

(1921) 07 PAT CK 0035

In the Patna High Court

Babu Audh Bihari Lal

APPELLANT

Vs

Mr. Kesri Prasad Singh and Others

RESPONDENT

Date of Decision : 21-07-1921

Acts Referred:

Specific Relief Act, 1963 — Section 42

Citation : 63 Ind. Cas. 6

Hon'ble Judges : Ross, J

Bench : Single Bench

Judgement

Ross, J.—This is an appeal by the plaintiff in a suit to declare a Municipal Election in Arrah invalid, and that the plaintiff was duly and validly elected a Municipal Commissioner, The Munsif decreed the suit, but the District Judge dismissed it on appeal.

2. I shall first deal with certain preliminary points that were raised in the argument. It was contended in the first plane on behalf of the respondent that inasmuch as the election was held on the 27th May 1918 and u/s 21 of the Bengal Municipal Act, 1884, the term of appointment of a Municipal Commissioner is limited to three years, the Court will not pass a decree which can have no effect, as the term of the appointment has already Come to an end. The appellant relies on Section 20 of the Act, which extends the period of three years until the date of the first meeting of the new Commissioners. This however, does not affect the substantive term of the appointment but the plaintiff does not seek a mere equitable relief which the Court may at its discretion grant or withhold. He seeks to enforce a legal right to have the election declared invalid and if his case is proved, he must get a decree.

3. The second objection raised on behalf of the respondent was that the suit is not maintainable because Section 42 of the Specific Relief act does not appple to the reliefs claimed. But the suit is clearly maintainable as a suit to declare an election invalid. This is the effect of the decision in Sabhapat Singh v. Abdul Goffer 24 C. 107 : 12 Ind. Dec. . So far as the plaintiff claims to he declared

validly elected as a Municipal Commissioner, I think the suit must fail. It is said that the defendant was disqualified from election. It is not said that his disqualification was known to the voters and consequently it cannot be said that the votes given to him were thrown away, and the plaintiff cannot be considered to have been elected unless these votes must be considered to have been thrown away the election is declared invalid, the election of the plaintiff should not be validated, as was held in Sabhapat Singh's case 24 C. 107 : 12 Ind. Dec. 736.

4. The third objection raised on behalf of the respondent is that Rule 40 of the rules framed by the Local Government u/s 15 of the Act bars the suit. That rule provides that all disputes arising under the rules shall be decided by the Magistrate and that his decision shall be final. The effect of this rule only is that the decision of the District Magistrate that the defendant was validly nominated is final but the question whether he was disqualified from election is a separate question and open to the decision of the Civil Court.

5. I now turn to the merits of the case. The plaintiff's case is that the defendant, before he was eligible for election as a Municipal Commissioner, must be nominated and that he could only be nominated if his name was on the Electoral Roll, and that in fact his name was not on the Electoral Roll and when it was restored to the Roll by the District Magistrate, any application in that behalf was already out of time. Consequently, it was argued that the whole election, so far as the defendant is concerned, was illegal and void.

6. The facts are that the name of the defendant was originally on the register of voters. It disappeared from the register. No one knows or says how, or when, or why.

7. The defendant was ignorant of the fact and there was a suspicious entry in the list of names removed from the Roll. No attempt is made to show nor is it even suggested, that there was any ground for the removal of the name. It is not denied that the defendant is qualified under the Act to be a voter. The inference from these facts is that the name was removed by fraud or by (sic) negligence which would be evidence of fraud. The limitation of time imposed by the rules is for dealing with objections against the decision of the revising authorities which come before the District Magistrate. It has no application to the facts of this case. The District Magistrate, in my opinion not only had the right but was under the duty to treat the name of the defendant as being still on the Roll, and this is precisely what he did, In my opinion there was no defect in the defendant's election, nor was he disqualified from election.

The appeal is dismissed with costs.