

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

C.M.A.No.1689 of 2020

and

C.M.P.No.12448 of 2020

S.Poovendirakumar

..Appellant

Vs.

1.S.Prakash

2.P.Annadurai

3.K.Yuvaraj

(Respondents 2 and 3 exonerated as
per memo dated 02.03.2020)

4.The State of Tamil Nadu,
Represented by its District Collector,
Erode District.

5.The State Election Commissioner,
State Election Commission Office,
Vadapalani, Chennai.

6.The Deputy Registrar of Co-operative
Societies cum
Election Returning Officer,
Erode Panchayat Union,
Erode Taluk,
Erode.

..Respondents

Prayer : Civil Miscellaneous Appeal filed under Order 43 Rule
1 of C.P.C., against the Fair and Decretal order dated
11.03.2020 passed in I.A.No.2 of 2020 in E.O.P.No.9 of 2020 on
the file of the I Additional District Judge, Erode.

For Appellant : No Appearance

For Respondents : Mr.R.Neelakandan
[For R1]

J U D G M E N T

The Fair and Decretal order dated 11.03.2020 passed in
I.A.No.2 of 2020 in E.O.P.No.9 of 2020 is sought to be set
aside in the present Civil Miscellaneous Appeal.

2. The contention of the petitioner/appellant is that the appellant was a candidate, participated in the process of Panchayat Election for Ward No.2 for the post of Member for the Perode Village Panchayat. The Election was held on 27.12.2019. The Election Officer wrongly declared as elected and thus, the appellant filed E.O.P.No.9 of 2020. Along with the said E.O.P, the Interlocutory Application was filed seeking an order of interim injunction, restraining the elected candidates from functioning as Ward member and to participate in the further process for Election to the Post of Chairman.

3. It is further contended that the 1st respondent filed his nomination along with Form 3 and an affidavit in support of the declaration decides other papers and while furnishing the particulars, the 1st respondent had disclosed that there is no arrears of amount due to the Government by suppressing that he is doing mines business. The contention of the appellant is that the 1st respondent was doing an mining business and the said factum was suppressed in Form 3 filed along with the nomination. The appellant further states that the 1st respondent during the process of Election, supplied liquor to the voters and further, disbursed sarees, dhoties and cash to the voters, which all are against the Election rules. The violations committed by the 1st respondent is in violation of Section 258 of the Tamil Nadu Panchayat Act, 1994 and Rule 122 of the Tamil Nadu Panchayat (Election) Rules, 1995. The appellant states that for all these reasons, the Election itself is null and void and therefore, Interlocutory Application filed seeking an order of interim injunction ought to have been granted by the Trial Court.

4. Without even considering the primary grounds raised in the Election Petition, the Interlocutory Application was dismissed by the Trial Court. Thus, the present Civil Miscellaneous Appeal is filed.

5. The learned counsel appearing on behalf of the 1st respondent disputed the contentions by stating that admittedly, the Election Petition was filed by the appellant before the I Additional District Judge, Erode. The said Election Petition is pending for adjudication. The Interlocutory Application filed seeking interim injunction was rightly rejected by the Trial Court mainly on the ground that the functioning of an elected Ward Member cannot be restrained at all. Thus, the present Civil Miscellaneous Appeal is liable to be rejected.

6. This Court is of the considered opinion that the process of Election was concluded and the 1st respondent was declared elected for the post of Ward Member in Panchayat Union, Erode. Therefore, he cannot be restrained from participating in the further process and further, he cannot be

restrained from functioning until the Election Petition is decided on merits by the competent Court in E.O.P.No.9 of 2020. All the issues raised in the present Civil Miscellaneous Appeal are to be adjudicated with reference to the documents as well as the evidences available and under these circumstances, it is not preferable to restrain the elected Ward Member from functioning as such or to participate in the further process of election or otherwise.

