Central Talkis Ltd. Kanpur v. Dwarka Prasad* : 1961 CriLJ740 . *Shiv Shanker Choibey and Ors. v. The Bhir Hindu Regions Trust Board* : AIR1968 Pat510 , *Rumeshwar Lal Anr. v. Jogend Das* : AIR1970 Ori76 , *Surendra Mohan v. Dharamdhand Atiahd* AIR 1971 J & K 76, *Bwrinath Gupta v. Estates Officer (Controller of Aerodrome)* AIR 1977 J & K 38, and *Thakur Das dead by LBS v. State of Madhya Pradesh and Anr.* : 1978 CriLJ1 .

5. In order to appreciate the rival contentions of the learned Counsel for the parties I may read the relevant portion of Rule 78, which is as under:

78. Manner of challenging an election or co option under the Rules:

The election or cooption of any person as the Panch of a Panchayat or the election of any person as the Sarpanch or Up Sarpanrh of a Panchayat or as the member or Chairman of a Nyaya Panchayat may be called in question by presenting a petition to the Munsif, or, where there is no Munsif, to the Civil Judge, within whose jurisdiction the place of Headquarters of the Panchayat or the Nyaya, Panchayat, as the case may be, is situated, within thirty days from the date on which the result of such election or co-option is declared, on any one or more of the following grounds.

Rule 79 of the Rules provides as to who can, present election petition Rule '83 of the Rules deals with the procedure for hearing of an election petition. The material portion of this rule for the present purpose is as under:

83. Hearing of petition: - The procedure provided in the Code of Civil Procedure, 1908 (Central Act V of 1908, in regard to suits, shall, insofar as it can be made applicable, be followed in the hearing of the petition. Provided that -

(a)...

(b) the Munsif or the Civil Judge,, as the rase may be. shall not be required to record evidence in full but shall only make a memorandum thereof sufficient in his opinion for the purpose of deciding the petition.

(c) ...

(d) the Munsif, or the Civil, Judge, as the case may be shall only be bound to require the production of, or to receive, so much evidence, oral or documentary, as he considers necessary, and

(e) ...

Rule 84 of the Rules provides for powers of the court hearing the petition. The material portion of it for the present purpose reads as under:

84. Powers of court hearing petitions. - The Munsif or the Civil Judge, as the case may be, hearing a petition shall have the same powers and privileges as a Judge of a Civil Court when trying a suit and may for the purpose of serving any notice or issuing any process or doing any other thing, employ an officer, clerk or peon attached to his court: Provided.

6. Other three important rules, which deserve mention here, are the Rules 85, 86 and 86-A. Sub-rule (2) of Rule 85 lays down that the Munsif or the Civil judge, as the case may be, after pronouncing the order made under Sub-rule (1) shall send a copy thereof to the Collector for taking further, necessary action in pursuance thereof Rule 86 of the Rules provides for the execution of order as to costs and amongst others lays down that 'any order with regard to costs passed by the Munsif or the Civil Judge shall be executed by him on application made in that behalf in the same manner and by the same procedure as if it were a decree for the payment of money made' by himself in a suit.

7. Rule 86-A of the Rules makes provisions for general power of transfer of withdrawal, It provides that the District Judge within whose jurisdiction the place of head quarters of the Panchayat, or Nyaya Panchayat, as the case may be, is situated, may at any stage of the proceedings withdraw any petition pending in the Court of any Munsif or Civil Judge subordinate to him, and

(i) try or dispose of the same or

(ii) transfer of the same for trial, or, disposal to the court of any other Munsif or Civil Judge within his jurisdiction or

(iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

In the light of these provisions of the Rules, it is to be determined whether the revision under Section 115 GPC lies against an order of the Munsif acting as an Election Tribunal under Rule 78 of the Rules or not In Surindra Mohan's AIR 1971

J & K 76, it has been observed:

Where the authority has been empowered to act judicially and possesses all the trappings of a court and has to abide by the rules of evidence, then its selection by designation, must be presumed to be as a court and not a persona designata.

