CIVIL REVISION.

Before Bartley and Nasim Ali JJ.

BAN BIHARI MUKHERJI

v.

MAKHAN LAL MUKHERJI.*

1937

Dec. 16.

Election petition—Decision of District Judge, if final—Jurisdiction of High Court to interfere—Bengal Municipal Act (Ben. XV of 1932), ss. 38(d), 39B, 43—Government of India Act, 1935 (25 & 26 Geo. V, c. 42), s. 224.

The decision of the District Judge under s. 38(*d*) of the Bengal Municipal Act cannot be called in question by any Court. It is final under ss. 39B and 43 of the Bengal Municipal Act.

Section 224 of the Government of India Act, 1935, gives no jurisdiction to High Court to interfere in the matter.

CIVIL RULE issued in favour of the elected Commissioner.

The petitioner was elected unopposed as a Commissioner of Khardaha Municipality in the District of 24-*Parganâs*. The opposite party also filed a nomination paper, which was rejected on scrutiny, on February 27, 1937, as the name of the opposite party was not in the final electoral roll published on February 2, 1937. But opposite party in this matter filed an appeal under s. 529A of the Bengal Municipal Act before the District Magistrate, who allowed the appeal on March 2, 1937. After this success in the appeal, the opposite party filed an Election Petition under s. 36 of the Bengal Municipal Act. His case was that, by the decision of the District Magistrate in appeal under s. 529A of the Bengal Municipal Act, the opposite party should have been *deemed* to be included in the electoral roll since the date of its final

*Civil Revision, No. 1079 of 1937, against the order of M. H. B. Lethbridge, District Judge of 24-*Parganâs*, dated June 16, 1937.

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publication. The District Judge gave effect to this contention of the opposite party. Against this decision of the District Judge, the present Rule was issued.

This Rule first came up for decision before Henderson J., who, by his order dated November 25, 1937, sent the case to the Division Bench for disposal, as it related to a question which is likely to arise frequently in election petitions.

The other material facts appear from the judgment.

Binayak Nath Banerji for the petitioner. Section 39B of the Bengal Municipal Act, read with s. 43 of the said Act, does not preclude the jurisdiction of the High Court to interfere in revision. Again, s. 43 of the Bengal Municipal Act is no bar to revision. The word "final" in s. 39B means that it is not appellable. At any rate, under the Government of India Act this Court may interfere.

Girija Prasanna Sanyal, Ramaprasad Mukhopadhyaya and *Uma Prosad Mukherji* for the opposite party not called upon.

BARTLEY J. This matter was argued before us by the learned advocate for the petitioner at very considerable length, but it can, we think, be briefly disposed of.

The Rule was issued on the opposite party to show cause why an order made by the learned District Judge of the 24-*Parganâs*, upon a petition under s. 36 of the Bengal Municipal Act, should not be set aside. The order itself set aside the election of the petitioner as a municipal commissioner for Ward No. 4 of the Khardaha Municipality, and directed a fresh election. Against that decision the present Rule has been obtained.

In our opinion, the Rule must be discharged on the short ground that the provisions of s. 39B, read with s. 43 of the Bengal Municipal Act, preclude us from

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calling in question the order of the learned District Judge. That order was made on an election petition filed under s. 36 of the Act, and challenging the validity of the election upon grounds not excluded by the proviso to the section. The learned Judge set aside the election on the ground that the nomination paper of the petitioner—the opposite party in this Rule—had been improperly rejected, a decision within the terms of s. 38(*d*) of the Act. Section 39B of the Act lays down that the decision or order of the Judge under s. 38 shall be final, and, under the provisions of s. 43 of the same Act, no order passed in any proceedings under ss. 36 to 40 (both inclusive) shall be called in question in any Court.

In our view, the provisions of ss. 39B and 43 of the Act, above referred to, are sufficient to debar us from making any order by way of interference with the decision of the Court below.

It was suggested that, if we held that the Code of Civil Procedure could not be invoked in this case, we might still intervene under s. 224—the old s. 107—of the Government of India Act.

In view, however, of the actual wording of that section, we cannot see any force in this contention.

This Rule must, accordingly, be discharged with costs—hearing fee three gold *mohurs*.

Let the record be sent down as early as possible, and the counter-affidavit be amended as prayed for, and kept on the record.

NASIM ALI J. I agree.

Rule discharged.

N. C. C.