says that he has exactly a similar petition pending in this Court in which he has questioned the legality and constitutional validity of the levy of a flat rate of Rs. 5 per acre as consolidation fee. His contention is that rule 14 of the 1949 Rules is violative of Article 14 of the Constitution. The ground given by him is that persons similarly situate are differentially treated inasmuch as in consolidation proceedings land is carved out and allotted to village Panchayat and also non-proprietors, who thus benefit by the consolidation, but do not pay any fee for consolidation, whereas the landowners or right-holders have to pay the fee. He contends that this discrimination is not justified and has no basis for it. The argument is apparently misconceived for the simple reason that the benefit of land to Gram Panchayat and non-proprietors goes under specific provisions of the Act and in so far as the matter of consolidation of holdings is concerned, that is only done so far as the holdings of the landowners or right-holders and the tenants are concerned. There is no holding of a Panchayat or a non-proprietor that is ever available for consolidation. So that there is no question of discrimination between those persons who do not own or possess as tenants any land in an estate and those who do so. This argument is also without any substance.

In the result, on the last and the fourth argument, the conclusion is that the levy of the consolidation fee of Rs 5 per acre is a valid levy as fee and it is not a tax.

All the four grounds against the scheme of consolidation and repartition in the village of the petitioners have not been accepted and consequently this petition fails and is dismissed, but, in the circumstances of the case, there is no order in regard to costs.

A. N. GROVER, J.—I agree.

K.S.K.

CIVIL MISCELLANEOUS

Before Mehar Singh, A.C.J. and A. N. Grover, J.

BAWA KULDIP SINGH,—*Petitioner*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 597 of 1965.

May 18, 1966.

Punjab Municipal Act (III of 1911)—S. 38(1)—Appointment of a Secretary to a Municipal Committee—Approval of the State Government—Whether to be

obtained before such appointment—S. 27 proviso—Object of—Other day—Meaning of—Whether includes the same day—Requirement of adjournment of meeting to other day—Whether mandatory.

Held, that according to section 38(1) of the Punjab Municipal Act, the appointment of a Secretary to a Municipal Committee is subject to the approval of the State Government. The provision being positive, it is necessary that there is to be approval of the State Government before the appointment can be legally affective.

Held, that the expression 'other day' in proviso to section 27 of the Act means a day next following on which the said meeting proves abortive because of want of quorum, or any other day following that day. It cannot and does not mean the very day on which the meeting proves abortive.

Held, that the object of the requirement of adjournment of meeting to 'other day' in proviso to section 27 of the Act is to give sufficient and due notice to the absent members to enable them to attend the adjourned meeting and also to give them time to consider the purpose for which the meeting has been called. All this is to avoid precipitate decisions in snap meetings so as to do the same by avoiding the presence of some members who may be hostile to such action. The provision is for the protection of the rights of the members of a municipal so that they may be able to exercise their function as such and discharge their duty to the public. It is apparent that a provision, which has such an object as its basis, must be and is mandatory and not merely directory.

Case referred by the Hon'ble Mr. Justice Dua to a larger bench on 12th August, 1965, *for decision of the important questions of law involved in the case and the case was finally decided by a division bench consisting of the Hon'ble the Acting Chief Justice Mr. Mehar Singh and the Hon'ble Justice A. N. Grover on 18th May,* 1966.

Petition under Article 226/227 of the Constitution of India, praying that a writ of certiorari, mandamus or any other appropriate writ, order or direction be issued to the respondents directing them to allow the petitioner to work as the Secretary of the Municipal Committee, Mukatsar, and further praying that the Municipal Committee, Mukatsar, be restrained from appointing any other Secretary in place of the petitioner during the pendency of the petition.

H. L. Sibal and Amar Singh Ambalvi, Advocates, for the Petitioner.

S. K. Jain, S. C. Goyal and P. N. Aggarwal, Advocates, for the Respondents.

ORDER OF THE DIVISION BENCH

MEHAR SINGH, A.C.J.—This is a petition under Articles 226 and 227 of the Constitution by Bawa Kuldip Singh, petitioner, to which the three respondents respectively are the State of Punjab, the Sub-Divisional Officer (Civil), Muktsar, and the Municipal Committee of Muktsar.

