

(1950) 08 GUJ CK 0003

In the Gujarat High Court

Case No : Civil Revision Application No. 90 of 1950

Ratilal Fulbhai and Others

APPELLANT

Vs

Chunilal M. Vyas and Another

RESPONDENT

Date of Decision : 23-08-1950

Acts Referred:

Bombay District Municipal Act, 1901 — Section 22
Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227

Citation : AIR 1950 Guj 15

Hon'ble Judges : H.V. Divatia, C.J;S.J. Chhatpar, J

Bench : Division Bench

Advocate : T.U. Mehta, for the Appellant; G.B. Joshi, Opponent No. 1 and C.N. Shah, General for State, for the Respondent

Judgement

1. This is an application by the original opponents against an order passed by the District Judge, Sorath, in an enquiry which he was conducting u/s 22, Bombay District Municipal Act as applied to Saurashtra.

2. The applicant Chunilal M. Vyas, was a voter at the Municipal Elections held at Visavadar in the Sorath District. He objected to the election of the present applicants, who were the opponents in that application, on the ground of irregularity and illegalities in the procedure relating to the election and other grounds. Before the regular hearing began, the applicant applied for an interim injunction to the learned Judge to the effect that the opponents should not function as elected members of the Municipality till the final disposal of the proceedings-pending before him. After hearing both parties, and the learned District Government Pleader on behalf of the Saurashtra Government, he-granted the interim injunction prayed for. It is against that order that the present applicants, who were opponents before him, have applied to this Court.

3. It is urged, in the first instance, by the applicants before us that the learned Judge had no jurisdiction to grant the interim injunction" which he has done. The

learned Advocate-General has brought it to our notice that all the proceedings before the learned Judge below were ultra vires, because the Government has passed" no order of his appointment as a Tribunal to hear the election petition. It is specifically provided in Section 22, District Municipal Act that after an election petition has been filed before the District Judge of the District, an enquiry shall be made by a Judge, not below the grade" of, an Assistant Judge, appointed by the Raj-Pramukh either specially or generally. The learned Advocate-General says that the Government has passed no such orders appointing the District Judge, Sorath, to hold the enquiry. The learned Advocate Mr. Joshi, who appears on behalf of the opponent, is not able to produce such an order of appointment either separately or from the Saurashtra Government Gazette. We take it, therefore, that no such order of appointment has been passed by the Government. That being so, the District Judge had, in our opinion no jurisdiction to begin this enquiry and grant the interim injunction prayed for. Mr. Joshi contends that it is not necessary to pass any order so far as the District Judge is concerned, but that an order is to be passed only if any other Judge is to be appointed as a Tribunal, but that construction of the section is clearly wrong, because whoever is the Judge who is to conduct the enquiry, whether he is the Assistant Judge or District Judge, must be either generally or specially appointed by the Government. It is true that the application has, in the first instance, to be filed before the District Judge, because there must be some person who must be empowered to receive the application, but after the application is received by the District Judge, it is the Government who have to appoint a Tribunal or the person who is to hear the application, and unless such an order is made, no Judge has the jurisdiction to proceed with the enquiry. It appears that the attention of neither of the parties, nor even of the learned District Judge, himself, seems to have been drawn to this defect, but the defect goes to the root of jurisdiction and renders all subsequent proceedings ultra vires.

4. Mr. Joshi further contends that even if it be so, we have no power to declare the proceedings a ultra vires, having no power to entertain the revision application itself. Even assuming that Section 115, Civil P.C., does not apply, we have now Article 227 of the Constitution of India, which says that:

Every High Court shall have superintendence over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction.

The Judge who is to be appointed for the municipal enquiry, is a Tribunal within the meaning of that term, and this Court, therefore, has the power of superintendence over it. Moreover under Article 926 also, this Court has the power in appropriate cases to issue a writ in the nature of mandamus to any person or authority, and therefore, apart from Article 227, we would have the power to issue the writ of mandamus to the learned District Judge, who has proceeded with the enquiry, if we are of the opinion that the enquiry is ultra vires. For both these reasons, we have the jurisdiction to declare these proceedings as ultra vires.

5. It is lastly contended by Mr. Joshi that original Bombay District Municipal Act, 1901, before 1917, contained the words "District Judge or such other Judge as may be appointed by the Governor General in Council in this behalf" in Section 22 (a) and the Saurashtra Government has applied the Bombay District Municipal Act, 1901, i.e., as it stood before the amendment made in 1917, and that therefore, the District Judge has the jurisdiction to hear the application. But the argument is fallacious. What has been applied by the Saurashtra Government in 1949 is the Bombay District Municipal Act, 1901, as it stood on that date, and as it stood on that date, it was with the amendment of 1917, and, therefore, the present Section 22(a) has been adopted by the Saurashtra Government.

6. For all the above reasons, we are of the opinion that the proceedings before the learned Judge below are ultra vires, and that we have the power to declare them as such. We, therefore, reverse the order of the lower Court, and allow the revision application. We direct that the order of interim injunction made by the learned Judge be vacated, and that the learned Judge has no jurisdiction to proceed with this enquiry, unless and until he is appointed for this purpose by the Saurashtra Government.

7. Each party will bear its own costs in this revision application.