In Badrinath Gupta's case AIR 1977 J & K 38, it was held that the District Judge while hearing the appeal under Section 9 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 does not act as a persona designata but acts as a Civil Court subordinate to the High Court and that the District Judge has been prescribed as the appellate authority not in his personal or individual capacity but by virtue of the post that he is holding and no District Judge has either been designated as the appellate authority by name nor has any District Judge been singled out for functioning as the appellate authority. It was further held that moreover, the nature of his duties enjoined upon him to act judicially and he possesses all the trappings of a Court. The term 'persona designata' in connection with the provisions of the Essential Commodities Act, 1955 came up for consideration before their Lordships of the Supreme Court in Thaliur Dass's case : 1978 CriLJ1 The Sessions Judge was appointed as an appellate authority by the State Government under Section 6C of the Essential Commodities Act. In that connection it was observed:

the Sessions Court is constituted under the Code of Criminal Procedure and indisputably it is an inferior criminal court in relation to the High Court. Therefore, against the order made in exercise of powers conferred by Section 6C, a revision application would lie to the High Court & the High Court would be entitled to entertain a revision application under Sections 435 and 439 of the Code of Criminal Procedure, 1898, which was in force at the relevant time and such a revision application would be competent.

In these circumstances, it was held that, the Sessions Court is not persona designata.

8. Reliance was placed in Badrinath Gutpa's case AIR 1977 J & K 38 & on Surendra Mohan's case AIR 1971 J & K 76.

9. The question whether the Munsif or the Civil Judge hearing the election petition under Rule 78 of the Rules functions as a persona designata or as a Civil Court came up for consideration in Keshav Dev's case 1964 RLW 1. The Division Bench of this Court after examining the authorities cited before it came to the conclusion that the Munsif or Civil Judge hearing the election petition under Rule 78 is a persona designata. The provisions of Section 22 of the UP Municipalities Act of 1916 as applied to the former United State of Rajasthan also came up for consideration before Ranawat J., as he then was, in Keshri Prasad's case 1951 RLW 102, Section 22, Sub-clause (1) of the Municipalities Act 1916, as adapted to Rajasthan, runs as under;

An election petition shall be heard by the District Judge within whose jurisdiction the Municipality concerned is situated, unless some other person or tribunal has been appointed b) rule in this behalf, and at a place in the district within which such Municipality is situated.

The kamed Judge held that the the District Judge, Jhalawar was persona designate under Section 22 of the UP Municipalities Act, 1916 as applied to the United State of former Rajasthan, and his action imdealing with election petitions can not be revised under Section 115 of the CPC. On the basis of the decisions reported in Surendra Mohan's case AIR 1971 J & K 76, Bandrinath. Gupta's case AIR 1977 J & K 38 and Thskurdas (dead) by LR's's case : 1978 CriLJ1 , the learned Counsel for the petitioner wanted to persuade that this revision application may be referred to a Larger Beach as Keshav Das's case 1964 RLW 1, requires reconsideration.

10. From the rules mentioned above,, there is no room for any doubt that the Munsif or the Civil Judge healing ,the electicn petition under Rule 78 of the Rules has not been made identical with the Civil Court, There is no bar to the appointment of a persona designate by official designation as per Section 17 of the Rajaslhan General Clauses Act, (No. VIII of 1955) or Section 15 of the General Clauses Act) (No. X of 1897). It is clear from the aforesaid rules that a special Tribunal has been constituted to hear and dispose of the election petition under the Rules. In these, circumstances, Keshav Dev's case 1964 RLW 1, in my

opinion, does not require reconsideration. I respectfully agree with the view taken in the aforesaid two cases of this Court.

11. Before parting with the case, it may be mentioned that the petitioner has also filed S.B. Civil Writ petition No 70 of 1978 Petitioner Motiram v. State of Rajasthan against the order of the Munsif dated March 30, 1978, under revision and that is also pending in this Court.

12. In the premises aforesaid, I have come to the conclusion that the, Munsif or the Civil Judge hearing the election petition under Rule 78 of the Rules in a persona designata and is not a court subordinate to the High Court. The order passed by the Munsif dated March 30, 1978 is, therefore, not ,visable under Section 115 of the Code of Civil Procedure I accordingly uphold the preliminary objection and the revision petition is, therefore, not maintainable.

13. The result is that this revision application is dismissed without any order as to costs.

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