

Promode Lal Moitra Vs. Additional District Magistrate, 24 Parganas and ors.

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Court : Kolkata

Decided On : Sep-12-1956

Reported in : AIR1957Cal164,61CWN11

Judge : Sinha, J.

Acts : [Constitution of India](#) - Articles 226 and 329; ;[Representation of the People Act, 1951](#) - Sections 7 and 80; ;Bengal Municipal Election Rules - Rule 20(1) and 20(3); ;Code of Criminal Procedure (CrPC) - Section 195(1); ;[Bengal Municipal Act, 1932](#) - Section 36

Appeal No. : Civil Revn. No. 628 of 1956

Appellant : Promode Lal Moitra

Respondent : Additional District Magistrate, 24 Parganas and ors.

Advocate for Def. : S.M. Bose, ;N.C. Chakraborty and ;S.K. Roy Choudhury, Advs. (for Nos. 1 and 4), ;Sankar Banerjee and ;Arun Kumar Dutt, Advs. (for No. 2), ;Mayer Balai Lal Pal and ;Nanda Lal Pal, Advs. (for No. 3), ;R

Advocate for Pet/Ap. : C.N. Laik, ;Murari M. Dutt, ;Pabitra Kr. Banerjee, Advs.

Disposition : Application dismissed

Judgement :

Sinha, J.

1. The facts in this case are as follows: The petitioner is a resident of Baranagore, which is within the Jurisdiction of the Baranagore Municipality. For the purposes of the General election of the said municipality, fixed on 11-3-56, the final electoral Roll of the said Baranagore municipality was published under the Election Rules made under the [Bengal Municipal Act, 1932](#) and the petitioner's name appears as a male voter in Ward No. 3. The Respondent No. 3, Amar Mazumdar is also a recorded voter in the same Ward. For the purposes of the said election, both the petitioner and the Respondent No. 3 filed their respective nomination papers with the Respondent No. 2, who is the Chairman of the Municipality. The nomination and registration of candidates standing in an election held under the [Bengal Municipal Act, 1932](#), are governed by a set of rules framed by the Government of Bengal, under powers conferred by Section 44 of the said Act. Rule 17 lays down that not less than 45 days before the election day the Commissioners shall fix for the nomination of candidates, a date which shall not be less than 35 days before the election day. On or before the date of nomination, every candidate for election is to file his nomination paper in the prescribed form and in accordance with the prescribed formalities, with the Chairman. The Chairman then publishes a notice fixing the time and date of the scrutiny of the nomination paper, and on the date so fixed, scrutinises the nomination papers in the presence of the candidate or agent & must register those whose nomination papers are found valid. The Chairman then allocates the symbols, and his decision in this respect is final. The Chairman then prepares and publishes the list of candidates so registered. Under Rule 20, If any person who has filed a nomination paper disputes the right of any other candidate to be on such list then under Sub-rule (1), he may appeal to the Magistrate in writing within three days of the publication of such a list. The Magistrate shall make such order as to the Insertion of the name as 'appears to him to be just'. The list is accordingly amended by the Chairman, and the amended list is thereupon published. Under Sub-rule (3), 'The order of the Magistrate shall be final'.

2. In the present case, the Chairman held the scrutiny of nomination papers on the 10th February, 1956. The results were published on the 11th February and the

petitioner's name was registered in the list of nominations so published. On or about the 14th February, 1956, the respondent No. 3, Amar Mazumdar preferred an appeal before the respondent No. 1, the Additional District Magistrate, 23-Parganas, against the inclusion of the petitioner's name in the list, on the ground that he was disqualified, under Section 22(1)(f) of the said Act. The Chairman was made respondent No. 2, in the said appeal which was numbered as Appeal Case No. 23 of 1956. The relevant provision of Section 22 is set out below:

'22(1) A person shall not be eligible for election or appointment as a Commissioner if such person--(f) has, directly or indirectly, by himself or by his partner or employer or any employee, any share or interest in any contract or employment with, by, or on behalf of, the Commissioners'.

