



O.A.No.764 of 2021

ORDERS RESERVED ON : 25.02.2022

ORDERS DELIVERED ON : 17.03.2022

O.A.No.764 of 2021
in E.L.P.No.8 of 2021
and O.A.No.15 of 2022

V.BHARATHIDASAN, J.,

ORDER

This application, has been filed under Order VII Rule 11 of the Code of Civil Procedure, 1908, (hereinafter referred to as 'CPC'), to reject the Election Petition in E.L.P.No.8 of 2021. This application has been filed by the first respondent / returned candidate, from Bodinayakanur Legislative Assembly constituency. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Election Petition.

2. The election petitioner claiming himself as an eligible elector from Bodinayakanur Legislative Assembly constituency, has filed this election petition, to declare the election of the first respondent, from Bodinayakanur Legislative Assembly constituency as null and void.

3. The election petition has been filed on the ground that, in the General Election to the Tamil Nadu Legislative Assembly held in April,



O.A.No.764 of 2021

2021, the first respondent contested from Bodinayakanur Legislative Assembly constituency as the official candidate of the All India Anna Dravida Munnerta Kazhagam (in short 'AIADMK') and secured 1,00,050 votes and he was declared elected. According to the election petitioner, the first respondent, at the time of filing his nomination papers, suppressed many facts and failed to disclose the assets and liabilities of his wife, Mrs.P.Vijayalakshmi, which amounts to non compliance of the provisions of Sections 33 and 33A of the Representation of People Act, 1951 (hereinafter referred to as the 'Act') r/w Rule 4A of the Conduct of Election Rules, 1961 (hereinafter referred to as the 'Rules').

4. Further according to the election petitioner, on verification of the affidavit furnished by the first respondent in Form 26, along with his nomination papers, the election petitioner came to know about the suppressions and non-disclosure of full particulars of the assets and liabilities of his wife. The allegations made in the election petition, in brief are as follows:

(i) In the affidavit filed in Form 26, at Para 8(i), the first respondent has stated that his wife has given guarantee to the City Union Bank, Mandaveli Branch,



O.A.No.764 of 2021

WEB COPY

Chennai, for the credit facility sanctioned to one M/s.Vijayanth Developers Pvt. Ltd for Rs.12,00,00,000/- (Rupees twelve crores). However, from the Memorandum of extension of equitable mortgage by way of deposit of Title Deeds, executed by her on 22.01.2021 and 10.02.2021, it is reflected that the total bank guarantee given by the wife of the first respondent was Rs.27,50,00,000/- thereby the first respondent has suppressed the liability of his wife to the extent of Rs.15,50,00,000/- in his affidavit.

(ii) In para 7B(i), of the affidavit filed in Form 26, the market value of various properties owned by the first respondent's wife has been shown as Rs.1,21,12,500/-, however, the actual value stated in the bank guarantee given by her before the bank was shown as Rs.13.5 crores. Hence, the first respondent has undervalued the property and wrongly disclosed her assets.

(iii) In the very same paragraph in 7B(i), of the affidavit, with respect to various agricultural lands, the



WEB COPY

value is shown as Rs.27,51,086/-, however for the very same properties, when it was given as bank guarantee to the bank, the value has been shown as Rs.14 crores.

(iv) In paragraph 7B(iv), of the affidavit, in respect of residential building, the survey number has been wrongly given as 4294 instead of 4294/1. That apart, in respect of the above said house property, at the time of purchase, there was no building, but, now it is shown that a 2000 sq.ft. of residential building has been constructed there and thereby huge investment has been made, which has been suppressed.

(v) So far as the non agricultural property situated in S.No.4293/1 at South Agragaram, Periyakulam town, it has been shown as a vacant land, however it was assessed for property tax by the concerned municipality and hence the presence of the building has been suppressed by the first respondent.



WEB COPY

(vi) In paragraph 7B, of the affidavit, the first respondent suppressed five residential building owned by his wife, in various survey numbers at Thenkarai Village, Periyakulam Taluk, though it has been reflected in the registration records.

(vii) In paragraph 9(a), of the affidavit, the first respondent has mentioned his profession as agriculturist, but he has not shown any agricultural income, whereas, he has only shown the agricultural income of his wife, hence there is misrepresentation by the first respondent.

(viii) After declaring that all the particulars given in Form 26 are true, in contrary to the said declaration, the first respondent concealed material informations, which amounts to non-compliance of the provisions of Sections 33 and 33A of the Act and Rule 4A of the Rules.

(ix) The nondisclosure of immovable properties materially affect the result of the election, and the



O.A.No.764 of 2021

WEB COPY

deliberate suppression of material facts, furnishing of false information by the first respondent amounts to improper acceptance of nomination as contemplated under Section 100(1)(d)(i) and (iv) of the Act.

With the above allegations the election petitioner has sought to declare the election of the first respondent from Bodinayakanur Legislative Assembly constituency as null and void.

