

In Re: Surendra Chandra Ghose

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Court : Kolkata

Decided On : Feb-28-1918

Reported in : 49Ind.Cas.454

Judge : Greaves, J.

Appellant : In Re: Surendra Chandra Ghose

Judgement :

Greaves, J.

1. On the 22nd February last I granted a Rule at the instance of Mr. Surendra Chandra Ghosn calling on the Chairman of the Corporation of Calcutta to show cause why certain names should not be expunged from the Municipal Election Roll. The Rule was served in the first ' instance on the Chairman alone and was returnable on Monday last. When the Rule came on for hearing, on that day two preliminary objections were taken by Counsel on behalf of the Chairman of the Corporation. First, it was said that the decision of the Chairman was final and that the Court had no jurisdiction to deal with the matter; secondly, it was said that the applicant did not bring himself within the provisions of Section 45 of the Specific Relief Act, under which alone the Court had jurisdiction. So far as the first objection is concerned, it seems to me that unless the Municipal Act specifically lays down that the decision of the Chairman is final, the jurisdiction of the Court under Section 45 of the Specific Relief Act is not ousted. I find no provision in the

Municipal Act expressly making the decision of the Chairman final, therefore, it seems to me that the first preliminary objection fails, and that the applicant is entitled to make his application if he brings himself within the provisions of Section 45 of the Specific Relief Act. So far as the second objection is concerned, it is said that Mr. Ghose, who is- a voter for Ward ' XXI and who is the sitting Commissioner' of Ward XVII and who also expresses his intention of becoming a candidate at the ensuing election, is not within the terms of Section 45 of the Specific Relief Act, having regard to the fact that his property, franchise or personal right is not affected by what has been done. I think there are two answers to this. First of all, the Municipal Act itself gives to a person in his position a right to object before the Chairman or his Deputy to votes that are put upon the Election Roll. That being so, I think it is difficult for the Chairman to argue that the applicant does not fall within Section 45 (a) of the Specific Relief' Act. But there is one other reason also, which to my mind so far as I am concerned is con-elusive against this objection. In two cases, In re Mr. Nisith Chandra Sen 15 Ind. Cas. 441 : 15 C.L.J. 488 : 39 C. 754 and In re Mr. Romesh chandra Sen 14 Ind. Cas. 682 : 15 C.L.J. 494 : 39 C. 598 : 16 C.W.N. 472, the Court has interfered in matters of this nature under Section 45 of the Specific Belief Act. And in In re Mr. Romesh Chandra Sen 14 Ind. Cas. 682 : 15 C.L.J. 494 : 39 C. 598 : 16 C.W.N. 472 the applicant was in exactly the same position as the applicant before me. Consequently, I think that I am bound, sitting here, by the above decisions to hold that the Court has jurisdiction under, Section 45 of the Specific Belief Act in this matter. After hearing these two preliminary objections on the 25th February, I directed the Rule to be served on the persons whose votes were sought to be effected and the Rule' on its merits was argued before me to day.

2. There are four classes of voters who are objected to, and one individual voter Mr. Alistair Cameron. So far as Mr. Cameron is concerned, it appears upon the evidence that he occupies the premises No. 12, Elysium Row, as the senior partner in the firm of Messrs. Maokinnon, Mackenzie & Co. They are the registered owners of that house, and I understand that Mr. Cameron as one of the partners is entitled,, to the owner's vote in respect of these premises. What I have got to decide upon the evidence before me is whether he is entitled to an occupier's vote in respect of-these premises, To make him entitled to a vote as

occupier in respect of these premises he must either pay rent to the owner or be liable to pay rent. Upon the evidence before me I have no evidence that he either pays rent to the owner or that he is liable to pay rent. I can only deal with the matter upon the materials before me, and so I hold that upon the evidence before me he is not entitled to be on the Municipal Election Roll as an occupier in respect of the premises No. 12, Elysium Bow.

3. Then the next class' of voters that I come to are the four names which are set out in Exhibit E to the petition. They apparently are objected to because it is said that they did not give written notice of their claim, to the Chairman of the Corporation under the provisions of Rule 8 (1) of Schedule IV prior to 1st January last. I am satisfied upon the evidence that a written notice on their behalf was in fact given. It is not shown by the person who objected to their Votes that that written notice was not given before the 1st January 1918, and it is upon the person objecting to their votes to prove that they have not complied with the provisions of the Act or the rules; and accordingly I disallow the objection to their votes. I accept the evidence before me that these gentlemen not only gave written notice, which I think would be sufficient whether they signed the notice or not, but that they actually in fact signed the notice themselves. Accordingly I dismiss the application to expunge the votes so far as the names contained in Schedule E are concerned.

4. So far as Schedule D is concerned, the objection taken to these gentlemen is that they have not paid, within the meaning of Rule 3 of Schedule IV, the rates for the period from the 31st March 1917 to the 30th September 1917. It seems to me that the answer to that argument is contained in the petition of the petitioner himself.' He shows the dates upon which these persons first occupied the respective premises which are set against their names. It is clear from this that they were not liable for the rates for those six months. Therefore, the objection of the petitioner, so far as these gentlemen are concerned, fails, and I hold, upon the construction of the rule and the portion of the Act applicable to this case, that the only persons to whom the rule applies are, persons who are actually liable for the rates in respect of those six months.

