

1946

Present : Dias J.

SIMON SINGHO, Petitioner, and THE GOVERNMENT  
AGENT, W. P., et al., Respondents.

APPLICATION FOR A WRIT OF *Certiorari* or *Quo Warranto* on the  
Government Agent, W. P.

*Writ of mandamus—Petitioner should have personal interest in making application—Affidavit—Declarant unable to understand English—Jurat is essential—Civil Procedure Code, s. 439.*

It is essential in an application for a writ in the nature of *mandamus* that the petitioner should have some personal interest in making it.

The absence of the *jurat* in an affidavit where the declarant is unable to understand writing in the English language makes the affidavit valueless and inadmissible.

**A**PPPLICATION for a writ of *mandamus* in respect of the election of a Village Committee member.

*E. W. Perera* (with him *Dodwell Goonewardene*), for the petitioner.

*C. R. Gooneratne*, for party noticed 2nd respondent.

*D. Jansze, C.C.*, for the first respondent (Government Agent).

*Cur. adv. vult.*

November 4, 1946. DIAS J.—

This matter commenced as an application for a writ of *certiorari*, *mandamus*, or *quo warranto*. When the enquiry began, the petitioner confined his case to an application for a *mandamus*.

If the facts of the case are as opened to me at the commencement of the enquiry, the proceedings which took place on May 29, 1946, at the Nittambuwa Mixed School for the election of a Village Committee member for Ward No. 8 of the Egodapotha Peruwa cannot stand. The evidence called on behalf of the petitioner, however, falls far short of what was attempted to be proved, and the application for the writ cannot succeed.

On March 30, 1946, the first respondent, the Government Agent of the Western Province, acting under section 14 (1) of the Village Communities Ordinance (Chapter 198) published the printed notices P1 and 1D1 announcing that the general election for this Village Committee would take place on May 29, 1946.

Nomination day was fixed for April 24. On nomination day, there being only one candidate for Ward No. 9, he was duly declared to be elected for that ward. Two nomination papers—one from a person named *Henson* and another from the second respondent (the successful candidate)—were tendered for Ward No. 8. Petitioner makes no complaint as to anything done on nomination day. In accordance with the notification given in the notices P1 and 1D1, the election for this ward was to take place at 2.30 P.M., on May 29, at the Nittambuwa Mixed School.

Ward No. 8 is thus described in the printed notice :—

“ The northern portion of Nambadaluwa from the Colombo-Kandy P. W. D. road ”

while Ward No. 9 is stated to be :—

“ The southern portion of Nambadaluwa from the Colombo Kandy P. W. D. road.”

In other words, these two wards lie on opposite sides of the main Colombo-Kandy road, Ward No. 8 to the north and Ward No. 9 to the south, between the Colombo-Kandy road which runs from west to east. Ward No. 8 is also called the “ Horagolla Side ” of Nambadaluwa where the late Sir Solomon Dias Bandaranaike had his residence—a location which should be familiar to every villager of the place. It might not be clear to a non-villager like Henson. The map 1R2 which was produced during the enquiry makes the position clear.

The petitioner's case is nothing less than a charge that the presiding officer, Mr. Mahatantilla, said to be a “ young and inexperienced person ”, was imposed upon by the Vidane Arachchi and one Weerasinghe, both of whom are kinsmen of the second respondent, with the object of eliminating Henson the rival candidate, so that the second respondent could secure an easy victory at the election.

It is alleged that the Vidane Arachchi and Weerasinghe with that object succeeded in persuading Mr. Mahatantilla on election day that the two wards No. 8 and 9 had become “ mixed ”, and that Ward No. 9 was really Ward No. 8, and that Ward No. 8 was Ward No. 9.

The case for the petitioner is that the result of this conduct was that the voters who had come to vote for Henson were “ turned out ” of the place, whereby the second respondent obtained an overwhelming majority against the single vote which was cast for Henson.