5. The first respondent has filed the present application, under Order VII Rule 11 of CPC, to reject the election petition on the ground that, the election petitioner has not set out any case of improper acceptance of nomination or non-compliance with the provisions of the Act and Rules, as the election petitioner does not substantially set out any material facts on which the election petitioner relies to challenge the election of the first respondent, the election petition is liable to be rejected. That apart, the election petition contains only vague and bald allegations, it does not disclose any triable issue and no cause of action has been made out. In the said circumstances, according to the first respondent, the election petition ought to be rejected under Order VII Rule 11 of CPC.



O.A.No.764 of 2021

6. On merit, the first respondent has denied all the allegations made by the election petitioner elaborately, and submitted that there is no suppression of material fact or misrepresentation in the affidavit filed by the first respondent. The details of which shall be discussed in the later part of this order.

7. Mr.AR.L.Sundaresan, learned senior counsel appearing for the first respondent/returned candidate, would submit that the allegations set out in the election petition are totally incorrect, there is no nondisclosure of assets and liabilities and immovable properties in Form 26. The first respondent has not misrepresented deliberately and has not filed any false affidavit. The learned senior counsel also taken the Court to each and every allegation made in the election petition along with the relevant documents filed along with the election petition to substantiate that the allegations contained in the election petition are totally untrue, baseless and all the details as required under Form 26, have been duly and correctly furnished by the first respondent.

8. Further, according to the learned senior counsel, the allegations made in the election petition is not related to any nondisclosure of the immovable property, the immovable properties owned by the spouse of the first respondent has been duly disclosed. According to the learned senior



O.A.No.764 of 2021

counsel, there is no allegation either against the first respondent or his spouse that they owned or possessed some other immovable property other than those that has been disclosed in the affidavit and the same has been suppressed by the first respondent. Even assuming there is nondisclosure of assets, it only gives rise to an offence under Section 125-A of the Act, and on that ground, the election of the first respondent cannot be set aside. Hence, according to the learned senior counsel, no case is made out to show that the election has been materially affected. Mere vague averments that non-disclosure of immovable property in Form 26 materially affected the election is not sufficient without any supporting materials therein. Even though there is no suppression of total liability of the first respondent wife, even assuming that the liability was not disclosed, the election petitioner is not entitled to get the relief he sought for in the election petition and on that ground, the election of the first respondent cannot be declared as null and void. According to the learned senior counsel, from the averments made in the election petition, absolutely there is nothing to show that there has been improper acceptance of nomination, which has materially affected the result of the election. Therefore, as the election petition has not disclosed any cause of action or raised any triable issue, the election petition has to be rejected at the threshold.



WEB COPY 9. Per contra, Mr.M.Joseph Thatheus Jerome, the learned counsel appearing for the election petitioner, would contend that, the first respondent/returned candidate, while filing the affidavit has deliberately suppressed the assets and liabilities of his wife and his nomination has been improperly accepted by the Returning Officer despite objections, therefore, on that ground itself, the election of the first respondent has to be declared null and void.

10. Further, according to the learned counsel, it is incumbent upon every candidate to give information about his assets and liabilities, which is an essential part of free and fair election, every voter has right to know the details of the candidate and the same is covered under Freedom of Speech, guaranteed under Article 19(1)(a) of the Constitution of India. Every candidate should disclose the full assets owned by them at the time of election and on that basis only the elector can decide whether he can be elected. In the instant case, nondisclosure of information by the first respondent materially affected the result of the election. The learned counsel also elaborately argued on each and every allegations made in the election petition with relevant documents. That apart, the learned counsel also relied



upon number of judgments, which will be referred to in the later part of this order.

11. I have considered the rival submissions and also perused the materials available on record carefully.

12. The election petition has been filed alleging noncompliance of the provisions of Sections 33 and 33-A of the Act, which is in violation of Section 100(1)(d)(i) and (iv) of the Act, which is now sought to be rejected by the first respondent. It would be useful to refer to the relevant provisions of CPC, the Representation of People Act and Conduct of Election Rules.

13. Order VII Rule 11 CPC, deals with rejection of plaint, which is extracted hereunder :

"Order VII Rule 11 Rejection of plaint.—

The plaint shall be rejected in the following cases:

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time



to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff. "

14. Section 33 of the Act, speaks about presentation of nomination paper and the requirements for a valid nomination. Section 33-A of the Act,



speaks about right to information, and Section 100 of the Act, speaks about the grounds for declaring an election as void. Rule 4-A of the Rules speaks about the form of affidavit to be filed at the time of delivering nomination paper. Sections 33, 33-A and 100 of the Act and Rule 4-A of the Rules are extracted below:

"Section 33. Presentation of nomination paper and requirements for a valid nomination.

(1) On or before the date appointed under clause

(a) of section 30 each candidate shall, either in person or by his proposer, between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer :

Provided that a candidate not set up by a recognised political party, shall not be deemed to be duly nominated for election from a constituency unless the nomination paper is subscribed by ten proposers being electors of the constituency:



Provided further that no nomination paper shall be delivered to the returning officer on a day which is a public holiday:

Provided also that in the case of a local authorities' constituency, graduates' constituency or teachers' constituency, the reference to "an elector of the constituency as proposer" shall be construed as a reference to ten per cent. of the electors of the constituency or ten such electors, whichever is less, as proposers.

