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Court : Jammu and Kashmir

Decided On : Jul-19-2011

Judge : J.P. Singh, J.

Acts : Municipal Act, 2000 - Sections 16(1)(d), 289, 303

Appeal No. : OWP No. 122 OF 2006

Appellant : Zaffar Ullah Rather

Respondent : State of Jandk and ors

Advocate for Def. : Mr. K. S. Johal; Ms. Deepshikha Gupta, Advs.

Advocate for Pet/Ap. : M/s. S.D. Sharma; M. P. Gupta,Advs.

Judgement :

1. Petitioner-Zaffar Ullah Rathers election as Councillor Ward No. 13 Municipal Committee, Doda was questioned by Ghulam Nabi Shah, respondent No.2 before the Authorized Officer, who, allowing respondent No. 2s Election Petition, in ex-parte, set aside the petitioners election vide order dated 10.2.2006. The petitioner has filed this Writ Petition questioning the Authorized Officers Order on various grounds, inter alia, urging that the findings recorded by the Authorized Officer that the petitioner was disqualified to seek election under Section 16(1) (d) of the Municipal Act, 2000, as he had encroached upon 9 marlas of the State land comprised under Khara Nos. 185 and 138 situated at Doda, were illegal, in that,

the findings were recorded without following the procedure prescribed under Section 289 of the Municipal Act, which the Authorized Officer was under a statutory obligation so to do.

2. Mr. K. S. Johal, learned Senior counsel appearing for the contesting respondent, submitted that the petitioners Writ Petition may not be maintainable, as he had straightway approached this Court without availing of the statutory remedy of appeal against the authorized Officers order, which was available to him under Section 303 of the Municipal Act. It was further submitted by the learned Senior counsel that as the petitioner had opted not to contest the Election Petition, so he was disentitled to question the decision of the Authorized Officer, which he had taken on the information appearing from the reports obtained by him from the concerned Revenue Officer, to examine the respondents plea as to whether or not the petitioner was disqualified to seek election as Councillor.

3. I have considered the submissions of learned counsel for the parties and perused the provisions of Sections 289 and 303 of the Municipal Act, which were referred to by the learned counsel for the parties to support their respective submissions.

4. So far as the objection of respondents learned counsel as to the maintainability of the petitioners Writ Petition was concerned, I do not find any merit therein, in that, the Authorized Officer, being himself the prescribed Appellate Authority, the petitioner had no forum available to him where he could exercise his Right of Appeal under Section 303 of the Municipal Act and in this view of the matter, the petitioners Writ Petition cannot be held nonmaintainable. Even otherwise, the availability of alternative remedy may not always operate as bar to the exercise of Extra Ordinary Writ Jurisdiction, if the Court was, otherwise satisfied that the facts and circumstances of the case warranted exercise of such jurisdiction, to advance the cause of justice.

5. Perusal of the order passed by the Authorized Officer reveals that after setting the petitioner ex-parte, he did not take any steps to deal with the Election petition in accordance with the procedure prescribed in the Civil Procedure Code for trial of suits, which he was required so to do, in terms of provisions of Section 289 of the

Municipal Act.

6. Without calling upon the respondent to lead evidence in support of his pleas in support of the Election Petition, the Authorized Officer, chose to rely upon the reports of the Revenue Officers in coming to the conclusion that the petitioner was in un-authorized occupation of the State land and thus disqualified to contest election and that too without recording the statements of the Revenue Officers.

7. The Authorized Officers reliance on the reports of the Revenue Officers, without recording their statements, is unwarranted, in that, the reports, being inadmissible in evidence, could not be relied upon by the Authorized Officer, unless proof in support thereof, had been adduced by the respondent.

8. Therefore, there being no legal evidence on records justifying the finding that the petitioner was in unauthorized occupation of the State land, the Authorized Officers finding that the petitioner was disqualified under Section 16 (1) (d) of the Municipal Act to seek election as Municipal Councillor, cannot be sustained. The order passed by the Authorized Officer on the respondents Election Petition, declaring the petitioner disqualified under Section 16 (1) (d) of the Municipal Act, as Councillor, without following the procedure prescribed under Section 289 of the Municipal Act and in the absence of any evidence of any type whatsoever on records justifying the disqualification, cannot, therefore, be sustained.

9. This Writ Petition, therefore, succeeds and is, accordingly, allowed setting aside Authorized Officers order dated 10.2.2006 whereby he had set aside the petitioners election as Councillor Ward No.13, Municipal Committee, Doda declaring him disqualified under Section 16 (1)(d) of the Municipal Act.

10. The petitioner is held entitled to his remuneration, honorarium/sitting fee etc., as admissible under Rules.

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