

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Miscellaneous Appeal No.345 of 2015

JUDGMENT:

This appeal under Order XLIII Rule (1) of the Code of Civil Procedure, 1908 ('the Code' for short) is filed by the 1st respondent assailing the orders dated 08.05.2015 of the learned Vacation Judge-cum-II Additional District Judge, Warangal at Mahabubabad passed in IA.No.46 of 2015 in IA.No.17 of 2015 in OP.No.1 of 2015.

2. I have heard the submissions of the learned counsel for the appellant/1st respondent in the said OP ('the appellant/the 1st respondent', for brevity); the learned counsel for the respondents 1 and 2/Petitioners in the said OP ('the petitioners', for brevity) and the learned counsel for the respondents 5 and 6 therein. I have perused the material record.

3. The basic facts necessary for consideration in this appeal, in brief, are as follows:

3.1 The petitioners brought OP.No.1 of 2015 on the file of the Court of the Vacation Civil Judge-cum-II Additional District Judge, Warangal against the appellant and respondents 3 to 6 in this appeal for the following reliefs:

“a) To appoint Advocates/Commissioners, after completion of the formalities including issue of identification cards for holding the elections;

b) To declare that, the actions of the respondents in violation of the registered byelaws and are illegal.

c) To direct the respondents to furnish all the account books during their tenure till date for scrutiny and verification.

d) Award costs of the OP and

e) to grant such other relief or reliefs, which the Hon'ble Court deems fit in the circumstances of the case.”

[reproduced verbatim]

3.2 The above OP is being resisted by the contesting respondents therein.

During the pendency of the above OP, the petitioners had filed the aforementioned IA.No.46 of 2015 under Order XXXIX Rules 1 and 2 of the Code to direct the respondents therein to stop the elections till the disposal of IA.No.17 of 2015. The Court below, by an order dated 08.05.2015, had passed the following order:

“Upon motion made unto this Court by Sri K. Lingam Goud, who reported that he is the Junior Counsel of Sri K.Krishna Prasad, Counsel for the petitioners and upon hearing the arguments of the said Counsel, this Court doth order directing the elections for respondent No.1 Church to be stopped till the disposal of IA.No.17 of 2015 in OP.No.1 of 2015.”

[reproduced verbatim]

4. Aggrieved of the said order, the 1st respondent therein preferred this appeal. The appellant, during pendency of this appeal, had sought suspension of the before mentioned order and also permission to the appellant to proceed with the elections which have already been notified.

This Court by orders dated 10.05.2015 had authorised the Election Officers to conduct the elections to be conducted on 11.05.2015 as per the schedule notified subject to the condition that the counting of the votes should not be under taken nor the results be declared, until further orders. It was further ordered that since the elections are being held and the results are being withheld, the present body should continue to function for a period of one month subject, however, to the condition that they should not take any major policy decision and shall discharge only the routine functions, which are essential for the day to day functioning of the Society.

The said interim order of this court made in this appeal on 10.05.2015 reads as under:

This miscellaneous appeal is directed against the orders of the learned Vacation Judge-cum-II Additional District Judge, Warangal at Mahabubabad in IA.No.46 of 2015 in IA.No.17 of 2015 in OP.No.1 of 2015 under which the elections stated to be held for the petitioner's-appellant's Church on 11.05.2015 has been stopped till the disposal of IA.No.17 of 2015.

Pending disposal of the CMA, CMA MP (SR) No.15939 of 2015 is filed seeking for suspension of the impugned order and permitting the petitioner-appellant to proceed with the elections which have

already been notified.

Learned counsel appearing for the petitioner-appellant submits that the election process has commenced and everything is being conducted in the presence of the Election Officers, who are members of the Bar.

As a matter of fact, learned counsel submits that another member of the Society has filed PLC before the District Legal Services Authority, Warangal bearing No.2696 of 2015 and the compromise was made out which was reduced in writing on 07.04.2015 under which it was agreed by both the Society as well as the petitioner to the PLC to proceed with the elections in the presence of Sri T. Sridhar and E. Venugopal Rao, who were authorised to act as Election Officers.

Perused the order under challenge. No reasons whatsoever are assigned by the Court below for stopping the elections, which has been set in motion in pursuance to the notification, dated 10.04.2015. In view of the above and since the process has been set in motion, it is felt that the entire process cannot be brought to grinding halt at the last minute thereby derailing the entire set up. Therefore, while ordering urgent notice to the respondents, returnable in four (04) weeks, the Election Officers are hereby authorised to conduct the elections as per the schedule notified to be conducted on 11.05.2015, subject to condition that the counting of the votes should not be taken nor the results declared, until further orders.

Issue urgent notices to the respondents, returnable in four (04) weeks.