(1-A) Notwithstanding anything contained in sub-section (1), for election to the Legislative Assembly of Sikkim (deemed to be the Legislative Assembly of that State duly constituted under the Constitution), the nomination paper to be delivered to the returning officer shall be in such form and manner as may be prescribed :

Provided that the said nomination paper shall be subscribed by the candidate as assenting to the nomination, and—

(a) in the case of a seat reserved for Sikkimese of Bhutia-Lepcha origin, also by at least twenty electors of the constituency as proposers and twenty electors of the constituency as seconders;

(b) in the case of a seat reserved for



Sanghas, also by at least twenty electors of the constituency as proposers and at least twenty electors of the constituency as seconders;

(c) in the case of a seat reserved for Sikkimese of Nepali origin, by an elector of the constituency as proposer:

Provided further that no nomination paper shall be delivered to the returning officer on a day which is a public holiday.

(2) In a constituency where any seat is reserved, a candidate shall not be deemed to be qualified to be chosen to fill that seat unless his nomination paper contains a declaration by him specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is a Scheduled Caste or, as the case may be, a Scheduled Tribe of the State.

(3) Where the candidate is a person who, having held any office referred to in Section 9, has been dismissed and a period of five years has not elapsed since the dismissal, such person shall not be deemed to be duly nominated as a candidate unless his nomination paper is accompanied by a certificate issued in the prescribed manner by the



Election Commission to the effect that he has not been dismissed for corruption or disloyalty to the State.

(4) On the presentation of a nomination paper, the returning officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls :

Provided that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood; and the returning officer shall permit any such misnomer or inaccurate description or clerical, technical or printing error to be corrected and where necessary, direct that any such



misnomer, inaccurate description, clerical, technical or printing error in the electoral roll or in the nomination paper shall be overlooked.

(5) Where the candidate is an elector of a different constituency, a copy of the electoral roll of that constituency or of the relevant part thereof or a certified copy of the relevant entries in such roll shall, unless it has been filed along with the nomination paper, be produced before the returning officer at the time of scrutiny.

(6) Nothing in this section shall prevent any candidate from being nominated by more than one nomination paper:

Provided that not more than four nomination papers shall be presented by or on behalf of any candidate or accepted by the returning officer for election in the same constituency.

(7) Notwithstanding anything contained in sub-section (6) or in any other provisions of this Act, a person shall not be nominated as a candidate for election,—

(a) in the case of a general election to the



House of the People (whether or not held simultaneously from all Parliamentary constituencies), from more than two Parliamentary constituencies;

(b) in the case of a general election to the Legislative Assembly of a State (whether or not held simultaneously from all Assembly constituencies), from more than two Assembly constituencies in that State;

(c) in the case of a biennial election to the Legislative Council of a State having such Council, from more than two Council constituencies in the State;

(d) in the case of a biennial election to the Council of States for filling two or more seats allotted to a State, for filling more than two such seats;

(e) in the case of bye-elections to the House of the People from two or more Parliamentary constituencies which are held simultaneously, from more than two such Parliamentary constituencies;

(f) in the case of bye-elections to the Legislative Assembly of a State from two or more Assembly constituencies which are held simultaneously, from more than two such Assembly constituencies;



O.A.No.764 of 2021

(g) in the case of bye-elections to the Council of States for filling two or more seats allotted to a State, which are held simultaneously, for filling more than two such seats;

(h) in the case of bye-elections to the Legislative Council of a State having such Council from two or more Council constituencies which are held simultaneously, from more than two such Council constituencies.

Explanation.— For the purposes of this sub-section, two or more bye-elections shall be deemed to be held simultaneously where the notification calling such bye-elections are issued by the Election Commission under section 147, section 149, section 150 or, as the case may be, section 151 on the same date.

Section 33-A. Right to information.—

(1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) or section 33, also furnish the information as to whether —

(i) he is accused of any offence punishable



with imprisonment for two years or more in a pending case in which a charge has been framed by the court of competent jurisdiction;

(ii) he has been convicted of an offence [other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8] and sentenced to imprisonment for one year or more.

(2) The candidate of his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form very fine the information specified in sub-section (1).

(3) The returning officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his office for the information of the electors relating to a constituency for which the nomination paper is delivered.]



* * *

Section 100. Grounds for declaring election to be void.—

(1) Subject to the provisions of sub-section (2) if the High Court is of opinion—

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of



WEB COPY



O.A.No.764 of 2021

any vote which is void, or

(iv) by any non—compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void.

(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the High Court is satisfied—

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;

(b) Omitted

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents then the High Court may decide that the election of the returned candidate is not void."



