



CRP(PD)(MD)No.1602 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 08.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)No.1602 of 2022 and
CMP(MD)No.6924 of 2022

K.Udhayakumar

... Petitioner

Vs

1.Palanijothi

2.Karuppaiah

3.The Election Officer/Block Development Officer Regular),
Thirupullani Panchayat Union,
Thirupullani,
Ramanathapuram District.

4.The District Election Officer/District Collector,
Sethupathy Nagar,
Ramanathapuram Town.

... Respondents

Prayer: Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 13.07.2022 passed in I.A.No.74 of 2022 in E.L.O.P No.15 of 2020, on the file of the Additional District Judge, Ramanathapuram.



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For Petitioner : Mr.V.Meenakshisundaram
For R1 & R2 : Mr.J.Barathan
For R3 & R4 : Mr.G.V.Vairam Santhosh
Additional Government Pleader

ORDER

As against the order passed by the learned District Judge, Ramanathapuram in I.A.No.74 of 2022 in E.L.O.P.No.15 of 2020, dated 13.07.2022, this Civil Revision Petition is filed.

2.The petitioner is the first respondent in E.L.O.P No.15 of 2020. The petitioner is the elected/returned candidate in the election conducted on 27.12.2019 at Mallal Panchayat, Keelakarai Taluk, Ramanathapuram District. The first respondent, who lost the election in three votes filed the above E.L.O.P No.15 of 2020, before the Principal District Court, Ramanathapuram, on the ground that in the names of five persons who are already dead and in the names of five persons, who are living in abroad, votes have been cast upon and by producing relevant documents such as passport details of the persons, who are



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living in abroad and the death certificates of the deceased, the first respondent has filed the above election petition, to declare the election results published on 02.01.2020, as null and void. The said application was filed in the month of February 2020. The first respondent has completed his evidence on 09.01.2021 and the petitioner has completed his evidence on 23.09.2021. Pending the election petition, the first respondent/the petitioner herein filed C.R.P.(MD) Nos.280 & 372 of 2022, as against the dismissal order passed in I.A.Nos. 60 & 51 of 2021, which was filed for amendment of counter affidavit filed in E.L.O.P.No.15 of 2020. The above Civil Revision Petitions have been dismissed with certain observations as against the first and third respondents. Thereafter, I.A No.74 of 2022 has been filed by the petitioner herein, under Section 151 of Civil Procedure Code on 29.06.2022, to re-open the evidence on his side for examination of booth agents as witnesses, when the main election petition was posted for arguments and the same was dismissed by the trial Court on the ground that as per Section 258(6) of Tamil Nadu Panchayat Act, the



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election petition has to be concluded within a period of six months.

Further, the trial Court observed that the election petition is pending from the year 2020 and this application is filed belatedly, after the lapse of 2 ½ years for examination of witnesses and it is purely to drag on the proceedings and rejected the application. Aggrieved over the same, the present Civil Revision Petition is filed.

3.The learned counsel appearing for the petitioner submits that the witnesses, who have to be examined are the booth agents, who were present in the respective election booths at the time of polling and therefore, they are the necessary witnesses for deciding the main election petition. He further submits that the relevancy of examination of booth agents is only for answering the allegations of the identity of the persons, who have cast upon their votes and to decide whether the records maintained by the election officer is correct or not. He further submits that the examination of such witnesses is not to drag on the proceedings and the petitioner must be provided with such opportunity



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and if this opportunity is not provided to him, he cannot establish his case properly before the trial Court. He also undertakes to produce all the witnesses on a single day with chief and also ready to subject themselves for cross examination on the same day itself.

