

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

C.R.P.No.2113 of 2018

ORDER:

This revision is filed aggrieved by the order dated 05.03.2018 in I.A.No.14 of 2018 in O.P.No.1 of 2017 on the file of the Junior Civil Judge, Yellareddy, Nizamabad District and consequently, to reject the said O.P.

2. Heard the learned counsel for the revision petitioner, the learned counsel for respondent No.1, the learned Standing Counsel for Zilla Parishad, Mandal Parishad and Gram Panchayats for respondent Nos.2 and 4, the learned Government Pleader for Arbitration for respondent Nos.5 and 6 and perused the record.

3. The learned counsel for the revision petitioner would contend that the Court below under utter misconception held that there are two different situations, out of which, the first situation is governed under Section 22 of the Panchayat Raj Act (for short 'the Act') while the second situation is governed by the rule 2(2) thereof. The Court below also misconstrued that the disputes under Section 22 of the Act shall be dealt with by the District Court while the Election Petitions shall be dealt with by the District Munsif as the District Munsif is defined as the Election Tribunal under Rule 2(2) of the Act. The learned Magistrate without adverting to the same was pleased to dismiss the application filed by the petitioner and ultimately, prayed to

set aside the impugned order and consequently, to reject the O.P.

4. On the other hand, the learned counsel for respondent No.1 would contend that he filed the O.P. to declare the petitioner as disqualified for the post of Ward Member as well as Upa Sarpanch. As per Rule 2 of the Rules made under G.O.Ms.No.111, dated 03.03.1995, no election under the Act, whether of a member, Sarpanch or Upa Sarpanch of Gram Panchayat, President (and Vice-President) of Mandal Parishad and Member of Mandal Parishad Territorial Constituencies and Chairman, (Vice-Chairman) of Zilla Parishad and Member of Zilla Parishad Territorial Constituency thereof, shall be called in question except by an election petition presented in accordance with these Rules to the Election Tribunal as defined in sub-rule(2) by any candidate or elector against the candidate. The Tribunal rightly held that it has jurisdiction and competent to adjudicate the election disputes and moreover, with regard to the limitation, it will be decided at the time of final adjudication of the petition. Therefore, there is no infirmity in the impugned order and ultimately, prayed to dismiss the petition.

5. The learned Standing Counsel for respondent Nos.5 and 6 relied on the decision reported in *Jogi Satyanarayanamma v. Kodi Vijaya Lakshmi and others*¹ and contended that the facts and circumstances of the present case are identical to that one. In the instant case, election of

¹ 2008(3) ALD 1

Upa Sarpanch is under challenge whereas in the said case, election of Sarpanch was under challenge.

6. In view of the submissions made by both sides, the point that arises for determination is, whether the O.P. filed by respondent No.1 is liable to be rejected?

7. It is appropriate to refer to the *Jogi Satyanarayanamma's* case (supra), volume III of provisions under Section 233 of the Act and also the provisions under Rules 2(2) of the Act. So, in the subject application, the challenge is with regard to the election of the petitioner as Ward Member as well as Upa Sarpanch. The said aspect has not been covered under 2(2) of the Act. The Court below while dealing with this aspect had elaborately dealt with the provisions of Section 22 of the Act and Rule 2 of the Rules made under G.O.Ms.No.111, dated 03.03.1995 and also Section 233 of the Act and held that under Rule 2(2) of the Rules, the Tribunal is competent to determine the *lis*. There is no infirmity in the finding of the Court below. It cannot be said that the District Munsif, Yellareddy, has no competence to determine the *lis*. So also, the cause of action relates to bundle of mixed questions of fact. Those can be dealt with at the time of final disposal of the election petition. The Civil Revision Petition is devoid of merit and it is liable to be dismissed.

8. Accordingly, the Civil Revision Petition is dismissed and consequently, the interim order dated 09.04.2018 shall stand vacated.

Miscellaneous Petitions pending, if any, shall stand closed.

There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 20.09.2018
ssp