The Municipal Committee of Muktsar, respondent 3, by an advertisement invited applications for appointment of secretary in its office. A meeting of the Municipal Committee was called to select a candidate as secretary of it on October 31, 1964, at 3 p.m. The total number of members of the Municipal Committee of Muktsar is eleven. It was a special meeting because it is provided in sub-section (1) of section 38 of the Punjab Municipal Act, 1911 (Punjab Act 3 of 1911), in this manner—

> "38. (1) Every Committee shall, from time to time, at a special meeting, appoint, subject to the approval of the State Government, one of its members, or any other person, to be its Secretary, and may, at a like meeting, suspend, remove, dismiss or otherwise punish any person so appointed;
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> * * * *
>
> (3) When a member of the committee is appointed secretary, he shall receive no remuneration in respect of his services. When any other person is appointed secretary, the committee may, with the previous sanction of the State Government, assign to him such remuneration as it may think fit."

So the Municipal Committee of Muktsar could only consider the question of appointment of a secretary to itself at a special meeting. Section 27(1), with the proviso, of the Act, reads—

> "27. (1) The quorum necessary for the transaction of business at a special meeting of a committee shall be one-half of the number of the committee actually serving at the time, but shall not be less than three.
>
> (2) * * * *
> * * *
>
> Provided, that, if at any ordinary or special meeting of a committee a quorum is not present, the chairman shall adjourn the meeting to such other day as he may think

fit, and the business which would have been brought before the original meeting if there had been a quorum present shall be brought before, and transacted at, the adjourned meeting, whether there be a quorum present thereat or not."

So, according to sub-section (1) of section 27 of the Act, the quorum for the meeting of the Municipal Committee of Muktsar to appoint a secretary to itself at 3 p.m. on October 31, 1964, was six, because the total number of its members is eleven. It is common ground that only five members were present at the appointed time of the meeting. So the quorum was not there for a proper meeting according to sub-section (1) of section 27 of the Act. Consequently under the proviso to section 27 of the Act, the meeting had to be adjourned to 'such other day as he (chairman) may think fit'. The acting chairman adjourned the meeting not to any other day but to the same day at 7 p.m., that is to say, four hours after the original meeting at 3 p.m. for which there was no complete quorum. For such second meeting, according to the said proviso, no quorum is necessary. The same five members again met at 7 p.m. on October 31, 1964, and passed a resolution appointing the petitioner secretary to the Municipal Committee of Muktsar. The petitioner avers that he was given a letter of appointment and he joined as Secretary of the respondent-municipality on November 2, 1964, November 3 was a public holiday, and he worked as secretary of the respondent-municipality on November 4, but on November 5 he was advised by the acting President to go on leave. Accordingly he proceeded on leave to November 11, 1964, He also admits that a letter of November 4, 1964, from respondent 2 was received by respondent 3 that the petitioner was not to work as secretary of respondent 3 till approval of his appointment by the Commissioner. Some time later in November, 1964, he was informed by the acting President of respondent 3 that respondent 2 had suspended the resolution appointing the petitioner as secretary of respondent 3 and this obviously was done under section 232 of the Act. It is after that that the petitioner came to this Court questioning the legality of the order of respondent 2 suspending the resolution of respondent 3 appointing him secretary to the latter.

The petition came for hearing first before Dua, J., and three arguments were urged before the learned Judge—(i) that the petitioner having joined as secretary of respondent 3 on November 2, 1964, and the resolution of respondent 3 having been executed,

there could be no suspension of an executed resolution under section 232 of the Act, (ii) that the expression 'other day' in the proviso to section 27 was not necessarily limited to a day other than the day on which the meeting called proves abortive for want of quorum, but may be the very same day for which such a meeting was called, and, in any case, the requirement for adjournment to 'other day' is merely directory, and (iii) that the petitioner having joined service, he could only be discharged from his service in the terms of sub-section (1) of section 45 of the Act which provides for discharge of a Municipal employee with one month's notice or with one month's pay in lieu of notice, which has not been done in this case. The learned Judge was of the opinion that those are important questions raised in the petition which should be decided by a larger Bench, and that is how this petition has come before this Bench.