That Henson, who does not reside in this locality, was under a misapprehension is quite clear. The evidence shows that on election day he was still labouring under this misapprehension, and when the identity of the wards was pointed out to him, he voluntarily left the place, and with him went a section of his supporters.

I cannot accept the suggestion that they were “ turned out ”. Henson's subsequent conduct supports this inference. He despatched the telegram XI to the first respondent seeking an interview on the following day. It was stated that at that interview a certain document was shown to Henson and his proctor. It was asserted that that document had been “ suppressed ” and a new document X9 (called for by the petitioner and produced from the custody of the first respondent) was “ substituted ” for the document which was shown to Henson and his proctor. Neither Henson nor his proctor has given evidence to establish this assertion which is denied. It was also asserted that the document X4 is a false document. At the close of the enquiry, counsel unreservedly, though belatedly, withdrew these allegations. He also stated that he was making no complaint against the character or integrity of Mr. Mahatantilla. He submitted, however, that Mr. Mahatantilla was duped and imposed upon by the Vidane Arachchi and Weerasinghe. The Vidane

Arachchi has given evidence. Hardly anything adverse to the witness was elicited in cross-examination. He candidly admitted that, being a relative of the second respondent, he naturally desired his kinsman should be elected in preference to Henson; but he denied that anything was done by him or anyone else to make either the presiding officer, Henson, or any other person believe that Ward No. 9 was really Ward No. 8. I accept that evidence.

It is to be observed that it is not Henson who is making this application, but one J. A. Simon Singho, who states in his affidavit, P2, that he is a qualified voter for Ward No. 8—a fact about which there appears to be some doubt. Mr. Henson cannot make this application for the simple reason that after the interview with the first respondent, both he and his proctor withdrew their objections—see X4.

It was alleged that X4 was a false document, but that allegation was withdrawn. The documents X9 and X10 and the official minutes on X10 are documents produced by the petitioner and must be regarded as a part of his proof. These documents destroy petitioner's case. They prove that there was no irregularity in the conduct of this election. Mr. Mahatantilla, in his affidavit, 1R1, has sworn to what took place.

In my opinion, 1R1, X9, X10 and X10c demolish the petitioner's case.

It is essential in an application of this nature that the petitioner must have some interest in the matter. Under cross-examination the petitioner stated quite unequivocally that he was not interested in the election at all and although he was present and was a voter, he had gone there merely as a sightseer ("nikkan") and not for the purpose of voting. He stated that the Horagolla people (Ward No. 8) were ordered to stay and when others were told to go away that no Horagolla people left. This is the case for the first respondent. He says that the affidavit P2 was never read over and explained to him but that a document in English was produced, that he was taken before a Burgher gentleman and ordered to sign it. He denies that he stated in the affidavit that people were sent away without recording their objections. On being asked why he personally did not object to the alleged irregularities, the witness gave a significant answer. He said "I did not object, because the election for my ward was to follow". He then realised that the election for Ward No. 9 could not take place, because the seat was already filled, and said "My ward was filled, therefore, I could not vote".

If his ward was filled, then his ward was No. 9. If so, what interest has he in Ward No. 8? It is obvious that the petitioner is a man of straw who has no personal interest whatever in this matter. For that reason alone this application should be refused.

The affidavit of the petitioner on which these proceedings began is valueless and inadmissible. Section 439 of the Civil Procedure Code provides that in cases where the declarant is unable to understand writing in the English language, the affidavit must be read over and interpreted to him in his own language "and the *jurat* shall express that it was read over or interpreted to him in the presence of the Justice of

the Peace or Commissioner, and that he appeared to understand the contents, and that he made his mark or wrote his signature in the presence of the Justice of the Peace or Commissioner.”

The affidavit P2 contains no such *jurat*. The petitioner cannot understand writing in the English language. The absence of the *jurat* in the case of affidavits sworn to by persons like the petitioner makes the affidavits valueless—*R. v. Ponnasamipulle*<sup>1</sup>. The affidavits P4 and P5 are also defective for the same reason.

The application fails and must be dismissed with costs.

*Application dismissed.*

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