

acquisition lay on the person asserting it. In our opinion therefore the decision of the Judge was absolutely wrong. We set aside his decree dismissing the suit.

It was urged for the respondents that we should now remand the record so as to give them an opportunity of putting in their evidence. We refuse to adopt that course. The defendants had ample opportunity to produce their evidence. They absolutely refused to submit to the ruling of the first Court and declined to produce evidence. They have only themselves to thank for the consequences. We refuse to assist them. The suit then was practically undefended and was properly decreed by the Court of first instance in the absence of any evidence for the defence. That was a right decree. We restore it, and (setting aside the decree of the lower appellate Court) we allow this appeal with costs.

*Appeal decreed.*

*Before Mr. Justice Blair and Mr. Justice Burkitt.*

ABDUR RAHIM (PLAINTIFF) v. THE MUNICIPAL BOARD OF KOIL  
(DEFENDANT).\*

*Suit for declaration of right to be entered in list of candidates for appointment as member of a Municipal Board—Jurisdiction—Suit brought against the Municipal Board in its corporate capacity.*

Where a plaintiff sued for a declaration of his right to have his name entered in the list of persons entitled to be candidates for election as members of a Municipal Board and brought his suit against the Board in its corporate capacity, it was held that such a suit would not lie against the Board, even if, which was not decided, it might lie against the revising authority, by the irregular action of which, it was alleged, the plaintiff's name had been excluded from the list of candidates.

\*THE facts of this case sufficiently appear from the judgment of the lower appellate Court, which was as follows:—

“The plaintiff appellant asks for a declaratory decree against the Municipal Board of Aligarh (*sic*), to the effect that he is entitled to be entered in the list of candidates for election as a member of the Board, and for damages amounting to Rs. 1,100.

\* Second Appeal No. 293 of 1897 from a decree of L. G. Evans, Esq., District Judge of Aligarh, dated the 4th March 1897, confirming a decree of Babu Bapin Behari Mukerji, Subordinate Judge of Aligarh, dated the 6th December 1895.

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“ His allegation is that he was elected as a member in March, 1894, but his election was set aside by the Magistrate's order passed in May 1894.

“ After this the Municipal Board appointed Mr. H. J. Smith, K. Muhammad Yusuf, L. Sri Lal and Sheikh Amin-ud-din as a revising authority for correcting the list of voters for 1895.

“ Muhammad Nur Khan, his former opponent, raised an objection to entry of name of plaintiff on list of voters, on the ground that he paid a monthly rent of less than Rs. 10. The matter was brought up before the revising authorities on 26<sup>th</sup> January, 1895, and some irregular and illegal proceedings took place, as detailed in the plaint, in consequence of which the name of plaintiff appellant was struck off list of candidates for membership. It is alleged that the order passed by the revising authority was passed *malâ fide* at the instigation of Muhammad Nur Khan, to whom the members of the revising tribunal were partial (Mr. Smith alone excepted). In consequence of this illegal action of the revising tribunal plaintiff appellant failed to be elected in 1895, and this suit is the result.

“ The learned Subordinate Judge fixed several issues and decided as below :—

1. The suit is cognizable by a Civil Court.
2. The order of the revising authorities was not wholly regular and the decision was erroneous.
3. The suit is not barred by section 42, S. R. A.
4. The plaintiff is qualified to be a member.
5. The plaintiff can maintain a suit for damages, but he cannot get any because he has failed to prove malice on part of the revising authorities.

“ The plaintiff has appealed against this decision. No objection has been taken under section 561, Civil Procedure Code, by the defendant Municipal Board, but I hold that the defendant can nevertheless contest the findings of the lower Court where they are against them. ‘ A respondent who fails to file a petition under this section is not bound by the findings arrived at against him by the lower Court’— *Bhagoji v. Bapuji* (1), and may take any objection to the decree of the lower Court which he

might have taken if he had preferred a separate appeal—*Kamat v. Kamat* (1); *In re M. Himmat Bahadur* (2).

“Under these circumstances the Government Pleader on behalf of the Municipal Board urges:—

(1) that the suit is not cognizable by a Civil Court;

(2) that the plaintiff is not entitled to the declaration asked for as against the defendant Board.

“I am referred to the ruling of the Calcutta High Court in *Sabhapat Singh v. Abdul Gaffur* (3) on behalf of the Board.

“The remarks of Mr. Justice Trevelyan, p. 111 *et seq.*, point to the conclusion that a suit would lie under the circumstances stated by the plaintiff appellant, that is, assuming that the allegation of the plaintiff appellant is correct, that his name was struck off the list of candidates in an irregular way by friends of Muhammad Nur Khan, who were not acting in good faith; it stands to reason that the relief claimed is one which can be considered by the Civil Court acting under section 42, Specific Relief Act.

“This is clearly the meaning of the ruling of the Calcutta High Court referred to above, and as no ruling can be cited to the contrary, I hold that the learned Subordinate Judge was right in finding that he has jurisdiction to try and decide this suit.

“The next point for decision is more difficult—

Can the plaintiff appellant claim the declaration asked for against the Municipal Board?

“The plaintiff appellant, who has conducted his own case, admits that his claim is against the corporate body represented by the President, and not against the President or any individual member personally.

“In the Calcutta case above noted it was decided that no action for damages could lie against the Magistrate who set aside the election, as he only acted *bona fide* in pursuance of what he believed to be the duties of his office; and it was further held that no declaration could be made against him, as the matter was not one in which he really had an interest.