3. In order to understand the decision in the appeal, it will be necessary to relate a few facts. The Petitioner's father, Matilall Maitra since deceased, carried on a business in Petrol and Motor accessories under the name and style of Messrs. Radha Motor Works, at 86/1 Barrackpore Trunk Road, Alambazar. Upon his death, the Standard Vacuum Oil Co. served a notice stopping supplies of Petrol. Matilal left him surviving four sons, viz., the Petitioner Promode and his three brothers Kumudlall, Subodhlall and Sujanlall. On or about the 14th of April, 1950, the three brothers of the Petitioner entered into an agreement of Partnership, constituting the partnership firm of Messrs. Radha Motor Works. A copy of the Deed of Partnership is annexed to the petition and marked with the letter 'D'. This shows that the old business was continued by the partnership, but the name of the petitioner was excluded therefrom. He is not shown to be a partner, in the Deed and has no share therein. But the brothers did not Separate. It is not denied that they have continued to live in a joint family and in joint mess. The joint properties, recorded in the name of Motilal Moitra and others still continue to be recorded in that name, the rates and taxes being paid by Kumudlal on behalf of all the brothers. The firm of Radha Motor Works supply petrol to the Municipality and also spare parts for motor vehicle. They also effect repairs. There are no written contracts and the system appears to be as follows: The sale of petrol is effected on the basis of printed credit memos which are supplied in advance by the firm. The Secretary of the Municipality signs the credit memos and petrol is supplied.

Later on, bills are submitted with vouchers and periodical payments are made. Repairs and supply of spare parts are made by calling tenders. In case of emergency, spare parts are also obtained on credit memos. Average payment made during a year amounts to Rs. 24,000/- approximately.

4. On the 10th February, 1956, about Rs. 17,000/- remained due. In his petition of appeal, a copy whereof is annexure 'A' to the present petition, Amar Mazumdar claimed that the petitioner had directly or indirectly, by himself or otherwise, a share or interest in the contract of employment of the said Radha Motor Works, with; by or on behalf of the Commissioners of the Baranagore Municipality, and as such he was disqualified under Section 22(1)(f) of the said Act from standing as a candidate in the election. Upon the appeal being preferred the learned Magistrate passed the following order:

'This is an appeal under Rule 20(1) of the Bengal Municipal Election Rules, Call for a Report from the Chairman, Baranagore Municipality with records. Issue notice on the opposite party No. 1. All connected papers should be sent along with the Report. Fix 22-2-56 for hearing'.

5. The Chairman In his turn called for reports from the officers of the Municipality. (See annexure 'B' to the affidavit of Chairman affirmed on the 28th March, 1956.) On the 21st February, 1956, the Chairman submitted his report together with reports received from the officers of the Municipality. A copy of this report is annexure 'C' to the petition. The report is entirely ex parte In the sense that no intimation was given thereof to the petitioner, nor was the Chairman called or offer himself for cross-examination. It cannot be said that the petitioner did not come to know that a report had been made, but he had no opportunities given to him of denying the accuracy thereof. The rules do not provide for the calling of any such report, but it appears that it is the procedure invariably employed in determining the appeals. As I shall presently point out. It is not warranted by law and the sooner the practice is discontinued the better. It will also be observed that the Chairman was himself a candidate for election, and a respondent to the appeal before the Magistrate. And yet, the facts stated by him exparte and behind the back of the petitioner were all accepted as true and correct. I might mention that in

the report, there is a certificate that 'the facts contained in the application on which report has been called for, appear to be materially true and substantially correct'.

6. The respondent No. 1 gave his decision on, the 23rd February, 1956. A copy of the judgment is annexed to the petition and marked 'K'. The findings may be summarised as follows'.

(1) The learned Magistrate relied fully upon the report of the Chairman, accepting the statements made therein as correct. He also relied upon the report of the Accountant.

(2) He held that the issue of coupons for supply of petrol by the Secretary of the Municipality and acceptance of these coupons by Radha Motor Works constituted a contract between the Commissioners and the Petrol Pump.

(3) He held that the contract was subsisting at the material date and was not of a casual nature.

(4) With regard to the interest of Pramode in the contract, he found as follows:

'It has got to be seen whether business by the other members of a Hindu undivided family is carried on separately and whether any other member has got any share or interest in the concern. Brothers living jointly in joint mess with ancestral properties standing jointly without mutation, where the Municipal taxes are paid up by any one of the brothers have not interest in the well being of the other. As the partnership Deed filed by the opposite party shows only that Promode Lal Moitra has got no share in Radha Motor Works, the learned lawyer for the opposite party could not rebut the proposition that Promode Lal Moitra is without easy interest in this concern. The learned Advocate for the petitioner rightly pointed out to me that several thousands of rupees are still outstanding to Radha Motor Works. If any question arises about the maintainability of any bill submitted by the said concern and if the Municipal Commissioners are called upon to decide such questions it is evident to, which side the sympathy of Promode Lal Moitra will lie. He cannot claim to have no interest in this petrol pump said to belong to his three brothers where all these brothers live in the same house in joint

mess and where they own some ancestral property without mutation. Clearly in case of any objection to the claims of Radha Motor Works before the Municipality, this gentleman if returned as a Commissioner will have to face a conflict between interest and duty. It may not be a direct interest but it is certainly an indirect interest.' 5. It was held that Promode was disqualified under Section 22(1)(f) of the said Act.

