

APPELLATE CIVIL.

Before Mr. Justice Divatia.

VINAYAK VASUDEO MEHENDALE (ORIGINAL DEFENDANT No. 2), APPELLANT
v. GOPAL CHIMNAJI BHATE (ORIGINAL PLAINTIFF), RESPONDENT.*

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December 9

The Bombay Local Boards Act (Bom. Act VI of 1923), ss. 13, 14, 15—Voter—Manager of joint Hindu family—Coparcener other than manager—Voter's list—Finality—Holder, meaning of—The Bombay Land Revenue Code (Bom. Act. V of 1879), s. 3 (11).

The provisions of s. 15, sub-s. (2) (a) (ii) are to be read with the provisions of s. 15, sub-s. (4) (c) of the Bombay Local Boards Act, 1923, and when read together, they mean that in the case of a joint Hindu family no person other than the manager has the right to vote except in a case when one of the coparceners is holding some separate or self-acquired property in his own right, and in such a case he is entitled to be a voter if he fulfils the other requisites of the section.

The meaning of the word "holder" is not to be taken as defined in s. 3 (11) of the Bombay Land Revenue Code, 1879, since as provided in s. 3 (d) of the Bombay Local Boards Act, 1923, the term "holder" is defined in s. 15 (4) of the Act.

Sections 13 and 14 of the Bombay Local Boards Act, 1923, cannot be construed to mean that the voters' list prepared under s. 15 of the Act is conclusive and that no one has a right to challenge the names appearing in the list after it is duly published before the election.

There is no provision in the Act either in express words or by implication according to which the names of the persons appearing in the list are to be treated as conclusive in the sense that they cannot be challenged after there has been a final publication of the list of voters.

The marginal note to s. 14 of the Bombay Local Boards Act, 1923, is incorrect.

SECOND APPEAL from the decision of S. M. Kaikini, Assistant Judge, Thana, setting aside the decree passed by V. R. Paralkar, Subordinate Judge, Roha.

Suit for declaration.

Under the provisions of the Bombay Local Boards Act, 1923, the Collector of the Kolaba District announced that an election of the members of the District Local Board's General Constituency* of the Roha Taluka for 1936-37, 1937-38, 1938-39, should take place appointing January 21, 1936, as the date within which nomination papers in the

*Second Appeal No. 362 of 1936 (with Civil Revisional Application No. 283 of 1936).

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prescribed form were to be submitted by the candidates. Two seats had been allotted to Roha and there were four candidates, viz., the plaintiff and defendants Nos. 1 to 3. On January 27 following, that is, the day fixed for the scrutiny of the papers plaintiff objected to the nomination of defendants Nos. 1 and 2. The Mamlatdar of Roha, however, accepted their nomination papers.

The plaintiff, therefore, filed a suit for a declaration that he and defendant No. 3 were the elected members and, in the alternative, he asked for a declaration that he was the elected member of the said constituency.

Defendant No. 1 stated, *inter alia*, that he was the manager of a joint family, that he held property in his own right and paid assessment for the same, that the voters' list was final and that the Court could not question the right of the defendants to remain on the voters' list. Defendant No. 2 stated that he was the holder of land paying assessment of Rs. 351.

The Subordinate Judge dismissed the suit. On appeal, the Assistant Judge set aside the order of the trial Court and granted plaintiff a declaration as prayed.

Defendant No. 2 appealed.

M. C. Setalvad, with *Soloman Moses*, for the appellant.

K. N. Dharap, for the respondent.

DIVATIA J. This is an appeal by defendant No. 2 in a suit by the plaintiff for a declaration that he and defendant No. 3 were duly elected members of the District Local Board's General Constituency of Roha Taluka in the District of Kolaba, and in the alternative for a declaration that the plaintiff alone was the elected member of the said constituency.

The facts shortly are that the plaintiff and the three defendants were four candidates for two seats in the election which took place on March 14, 1936. On January 21, 1936,

which was the date for the nomination of the candidates, all the four persons were duly nominated as candidates. The scrutiny of the nominated members was held on the 27th. At that time the plaintiff objected to the nomination papers of the first two defendants on the ground that each of them was a member of a joint Hindu family but neither of them was the manager of the family, and that, therefore, both of them were not duly qualified to be voters on the list as well as to stand as candidates for the election. However, the Returning Officer accepted the nomination of these defendants. Thereupon on February 8, 1936, the plaintiff filed the present suit for the reliefs I have stated above. The election took place on March 14. Soon after that, the present suit was heard, and the main issues in the suit were, whether the Court could inquire into the validity of the order of the Returning Officer; whether the plaintiff was entitled to challenge the right of defendants Nos. 1 and 2 to be on the voters' list; and whether a coparcener other than the manager of a joint Hindu family, appearing in the final list of the voters, was disqualified for being a voter under s. 15 (4) (c) of the Bombay Local Boards Act VI of 1923. The trial Court found all the issues against the plaintiff and dismissed the suit on the same day on which the election was held, viz., March 14.

