



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.09.2019

CORAM

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

C.R.P. (MD)No.1413 of 2019

and C.M.P. (MD)No.7479 of 2019

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The C.S.I.Kanyakumari Diocese,
Rep.by its Bishop,
71, Dennis Road,
Agastheeswaram Taluk,
Nagercoil, Kanyakumari District.

: Petitioner

Vs.

1.M.Singh Siva Gnnandhas

2.The Bishop,
C.S.I. Kanyakumari Diocese,
71, Dennis Road,
Agastheeswaram Taluk,
Nagercoil, Kanyakumari District.

3.Rev.R.Hanslin Nesaraj

4.The Convener
(Commissioner for settlement of
Election Dispute Committee,
Agastheeswaram Taluk, Kanyakumari District)

: Respondents

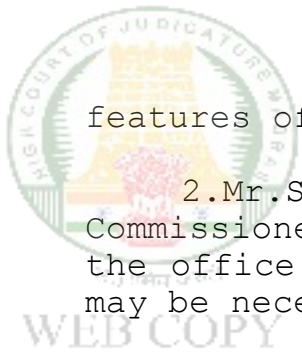
PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to call for the records in I.A.No.4 of 2019 in O.S.No.27 of 2019, dated 02.08.2019 on the file of the Principal District Munsif, Padmanabhapuram, Kanyakumari District and set aside the same by allowing this revision petition.

For Petitioner : Mr.Issac Mohanlal
Senior Counsel
for M/S.F.Deepak

For Respondents : Mr.C.Aravinthan
for M/S R.Jenifar Bibin

ORDER

This Civil Revision Petition has been filed to set aside the order in I.A.No.4 of 2019 in O.S.No.27 of 2019, dated 02.08.2019 on the file of the Principal District Munsif, Padmanabhapuram, Kanyakumari District. The said petition was filed seeking for appointment of an Advocate Commissioner to ascertain the physical



features of the election polling box.

2.Mr.S.K.Ajithkumar, Advocate was appointed as Advocate Commissioner by the Court below and he was directed to proceed to the office of the Church and to take an extract of the materials as may be necessary for deciding the controversies.

3.The learned senior counsel appearing for the petitioner submitted that there is no scope for appointment of Advocate Commissioner and to fix the duties of the Advocate Commissioner, and therefore, the order passed by the Court below is un-sustainable.

4.The learned counsel for the respondents submitted that the the Court below, on careful consideration has appointed Advocate Commissioner to decide the controversies, and therefore, the Advocate Commissioner may be allowed to carry out the functions.

5.The learned counsel appearing for the petitioner filed an affidavit on 18.09.2019 wherein he stated as follows:

"8.It is respectfully submitted that even as the election is over as early as on 23.09.2018 and the Election Petition thereon dated 27.09.2018 being dismissed by the Commission for Settlement of Election Disputes on 12.11.2018, if the 1st respondent / plaintiff is eager to have Ballots counted again, the Commission for Settlement of Election Disputes would be prepared a re-count the Ballots again and the 1st respondent / plaintiff as well as his Legal Counsel may be physically present during the process."

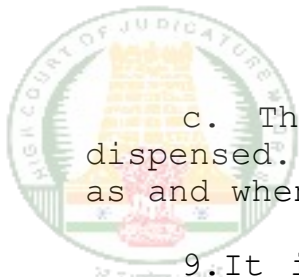
6.The learned counsel appearing for the petitioner submitted that the present dispute was referred already to the Commission for Settlement of Election Disputes and the said Commission dismissed his petition on 12.11.2018. The suit was filed without challenging the above dismissal, and therefore, the first respondent has no right to file the present suit and ask for re-counting of the votes.

7.The learned counsel for the revision petitioner fairly submitted that they are ready for re-counting of the votes, as requested by the first respondent / plaintiff, in the presence of the first respondent / plaintiff along with his legal counsel.

8.After hearing the learned counsel for the petitioner and the learned counsel for the first respondent, this court is inclined to pass the following orders:

a. The plaintiff shall re-count the votes within a week from the date of receipt of a copy of this order.

b. The revision petitioner shall re-count the votes in the presence of the first respondent / plaintiff along with his legal



c. The appearance of the Bishop before the Court below is dispensed. However, the Bishop shall appear before the Court below as and when required.

9.It is made clear that this order been passed in view of the affidavit filed by the petitioner dated 18.09.2019. Otherwise, this Court is of the view that the suit itself is not maintainable due to the reasons that the first respondent has already referred the dispute before the Commission for Settlement of Election Disputes and the said commission has also dismissed the application for re-counting, on 12.11.2018. That being the case, the question of filing the present suit does not arise at all.

10.This Court in order to give a quietus to the matter, and on the basis of the fair submission of the learned counsel for the revision petitioner and in view of the affidavit filed by them, has passed the above order. The Court below may decide the maintainability of the suit in the event of the revision petitioner or any other person filing a petition to strike off the suit.

11.With the above directions and observations, this Civil Revision Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)

gns

To

The Principal District Munsif,
Padmanabhapuram,
Kanyakumari District.

+1 CC to M/s.R.JENIFAR BIBIN, Advocate (SR-88643[F] dated 23/09/2019)

+1 CC to M/s.F.DEEPAK, Advocate (SR-88722[F] dated 24/09/2019)

C.R.P. (MD)No.1413 of 2019
23.09.2019

JMN(26.09.2019) 3P : 4C