7. This Court is of the considered opinion that the Courts are expected to be cautious, while granting interim injunction in such matters of Election Petitions. A Ward Member elected by majority, must be allowed to function in the interest of people and to serve the people of that locality under the provisions of the Panchayat Act. In the event of restraining such elected Ward Member, the people will loose an opportunity to redress their grievances through the Elected Ward Members. Thus, interim injunction in such circumstances cannot be granted unless there is an extraordinary circumstances, warranting any such interim orders.

8. With reference to the miscellaneous appeal on hand, this Court is of the considered opinion that it is not disputed that the 1st respondent was declared elected. Therefore, he must be allowed to function till the Election Petition is decided on merits and with reference to the issues raised by the appellant in the Election Original Petition.

9. The reasonings furnished in the order passed by the Trial Court is candid and convincing. The Trial Court considered all the grounds raised by the appellant in detail and arrived a conclusion that the appellant is not entitled for any such interim injunction as such sought for. This Court do not find any acceptable ground for the purpose of interfering with the order passed by the Trial Court in the Interlocutory Application.

10. Thus, the Fair and Decreetal order dated 11.03.2020 passed in I.A.No.2 of 2020 in E.O.P.No.9 of 2020 stands confirmed and accordingly, the Civil Miscellaneous Appeal No.1689 of 2020 stands dismissed. The Trial Court is requested to expedite the E.O.P and dispose of the same as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

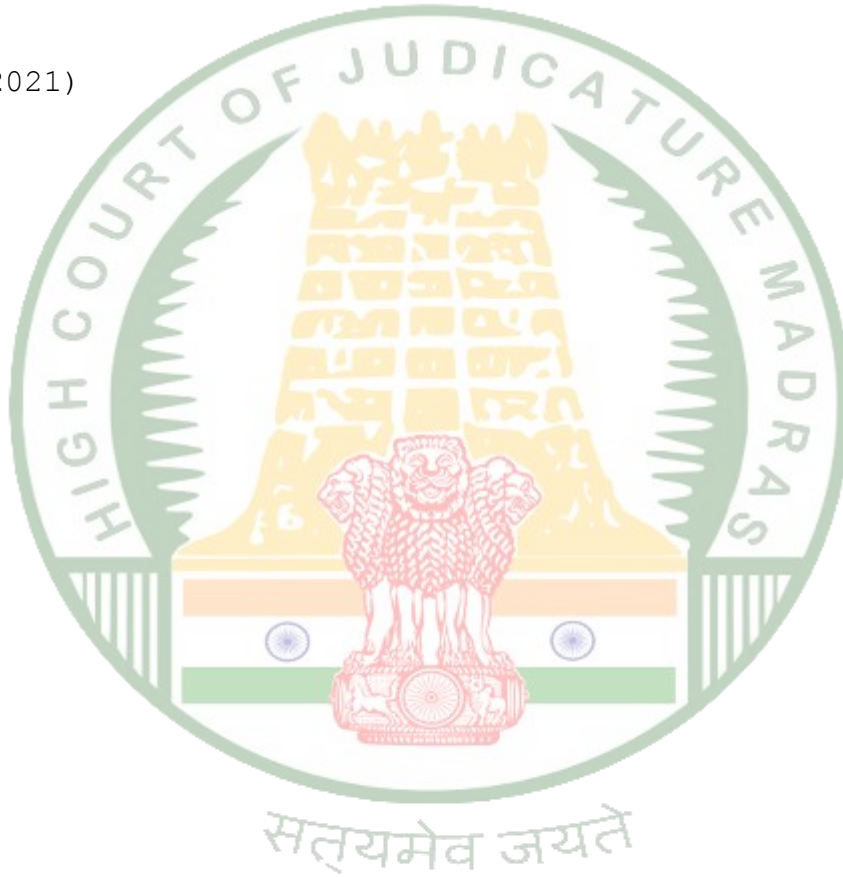
To

The I Additional District Judge,
Erode.

Copy to: The Section Officer,
VR Section,
High Court, Madras-104.

C.M.A.No.1689 of 2020

SSV(CO)
CB(12/03/2021)



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