On March 22, the plaintiff filed an election petition as provided for in the Act against the election of defendant No. 2, as defendant No. 1 had withdrawn his candidature on the date of the election. The plaintiff appealed against the dismissal of the suit to the District Court, and the Assistant Judge of Thana heard the appeal as well as the election petition together with the consent of both the parties. The learned Assistant Judge has allowed the appeal and has held that neither of the defendants possessed the requisite qualifications under s. 15 of the Act, and that the plaintiff was entitled to challenge the right of the defendants to be voters as well as candidates even if their names were entered

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in the voters' list. On these findings he also decided in the plaintiff's favour in the election petition.

The present appeal has been filed by defendant No. 2 against the decree of the Assistant Judge in appeal, and the companion revisional application has been filed by him against the order in the election petition, and therefore, both these matters are heard together.

I will first take up the point whether the plaintiff's contention that the appellant was not entitled to be on the voters' list under s. 15 of the Act is sound. That section is divided into four sub-sections. The material parts of the section so far as the present dispute is concerned are sub-s. (2) (a) (ii), and sub-s. (4) (c). The former part provides that the following persons shall be entitled to have their names entered in the list for a constituency prescribed under s. 6 qualifying them to vote at elections of members of district local boards in such constituency, namely, every person who on the first day of January next preceding the date on which the list is published under s. 12 had a place of residence within the constituency and who on the first day of January aforesaid held in his own right or occupied as a tenant in any place in the Bombay Presidency, other than Sind, alienated or unalienated land assessed at or of the assessable value of not less than Rs. 32 land revenue.

Now, it is common ground that the appellant was a member of an undivided Hindu family and that he was not the manager thereof. It appears, however, that certain portions of the joint family property were entered in the revenue records in his name and that the assessment thereof was paid by him to the Government. It is, however, admitted by the appellant that this assessment was paid by him from the joint family funds. It is contended by the plaintiff that even though his name appeared in the revenue records as holding certain property, he is not qualified to be a voter under s. 15 because he is not holding those lands in his own right as he was only a coparcener of the joint family, and that

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he cannot, therefore, claim the lands which he holds, in his own right, as the other coparceners have a share in them. On the other hand, it is contended on behalf of the appellant that even though the family is a joint family, as long as the appellant is entered as the holder of certain lands in the revenue records, he must be said to be holding those lands in his own right, and that the words "in his own right" do not mean in his own exclusive right or of his own ownership, but they are put in there as contrasted with the provisions of sub-s. (4) (d), namely, that he is holding the land not in a fiduciary capacity but on his own account. The plaintiff contends as against this that sub-s. (4) (c) clearly provides that where any property is held or occupied or payment is made or received jointly by the members of a joint family, the family shall be adopted as the unit for deciding whether the requisite qualification exists; and if it does exist, the manager of the family only shall be qualified as an elector in respect of such property or payment. The appellant attempts to explain this provision as meaning that although the family was regarded as a unit for the purpose of being a voter, it does not exclude the case of a coparcener holding land in his own name in the revenue records from being a voter, and that the only criterion is whether he is a holder in his own right, and for that purpose it is further contended that the meaning of the word "holder" is to be taken as defined in the Bombay Land Revenue Code, as provided in s. 3 (d) of this Act. I do not think, however, that the last contention is sound because we have got the definition of the term "holder" in s. 15, sub-s. (4), itself, where the term "holder" is defined as meaning a person lawfully in possession of land, whether such possession is actual or not. Construing s. 15 as a whole, I have no doubt that the plaintiff's contention is correct, and that it was clearly the intention of the Legislature to regard the joint family as a unit for the purpose of voting and that it was the manager alone who was to be regarded as qualified

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to be an elector. I am further of opinion that the words "in his own right" mean that he must own the land by himself, in other words, he must be the exclusive owner of the land. The provisions of sub-s. (2) (a) (ii) are, in my opinion, to be read with the provisions of sub-s. (4) (c), and both of them read together mean that in the case of a joint Hindu family no other person except the manager has the right to vote except in a case where one of the coparceners is holding some separate or self-acquired property in his own right, and in such a case he is entitled to be a voter if he fulfils the other requisites of the section. On this point, therefore, the lower appellate Court was right in holding that defendant No. 2, even though some family property was in his name in the revenue records, was not a duly qualified voter for the purposes of the election and that he was not entitled to have his name on the voters' list.