(1) (1884) I. L. R., 8 Bom., 368. (2) (1866) B. L. R., Sup. Vol., 429.

(3) (1896) I. L. R., 24 Calc., 107.

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“It was held, however, that an action did lie against those persons who denied the right of the plaintiff and put in force machinery which excluded his exercise of that right.

“In this case the plaintiff appellant bases his suit on the allegation that certain specified members of the Municipal Board, acting under the instigation of his opponent Muhammad Nur Khan, put certain machinery in motion, which resulted in his name being struck out of the list of candidates for the year 1895, and on this ground he says he is entitled to a declaration and damages as against the Municipal Board in its corporate capacity. In this case, according to the rules laid down for the Aligarh Municipality (G. O. No. 716, dated 9th August, 1884), the result of the proceedings of the revising authority was that their order became final, not being corrected by the Magistrate within one month from the last sitting. In other words, the proceedings of the revising authorities were automatically ratified by the Board under the rules, and the order of the revising authorities became for all practical purposes an order of the whole Board.

“But it is not contended that the members of the Board in their corporate capacity were actuated by any malice.

“The order of the revising authorities became the order of the Board under force of circumstances, and it is obvious that the position of the Municipal Board in its corporate capacity is in this case similar to the position of the Magistrate in the Calcutta case. The following remarks apply in this case, *mutatis mutandis*. ‘What he (the Magistrate) did was done, or at any rate purported to be done, in pursuance of authority given to him by law. There is a question whether he had any authority to do what he did \* \* \*; but even if that be so, the Magistrate acted *bona fide* in pursuance of what he believed to be the duties of his office, and therefore he would not be liable to an action in respect of it. He would certainly not be liable to any action for damages, and, as far as a declaration against him is concerned, that is not a matter in which he really had any interest. \*\*\* We think it very doubtful whether such a decree could be given, and certainly, as a matter of policy, it would not be right for us to do anything which would compel Magistrates of districts to be

brought in in suits of this kind when the contest is really one between the parties who have opposed one another at an election.'

"In this case, applying the principles laid down above, I hold that the real dispute lies between plaintiff appellant and the friends or partisans of Muhammad Nur Khan, and that the Municipal Board in its corporate capacity cannot be dragged into their quarrels.

"The Municipal Board in its corporate capacity acted *bona fide* in pursuance of rules laid down for its guidance by Government, and is not interested in any way with respect to the title of plaintiff appellant to any particular character or right. In this particular instance the right of plaintiff appellant to be elected a member of the Board is not a matter in which the Board in its corporate capacity is interested in the slightest degree.

"For the above reason, I hold that the plaintiff appellant cannot, under s. 42, Specific Relief Act, claim any declaration or ask for any damages against the Municipal Board in its corporate capacity, and the suit must therefore fail.

"It is unnecessary, under these circumstances, to express any opinion on the facts; but I may say that I agree with the learned Subordinate Judge in his finding on the sixth issue, *viz.*, that the plaintiff appellant is qualified under the rules to be a member of the Municipal Board.

"The learned Subordinate Judge for reasons given by him did not award costs to defendant Municipal Board, but in this appeal I am of opinion that the Board is entitled to its costs.

"The plaintiff appellant should have been content with the finding of the learned Subordinate Judge that the proceedings of the revising authorities were irregular and their decision erroneous.

"It is quite clear that as against the Board in its corporate capacity he has no reasonable ground of complaint.

"Appeal dismissed with costs."

The plaintiff thereupon appealed to the High Court.

Babu *Satya Chandar Mukerji* for the appellant.

Mr. *E. Chamier* for the respondent.

BURKITT, J. (BLAIR, J., concurring).—In this appeal various questions have been argued before us, and amongst others the

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question as to whether any suit having for its object to obtain a declaration that the plaintiff is entitled to have his name entered in the lists of electors or candidates could lie against the Municipal Board. We do not propose to decide any of those questions. We are of opinion that the appeal must fail on the short ground that the suit has been brought against the wrong party. The plaintiff's allegation is that by reason of certain tortious acts committed by the revising authority his name was wrongfully struck off the list of persons qualified to stand as candidates for election to the Municipal Board at the next election. This the plaintiff alleged as done at the instigation of, and with a view to please and show partiality to, a disappointed candidate. It is admitted for the plaintiff that he had a remedy by application to the District Magistrate (who had power to revise and amend the list prepared by the revising authority), but that he did not avail himself of that remedy.

We are clearly of opinion that if the plaintiff had any right of suit, as to which we express no opinion, his suit should have been instituted against the persons of whose alleged wrongful acts and misconduct he complains, namely, the persons who constituted the revising authority, and that the suit, if maintainable at all, would lie against them personally for the individual acts done by them. The revising authority had the duty imposed on it of preparing the lists of voters and candidates, subject to the final orders of the District Magistrate, and if the members of that body are responsible to any Court for wrongful acts done by them in the performance of that duty they are responsible as individuals. The Municipal Board in its corporate capacity is not answerable for the misconduct and wrongful acts of the revising authority in preparing the lists. It has no control over or power of amending those lists. The Magistrate of the District is the only authority by which those lists can be revised or amended.

For the above reasons we are of opinion that this appeal fails. We therefore dismiss it with costs.

*Appeal dismissed.*