O.A.No.764 of 2021

* * *

Rule 4-A. Form of affidavit to be filed at the time of delivering nomination paper.—

The candidate or his proposer, as the case may be, shall, at the time of delivering to the returning officer the nomination paper under subsection (1) of section 33 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in Form 26."

15. Now let us consider whether the averments contained in the election petition is lagging in material facts, and it fails to disclose cause of action, ultimately warranting rejection of the election petition.

16. The election petition has been filed on the ground that the first respondent while filing his nomination, in the affidavit filed under Form 26, has not disclosed the full particulars of the assets and liabilities of his wife, which amounts to non compliance of Sections 33 and 33A of the Act and Rule 4-A of the Rules. Now, let us consider the allegations set out by the election petitioner in the election petition in detail.



Allegation contained in Para 10(i) of the Election Petition:

WEB COPY 17. The main allegation is that, in the affidavit filed by the first respondent he had suppressed the assets, liabilities and immovable properties of his wife. According to the election petitioner, in the affidavit filed in Form 26, the first respondent has stated in paragraph 8(i) that, his wife stood as a guarantor for M/s.Vijayanth Developers Pvt. Ltd., owned by one of her sons for Rs.12,00,00,000/-. Further, according to the election petitioner, the total guarantee given in respect of the properties, which was mortgaged, for the loan borrowed by her son, V.P.Jayapradeep, was Rs.27,50,00,000/-, hence there is a suppression of liabilities to an extent of Rs.15,50,00,000/- in the affidavit.

18. Disputing the same, the learned senior counsel for the first respondent submitted that, originally, the properties which were given as guarantee to the bank belongs to her two sons viz., Mr.Raveendranath and Mr.Jayaprdeep, later the above said properties have been gifted by them in favour of their mother Mrs.P.Vijayalakshmi, the wife of the first respondent, by means of a Gift Settlement Deed, executed and registered on 22.01.2021, and another Gift Deed dated 10.02.2021 by her second son. Further the credit facilities availed by the company is prior to the above gift settlements,



O.A.No.764 of 2021

and the properties were given as collateral security by her sons much earlier to the settlement. After the properties were gifted in her favour, she extended the guarantee for a sum of Rs.1.50 crores on 22.01.2021 for Mr.V.P.Jayapradeep and another guarantee for a sum of Rs.10 crores for M/s.Vijayanth Developers Private Ltd., on 20.05.2019. The election petitioner has filed all the memorandum of deposit of title deeds, relying on which, the learned senior counsel for the first respondent would submit that, there is no suppression of liability and the written submissions filed by the first respondent can be usefully referred, which is as follows:

"The credit facilities availed by the Company in respect of the agricultural punja lands were originally stood in the name of the sons of the Applicant/respondent, wherein they had mortgaged the said land along with other properties for their business with City Union Bank, Mandaveli, Chennai from the year 2018 onwards and the same was continued till 2021 whereas the title deeds deposited in the name of one Mr.Raveendranath and Mr.Jayapradeep had transferred out of love and affection to their mother, i.e., the spouse of the candidate Mrs.P.Vijayalakshmi by way of Gift Settlement Deeds only after obtaining consent from the bank (page No.76 in the Election Petition) and



executed Gift Settlement Deed dated 22.01.2021 registered as Document No.172/2021 (Page No.44 in Election Petition) by the 1st son and Gift Settlement Deed dated 10.02.2021 registered as Document No.386/2021 (Page No.191 in election petition) by the 2nd son. Wherein the credit facilities which was fully availed by the company is prior to the Settlement to the spouse of the candidate Mrs.P.Vijayalakshmi and she only stood as a guarantor to the credit facility been availed by the company.

(i) The Election Petition referred two Memorandum of Deposit of Title Deeds in the name of the spouse of the candidate Mrs.P.Vijayalakshmi, whereas in the 1st Deed dated 22.01.2021 covers a loan of Rs.1.50 Crores individually in the name of Mr.V.P.Jayapradeep on 03.08.2018 (through MODT(Deed) vide., Doc.No.1879/2018) (Page No.15 in Additional Documents) and

(ii) An additional credit facility covers a loan of Rs.10 Crores (through MODT (Deed) vide., Document No.1183/2019) (Page No.32 in Additional Documents) in the name of M/s.Vijayanth Developers Private Ltd., on 20.05.2019 and



(iii) And enhanced credit limit of 2 Crores in the name of M/s.Vijayanth Developers Private Ltd., on 10.11.2020 (through MODT (Deed) vide., Document No.2399/2020) (Page No.101 in Additional Documents) was sanctioned and released on 10.02.2021 against the security of immovable properties in the name of Mrs.P.Vijayalakshmi, the wife of the Candidate.

(iv) The total loan was therefore only Rs.13.50 Crores.