4.The learned counsel appearing for the first respondent on caveat entered appearance and submits that this Civil Revision Petition is filed only to drag on the proceedings, which is pending before the trial Court. According to the learned counsel, the election petition has been filed in the month of February 2020 and the same is pending for the past 2 ½ years. Even in the counter affidavit, the respondents have admitted that the petitioner has secured less votes than the first respondent. Moreover, they have attempted to drag on the proceedings by filing the applications in I.A.Nos.58 and 60 of 2022, seeking for amendment in the counter affidavit, which was rightly rejected by the trial Court, as against which, the petitioner and the third respondent have filed Civil Revision Petitions before this Court in



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CRP(MD) Nos.280 and 372 of 2022, which was also dismissed by this Court on 05.03.2022 with the following observations as against the petitioner and the third respondent:-

“8.The first and third respondents in E.L.O.P.No.15 of 2020 have filed an affidavit on 17.02.2021. Already petitioner side evidence was closed. R.W.1 was also cross examined and the case was posted for cross examination of R.W.2. At this stage, the petitions in I.A.Nos.60 nad 51 of 2020 have been filed under Order VI, Rule 17 of Civil Procedure Code to amend the counter.

9.Almost, in the counter, all the paragraphs have to made correction. If the petitiones in I.A.Nos.60 & 51 of 2020 are to be allowed, great prejudice caused the entire evidence of P.W.1.

10.Since the facts of the cases are different, the Judgment reproted in 1998-1-SCC 278 & 2015-10-SCC-203 are not applicable to the case on hand.



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11. Belatedly, the first and third respondents have filed the petitions in I.A.Nos.60 & 58 of 2021 in E.L.O.P.No.15 of 2020, without any proper reason.

12. The main averments stated in the plaint are counting of votes are not done properly. The 1st and 3rd respondents have colluded with each other and now, both of them have filed these amendment petitions to amend number of votes already stated in counter. It goes into the roots of the matter.”

5. The learned counsel further submits that the main petition is filed that in the names of the persons, who are in abroad and already dead, votes have been caste upon in Mallal Panchayat election and therefore, the election results published on 02.01.2020 has to be declared as null and void. The examination of booth agents is irrelevant to the case and the particulars with regard to the votes polled and the persons who voted, have already been placed on record by the third



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respondent/Election Officer before the trial Court and therefore, by examining the booth agents, the petitioner cannot develop his case and examination of booth witnesses is not helpful to decide the election petition in any way. Therefore, this application, according to the learned counsel is only to drag on the proceedings and to fill up the lacuna. Hence, this Civil Revision Petition is liable to be dismissed.

6.This Court considered the rival submissions made and also perused the materials placed on record.

7.It is seen from the records that I.A No.74 of 2022 is filed by the petitioner for re-opening and examination of five witnesses in the election OP No.15 of 2020 filed by the first respondent herein. The said application has been filed in the fag end of the trial, when the case was posted for arguments. The trial Court dismissed the application on the ground that this application has been filed only to drag on the proceedings. The learned counsel for the respondent has also produced



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the earlier order of this Court passed in CRP(MD)Nos.280 and 372 of 2022, dated 15.03.2022, wherein, certain observations have been made as against the petitioner and the third respondent.

8.After arguing for a while, the learned counsel appearing for the petitioner has come forward with a plea that he will produce all five witnesses on a single day before the trial Court and also subject themselves for cross examination on the same day itself.

9.In view of the specific stand taken by the learned counsel for the petitioner that he will produce all the witnesses on a single day and also subject themselves for cross examination on the same day itself, this Court without expressing anything on the merits of the relevancy of the witnesses, is inclined to dispose of this Civil Revision Petition with the following directions:-



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- i. The petitioner is directed to produce all five witnesses on 17.08.2022, before the trial Court. The election petitioner/respondent shall also cross examine those witnesses on the same day itself.
- ii. Since the election application is pending from the year 2020, the trial Court shall decide the relevancy of the witnesses at the time of disposing the main election petition in E.L.O.P.No.15 of 2020.
- iii. The parties shall conclude their arguments within a period of one week from thereon.
- iv. The election petition is also to be concluded within a period of 15 days from thereon.



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10. With the above directions, this Civil Revision Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No.

Internet : Yes / No.

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To

The Additional District Judge, Ramanathapuram.

Note: Issue order copy on **11.08.2022**.



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B.PUGALENDHI, J.

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Order made in
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