

(1945) 11 PAT CK 0007
In the Patna High Court

Badridas Agarwala

APPELLANT

Vs

Chairman, Dhanbad Municipality

RESPONDENT

Date of Decision : 13-11-1945

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 12, 24
Civil Procedure Code, 1908 (CPC) — Section 47

Citation : AIR 1946 Patna 268

Hon'ble Judges : Verma, J;Shearer, J

Bench : Full Bench

Judgement

Verma, J.—This miscellaneous second appeal arises out of an objection taken by the judgment-debtor u/s 47, Civil P.C., in an execution proceeding. The Chairman of the Dhanbad Municipality brought a suit against the judgment-debtor-appellant. The suit was decreed on admission and then the decree was sought to be executed. The point that succeeded before First Court was that the Chairman of the Municipality had no right to sue; but the lower appellate Court has held that he was entitled to sue and therefore he has dismissed the objection.

2. The case has been argued very fully by both the parties, and the point that has been agitated by the learned advocate for the appellant is that as the suit was filed by the Chairman, Dhanbad Municipality, the decree obtained therein was a nullity and, therefore, incapable of execution. In order to appreciate the point of law urged we sent for the original plaint to see what the position actually was, and we find that the plaintiff described therein is "the Chairman, Dhanbad Municipality, Dhanbad." The facts out of which this suit arose, which have not been questioned before us, appear from the plaint. The defendant took settlement of some municipal stalls in Dhanbad Bazar at Rs. 660 for one year from 1st September 1937 to 31st August 1938. Out of this a sum of Rs. 165 was paid, but Rs. 495 was still due. The plaintiff, therefore, filed the suit for a sum of Rs. 502. As I have noted before, the judgment, debtor admitted his liability and a decree was passed. The decree was for Rupees 502 as principal, and Rs. 67-2-0 as costs. It was payable in monthly instalments of Rs. 8 payable from

28th February 1939. Out of this amount the decree-holder admitted that he had received Rs. 248 and in the present execution proceedings the prayer was for recovery of Rs. 320 odd and costs.

3. In support of the contention raised on behalf of the appellant, the learned advocate has strongly relied upon two decisions of this Court. The first case on which he relies is reported in *Kali Prasad Sinha, Chairman, Buxar Municipality Vs. Badri Narain Sahu and Others*, , where after referring to the provisions of Section 12, Bihar and Orissa Municipal Act, Wort J. observed as follows:

But the real point is that by the Section the Commissioners become a legal entity which legal entity is not represented by the Chairman; although reference is made to the Chairman from time to time in the Act, he is a person who apart from such reference is unknown to the law, is not a legal entity but is merely a person. If the chairman is sued the plaintiff is entitled to relief only against him and that is clearly not the plaintiff's case here. In no sense of the word could he be held to be the representative for the purpose of the proceedings of the Municipal Commissioners and there is no justification on principle or on authority or under the Act itself to entitle a party to seek his relief against the Commissioners by bringing an action against the Chairman. In my judgment it is not merely a mistake of form but it goes to the very root of the action.

4. The learned Judge then relied upon the decision reported in *In re Hodges* (1873) 8 Ch. A. 204. In that decision the learned Judge did not think it necessary to decide whether the word "may" in the sentence "and may by that name sue and be sued," in Section 12, Bihar and Orissa Municipal Act, should be construed as "shall."

5. The second case upon which the learned advocate for the appellant relies was decided by the same learned Judge. That case is *Kamakhya Narayan Singh Vs. Chairman, Hazaribagh Municipality*, , where Wort J. construed the word "may" in Section 12 of the Act, as equivalent to "shall," and held that the Chair, man of the Municipality was not a legal entity nor a corporation sole and therefore was not entitled to sue.