(v) The 2nd MODT(Deed) dated 10.02.2021 vide., Document No.410/2021 (Page No.167 in the Election Petition) is in the name of Mrs.P.Vijayalakshmi is an additional security given for the same loan sanction/disbursed earlier, secured under MODT dated 22.01.2021 in D.No.206/2021 referred to above but it is wrongly construed by the Election Petitioner that the 1st MODT(Deed) as a separate MODT(Deed) to the tune of Rs.13.50 Crores and the 2nd MODT(Deed) as a separate MODT(Deed) to the tune of Rs.14 Crores and wrongly arrived to a conclusion that the Applicant's wife Mrs.P.Vijayalakshmi has given a bank guarantee for a sum of Rs.27.50 Crores which is total misconception of facts.



(vi) In this Connection a Rectification Deed was registered on 11.03.2021 vide., Document No.785/2021 (Page No.120 in Additional Documents) and the list of the Title Deeds deposited and Description of Property was altered.

(vii) Whereas the Election Petitioner filed a Mortgage Receipt dated 18.08.2021 vide., Document No.2008/2021 (Page No.140 in Additional Documents) confirm the total loan amount mortgaged by the wife of the candidate Mrs.P.Vijayalakshmi is a sum of Rs.12 Crores vide 10.02.2021 vide., Document No.410/2021 (Page No.167 in the Election Petition)/

Hence a sum of Rs.12 Crores has been stated accurate in Paragraph 8(1) of the Affidavit in Form-26 of the Nomination Papers filed by the Applicant and there is no suppression of facts as alleged by the Election Petitioner."

19. I have carefully considered all those documents, and I find that originally all the properties were mortgaged by the first respondent's sons and thereafter, the properties were transferred in favour of the first



O.A.No.764 of 2021

respondent wife with the consent of the bank and after the properties have been transferred in her name, she has extended the bank guarantee only for a sum of Rs.12 crores, which has been disclosed in the affidavit and therefore there is no suppression or misrepresentation by the first respondent.

Allegation contained in Para 10(ii) & (iii) of the Election Petition:

20. The next allegation is that, the total market value of the agricultural properties has been shown as Rs.1,12,12,500/-, in respect of some survey numbers measuring an extent of 31.37 acres at Thenkarai Village and Thamaraikulam Village in Periyakulam Taluk, and another extent of land measuring 8.36 acres, in respect of some other survey numbers in Thenkarai Village, Periyakulam Taluk it has been shown as Rs.27,51,086/-, in the affidavit, whereas while the same properties were given as guarantee to the bank, the value has been shown as Rs.13.5 crores and Rs.14 crores respectively thereby, according to the election petitioner, by undervaluing the properties a false affidavit has been filed by the first respondent.

21. The above allegations have been disputed by the learned senior counsel appearing for the first respondent, and stated that, not only the



O.A.No.764 of 2021

agricultural property owned by his wife has been given as guarantee but the properties stood in the name of other directors of the company are also included in it. Hence it is not his wife's property alone which was given as guarantee, and the market value of all the properties were shown as Rs.13.5 crores and Rs.14 crores respectively. The learned senior counsel also referred to the relevant documents filed by the petitioner to that effect.

22. I have gone through the relevant documents namely, memorandum of deposit of title deeds and I find force in his arguments. Apart from the property owned by his wife, other properties were also given as guarantee, and the total value of all the properties were mentioned therein, and there is no suppression or undervaluation of the properties.

Allegation contained in Para 10(iv) of the Election Petition:

23. The next allegation is that, the first respondent has given a wrong survey number in respect of his residential building as Survey No.4294 instead of Survey No.4294/1.

24. The learned senior counsel appearing for the first respondent referred to the certified copy of the sale deed dated 24.11.1998, filed by the



O.A.No.764 of 2021

election petitioner, by which she had purchased the above property, wherein, in the schedule of properties, the Survey number has been mentioned as only 4294 and not as 4294/1.

25. This Court also verified the same and as per the sale deed, the land in survey number purchased by the petitioner's wife is only 4294 and not 4294/1 as stated by the election petitioner, and this allegation is totally baseless.

Allegation contained in Para 10(v) of the Election Petition:

26. According to the petitioner, the first respondent and his wife originally purchased an extent of 2068.5 sq.ft of land in survey number 4294, in South Agraharam, Thenkarai at Periyakulam, at that time there was no house, but at present a residential building has been constructed after demolishing the old building. However, that has been suppressed by the first respondent and the value of the above development was not disclosed in the affidavit.

27. The said allegation has been disputed by the first respondent that, at the time of purchase of the property, the value was only Rs.2,72,375/-,



O.A.No.764 of 2021

however at the time of nomination, in the affidavit, he has shown the value of the property as Rs.30,00,000/- and that variation in the value included construction put up therein and he has not suppressed the total value of the property, which also included the development made therein.

28. This Court verified the documents and the affidavit and it cannot be stated that the first respondent has suppressed the development made in the above survey number, and this allegations cannot be sustained.

Allegation contained in Para 10(vi) of the Election Petition:

29. The next allegation relates to the property in T.S.No.4293/1, at South Agraharam, Periyakulam Town, according to the election petitioner it has been shown as a vacant land, but the Periyakulam Municipality has assessed property tax, for the property, which shows that there is a residential building and the first respondent has suppressed the superstructure in the said property.