7. The present rule was issued on the 6th March, 1956, upon the respondents to show cause why the said order should not be quashed by a Writ in the nature of Certiorari and/or why a Writ in the nature of Mandamus should not be issued directing the said respondents to forbear from proceeding to hold the general election on 11-3-56 and for other reliefs. No interim order was made postponing the election but an order was made restraining the Government from publishing the names of the successful candidates in Ward III only. The election duly took place and the results were duly declared on the 11th March, 1956. The names of successful candidates in Ward III however have not been published. Subsequently, upon an application made by the petitioner, the rule has been amended, adding the respondents Nos. 5 to 9 who have been successful in the election from Ward No. 3 & as such are affected by the result of this application. The application has also been amended inter alia by adding a prayer that the election in Ward No. 3, held on 11th March, 1950, should be set aside.

8. The Judgment of the learned. Additional District Magistrate has naturally been the target of attack in this case. There can be little doubt that the reasoning is very poor and the procedure adopted is defective. The learned Advocate General appearing for the Respondent No. 1, did not make any attempt to justify either. But he has taken a point which goes to the root of the matter. He argues that an application does not lie under Article 226, but that the proper course for the petitioner would have been to make an application under Section 36 of the Act, and if he satisfied the learned District Judge that the result of the election has been materially affected by improper acceptance or refusal of the petitioner's nomination, then the election could have been set aside. In that event, the election would be held again and the petitioner would have had a chance to contest the same. He argues however that now the matter is too late, since such an

application is barred by limitation, being beyond ten days of the declaration of the result of the election. Broadly speaking, I have already dealt with the point in my decision *Narayan Chandra v. District Magistrate, Hoogly*, : AIR1954 Cal32 . I have held there that where the Act contained a complete remedy for the particular breach complained of, an application under Article 226 does not lie.

9. I shall try to summarise the law on the point which seems to me to be as follows:

1. The right to vote or stand as a candidate for election is not a civil right but a creature of statute or special law and must be subject to the limitations imposed by it. Per Fazl Ali J, in *N. P. Ponnuswami v. Returning Officer, Namakkal Constituency*. : [1952]1SCR218 *Narayan Chandra v. District Magistrate, Hoogly* (A) (supra).

(2) Where a right or liability not existing at Common Law is created by a Statute which at the same time gives a special and particular remedy for enforcing it, the remedy provided by the Statute must be followed, per Willes J. in *Wolverhampton New Water Works v. Hawksford*, (1859) 6 CB (N. S.) 336 (C).

The party enforcing the remedy must adopt the form of remedy given by the Statute. *Secretary of State v. Mask & Co.* .

(3) Elections under the [Bengal Municipal Act, 1932](#) (hereinafter referred to as the 'Act') are governed by the provisions of the Act and the rules framed thereunder.

(4) The preparation, publication and revision of the electoral roll, the registration of voters and the nomination and registration of candidates are to be done in accordance with the rules framed by the State Government under the powers granted by Section 44 (b) of the Act.

(5) such rules have been prescribed.

(6) Section 44 of the Act which confers power upon the State Government to make rules, is a limited power. It does not confer power upon the State Government to frame rules on any and every matter connected with the Act, but only upon

specified headings. One of the headings, e.g. heading (b), confers power to frame rules to regulate and determine 'the preparation, publication and revision of the electoral roll, the registration of voters and the nomination and registration of candidates'. There is an omnibus heading namely heading (h) which empowers the State Government to make rules regarding such matters in respect of which the Act makes no provision or insufficient provision.

(7) It follows that the State Government has no power to make rules which are inconsistent with, or destructive of, the provisions contained in the body of the Act. If such rules are made, the provisions in the body of the Act must be considered as the dominant provision and must prevail over the rule.