Learned counsel for the petitioner-appellant is also permitted to take out personal notice on the respondents by registered post with acknowledgment due and file proof of service.

It is submitted by the learned counsel appearing for the petitioner-appellant that the term of the existing body expires by 12.05.2015 and therefore, appropriate orders may be issued.

Having perused the material on record, it is felt that since the elections are being held and the results are being withheld, the present body should continue to function for a period of one month subject, however, to condition that they should not take any major policy decision and shall discharge only the routine functions, which are essential for the day to day functioning of the Society.”

5. In this factual background, the learned counsel for the appellant/1st respondent would submit that since pursuant to the interim orders of this Court, the elections were conducted as per the schedule and that the polled votes are in sealed boxes, necessary directions may be issued while disposing of the CMA.

6. On the other hand, the learned counsel for the petitioners would submit that they have no confidence in the election officers.

7. A plain reading of the order impugned would show that the elections were stopped till the disposal of IA.No.17 of 2015. The order is bereft of reasons.

8. Be that as it may. When an appeal has been preferred by the aggrieved 1st respondent therein, this Court passed an order 10.05.2015 authorising the election officers to conduct elections as per the schedule subject to the condition that the counting of votes should not be undertaken nor the results be declared until further orders of the Court. Pursuant to the above said orders of this Court, elections were duly conducted. Further, the counting of votes was not taken up and the results were not declared as this Court in the aforementioned orders directed that the counting of votes should not be undertaken and the results also shall not be declared until further orders of this Court. Since the election officers had conducted the elections, the sealed ballot boxes are in their custody. Therefore, the impugned order directing stoppage of elections is no longer an enforceable order and has become infructuous. Now that the elections are held as per the order of this Court, the polled votes are in sealed ballot boxes. In view of the earlier orders of this Court, this appeal can be disposed of with certain directions that would help in completing the process of elections till the declaration of results as such a course is not only necessary but also would sub serve the ends of justice.

9. In the facts and circumstances peculiar to the case, it is necessary to dispose of the CMA without going into the merits of the contentions of both the parties in the OP pending before the Court below and without making any observations which will have a bearing on the merits of the main matter. It is note worthy that the appellant/1st respondent in the OP is requesting this Court to give directions to the trial Court to take custody of the sealed ballot boxes from the election officers and take control over the matter for issuance of further necessary directions for counting of votes and declaring the results as such a course is the only rational and legal course to be adopted since the elections are held pursuant to the orders of this Court. On the other hand, the

learned counsel for the petitioners in the OP i.e., the respondents 1 and 2 herein would forcefully contend that they have no confidence in the elections officers. Be that as it may.

10. Having regard to the facts and circumstances of the case, and in the light of the apprehensions of the petitioners, without stating anything adverse against the election officers on mere apprehensions and at the same time keeping in view the interests of all concerned this Court considers that the best course open is to direct the election officers to surrender the custody of the sealed ballot boxes and the CD/CDs or DVD/DVDs containing the video recording of the elections conducted to the Court below within two weeks from the date of the receipt of a copy of this judgment by the Court below.

11. Once the Trial Court thus gains seisin over the matter, it can proceed judiciously in the matter with the further process of counting of the votes and declaration of election results. It is needless to mention that it is open to the trial Court, if found necessary, to appoint an advocate commissioner from the panel being maintained by the Court or any other competent advocate commissioner whose appointment is acceptable to both the sides for supervising the counting of votes as per the directions in the Warrant that may be entrusted and placing a report before the trial Court with the details showing the votes polled in favour of and against each candidate in the fray of elections and also the votes which are invalid, if any. On such report being placed before the trial Court, the trial Court may then pass necessary orders declaring the results and giving directions to the successful/elected members to take over charge of the respective elected posts and the control and the management of the 1st respondent i.e., the appellant-Centenary Baptist Church. Since this whole process is likely to take some time and as there is already an interim arrangement made by this Court and that interim arrangement is continuing till today, it is apposite to direct that till the election results are declared by the appropriate orders of the trial Court and until the newly elected body takes charge, the present body, which is now functioning as per the orders of this Court, shall continue to function, however, subject to the condition that the present body should not take major policy decisions

and shall discharge only the routine functions, which are essential for the day to day functioning of the society. It is needless to mention that after the results are so declared it is open to the aggrieved party/parties to pursue the remedies, which the law permits.

12. The CMA is disposed of accordingly with the above directions. No costs.

Miscellaneous petitions, if any, pending in this appeal shall stand closed.

M. SEETHARAMA MURTI, J

9th July, 2015

Note: Registry is directed to communicate a copy of this judgment to the trial Court as expeditiously as possible and preferably within a week from today.

Vjl