30. The learned senior counsel appearing for the first respondent would submit that, the property was purchased by the first respondent's wife,



O.A.No.764 of 2021

in the year 2017, as a vacant land with an old dilapidated building, it was assessed for property tax and the property tax assessment was in the name of her vendor, after purchase, the first respondent's wife continue to pay the tax, and as on date there is no building in the said property and the first respondent has not suppressed anything. Further, the sale deed has also been produced by the election petitioner himself.

31. A perusal of the sale deed, in the schedule of property, it is shown as follows:

"சொத்து விபரம்

“பெரியகுளம், ரிடி பெரியகுளம், 1 எண்., இணை

சார்பதிவாளர் அலுவலகம், பெரியகுளம் முனிசிபல் டவுன், 16

வது வார்டு, தென்கரை தெற்கு அக்ரஹாரம் தெருவில்

T.S.4293/1 (நான்காயிரத்தி இருநூற்றி தொண்ணூற்றி

மூன்று/ஒன்று) நம்பருக்கு கதவு எண்.69க்கு வரிவிதிப்பு எண்.

124/016/00413, Old Assessment No.124/5206 உள்ள

மனையில் வடபக்கமுள்ள மனை வீடாக இருந்து தற்போது

இடிந்துபோய் காலியிடமாக உள்ள இடத்திற்கு மால்””

(Emphasis added)



WEB COPY 32. From the schedule, it could be seen that there is an old dilapidated building before her purchase, which was also assessed for property tax, and she continues to pay the tax. Merely because the first respondent's wife is paying property tax, it cannot be presumed that there is a building therein, and it cannot be held that the first respondent has suppressed the same.

Allegation contained in Para 10(vii) of the Election Petition:

33. The next allegation is that, the first respondent suppressed five residential buildings in S.Nos.3199/1, 3205/2, 3161/2 and 1329/3A in Thenkarai village, Periyakulam taluk. According to the election petitioner all these land and buildings are owned by his wife, which has been suppressed in the affidavit.

34. The learned senior counsel appearing for the first respondent would submit that, the above mentioned survey numbers are agricultural properties and there is no residential building, only small sheds are there for storage of fertilizers, farm equipments, a pump house and restrooms for agricultural labourers working therein, and no property tax has been assessed



O.A.No.764 of 2021

for any of the above said sheds by the local body. The learned senior counsel also referred to the relevant sale deeds to substantiate his contention that, it is only small sheds put for agricultural labourers and also used as store room for agricultural equipments, and there is no residential building as alleged by the election petitioner.

35. I have also carefully gone through the sale deeds, and there is no residential buildings as alleged by the election petitioner and in the sale deeds itself those sheds are mentioned as only restrooms for agricultural labourers and none of the sale deeds show that there are residential buildings as alleged by the election petitioner. The election petitioner has not substantiated his contention with any other material that there are residential buildings which has been suppressed by the first respondent.

Allegation contained in Para 10(viii) of the Election Petition:

36. The next allegation is that, the first respondent has shown his occupation as agriculturist, but he has not shown any agricultural income and he has only shown his wife's agricultural income, thereby the first respondent has made misrepresentation.



O.A.No.764 of 2021

37. The learned senior counsel appearing for the first respondent would submit that, the first respondent is only an agriculturist by occupation and admittedly his wife owned agricultural lands, and the income derived from the said agricultural lands have been shown separately by her wife. Merely because the election petitioner did not owned any agricultural land, it cannot be considered as misrepresentation.

38. I find some force in the argument made by the learned senior counsel. Perusal of the records, it could be seen that, the income shown by the first respondent is income earned by him as Deputy Chief Minister and he has separately shown the agricultural income of his wife. Admittedly his family owns agricultural properties, merely because the first respondent did not have any separate agricultural income, it cannot be construed that he is not an agriculturist and at any rate it could not be considered as misrepresentation. It is also not the case of the election petitioner that the first respondent is having separate occupation and he is not an agriculturist.

Allegation contained in Para 10(ix) of the Election Petition:

39. The next allegation is with regard to non compliance of the provisions of Sections 33 and 33A of the Act.



WEB COPY 40. According to the learned senior counsel appearing for the first respondent absolutely there is no averment in the election petition, as to any violation of Section 33A of the Act. Section 33A of the Act, deals with disclosure of information regarding criminal case involved by the candidates, and absolutely there is no allegation that the first respondent has been an accused in any criminal case or convicted for any offence, and failed to disclose the same. Hence there is no violation of Section 33A of the Act.

41. As rightly contended by the learned senior counsel it is not the case of the election petitioner that, the first respondent is involved in criminal offence, or he has been convicted. In the said circumstances, it cannot be held that the first respondent has violated the provisions of Section 33A of the Act.

