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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 7890/2007

Date of decision: 3rd September, 2009.

SURJIT SINGH

..... Petitioner

Through Mr. P.D. Gupta, Mr. Kamal Gupta & Mr.
Abhishek Gupta, Advocates.

versus

PREM ANTH & ORS

..... Respondents

Through Mr. V.P. Singh, Sr. Advocate with Mr.
Rajiv Samaiyar, Advocate for respondent No. 1.
Mr. Suresh Tripathy, Advocate for respondent No.
18.

+ W.P.(C) 7915/2007

STATE ELECTION COMMISSIONER

..... Petitioner

Through Mr. Suresh Tripathy, Advocate.

versus

SRI PREM NATH & ORS.

..... Respondents

Through Mr. V.P. Singh, Sr. Advocate with Mr.
Rajiv Samaiyar, Advocate for respondent No. 1.
Mr. P.D. Gupta, Mr. Kamal Gupta & Mr.
Abhishek Gupta, Advocates for respondent No.
18.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in the Digest ?

ORDER

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CM No. 9838/2009 in W.P. (C) No. 7890/2007

Learned counsel for the applicant seeks permission to withdraw the present application. Permission is granted.

The application is dismissed as withdrawn.

W.P.(C) No. 7890/2007 & W.P.(C) No. 7915/2007

1. It is admitted that Mr. Surjit Singh, who was declared elected as Councillor from Municipal Ward No. 12 in the elections held to Delhi Municipal Corporation on 5th April, 2007, has expired. Before his death, the election of Mr. Surjit Singh was challenged by Mr. Prem Nath before the learned Additional District Judge under Section 15 of the Delhi Municipal Corporation Act, 1957. By the impugned judgment dated 18th October, 2007, election of Mr. Surjit Singh was set aside with a direction to the Election Commission that the candidate, who had polled the second highest number of votes, should be declared as a returned candidate. It is an admitted case of the parties that the respondent No. 1, Mr. Prem Nath, had secured the second highest number of votes in the said election.

2. Mr. Surjit Singh has filed W.P. (C) No. 7890/2007 against the findings and directions given by the learned Additional District Judge in the judgment dated 18th October, 2007. The State Election Commission has also filed W.P. (C) No. 7915/2007.

3. The legal heirs of Mr. Surjit Singh have not filed any application for being substituted and brought on record as they want to contest the findings and observations in the impugned judgment. Learned counsel appearing for the respondent No. 1, Mr. Prem Nath, states that they will like to have fresh elections in the said constituency and he does not claim that the respondent No. 1 should be declared as a returned candidate. He

further states that respondent No. 1 had not made any prayer under Section 16(1)(b) of the Delhi Municipal Corporation Act, 1957 for declaration that he or any other candidate should be declared as duly elected, as a returned candidate. Learned counsel appearing for the State Election Commission also submits that the direction given by the learned Additional District Judge in the order dated 18th October, 2007 that the candidate, who had polled the second highest number of votes be declared as a returned candidate, is unjustified and contrary to law. As noticed above, Mr. Prem Nath, respondent No. 1 herein is the candidate, who had polled the second highest number of votes after Mr. Surjit Singh.

4. In view of the above statements and the factual position, the direction of the learned Additional District Judge in the order dated 18th October, 2007 to declare the candidate, who had polled the second highest number of votes as a returned candidate, is set aside. The writ petition filed by the State Election Commission is allowed to this extent. The writ petition filed by Mr. Surjit Singh is not required to be adjudicated on other aspects including his disqualification as he has already expired. The State Election Commission is at liberty to take steps for fresh elections in accordance with law.

The writ petitions are disposed of.

SANJIV KHANNA, J.

SEPTEMBER 03, 2009
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