5. I now come to the objections with regard to the persons named in Exhibits B and C to the petition. Apparently there are three persons Mr. Remfry, Mr. Pugh and Mr. Montgomery who have not been served with the Rule, and so any order that I make With regard to the votes of the persons contained in Schedules. B and C will not 'affect the votes of those persons, except in so far as the Chairman thinks fit to follow such guidance as he may receive from the decision which I am about to give in regard to the voters in Exhibits B and C.

6. The voters in respect of Schedules; B and C fall practically within the same category, except that there is this one difference. So far as the voters in Exhibit C are concerned their names are not,, at the time this application comes before me, in the assessment book. With that exception their votes stand upon the same footing. So far as these' persons are concerned, it appears upon the evidence that it is not in dispute that they occupy flats or portions of houses used as flats, which are not separately numbered as such and are not separately assessed as such in the records of the Corporation, and the question that I have got to decide, subject to the point that I have mentioned with regard to the names in Schedule C, is whether under those circumstances they are entitled to vote within the provisions of Section 37 of the Calcutta Municipal Act. So far as they claim as associations of individuals, although this was not specifically urged before me by Counsel who appeared on behalf of the Chairman of the Corporation, although it was faintly hinted at, I should certainly not be prepared to hold that they are associations of individuals, within the provisions of Section 37 (3) of the Calcutta Municipal Act. Associations of individuals (although I do not propose to lay down any definition) must, I think, be persons who are associated for some common object, and the mere fact that they occupy portions of a house sub-divided into flats does not, to my mind, make them associations of individuals, within the meaning of -section 37 of the Calcutta Municipal Act. Section 37 (1) provides for the voting of a person or a company, body corporate, firm, Hindu joint family, or other association of individuals ; and Section 37 (2) provides, that a person shall not be entitled to be enrolled in the Municipal Election Roll as a voter of any ward, unless' he is of the male sex and has attained the age of 21 years, and resides or pays rates or other taxes under this Act in Calcutta and (1) has his name entered in the assessment book thereafter prescribed as showing that he is (c) an occupier of some building

in Calcutta separately numbered and valued for assessment purposes at not less than Rs. 300 per annum. Apart from the definition of 'occupier' in Section 3 (30) of the Act, I should certainly have been of the opinion that the persons, whose names are set but in Schedules B and C and who occupy flats in the manner I have described, are not occupiers of some building separately numbered and valued: for assessment purposes within the meaning; of Section 37(2)(i)(c) of the Calcutta Municipal Act. I am fortified in that by the provisions of Section 47 of the Act, which is the section dealing with additional votes of occupiers having regard- to the aggregate value of the buildings occupied in the ward by an occupier coming under, Section 37(2)(i)(c).

7. I now come to the definition of ' occupier' in the Act. 'Occupier', see Section 3 (30), is defined as meaning, unless there is anything repugnant in the subject or context, any person for the time being; , paying or liable to pay to the owner the rent or any portion of the rent of the land or building in respect of which the word is used, and includes an owner living in his own house or hut. It is said that if I read the words of this definition into Section 37(2)(i)(c) of the Act, then these persons in Schedules B and c are clearly entitled to vote as they are persons liable to pay some portion of the rent of a building; in Calcutta separately numbered and; valued for assessment purposes, and the; point that I have got to decide is whether the word 'occupier' in Section 37(2)(i)(c) is the occupier as defined in Section 3 (30); of the Act. It is at first sight rather difficult,, to say that it is not, when you have a definition in the Act, saying what occupier' means. Counsel for the applicant, relies in support of his argument that, occupier in Section 37(2)(i)(c) does not mean or accord with the definition in Section 3 (30) or Section 47 to which I have already referred, and also on the fact that he says that Section 37 divides into two parts, the first part dealing with votes by bodies corporate or companies, and the second dealing with personal votes. I am not quite sure that he is right in this, because if you look at Section 37 (1), you find that the first words in it are 'a person' and so en. But the conclusion I have come to--and I can only regret that I am forced to give my decision without further consideration--is that the word 'occupier' in Section 37(2)(i)(c) does not mean the occupier who is defined in Section 3(30). The word 'occupier is also used in Section 37(2)(i)(A) and I think that in that Sub-clause it is not used as the occupier as defined in Section 3 (30),

for the person entitled to vote under that sub-clause is the owner and occupier and accordingly 'occupier' there cannot mean the person paying or liable to pay rent to the owner who is himself. Does occupier, therefore, mean one thing in Section 37(2)(i)(a) and another thing in Section 37(2)(i)(c)? I think not. I think in both places occupier means an occupier in the ordinary sense, and not as defined in Section 3(30). I think I must take Section 37(2)(i)(c), so far as occupier is concerned, by itself and apart, from the definition and I must hold that the only person who falls within that sub-section is a person who occupies a building separately numbered and valued for assessment. That being so, the names within Schedules B and C do not to my mind fulfil the provisions of Section 37(2)(i)(c), and so far as they are concerned the Rule succeeds. I make the Rule absolute so far as Exhibits B and C are concerned and so far as Mr. Alistair Cameron is concerned, but not as regards the names of the persons who have not been served. As the Rule has succeeded in part and has failed in part, I think the proper order is that there should be no order as to costs.

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