6. Reference has also been made to the case in *The King v. Patrick and Pepper* (1783) 168 E.R. 229 where it was held that a corporation must prosecute in their corporate name, and that the addition of such name as a description of the persons of which the corporation is composed, is not sufficient in an indictment. The learned advocate has referred to Section 29 of the old Act, which entitled the Chairman of the Municipal Commissioners" to file a suit and emphasised the point that the amendment makes it necessary for the Municipal Commissioners as a body corporate to sue or be sued. Relying upon the decision in *Jungli Lall v. Laddu Ram* AIR 1919 Pat. 430, the learned advocate for the appellant contends that the decree was void and should be ignored.

7. But it has to be noted that both the decisions of Wort J. reported in *Kali Prasad Sinha, Chairman, Buxar Municipality Vs. Badri Narain Sahu and Others*, and

Kamakhya Narayan Singh Vs. Chairman, Hazaribagh Municipality, related to cases in which the objections were taken at the trial of the suits themselves. The lower appellate Court has further pointed out that u/s 24, Bihar and Orissa Municipal Act, the chairman of a municipality can exercise the powers of a municipal corporation so long as there was no resolution of the municipal commissioners forbidding him from doing so. Section 24 lays down that

The, Chairman shall, for the transaction of the business connected with this Act, or for the purpose of making any order authorised thereby exercise all the powers vested by this Act in the commissioners: provided that the Chairman shall not act in opposition to or in contravention of any resolution of the commissioners at a meeting, or exercise any power which is directed to be exercised by the commissioners at a meeting.

8. The provisions of this Section were not referred to in the two decisions of this Court in Kali Prasad Sinha, Chairman, Buxar Municipality Vs. Badri Narain Sahu and Others, and Kamakhya Narayan Singh Vs. Chairman, Hazaribagh Municipality, . It has been urged by Mr. K.D Chatterji, appearing on behalf of the respondent, that the objection should have been taken during the pendency of the suit when there would have been an opportunity for the respondent to amend the plaint, if necessary, and that the chairman should be presumed to have sued the appellant as a representative of the commissioners. Although there is Section 12 which says that the municipal commissioners may sue and be sued as municipal commissioners, there is another provision which under certain circumstances permits a person or persons authorized by the Local Government to exercise the powers and carry on the duties of the municipal commissioners. That is Section 386. In a recent decision of the Federal Court in Administrator, Lahore Municipality v. Daulat Ram AIR 1942 F.C. 14 where the suit was filed by the Administrator of the municipality, an objection was raised that it should have been in the name of the municipal commissioners, and their Lordships observed:

It seems to us that we should be carrying the legal fiction to a needless length if we insisted that even in this state of facts, proceedings must be taken only in the name of the dormant corporation. It has not been disputed that the person competent to take proceedings is the Administrator; and even if the true view should be that he should take proceedings in the name of the Committee, the defect is one purely of a formal character which can be cured by amendment.

9. On the strength of this decision it is contended on behalf of the respondent that the defect in the present case also should be deemed to be merely formal. He points out that when the parties were before the Court which passed the decree, the appellant never raised the objection and each party understood the real nature of the suit, the objection should not be allowed at this stage. There is a good deal of force in this contention.

10. In Jogendra Nath Bannerjee v. Tollygunj Municipality AIR 1939 Cat. 178 it has been held that when the municipal commissioners appeared and contested

the suit throughout, the technical flaw that it was framed as against the chairman of the municipality could be disregarded. Reference has also been made to the decision of this Court in *Radhe Lal and Another Vs. East Indian Railway and Others*, where it has been held that in a case by or against a railway-company, the proper name under which the company should be sued is the name and style under which it carries on its business, and that if upon a fair reading of the plaint it is made out that the description of the defendant is a mere error and that the company is the real defendant then the suit may proceed against the company.

11. On the facts of the present case it is not necessary to decide whether u/s 24, Municipal Act, the chairman is entitled to sue on behalf of the municipal commissioners. What appears from the fact of this case is that the suit was filed by the chairman of the municipality, the defendant-appellant appeared and without taking any objection admitted his liability. In fact the appellant has paid a certain portion of the dues against him. In that view of the matter, I am of opinion that even if it was an error, it was of a technical nature and may be disregarded. I would, therefore, dismiss the appeal with costs.

Shearer, J

I agree.