42. It is true that, it is incumbent upon every candidate contesting in the election to give full information as required under the Act and Rules. It is an essential part of fair and free election, that apart, every voter has right to know about these details of every candidate from the affidavit filed in Form 26 along with the nomination form. Every candidate is required to



O.A.No.764 of 2021

disclose his assets and liabilities and his family members at the time of election, which will enable the voter to know about the candidate. Further the voter has the right to get information about the candidates which is an integral part of Article 19(1)(a) of the Constitution of India.

43. In the event of any candidate fails to disclose his assets and liabilities and other informations, and filed a false affidavit, along with his nomination, is an improper nomination and the candidate is not entitled to contest the election. Even if the nomination is accepted, at a later stage, if the Court comes to a conclusion that, it is an improper acceptance of nomination, then the election of the returned candidate will be declared as void. The Hon'ble Supreme Court in ***Kisan Shankar Kathore vs. Arun Dattatray Sawant*** reported in **(2014) 14 SCC 162** has held in paragraph 43 has follows:

"43. When the information is given by a candidate in the affidavit filed along with the nomination paper and objections are raised thereto questioning the correctness of the information or alleging that there is non-disclosure of certain important information, it may not be possible for the Returning Officer at that



time to conduct a detailed examination. Summary enquiry may not suffice. The present case is itself an example which loudly demonstrates this. At the same time, it would not be possible for the Returning Officer to reject the nomination for want of verification about the allegations made by the objector. In such a case, when ultimately it is proved that it was a case of non-disclosure and either the affidavit was false or it did not contain complete information leading to suppression, it can be held at that stage that the nomination was improperly accepted. Ms. Meenakshi Arora, learned senior counsel appearing for the Election Commission, right argued that such an enquiry can be only at a later stage and the appropriate stage would be in an election petition as in the instant case, when the election is challenged. The grounds stated in Section 36(2) are those which can be examined there and then and on that basis the Returning Officer would be in a position to reject the nomination. Likewise, where the blanks are left in an affidavit, nomination can be rejected there and then. In other cases where detailed enquiry is needed, it would depend upon the outcome thereof, in an election petition, as to whether the nomination was properly accepted or



it was a case of improper acceptance. Once it is found that it was a case of improper acceptance, as there was misinformation or suppression of material information, one can state that question of rejection in such a case was only deferred to a later date. When the Court gives such a finding, which would have resulted in rejection, the effect would be same, namely, such a candidate was not entitled to contest and the election is void. Otherwise, it would be an anomalous situation that even when criminal proceedings under Section 125-A of the Act can be initiated and the selected candidate is criminally prosecuted and convicted, but the result of his election cannot be questioned. This cannot be countenanced. "

44. Further, whether a candidate has suppressed material facts or failed to disclose his assets and liabilities or other informations, and whether the non-disclosure would amounts to material lapse, has to be decided based upon the facts and circumstances of each case.

45. In the instant case, the allegations of the election petitioner regarding the non-disclosure of the assets and liabilities of the first respondent's wife and the allegation of misrepresentation, have been



O.A.No.764 of 2021

elaborately considered and this Court comes to a conclusion that, the election petitioner failed to substantiate that, the first respondent had violated the provisions of Sections 33A, and 100(1)(d)(i) and (iv) of the Act. This Court also fully satisfied that the first respondent had substantially complied with all the requirements as required in the Act. That apart, as rightly contended by the learned senior counsel appearing for the first respondent, absolutely there is no pleading that those alleged nondisclosure has materially affected the election. The election petitioner failed to make out a case that, the nomination of the first respondent has been improperly accepted and the first respondent has not complied with the provision of the Constitution of India, or the Act or the Rules. The election petitioner failed to set out the requisite material facts and failed to disclose a cause of action, and gives rise to a triable issue.

46. The Hon'ble Supreme Court in ***Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi*** reported in ***1987 (Supp) SCC 93*** in paragraphs 8 and 11 has held as follows:

"8. The first question which falls for our determination is whether the High Court had jurisdiction to strike out pleadings under Order VI



Rule 16 of the Code of Civil Procedure and to reject the election petition under Order VII Rule 11 of the Code at the preliminary stage even though no written statement had been filed by the respondent. Section 80 provides that no election is to be called in question except by an election petition presented in accordance with the provisions of Part VI of the Act before the High Court. Section 81 provides that an election petition may be presented on one or more of the grounds specified in Section 100 by an elector or by a candidate questioning the election of a returned candidate. Section 83 provides that an election petition shall contain a concise statement of material facts on which the petitioner relies and he shall set forth full particulars of any corrupt practice that he may allege including full statement of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice. Section 86 confers power on the High Court to dismiss an election petition which does not comply with the provisions of Sections 81 and 82 or Section 117. Section 87 deals with the procedure to be followed in the trial of the election petition and it lays down that subject to the provisions of the Act and of any rules made thereunder, every election



petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable to the trial of suits under the Code of Civil Procedure, 1908. Since provisions of Civil Procedure Code apply to the trial of an election petition, Order VI Rule 16 and Order VI Rule 17 are applicable to the proceedings relating to the trial of an election petition subject to the provisions of the Act. On a combined reading of Sections 81, 83, 86 and 87 of the Act, it is apparent that those paragraphs of a petition which do not disclose any cause of action, are liable to be struck off under Order VI Rule 16, as the Court is empowered at any stage of the proceedings to strike out or delete pleading which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit. It is the duty of the Court to examine the plaint and it need not wait till the defendant files written statement and points out the defects. If the Court on examination of the plaint or the election petition finds that it does not disclose any cause of action it would be justified in striking out the pleadings. Order VI Rule 16 itself empowers the Court to strike out pleadings at any stage of the proceedings which may even be before the filing of



the written statement by the respondent or commencement of the trial. If the Court is satisfied that the election petition does not make out any cause of action and that the trial would prejudice, embarrass and delay the proceedings, the Court need not wait for the filing of the written statement, instead it can proceed to hear the preliminary objections and strike out the pleadings. If after striking out the pleadings the Court finds that no triable issues remain to be considered, it has power to reject the election petition under Order VII Rule 11.

* * *

11. In Bhagwati Prasad Dixit 'Ghorewala' v. Rajeev Gandhi [(1986) 4 SCC 78 : 1986 SCC (Cri) 399] this Court again reiterated that in an election petition pleadings have to be precise, specific and unambiguous and if the election petition does not disclose a cause of action it should be rejected in limine. These authorities have settled the legal position that an election petition is liable to be dismissed in limine at the initial stage if it does not disclose any cause of action. Cause of action in questioning the validity of election must relate to the grounds specified in Section 100 of the



Act. If the allegations contained in the petition do not set out grounds of challenge as contemplated by Section 100 of the Act and if the allegations do not conform to the requirement of Sections 81 and 83 of the Act, the pleadings are liable to be struck off and the election petition is liable to be rejected under Order VII Rule 11. A pleading if vague and general is embarrassing. If the allegation contained in the election petition even assuming to be true and correct do not make out any case of corrupt practice or any ground under Section 100 of the Act, the pleading would be unnecessary, frivolous and vexatious. It is always open to strike out the same. If after striking out defective pleadings the Court finds that no cause of action remains to be tried it would be duty bound to reject the petition under Order VII Rule 11 of the Code of Civil Procedure. If a preliminary objection is raised before the commencement of the trial, the Court is duty bound to consider the same, it need not postpone the consideration for subsequent stage of the trial."

47. In *Hari Shanker Jain Vs. Sonia Gandhi* reported in (2001) 8

SCC 233, the Hon'ble Supreme Court, in paragraphs 23 and 24 has held as



follows:

WEB COPY

"23. Section 83(1)(a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression "cause of action" has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. (See Samant N. Balkrishna v. George Fernandez [(1969) 3 SCC 238 : (1969) 3 SCR 603], Jitendra Bahadur Singh v. Krishna Behari [(1969) 2 SCC 433].) Merely quoting the words of the



section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In V.S. Achuthanandan v. P.J. Francis [(1999) 3 SCC 737] this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead “material facts” is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.

24. It is the duty of the court to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose a cause of action. To enable a court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and nothing else. Courts have always frowned upon vague pleadings which leave a wide scope to adduce any evidence. No amount of evidence can cure basic defect in the pleadings."



WEB COPY

48. In Ram Sukh Vs. Dinesh Aggarwal reported in (2009) 10 SCC

541, the Hon'ble Supreme Court, in paragraph 18 has held as follows:

"18. Undoubtedly, by virtue of Section 87 of the Act, the provisions of the Code apply to the trial of an election petition and, therefore, in the absence of anything to the contrary in the Act, the court trying an election petition can act in exercise of its power under the Code, including Order 6 Rule 16 and Order 7 Rule 11 of the Code. The object of both the provisions is to ensure that meaningless litigation, which is otherwise bound to prove abortive, should not be permitted to occupy the judicial time of the courts. If that is so in matters pertaining to ordinary civil litigation, it must apply with greater vigour in election matters where the pendency of an election petition is likely to inhibit the elected representative of the people in the discharge of his public duties for which the electorate have reposed confidence in him. The submission, therefore, must fail. "

Considering all those principles, and facts and circumstances of the instant case, this Court is of a considered view that the election petition does not disclose a cause of action, and failed to give rise to triable issues, and it is



O.A.No.764 of 2021

only liable to be rejected.

WEB COPY

49. In the result, the application in O.A.No.764 of 2021 filed under Order VII Rule 11 of CPC is allowed and consequently the election petition in E.L.P.No.8 of 2021 is rejected. Consequently, the application in O.A.No.15 of 2022, seeking to file additional documents, is closed. No costs.

17.03.2022

Index: Yes
kk



WEB COPY



O.A.No.764 of 2021

V.BHARATHIDASAN, J.

kk

PRE DELIVERY ORDER

in O.A.No.764 of 2021

in E.L.P.No.8 of 2021

and O.A.No.15 of 2022

RESERVED ON : 25.02.2022

DELIVERED ON : 17.03.2022