In the first place, the appointment of a Secretary to a municipal committee under sub-section (1) of section 38 of the Act is 'subject to the approval of the State Government'. The learned counsel for the petitioner contends that a resolution appointing a secretary by a municipal committee is effective and good and the appointment not open to question unless and till such time as the State Government does not approve the appointment. As I read the provisions of sub-section (1), it appears to me clear that the appointment being subject to the approval of the State Government and the provision being positive, it is necessary that there is to be approval of the State Government before the appointment can be legally effective. This approach is further strengthened by the provisions of sub-section (3) of the same section under which remuneration cannot be given to its secretary by a municipal committee except with the previous sanction of the State Government. The language of sub-section (1) is clear enough and when it is read with sub-section (3), no manner of argument is left that the appointment of a Secretary by municipal committee is not in law a good and effective appointment until it has been approved by the State Government. It is stated that in this case the matter, for approval or otherwise, of the appointment of the petitioner was never referred to the State Government. The return of respondent 1, the State of Punjab, says that the appointment of the petitioner as secretary to respondent 3 was not approved by the Commissioner. This statement has been made in the return in a careless manner because before sub-section (1) of section 38 of the Act was amended in 1953, in the case of a second class municipality, as respondent 3 is, the appointment of a secretary needed

the approval of the Commissioner. But the amendment of 1953 alters that and in every such case it is the approval of the State Government that is requisite. It is, however, not denied on the side of the petitioner that after respondent 2 had suspended, under section 232 of the Act, the resolution of respondent 3 appointing the petitioner secretary to it, the State Government has agreed with respondent 2 and approved his action in suspending that resolution. So that the State Government has approved that the petitioner has not been validly and properly appointed secretary of respondent 3. In the circumstances, there is no manner of doubt that within the scope of sub-section (1) of section 38 of the Act the State Government has not approved the appointment of the petitioner as secretary to respondent 3. The learned counsel for the petitioner points out that there was no occasion for the State Government to express approval of the suspension of the resolution because section 232 of the Act only deals with suspension of 'the execution of any resolution or order of a committee', and that section cannot possibly apply to a resolution or order already executed, as in this case, by the petitioner joining as secretary. The learned counsel stresses that as the resolution could not be suspended by respondent 2 under section 232 of the Act, respondent 1, the State of Punjab, could not approve of what could not be done by respondent 2, and, therefore, its approval of suspension of the resolution by respondent 2 cannot be regarded as not an approval of the appointment of the petitioner as secretary to respondent 3. Whether, on a technical approval to the language of section 232 of the Act and the petitioner having taken over as secretary to respondent 3, the resolution 3 is said to have been executed, and thus could not be suspended under section 232 of the Act, or not, when, rightly or wrongly, respondent 2 took the action by suspending the resolution and indicating that the appointment of the petitioner was improper and not according to law, and then the Punjab State, respondent 1, has approved of that, that, to my mind, fulfils the conditions of sub-section (1) of section 38, that respondent 1, the State of Punjab, has not given its approval to the appointment of the petitioner as secretary to respondent 3. This consideration alone is sufficient for the dismissal of the petition of the petitioner.

A special meeting of respondent 3 was called at 3 p. m. on October 31, 1964. There being no quorum in terms of sub-section (1) of section 27 of the Act, the meeting had to be adjourned to 'other day' according to the proviso. It is obvious that the expression 'other day' can in no circumstances mean the same day. In the proviso the expression 'other day' means a day next following on which

the said meeting proves abortive because of want of quorum, or any other day following that day. It cannot and does not mean the very day on which the meeting proves abortive. The learned counsel for the petitioner refers to bye-law 3 of respondent 3's bye-laws of February 29, 1932, which translated reads in this manner—

> "Notice of an adjourned meeting shall be given by the chairman on the spot and the same shall, as soon thereafter as possible, be sent to all members of the committee who are absent, provided that it shall be lawful for the president, or in his absence the vice-president, to cancel or alter, with due notice, on an emergency the place, date or hour of such meeting."

And he contends that the acting chairman or acting president of respondent 3 misunderstood the import of this bye-law in thinking that he had the power to adjourn the special meeting called at 3 p.m. on October 31, 1964, to a later time on the very day and so he adjourned the meeting to 7 p.m. on the very day, and that he considered that the only requirement was that notice of the adjourned meeting be given to all the members of the municipal committee. The bye-law is clear enough and there is no manner of mistaking its language and particularly as its printed version is in Urdu. All that it requires is that the chairman or the president has to inform the members present immediately the time, place and date of the adjourned meeting, he is to give notice of the same to all the members, and if a change in the place, date or hour of the meeting becomes necessary on account of emergency the same can be done, but again after due notice. Nothing in the language or terms of the bye-law justifies the holding of a special meeting, proving abortive for want of quorum, on the very day on which that happens contrary to the requirement of the proviso in section 27 of the Act. There is no allegation, much less any material to support it, that there was any emergency which required the holding of the meeting on that very day within four hours of the special meeting failing because of want of quorum. The learned counsel for the petitioner has had in his possession a certified copy of the report of the General Assistant to the Deputy Commissioner of Ferozepur, who is alleged to have conducted an enquiry into the whole incident some time before November 19, 1964, that being the date of his report. The learned counsel refers to a part of the report from which it appears that at 3.45 p.m. on October 31, 1964, telegrams were sent to all the members who were not present at the meeting at 3 p.m. to attend the adjourned meeting at 7 p.m. on the very day. But the same

