

(1945) 04 BOM CK 0007

In the Bombay High Court

Case No : Civil Revision Application No. 401 of 1943

Ahmedabad Municipality

APPELLANT

Vs

Mulchand

RESPONDENT

Date of Decision : 03-04-1945

Acts Referred:

Bombay Municipal Boroughs Act, 1925 — Section 219

Citation : AIR 1946 Bom 154 : (1945) 47 BOMLR 876

Hon'ble Judges : Weston, J; Lokur, J

Bench : Division Bench

Judgement

Lokur, J.—This revision application raises the important question of the necessity of impleading the Provincial Government in a suit filed by or on behalf of a superseded local authority. The suit out of which this application arises was filed by the Municipal Borough of Ahmedabad against its contractor Mulchand to recover Rs. 46-14-0 by way of damages for loss caused by his negligence by; reason of which the plaintiff had to pay damages to one Sakrabhai Motichand. The suit was filed in the Court of the Registrar of the Small Causes Court, Ahmedabad, and when it was pending, the Government of Bombay, in exercise of its powers under Sub-rule (1) of Rule 38-B of the Defence of India Rules, 1939, issued a notification superseding the Ahmedabad Municipality and appointing the Collector of Ahmedabad to exercise all. the powers and duties of the Municipality under Clause (b) of Sub-rule (2). A few days later Mr. Whitworth was appointed as the Administrator of the Municipality under that clause, and he took over the charge from the Collector on September 7, 1942. He applied to the Court to be joined as plaintiff No. 2. He was added as plaintiff No. 2, but on the defendant's objection, the Court held that the Government of Bombay was a necessary party, and refused to proceed with the suit until the Government of Bombay was added as a defendant. The plaintiffs have now come in revision against that order.

2. Sub-rule (1) of Rule 38-B of the Defence of India Rules, 1939, empowers the Provincial Government to supersede a local authority under certain

circumstances for such period as it may think necessary. Sub-rule (2) provides that when such an order of supersession has been made under Sub-rule (1)-

(a) all the members of the local authority shall, as from the date of supersession vacate their offices as such members;

(b) all the powers and duties which may, by or under any law for the time being in force, be exercised or performed by or on behalf of the local authority shall, until the local authority is reconstituted...be exercised and performed by such person or persons as the Provincial Government may direct;

(c) all property vested in the local authority shall until the local authority is reconstituted .vest in the Provincial Government.

3. These provisions correspond to Section 219 of the Bombay Municipal Boroughs Act, 1925. u/s 8 of that Act the Ahmedabad Borough Municipality is a body corporate having a perpetual succession, and it may sue or be sued in its corporate name through its Chief Officer. Section 204, Sub-section(1), empowers a borough Municipality to file a suit and to compound or compromise a suit instituted by or against it. Sub-section (4) of that section renders municipal fund liable to pay the expenses of any civil proceeding prosecuted or defended on its behalf. The powers and duties conferred upon the Administrator of a superseded Borough Municipality under Sub-rule (2)(b) of Rule 38B of the Defence of India Rules, 1939, include the powers and duties of! the Municipality to institute and defend suits u/s 204 of the Bombay Municipal Boroughs Act, 1925. It is, therefore, clear that the Administrator has the right to continue the suit instituted by! the Municipality prior to its supersession. But as all property vested in the Municipality has now vested in the Provincial Government under Sub-rule 2(c), the lower Court thinks that if the defendant succeeds and is allowed the costs of the suit, he will not be able to recover them as it will be open to the Government to say that it is not bound by the decree and that the property vested in it is not liable to the costs in a suit to which it was not a party. This fear is unfounded since Section 204, Sub-section(4), expressly declares the municipal fund to be liable to pay the expenses of any civil proceeding, prosecuted or defended on behalf of the Municipality. As pointed out in *Mahamahopadyaya Rangachariar v. The Municipal Council of Kumbakonam* I.L.R (1906) Mad. 539, a supersession has not the effect of a dissolution, and when the Municipality is reconstituted in pursuance of an order under Clause (b) or (c) of Sub-rule (3) of Rule 38-B, it is a revival of the old corporation and not the creation of a new one, and as pointed out by the Federal Court; in *Lahore Municipality v. Daulat Ram* A.I.R [1942] .F.C. 14 during the period when the order of supersession is in force, the statute makes it clear that all the members of the Committee vacate their seats and that all the powers and duties of the Committee are to be exercised and performed by the Administrator. It was held in that case that the person competent to take the proceedings was the Administrator. He, therefore, sufficiently represents the superseded Municipality and any liability arising out of a proceeding to which he is a party will have to be met out of the municipal fund.

That fund is created u/s 65 of the Act and it is to be held and applied by the Municipality as a trustee, subject to the provisions and for the purpose of the Act. Hence even after it has vested in the Government of Bombay, it shall be liable to pay the expenses of any civil proceeding prosecuted or defended by the Administrator although the Government may not be a party to the proceeding.

3. We, therefore, hold that the Government of Bombay is not a necessary party to a suit filed or continued by the Administrator of a superseded Municipality. We make the rule absolute and order the lower Court to proceed with the suit without requiring the plaintiffs to join the Government of Bombay as a defendant. Opponent No. 1 shall pay the costs of the petitioners and bear his own.