

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28<sup>TH</sup> DAY OF SEPTEMBER 2017

PRESENT

THE HON'BLE MRS JUSTICE B V NAGARATHNA

AND

THE HON'BLE DR.JUSTICE H.B.PRABHAKARA SASTRY

**WRIT APPEAL NO.5602/2017(LB-ELE)**

Between

Sri.Veeresh Kotagi,  
Adopted Son of Sri Ujjappa,  
Aged about 47 years,  
R/o.Thoravanda Village-577 201  
Agasanahalli Post,  
Anawatti Hobli, Soraba Taluk,  
Shivamogga District

...Appellant

(By Sri.M.R.Rajagopal, Advocate)

And

1. Sri.M.Shivalingappa,  
S/o.Goorappa,  
Aged about 61 years,  
R/o Thoravand Village-577 413.  
Agasanahalli Post, Anawatti Hobli,  
Sorab Taluk, Shivamogga District
2. The Election Commissioner,  
Anavatti Constitution (Zp),  
Soraba Taluk,  
Shivamogga District-577429.

3. Dr.M.Vishwanath,  
Election Commissioner,  
Anavatti Constitution (Zp),  
Soraba Taluk,  
Shivamogga District-577429.
4. Sri.A.Basavanyappa,  
S/o.Anandappa,  
Major in age,  
R/o Gudavi Village, Kasaba Hobli,  
Soraba Taluk,  
Shivamogga District-577429.
5. Sri Mallikarjunappa,  
S/o.Mallappa,  
Major in age,  
R/o Dwaralli Village,  
Mallapura Post, Soraba Taluk,  
Shivamogga District-577413.
6. Sri.Maheshwarappa.M.K,  
S/o.Shankryappa Kajji,  
Major in age,  
R/o.Moodi Village, Soraba Taluk,  
Shivamogga District-577429.
7. Sri.M.S.Karthik,  
S/o.N.S.Mruthynjaya,  
Major in age,  
R/o Anavatti, Soraba Taluk,  
Shivamogga District-577413.
8. Sri.Bharamagowda Patil,  
S/o.Basavalingappa Gowda,  
Major in age,  
R/o.Kamanavalli Village,  
Soraba Taluk,  
Shivamogga District-577413.
9. Sri Shivappa,  
S/o.Hulyappa,  
Major in age,  
R/o.Hunasavalli Village,

Soraba Taluk,  
Shivamogga District-577413.

...Respondents

(By Sri Satish.K, Advocate for  
Sri Chandrakanth R. Patil, Advocate for C/R1)

This Writ Appeal is filed under Section 4 of The Karnataka High Court Act praying to set aside the order dated 06.09.2017 passed in the Writ Petition No.38601/2017.

This Writ Appeal coming on for preliminary hearing this DAY, **B.V.Nagarathna J.**, delivered the following:

#### JUDGMENT

The petitioner in Writ Petition No.38601/2017 has challenged the legality and correctness of order dated 06.09.2017 passed by the learned Single Judge of this Court. By that order, the petitioner has been granted liberty to seek an alternative remedy by way of review or further appeal so as to assail order dated 01.07.2017 passed by the learned Senior Civil Judge & JMFC, Sorab in Election Petition No.1/2016 by which the respondent/petitioner's Election Petition was allowed.

2. Briefly stated, the facts are that election was held to the post of Member of the Zilla Panchayath, Anavatti

Constituency. The said election was assailed by the respondents before the learned Senior Civil Judge and JMFC, Sorab in Election Petition No.1/2016. By order dated 01.07.2017, the said petition was allowed. Consequently, the election of the petitioner as a Member of the Anavatti Zilla Panchayath was set-aside.

3. Learned counsel for the petitioner/appellant herein submits that the Court of the Senior Civil Judge & JMFC, Sorab had no jurisdiction to entertain the Election Petition on account of Section 2(9-A) of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993. He contends that insofar as the dispute with regard to the election of a member of the Zilla Panchayath is concerned, the designated Court is the District Court and therefore, the Court of the Senior Civil Judge and JMFC did not have the jurisdiction to entertain the dispute. He further submits that the Court of Senior Civil Judge and JMFC, not being the designated Court to try such an election dispute, it lacked an inherent jurisdiction. Of course, he very fairly submits that objection regarding jurisdiction was not raised by the petitioner herein before the

said Court. By order dated 01.07.2017, learned Senior Civil Judge and JMFC, Sorab allowed the Election Petition and set-aside the election of the petitioner as a Member of the Zilla Panchayath. Being aggrieved by that order, the petitioner filed the Writ Petition before this Court.

4. Learned Single Judge of this Court has observed that the question, as to, whether the learned Senior Civil Judge and JMFC, Sorab indeed had the jurisdiction to entertain the dispute or lacked the jurisdiction to do so, is a matter which had to be considered by that Court. In such circumstances, learned single judge has opined that the petitioner has an alternative remedy by way of review or an appeal to assail the impugned order before the District Court, as advised and accordingly, learned Single Judge, dismissed the Writ Petition. That order is assailed in this appeal.

5. Learned counsel for the appellant would submit that when a Court or a forum lacks inherent jurisdiction, then any order or Judgment by such a forum is a nullity. He submitted, in the instant case the learned Senior Civil

Judge and JMFC, Sorab did not have the inherent jurisdiction to entertain the election dispute. Therefore, order dated 01.07.2017 being a nullity, could not have resulted in displacing the petitioner from his membership. Learned counsel for the appellant has cited Judgments of the Hon'ble Supreme Court in the case of **WHIRLPOOL CORPORATION Vs REGISTRAR OF TRADE MARKS, MUMBAI AND OTHERS** reported in **(1998)8 SCC 1** and in **HASHAM ABBAS SAYYAD vs USMAN ABBAS SAYYAD AND OTHERS** reported in **(2007)2 SCC 355** in support of his submissions.

6. Having heard the learned counsel for the appellant and on perusal of the material on record, we find that a finding as to whether the said Court had the jurisdiction to entertain the election dispute or lacked the inherent jurisdiction to adjudicate on the dispute, is a matter which has to be considered by the Court of first instance, being the Senior Civil Judge and JMFC, Sorab. As stated by the learned counsel such a contention or objection to its jurisdiction, was not raised by the petitioner herein. But

would not come in the way of the petitioner seeking review of the order dated 01.07.2017 passed by the said Court.

7. As regards the judgments cited by the learned counsel, there can be no contrary opinion to the propositions of law laid down in the said Judgments.

8. We, however, do not think it proper to exercise our discretion to entertain this appeal so as to give a finding at this stage as to whether the Court before whom the election dispute was filed by the respondents, indeed had the inherent jurisdiction or not. We think, that is a matter which has to be considered by that Court in the first instance. In such circumstances, we do not think that the said Judgments would be of any assistance to the appellant herein.

9. In the circumstance, we find that the learned Single Judge was right in not entertaining the Writ Petition or interfering with the impugned order and relegating the petitioner to either file a review petition or an appeal against the order dated 01.07.2017. Therefore, we find no merit in the Writ Appeal.

10. At this stage, we observe that in the event, the petitioner avails the remedy by way of review or an appellate remedy, as the case may be, he is also at liberty to seek any interim order in support of his case.

In the result, the appeal is dismissed. In view of the dismissal of the appeal, I.A.No.2/2017 also stands dismissed

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

Brn