report shows that of the remaining six members who were not present at 3 p.m., only five were in Muktsar on that evening, and one was away and no telegram could have reached him so as to enable him to attend the meeting at 7 p.m. on that date. The learned counsel for the petitioner also refers to the letter, Annexure R. 4, of October 31, 1964, from the Deputy Commissioner, Ferozepur, to respondent 2, showing that in fact the other five members of respondent 3 who were in Muktsar on that evening did approach the Deputy Commissioner of Ferozepur before 7 p.m. on that day protesting against the adjourned meeting and this is so. The most that can be taken from that is that five of the six members who failed to attend the meeting at 3 p.m. had notice of the adjourned meeting at 7 p.m. on the very day. But the sixth member among them, or the eleventh member of respondent 3, did not have any such notice and could not possibly have it because he was out of station. The telegrams were addressed only to Muktsar addresses. The object of the proviso in section 27 of the Act in requiring the adjurnment to 'other day' is to enable the absent members to have due and sufficient notice of the adjourned meeting and to avoid that they are not surprised by a snap meeting where in a vital decision is taken by a municipality. The learned counsel for the petitioner urges that even if the meaning of the expression 'other day' is not 'the same day' the requirement of adjournment in the proviso to section 27 to 'other day' is directory and not mandatory, so that if it is not complied with and a special meeting, as in this case, is held not on 'other day' but on the same day, it cannot be held to be a meeting contrary to law and thus illegal. He points out that to see whether this particular provision is mandatory or directory, it is the object of the provision that has to be kept in view. But this is the very thing that goes against this argument of the learned counsel. The object of the requirement of the proviso to section 27 of the Act that the meeting is to be adjourned to 'other day' is to give sufficient and due notice to the absent members to enable them to attend the adjourned meeting and also to give them time to consider the purpose for which the meeting has been called. All this is to avoid precipitate decisions in snap meetings so as to do the same by avoiding the presence of some members who may be hostile to such action. The provision is for the protection of the rights of the members of a municipal committee so that they be able to exercise their function as such and discharge their duty to the public. It is apparent that a provision, which has such an object as its basis, must be and is mandatory and not merely directory. So that the second meeting held on October 31, 1964, at 7 p.m. was a meeting

contrary both to the proviso to section 27 of the Act and to bye-law 3 of 1932 Bye-Laws of respondent 3. Nothing done on such a meeting was valid. The resolution passed by the members present at such a meeting appointing the petitioner as secretary was no resolution of the Municipal Committee of Muktsar, respondent 3. In this approach the petitioner was not in law appointed secretary of respondent 3. Respondent 2 on realisation of all this may well have ignored the resolution, but if he proceeded to suspend it under section 232 of the Act, there was nothing wrong or objectionable in that, and, equally, if afterwards respondent 1, the State of Punjab, proceeded to approve of the action of respondent 2 in suspending such resolution, there has been nothing improper or objectionable in that. It rather, as already said, gives the clearest indication of its intention not approving the appointment of the petitioner as secretary to respondent 3.

In consequence this petition fails and is dismissed, but the parties are left to their own costs.

A. N. GROVER, J.—I agree.

K.S.K.

CIVIL MISCELLANEOUS

Before Mehar Singh, A.C.J., and A. N. Grover, J.

JOT RAM,—*Petitioner.*

versus

A. L. FLETCHER AND OTHERS,—*Respondents.*

Civil Writ No. 2205 of 1965.

May 19, 1966.

Punjab Security of Land Tenures Act (X of 1953)—S. 18—Order of purchase made in favour of tenant and complied with by him—Death of landlord during pendency of appeal against that order—Whether divests the tenant of his ownership of the land in case the heirs of the landlord, because of inheritance, are small landowners.