

Present : Maartensz A.J.

1929.

KARTIGESU v. GOVERNMENT AGENT,
NORTHERN PROVINCE.

Mandamus—Election of Village Committee—Resolution to vote by groups of villages—Bona fide election—Village Communities Ordinance, No. 9 of 1924, ss. 9 and 22.

Where a Government Agent summoned a meeting of the inhabitants of a subdivision under the Village Communities Ordinance for the election of a Village Committee and had complied with the provisions of sections 9 and 22 of the Ordinance, and where it was resolved at the meeting that the voting should be by groups of villages or wards,—

Held, that the election cannot be said to be merely colourable and that no *mandamus* would lie against the Government Agent directing him to hold a fresh election.

A PPLICATION for a writ of *mandamus* on the Government Agent of the Northern Province, directing him to hold a meeting for the election of a Village Committee for the Nallur subdivision of the Province. The petition stated that a meeting was held on April 18, 1929, to elect a Village Committee presided over by the Government Agent. At the meeting it was resolved by a majority that that the voting should be by groups of villages or wards, to each of which a number of members was allotted in proportion to the number of inhabitants in it.

It was submitted that the motions that were passed by a majority at the meeting were *ultra vires* as—

- (1) These were not stated to be the objects of the meeting in the written notice issued by the Government Agent.
- (2) They substantially limited the rights of the inhabitants conferred on them by section 14 (1) of Ordinance No. 9 of 1924.

H. V. Perera (with Ramachandra), in support.

Mervyn Fonseka, C.C., for the Government Agent.

De Zoysa, K.C. (with Subramaniam), for second to twenty-ninth respondents.

September 28, 1929. MAARTENSZ A.J.—

This is an application for a writ of *mandamus* on the Government Agent, Northern Province, directing him to convene and hold a meeting for the election of a Village Committee for the Nallur subdivision as required by Ordinance No. 9 of 1924.

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It is admitted that a meeting was held on April 18, 1929, to elect a Village Committee to consist of not less than six persons for the subdivision and that it was decided at the meeting that there should be twenty-eight members in the Village Committee.

The petitioner's complaint is against the procedure observed in electing the members of the Committee.

The petitioner avers that—

1. The Government Agent explained that the election of the twenty-eight members may be made in either of two ways, namely, by voting *en masse* or by groups of villages (or wards), consequently a motion was proposed and seconded that voting be by wards and a counter motion proposed and seconded that voting be *en masse*, and it was decided by majority that voting be by groups of villages.

2. At the said meeting the Government Agent further suggested that the number of members elected for each ward (or group of villages) should be proportioned to the number of inhabitants in that ward, and that the subdivision of Nallur be divided into four wards, namely :—

Tirunelveli East, which should thus have eleven members.

Tirunelveli West, which should thus have eight members.

Nallur, which should thus have six members.

Vannarponnai North-west, which should thus have three members.

These suggestions were adopted and passed by a majority at the meeting.

3. The election of members then proceeded on this basis. As a result of these resolutions the voting for each ward was confined to the inhabitants in that ward only, and the men elected for each ward were also confined to inhabitants of that ward.

4. The petitioner did not agree to the division of the subdivision of Nallur into wards or to the election of members in proportion to the inhabitants in each ward or to the restrictions of his rights as an elector, and that several others too refused to agree to these resolutions, and the petitioner annexes affidavits marked " B " to that effect from some of them.

The petitioner submits—

That the motions which were passed by a majority at the meeting, namely, that voting be done by wards or groups of villages, that the subdivision of Nallur be divided into four wards, that the number of members elected for each ward should

be proportional to the number of inhabitants in that ward, are *ultra vires* for the following among other reasons:—

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(a) As these were not stated to be the objects of the meeting in the written notice issued by the Government Agent, under section 9 of Ordinance No. 9 of 1924.

(b) As substantially limiting the rights conferred on the inhabitants by section 14 (1) of Ordinance No. 9 of 1924.

The petitioner prays—

That this Court may be pleased to declare the said election held by the Government Agent on April 18, 1929, null and void and to direct the Government Agent to hold another meeting for the due election of a Village Committee for the subdivision of Nallur.

The petition is dated June 13, 1929, and was forwarded to the Registrar with a covering letter dated June 14 or 15. It was listed on June 19, and dismissed for want of appearance.

An application to relist the application was made and allowed on June 28, 1929, and a notice on the Government Agent was allowed on July 19. I understand that the Court ordered notice on the Committee members as well. They were in view of the terms of the prayer of the petition clearly entitled to notice.

The application was opposed on the following grounds:—

- (1) That there had been undue delay in the making of the application.
- (2) That when the matter actually came up for consideration the office was full and the application, if any, should have been for a writ of *quo warranto*.
- (3) That the Government Agent had carried out the statutory duty imposed upon him by the Ordinance.
- (4) That the procedure followed was not *ultra vires*.

The third objection is in my opinion fatal to the application.