(8) It is a matter of first importance that elections should be concluded as early as possible according to the time schedule, and all controversial matters and all disputes arising out of all elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted. See *Fazl Ali J. in N. P. Ponnuswami v. Returning Officer Namakkal (B) (Supra)* at p. 234 (of SCR) : (at p. 70 of AIR).

In conformity with this principle, the scheme of law as regards elections to Municipal bodies in this country is that no significance should be attached to anything which does not affect the 'election', and if any irregularities are committed while it is in progress and they belong to the category or class which under the law by which the election is governed, would have the effect of vitiating the election, they should be brought up before the special tribunal appointed by Statute to deal with election petitions & should not be made the subject of a dispute before any court, while the election is in progress. See *Fazl Ali J. in N. P. Ponnuswami's Case (B) (Supra)* at p. 234 (of SCR): (at p. 70 of AIR).

(9) Thus, the law relating to election may be roughly divided into two distinct stages. One, prior to the election, that is to say the pre-election stage and the other, posterior to the election, that is to say the post-election stage.

10. The nomination and registration of candidates in an election under the Act, belong to the pre-election stage and are governed by Rules 17 to 21 of the

Election Rules. The setting aside of elections is governed by Sections 36 to 39B of the Act. . This belongs to the post-election stage.

11. Rule 17 lays down how nomination papers are to be drawn up and delivered to the Chairman. They are to be scrutinised by the Chairman in the presence of the candidates or their agents if they appear. The Chairman must register such candidates, as have filed valid nomination papers.

12. The Chairman as a Returning Officer can only determine formal objections (e.g. whether the form has been duly filled up or properly signed, etc.). He has no power to determine whether the candidate possesses the necessary qualifications for election under Section 22 of the Bengal Municipal Act, unless of course the nomination paper shows on the face of it that the candidate is disqualified. See *Ahmed Hossain v. Aswini Kumar Paul*, : AIR1953 Cal542 . *John Pritchard v. Bangor Corporation*, (1888) 13 AC 241 (P).

13. After scrutiny of the nomination papers, the candidates whose nominations are found valid, are registered, and the list is published.

14. The Chairman has the power of allotting symbols to the parties which is to be in conformity with the wishes of the parties as far as possible. But his decision in this respect is FINAL.

15. If any person who has filed his nomination paper under Rule 17(1) finds that his name is not included in the list of candidates published by the Chairman under Rule 17 (5) or disputes the right of any other candidate to be on such list, he may appeal to the Magistrate in writing within three days of the date of publication of such list.

16. The Magistrate in an appeal filed under Rule 20(1) shall make such order as to the insertion or omission of such name as appears to him to be just.

The word 'just' is a very inappropriate expression to be used in such a context, since the matter does not rest upon any abstract notion of righteousness on the part of the Magistrate. It merely means, 'In accordance with the provisions of the Act and the rules'.

17. The powers of the Magistrate are not coextensive with the Chairman acting as Returning Officer, but are wider. The Magistrate can determine whether a candidate is disqualified under Section 22 of the Bengal Municipal Act: Ahmad Hossain v. Aswini Kumar Paul (E) (Supra) at p. 427.

18. The Magistrate while hearing the appeal, may not be a 'court' within the meaning of 8, 195(1)(c) of the Criminal Procedure Code. See Bibhuti Bhusan Bannerjee v. Dwarikanath Bhatta chaterjee : AIR1943 Cal574 . But I differ with great respect from the decision of Sen J. holding both the proceedings before the Chairman and the Magistrate as 'Administrative acts'. The appeal before the Magistrate is not an administrative proceeding but a quasi-judicial proceeding.

19. As to what is a quasi judicial act, there have been many judicial pronouncements, May C.J. in Queen y. Dublin Corporation (1878) 2 LR IT 371 (H) described a quasi judicial act as follows:

'In this connection the term judicial does not necessarily mean acts of a Judge or legal tribunal sitting for the determination of matters of law, but for purpose of this question a Judicial act seems to be ah act done by a competent authority upon consideration, of facts and circumstances and imposing liability or affecting rights'.

See Province of Bombay v. Khushaldas S. Advani, : [1950]1SCR621 (I). Cooper v. Wilson, 1937-2 KB 309 at p. 341 (J).'

As stated above, the Magistrate has wide powers under Rule 20 and is empowered to decide important questions which affect a citizen's right of franchise and might totally annihilate it such proceedings cannot be purely administrative.

