

1927.

*Present:* Driberg A.J.

In the Matter of an Application for a Writ of *Quo Warranto*.

UKKU BANDA vs. GOVERNMENT AGENT, SOUTHERN PROVINCE, *et al.*

*Quo Warranto—Election of Village Committee—Members not in office de facto—Regularity of writ—Proper parties as respondents.*

An application for a writ of *quo warranto* on the ground of a wrongful usurpation of office will not be granted, unless the person against whom it is directed is in office *de facto*.

Where such an application was made to set aside the election of a Village Committee at a meeting of the inhabitants of a certain subdivision, held with the Government Agent of the Province as Chairman.

*Held*, that the Government Agent was not a proper party to be made respondent to the proceeding.

*H. V. Perera*, for petitioner.

*Mervyn Fonseka, C.C.*, for 1st respondent.

*A. E. Keuneman*, for 3rd, 5th, and 8th to 14th respondents.

*T. Weeraratne*, for 4th, 6th, and 7th respondents.

July 23, 1927. DRIEBERG A.J.—

This is an information in the nature of *quo warranto* by which the petitioner seeks for a declaration that the election of the 2nd to the 13th respondents on March 10, 1927, as the Village Committee of a certain subdivision of Akmimana is invalid, and that it be set aside.

The election was one held under the provisions of the Village Communities Ordinance, No. 9 of 1924. The 1st respondent Mr. L. W. C. Schrader, is the Government Agent of the Southern Province, and as such summoned the meeting and presided at the election. The 14th respondent is the Mudaliyar of Kitulampitiya; he apparently helped the 1st respondent to conduct the election, and the petitioner alleges in his affidavit that after their election the 2nd to the 13th respondents "decided" that the 14th respondent should be their Chairman.

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Mr. Fonseka contended that the 1st respondent should not have been made a party to these proceedings, and in my opinion he is right. An information *quo warranto* is one directed against those who wrongfully claim or usurp an office and the applicant should make only such persons parties. If an inquiry is directed the presiding officer may be an important witness for one side or the other, but he has no place in the proceedings as a party. I uphold the objection but, by agreement of parties, I make no order as to costs.

The 14th respondent too is not a necessary party to this application; he has filed a proxy together with the other respondents and I was not asked to make a separate order regarding him.

The petitioner asks that the election be set aside on several grounds, among them being that the method of taking the votes was irregular and that the Headmen present intimidated and interfered with those who wanted to vote for the Committee proposed by the petitioner. Objection was also taken to the notice summoning the meeting on the ground that it did not set out the villages which formed this subdivision; the notice, however, was not before me.

From the affidavit of the 1st respondent, the Government Agent, it appears that the petitioner did not bring these offences to his notice, that the Headmen were kept apart when the votes for the petitioner's nominees were taken, and that the petitioner at the conclusion of the meeting thanked him for the manner in which he had conducted the election, his only grievance being that the 14th respondent had not treated him with proper courtesy and consideration. It is, however, not necessary to consider these charges as the application must fail for another reason.

The meeting was held on March 10, 1927, and under section 15 of the Ordinance the existing Committee had to continue until June 30, 1927, and the Committee elected on March 10 would come into office on July 1 following. This application was made on April 14, 1927, and on June 8 notice was issued on the respondents to show cause why it should not be allowed. At that time therefore the existing Committee was rightly in office and functioning, and the 2nd to 13th respondents' claim to exercise office would not arise until July 1.

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The mere fact that the 2nd to 13th respondents had been elected was not sufficient, as they had not entered on their office and could not do so until July 1. "No instance has been produced in which the courts have granted an application in the nature of a *quo warranto* where the party against whom it was applied for has not been in the actual possession of the office. No such instance can have happened; and all the cases cited are the other way. In *Rex v. Ponsonby*<sup>1</sup> the court expressly held that there must be an user as well as a claim in order to found such an application" (Buller J. in *the King against Whitwell*<sup>2</sup>). It is necessary to show that the party against whom application is made is in office *de facto* and for this purpose it is not enough if the affidavit states simply that the party has "accepted the office" without specifying the mode of acceptance (*The Queen against Slatter*<sup>3</sup>).

The petitioner was not entitled to make this application, and I order that the rule issued on the respondents be discharged. The petitioner will pay the costs of the 3rd, 5th, 8th, 9th, 10th, 11th, 12th, 13th and 14th respondents. There was no appearance for the 2nd respondent, and Mr. Weeraratne for the 4th, 6th, and 7th respondents did not oppose the application.

Mr. Fonseka as *amicus curiae* on the instructions of the Solicitor-General said that as the regularity of the election was questioned he did not wish to leave unmentioned a matter which might affect the question, and he drew my attention to the fact that the meeting was held on March 10, whereas under section 22 (1) of the Ordinance it should have been held on a day within three months of the date on which the term of office of the existing Committee should have expired. The term of the existing Committee ended on June 30, and the meeting for the election of the new committee should therefore have been held on a date on or after April 1.

I do not think it necessary for me to express an opinion on this point.

*Rule discharged.*

<sup>1</sup> (1755) 1 Vesey Jr. 245, 247.

<sup>2</sup> 5 T. R. 85.

<sup>3</sup> 11 Ad. & E. 505.