The notice convening the meeting held on April 18 was duly published and the objects for which the meeting was to be held were set out in the notice as follows:—

2. The objects for which the meeting is to be held are—

- (a) To elect a Village Committee to consist of not less than six persons for such subdivision to hold office for three years from July 1, 1929;
- (b) To decide whether the power of making rules should be delegated to such Committee; and
- (c) To decide whether the Chairman of such Committee should be elected by the Committee or whether the Chief Headman of the division should be *ex officio* Chairman.

J. D. BROWN,

Government Agent, Northern Province.

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The meeting was convened in pursuance of the provisions of section 22 and section 9 of Ordinance No. 9 of 1924. Section 9 enacts as follows:—

The Government Agent shall, one month at least before the day of holding any such meeting, give notice by beat of tom-tom and by causing written notices to be affixed in such places within the subdivision as are in his opinion best adapted for giving the greatest publicity thereto, of the time and place appointed for holding such meetings, and of the objects for which the same is to be held, and shall, in such notices, call upon the inhabitants to attend in person at such meetings.

What took place at the meeting is recorded in the minutes thus:—

- (1) Object of meeting explained.
- (2) Qualifications of voters and candidates explained.
- (3) As regards numbers, two motions were moved. One for twenty-eight (the present number), one for twenty.
- (4) The large majority vote for an elected Chairman.
- (5) I put to the assembly that they depute to the Committee the power of making rules.—Carried unanimously.

The persons to serve on the Committee were then elected according to the resolutions passed by the majority of those present.

The Government Agent clearly carried out the duties imposed upon him by sections 9 and 22, and if a Committee was not elected, it was the inhabitants and not the Government Agent that were in default in the performance of a statutory duty.

The case *In re the Application for a Writ of Mandamus on the Government Agent, Northern Province*,¹ can be differentiated from the present case; for in that case objection was taken to the legality of the meeting at which the Committee was elected on the ground that the meeting was held at a place which was not the place appointed. Dalton J. held that the meeting was not held at the place appointed in the notice for holding the meeting as required by section 10 (1) of the Ordinance No. 9 of 1924, and held that the election of the Committee at such meeting was void, and granted a writ of *mandamus* on the Government Agent directing him to hold a meeting for the election of a Village Committee.

In the case of *Regina v. The Mayor, Aldermen, and Burgesses of the Borough of Leeds*² cited by the applicant, Radford Potts applied for and obtained a *mandamus* on the Mayor, Aldermen, and Burgesses of the Borough of Leeds, commanding them to receive and count his vote at the corporate meetings of the Council of the Borough, as he had been duly elected a councillor for Mill Hill

¹ 28 N. L. R. 323.

² (1841) 11 Adolphus and Ellis 512.

Ward in the said Borough, and having duly qualified, and accepted the said office of councillor and to permit him in other respects to exercise the office of councillor. It was not an application for a declaration that another person was not duly elected.

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In the case of *Rea v. The Mayor, Aldermen, and Burgesses of the City and Borough of Oxford*¹ it was held that—

If a councillor of a corporation be ousted, and another elected in his stead, and such election be merely colourable, a *mandamus* will go to permit the ousted party to exercise his office, but not to restore him to his office. If such ouster and election be *bona fide*, the Court will not grant a *mandamus* in favour of the party displaced; the proper proceeding is by *quo warranto* against the party holding the office *de facto*.

In the present case if there was a question whether the petitioner or one of the respondents was duly elected, it might have been open to him to apply for a *mandamus* to permit him to act on the Committee. But there is no such question and no such application.

In the *Matter of an Application for a Mandamus on the Chairman, Municipal Council, Colombo*,² Wood Renton, then Acting Chief Justice, held—

That where a person has been elected *de facto* to a corporate office and has accepted and acted in the office, the validity of the election and the title to the office can be tried only *quo warranto*, and a *mandamus* will not lie unless the election can be shown to be merely colourable.

He held further that—

The election will not be "colourable" where the party whose conduct is challenged has the right to elect and acts in good faith, even if he has proceeded upon an erroneous construction of the law.

It is not alleged in the present case that the Government Agent did not act in good faith, and if he had the right to elect, which he had not, he has if anything proceeded upon an erroneous construction of the law, and the petitioner would not be entitled to a writ of *mandamus*.

As I have observed before, it was not the Government Agent but the inhabitants of the subdivision who had the right to elect, and I am of opinion that the application for a *mandamus* on the Government Agent has been misconceived.

¹ (1837) 6 *Adolphus and Ellis* 349.

² (1913) 18 *N. L. R.* 97.

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The inhabitants of the subdivision who had a right to elect have so far as I can see acted in good faith in electing the committee members by voting by wards; and even if they proceeded upon an erroneous construction of the law, the election cannot be said to be merely "colourable."

As in my opinion this objection is fatal to the application I need not discuss the other objection raised by the respondents. I refuse to grant the writ applied for. The petitioner will pay the costs of the Government Agent and the second to twenty-ninth respondents. As regards the latter, they will be only entitled to one set of costs.

Rule discharged.