20. The Magistrate has not been given powers to summon witnesses. But it is not right to say that he cannot hear evidence. A quasi-judicial body can hear witnesses: Cooper v. Wilson (J) (Supra). It has also to apply the rules of natural justice.

21. since the Magistrate must apply the rule of natural justice, it is not permissible for him to rely upon an ex parte report, called in the present case from a party to the proceeding before him, without affording to the other party, a full opportunity of

dealing with the report and of contradicting' the contents thereof. Unless the party against whom a report has been made is -- (a) made aware of the same (b) is given an opportunity to know the contents and (c) is confronted with, the maker of the report and allowed to cross-examine him and (d) given an opportunity of refuting the contents of the report by calling his own evidence. -- the report cannot be used at all, and if used will vitiate the proceedings. In the present case, the report of the Chairman suffers from all the above defects and should not have been used or relied upon by the learned Magistrate.

22. Assuming however that the learned Magistrate has followed a wrong procedure or is even wrong on the merits, what then is the remedy?

23. According to Rule 20(3), the decision of the Magistrate is FINAL. If this means final for all purposes, then the petitioner has no further remedy at law. He may then have a remedy in equity under Article 226 of the Constitution.

24. The decision of a Magistrate is however, not final for all purposes. It is final only for the purposes of the election. In other words, the decision of the Magistrate is final only at the pre-election stage. Unless some such finality is provided for at the pre-election stage, the election cannot be held in accordance with the schedule fixed by the Act and the rules. Its progress is likely to be clogged up by litigation and public administration will be held up for an indefinite period. But it is not and cannot be final for all purposes. For reasons mentioned above, the rules cannot abrogate specific provisions of the Act or put fetters upon its operation, Section 36 to 39B deal with the post-election stage, and the right to apply under Section 36 cannot be restricted by rules made under Section 44. Thus, the decision of the Magistrate is not binding upon the District Judge, hearing an application under Section 36.

25. As stated, above, the scheme of the Act is to expedite the holding of elections and to postpone the ventilation of any grievances to a stage after the election. Where an appeal under Rule 20 has been wrongly decided, the matter may be further ventilated by an application for setting aside the election under Section 36 of the Act. : AIR1953 Cal542 . In fact, it is the only remedy open to the aggrieved party.

26. Where such an application has been made by a candidate whose nomination paper has been wrongly or improperly refused by the Chairman acting as Returning Officer Section 38(d), expressly gives power to the District Judge to set aside the election, if the result of the election has been materially affected, by the improper rejection. Where the person whose nomination paper has, been so refused, himself makes the application', it is obvious that ipso facto, the refusal has materially affected the result of the election, since the refusal candidate might himself have won the election.

27. Under Section 43 of the Act, no election of a Commissioner can be called into question in any court except under the procedure provided by this Act, and no order passed in any proceeding under Sections 36 to 40 shall be called into question in any court. The power of courts to grant an injunction in respect of the matters mentioned therein has been curtailed.

28. The question next arises as to the power of the High Court to interfere under Article 226 of the Constitution.

29. In the case of N. P. Ponnuswami v. Returning Officer Namakkal (B) (Supra) the Supreme Court was considering the powers of the High Court to interfere with the orders of the Returning Officer, in view of Article 329(b) of the Constitution and Section 80 of the [Representation of the People Act, 1951](#). Article 329 of the Constitution is prefaced with the words 'Notwithstanding anything in the Constitution', Hence, the powers of the High Court under Article 226 are necessarily affected. Although Fazl Ali J. considered many general principles, the ultimate conclusions reached in that case do not directly apply to the facts of the present case.

30. There is nothing, however, which operates as an absolute bar to the jurisdiction of the High Court under Article 226 of the Constitution to interfere at any stage of an election, under the Bengal Municipal Act. S. K. Sawday v. N. Singh, Roy, AIR 1946 Cal 206 (K); : AIR1954 Cal32 .

31. But this does not mean that the High Court should be oblivious of the principles adumbrated above. Where there is a particular remedy given by the Act

or the rules, the aggrieved party will be relegated to it and the High Court will decline to interfere. It is an accepted principle followed by Courts of Equity that it will never interfere where there is an adequate remedy at law. A fortiori, it must refuse to interfere where a right is created by a Statute and the Statute itself provides the remedy.

