(1978) 01 KAR CK 0033

In the Karnataka High Court

Case No : WP. 2620 of 1976

Bharamappa and Another APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 17-01-1978

Acts Referred:

Karnataka Village Panchayat and Local Boards Act, 1959 — Section 91

Citation : (1978) 1 KarLJ 380

Hon'ble Judges : Rama Jois, J

Judgement

1. The petitioners are residents of Mantrodi village in the Taluk of Savanur, District Dharwar. The Revenue village Mantrodi along with two other revenue villages, namely, Jekinakatti and Madapur were together declared as a village ''under Sec. 3 of the Karnataka Village Panchayats and Local Boards Act, 1959'' (hereinafter referred to as the Act). The residents of Mantrodi village appear to have made a grievance before the Divisional Commissioner, Belgaum to the effect that their interests are not being properly served by the Village Panchayat of Jekinkatti and, therefore, Mantrodi itself should be declared as a village and a separate panchayat should be constituted for the said village under the Act. The Divisional Commissioner having agreed with the grievance of the residents of Mantrodi village, issued notification dated 2-3-1974 (Ex. A) in exercise of his power under Sec. 3(2)(b) of the Act declaring that Jekinkatti village consisting of three revenue villages namely, Jekinkatti. Mantrodi and Madapur shall cease to be a village from the date of publication of the said notification. The said notification was published on 21-3-1974 in the official Gazette. The consequence of the said notification was that with effect from 21-3-1974 Jekinatti village ceased to be a village within the meaning of the Act.

2. By another notification of the same date (Ext. B) the Divisional Commissioner proposed to constitute Jekinkatti revenue village alone with Madapur as Jekinkatti village under the Act and Mantrodi revenue village along as a separate village under the Act. He called for representations from all the concerned persons. However, by a subsequent notification dated 24-6-1974 (Ext. C), the

Divisional Commissioner purported to withdraw the first notification declaring that Jekinkatti shall cease to be a village under the Act. The legality of the aforesaid notification cancelling the notification issued vide Ext. A, was questioned before the Karnataka Revenue Appellate Tribunal in appeal filed by two residents of Mantrodi village. The appellate Tribunal by its odrer dated 20th September, 1975 allowed the appeal setting aside the notification of the Divisional Commissioner vide Ext.C and remanded the case to the Divisional Commissioner.

3. In this situation, a notice dated 11-12-1975 (Ext.F) was issued by the Returning Officer proposing to hold election to the office of the Chairman of Jekinkatti Village Panchayat on 20-12-1975. In the election held pursuant to the aforesaid calendar of events, respondent 5 was declared to have been elected as the Chairman of the Village Panchayat.

4. The petitioners have challenged the legality of the election notice dated 11-12-1975 and the election notice dated 11-12-1975 and the election held pursuant to the said notice on the ground that in view of the first notification dated 2-3-1974 (Ext.A), Jekinkatti ceased to be a village under the Act and, therefore, no Village Panchayat of Jekinkatti can be considered to be in existence.

5. In view of the notification issued by the Divisional Commissioner exercising the power under Clause (b) of sub-sec. (2) of Sec. 3 of the Act declaring that Jekinkatti shall cease to be a village with effect from the date of publication of the said notification, Jekinkatti as village under the Act ceased to exist with effect from 21-3-1974 on which date the said notification came to be published in the official Gazette. Therefore, there was no Village Panchayat in respect of which an election for the Office of Chairman could be held as proposed in the election notice dated 11-12-1975. It is no doubt true, the effect of the first notification dated 2-3-1974 is that there is no Village Panchayat for the villages of Jekinkatti, Mantrodi and Madapur, but that is the consequence which flows from the notification issued by the Divisional Commissioner under Sec. 3(2)(b) of the Act. Having declared that Jekinkatti shall cease to be a village under the Act and having made another proposal on the same day for re-constitution of the two separate villages, one consisting of Jekinkatti and Madapur and the other consisting of Mantrodi revenue village, the Divisional Commissioner should have finalised the said proposal. In the alternative, it was open for the Divisional Commissioner to issue a fresh notification declaring Jekinkatti, Mantrodi and Madapur as ''Jekinkatti village'' under the Act. Unless such a fresh notification is issued, in the eye of law, there is no existence of Jekinkatti as a village under the Act and consequently there can be no village Panchayat which can function under the Act. The effect of the first notification dt. 2-3-74 is not only Jekinkatti village as a village under the Act ceased to exist, but all the members of the Panchayat vacated the office with effect from the date on which the said notification was published in the Official Gazette. This is the clear effect of Section 91 of the Act.

6. For the reason stated above, the rule is made absolute and it is hereby

declared that Jekinkatti as a village under the Act consisting of Jekinkatti, Mantrodi and Madapur revenue villages ceased to exist with effect from 21-3-1974 and as a consequence, all the members of the Panchayat including the 5th respondent ceased to hold the office of the members of the Panchayat. Consequently, the election notice issued on 11-12-1975 (vide Ext.F) was without authority of law and the 5th respondent, who is said to have been elected in the meeting of the so-called members of the Panchayat on 20-12-1975, is a person who has no right to hold the said office. A writ in the nature of mandamus shall issue to the 5th respondent not to function as the Chairman of the Jekinkatti Village Panchayat. No costs.