The appellant, however, contends further that even though he may not be a duly qualified voter under s. 15, the plaintiff is not entitled to challenge his status as such if his name was put in the voters' list prepared before the date of the election. In other words, the contention is that the voters' list is conclusive and no one has a right to challenge the names appearing in that list after it was duly published before the election. For this argument reliance is placed upon ss. 13 and 14 of the Act. Section 13 provides that the Collector may, on application being made to him at any time within one month after the publication of the list by any person claiming to be qualified to vote at any election of members of the local board, correct any erroneous entry in the list, or insert therein the name of any person whose right to be entered in the list is proved to the satisfaction of the Collector, and that the Collector's decision shall be final and conclusive. Section 14 provides that the Collector, after revising the list as provided in s. 13, shall republish the same within two months from the date of

publication under s. 12 ; that no person whose name is not in the revised list last published, before the date of any election shall be qualified to vote at the election of a member for the constituency for which such list has been prepared ; and that no person shall be qualified to be elected, for any constituency of a Taluka or District Local Board unless his name is in the revised list last published before the date of the election.

The appellant's contention on this point is that after the list was first published, the Collector had the power to correct any erroneous entry in the list or insert the name of any person whose name was wrongly omitted, and that the words " correct any erroneous entry in the list " meant not simply correcting the misdescription of a person but also deleting the name of a person who was not duly qualified to vote, and that this decision of the Collector has to be treated as final and conclusive. The lower appellate Court seems to be of opinion that the deletion of the name of a person, who was not qualified to be in the voters' list is not included within the expression " correct any erroneous entry in the list " but that it applies to the case of misdescription only. However, even taking that the deletion of the name of a person, who is not entitled to be on the list, is included in the expression, the question is whether the name of such a person appearing in the list is conclusive. All that this section says is that it would be open to any person, who claims to be qualified to vote at the election, to apply to the Collector for correcting an entry or inserting any other name therein, and that the decision of the Collector on that application was to be final and conclusive. In other words, it is the decision of the Collector that is made final, and not necessarily the name of a person appearing in the list. It is only if some person applies to the Collector that he gives his decision. If no application is made, as happened in the present case, the provisions of this section would not come into play. However, the appellant relies on the next s. 14

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for the purpose of his argument that the list is conclusive. But even in that section it is nowhere provided that the list is to be treated as conclusive in the sense that once the name of any person is put on the list, it cannot be challenged at the date of the election or at the date of the scrutiny of the nomination. Sub-section (2) of this section is entirely negative, and it says that no person whose name is not in the revised list shall be qualified to vote, but it does not say anything about the name of a person who is on the list but who is not qualified to be a voter. The marginal note to this section to the effect that the lists were conclusive evidence of the right to be elected or to vote is clearly incorrect, because the section does not say so.

It has been conceded by the learned counsel on behalf of the appellant that there is no express provision in this or any other section of the Act according to which the names of the persons appearing in the list are to be treated as conclusive in the sense that they cannot be challenged after there has been a final publication of the list of voters, and it is contended that looking to the scheme of the Act as a whole, that must be the intention of the Legislature. All that I can say is that, even if that was the intention of the Legislature, the words of the relevant sections, from which alone it is to be gathered, are entirely inadequate to convey such intention, and that it could have been positively expressed by the provision, as we find in some other Acts relating to elections of public bodies, that once the final list of voters was published after the objections are duly heard, it is to be treated as final and conclusive, and that it was not open to any person to challenge it thereafter. But, I do not find any such intention even by implication in these sections. It is further contended on behalf of the appellant that s. 8 (b) of the Act provides that every person whose name is entered in any such list for a constituency of the District Local Board may be a candidate at any election for the District Local Board, and that, therefore, the

Legislature intended that if the name of any person appeared in the list, he was entitled to stand as a candidate, which meant that the names on the list are to be treated as conclusive. I do not, however, think that is the case. This provision is to be read along with s. 14 (3) which says that no person shall be qualified to be elected for any constituency of a Taluka or District Local Board unless his name is in the revised list. In other words, nobody whose name did not appear on the list of voters was qualified to stand as a candidate, but that does not mean that if a person's name appears on the voters' list and he is therefore entitled to stand as a candidate at the election, his candidature cannot be challenged on the ground that although his name appeared on the voters' list, he was not duly qualified as a voter. This provision does not go further than saying that it is only the person whose name is on the list who can stand as a candidate.

These are the relevant sections of the Act on this point, and I am of opinion that it is open to the plaintiff to challenge the status of the appellant as a voter as well as his right to stand as a candidate on account of his not being qualified under s. 15, and that the list as finally published is not conclusive and does not bar the right of any person to challenge the names appearing therein.

The decision of the lower Court is therefore correct and accordingly the decree of the lower appellate Court is confirmed and the appeal is dismissed with costs.

As a consequence of this decision, the rule in Civil Revision Application No. 283 of 1936 must also be discharged with costs.

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Appeal dismissed.

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