32. But the High Court may interfere in a case where the Statute does not provide a remedy. Thus, the fact that a person is not on the electoral roll is not a ground for setting aside an election under Section 36. The court may therefore interfere to order a revision of the electoral roll: *Satish Chandra v. R. N. Bose*, : AIR1953 Cal520 .

33. In the present case, if the decision of the Magistrate precluded any further action on the part of the petitioner, an application might have lain to this Court under Article 226.

(10) Applying the law as summarised above, it follows that the petitioner in the present case has not followed the right procedure. It is true that he lost in the appeal, but he did not lose all his remedies. The proper course for him was to wait until the election was over and then make an application under Section 36 of the Act, to set aside the election on the ground as set out in Section 38(d) of the Act. Instead of that, he rushed to this High Court, but was unable to get the election stopped. Now of course it is too late because an application under Section 36 is time-barred. It was held in *Vishwamitra Karyalaya Press v. Authority appointed under Payment of Wages Act*, : AIR1955 All702 (M), that when the applicant has an alternative remedy which he has allowed to be barred by lapse of time, it was no argument to say that he should be granted relief under Article 226, as his legal remedy was barred. It is due to his own fault that the bar of limitation had come to operate. I appreciate the argument that the petitioner was misled by the fact that Rule 20(3), declares the decision of the Magistrate to be final, But, it cannot be a ground for granting relief because everyone is presumed to know the law, which means the true purport of the law. As a result of his blundering, others have come to obtain vested and valuable rights, which cannot be rightly destroyed.

(11) The above decision is entirely sufficient to dispose of this application, and it is not necessary to enter into the merits of the case. I will, however, advert to one point only. Section 22(f) speaks of a person's 'Interest' in any contract. The way that the learned Magistrate has dealt with this point is wholly unsatisfactory. Apart from his involved reasoning and inept language, it seems that he finally came to the conclusion that although the petitioner had no share or interest in the concern, it was clear where his sympathies lay, and thus he must be deemed to have at least an indirect interest. I must not be taken to have approved of such an amazing proposition of law. It is certainly a very difficult task to enunciate, what exactly is meant by the word 'Interest' as used in Section 22 (f) of the Act, but it is certainly not sentimental or sympathetic interest. Perhaps the best definition has been given in *England v. Inglis*, (1920) 2 KB 636 (N) cited by Mr. Binayak Bannerjee. In construing a similar provision in the Municipal Corporation Act, 1882, of England, the learned Judge held that an 'Interest' must be something more than a sentimental interest, such as arises from the natural love and affection of a father for his son, it need not, however, be only the possibility of a pecuniary advantage, it may equally be the likelihood of a pecuniary loss. The accruing benefit need not be direct. The possibility or even probability of an actual resulting benefit will be sufficient. As pointed out by Lindley L.J. in *Nutton v. Wilson*, (1889) 22 QBD 744 (O), the object of Sections of this kind is to prevent the conflict between interest and duty that must otherwise inevitably arise'.

(12) So far as the parties appearing are concerned, no one has attempted to support the reasoning or the logic, if logic it can be called, of the learned Magistrate. But Dr. Pal appearing for one of the respondents points out that the conclusions of the learned Magistrate may be supported on other grounds. While it is true that there is no presumption that a partnership consisting of some members of a joint family is joint family property, *Official Assignee Madras v. Neelambal Ammal*, AIR 1933 Mad 920 (P), a case may be cited where the fathers were the owners of a business in bricks, and bills in respect thereof were due from a Municipality and it was held that their sons who resided with them, had an interest in the firm even if it was an indirect interest. *Satyendra Kumar v. Municipal Chairman, Dacca* : AIR1931 Cal288 . Dr. Pal points out that admittedly the business had initially belonged to the father and after his death it would devolve

upon all the sons. However I need not dwell upon this point any further, it is not necessary to hold whether the conclusion of the learned Magistrate could be upheld on grounds other than what has been indicated by him. Perhaps it could have been supported if there was a full-fledged trial before the District Judge under Section 36, where evidence could be taken and even points of fact, canvassed and determined.

(13) It is sufficient for our purposes to hold that the petitioner has pursued an erroneous remedy and that he should not be granted relief in this application under Article 226 of the Constitution.

(14) The application is accordingly dismissed. The rule is discharged. All interim orders vacated. There will however be no order as to costs.

(15) The operation of the order will be stayed until the end of September, 1956.

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