

Pt. Vishnu Datt *v.* Jai Narain, etc. (Mahajan, J.)

and thus does not fall in the category of a residential house. The only allegation regarding this is in the application for attachment and that too in a different hand. In any case, in the warrant of attachment, this is not so stated. Moreover, when the judgment-debtor or his witnesses were in the witness-box, this matter was not put to them. After two months of the close of their testimony, when the decree-holder gave evidence, this fact is brought into prominence. In this situation, we are unable to hold that the house in dispute was a "Khandar" at the time of attachment.

The next question, that now remains to be settled, is whether the property in dispute is the only residential house of the judgment-debtor. The executing Court has given a clear finding on that matter. The finding is that it is the only residential house of the judgment-debtor. We have gone through the evidence on this part of the case and we are clearly of the view that on the evidence, as it stands, the finding is fully justified. The learned counsel for the respondent could not urge anything substantial against the decision of the executing Court on this part of the case. If this finding stands, the result would be that the so-called attachment and the consequent sale thereon would be bad in law. However, the judgment-debtor has claimed that he has only one-third share in the house. The entire house has been sold. No other person has come to object to the sale. In this view of the matter, the proper order to pass would be to set aside the sale with regard to one-third of the house in dispute which one-third belongs to the judgment-debtor.

The result, therefore, is that this appeal is partly allowed and the sale of the house, to the extent of one-third, is set aside. There will be no order as to costs.

MEHAR SINGH, C. J.—I agree.

B.R.T.

LETTERS PATENT APPEAL

Before Mehar Singh, C.J. and Daya Krishan Mahajan, J.

DIN DAYAL,—*Appellant*

versus

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Letters Patent Appeal No. 134 of 1966

August 24, 1966

Punjab Gram Panchayat Act, 1952 (IV of 1953)—Ss. 95 and 102—Inquiry against a Sarpanch for his removal—Whether must be held by the Government

or its delegate—Acts and omissions by a Sarpanch during a previous term of office—Whether can be considered for his removal after his re-election.

Held, that the manner of inquiry has nothing to do with the power of removal excepting to this extent that the removing authority by inquiry satisfies its mind as to the grounds on which the removal would be justified in law. There is nothing in section 102(2) of Punjab Gram Panchayat Act to warrant the suggestion that the inquiry must be held by the Government or by its delegate. There is nothing wrong in the Government or its delegate getting the matter inquired from any agency that the Government or the delegate considers necessary.

Held, that a Sarpanch cannot be removed for his acts and omissions during the course of his previous term of office after he has been elected for another term.

Letters Patent Appeal under clause 10 of the Letters Patent, against the judgment, dated 23rd March, 1966, passed by the Hon'ble Mr. Justice Shamsher Bahadur, dismissing Civil Writ No. 1916 of 1965.

H. L. SARIN, SENIOR ADVOCATE WITH BALRAJ BAHL, AND MISS ASHA KOHLI, ADVOCATES, for the Appellant.

M. R. AGNIHOTRI, ADVOCATE, for the Respondents.

JUDGMENT

MAHAJAN, J.—This is an appeal under Clause 10 of the Letters Patent and is directed against the decision of a learned Single Judge of this Court dismissing the appellant's petition under Articles 226 and 227 of the Constitution of India.

By this petition, the appellant challenged his removal from the office of Sarpanch of the Gram Panchayat, Hassanpur. The order of removal was passed by the Director Panchayats on the 8th of June, 1965, under sub-section (2) of section 102 of the Punjab Gram Panchayat Act, IV of 1953 (hereinafter referred to as the Act).

On facts, there is no controversy. The appellant has been a Sarpanch since 1958 right to the time of his removal. He was elected for the first time, as already stated, in the year 1958. He was again elected in the year 1960, and for the third time in the year 1964. The

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action under section 102(2) of the Act has been taken on the following grounds:—

- (a) That he had arranged an entertainment show in his capacity as Sarpanch for making collection for National Defence Fund from 11th January, 1963 to 25th January, 1963. In this connection, he was found guilty of not maintaining proper accounts of collections made by him and thus he embezzled funds;
- (b) That he made payment of Rs. 1,700 to the Contractor out of the Government Grant for construction of school building without getting the approval of the Overseer. The school building cracked and became unfit for use. The Overseer had estimated that a recovery of Rs. 2,230 be made from the contractor for defective construction. It shows that he made payment of Rs. 1,700 irregularly and abused his position as Sarpanch.

Proper inquiry was held into these allegations and on the basis of the findings in that inquiry, the impugned order was passed. The appellant did challenge the report of the inquiry on various grounds; but it is not necessary, for our purposes, to advert to this aspect of the matter. The learned Single Judge has examined this matter and has taken the view that the inquiry was proper. We see no reason to depart from that finding.

Before the learned Single Judge, the only substantial contention, that was raised, was that the Director, to whom the Government had delegated its authority for removal, could not delegate his power to hold an inquiry to the Sub-Divisional Officer. This contention was negatived by the learned Single Judge in view of the decision of this Court in *Piyare Lal v. The Deputy Commissioner, Hoshiarpur* (1). This very contention has been raised before us and again reliance has been placed on the provisions of section 95, sub-sections (1) and (6) read with section 102(2) of the Act. The relevant part of the aforesaid provisions is set down below for facility of reference:—

“95 (1) Government may, by notification, delegate all or any of its powers under this Act other than the power to make

(1) I.L.R. (1966) 2 Punj. 20.

rules, to a Deputy Commissioner or the Sub-Divisional Officer, as the case may be, or the Director.

* * * * *

95. (6) The Deputy Commissioner, or the Sub-Divisional Officer, as the case may be, may delegate any of his powers of control to any officer not below the rank of an Extra Assistant Commissioner or to a District Panchayat Officer.

* * * * *

- 102(2) Government may, after such enquiry as it may deem fit, remove any Panch—

- (a) on any of the grounds mentioned in sub-section (5) of section 6;
- (b) who refuses to act, or becomes incapable of acting, or is adjudged an insolvent;
- (c) who, without reasonable cause, absents himself for more than two consecutive months from the meetings of the Gram Panchayat or the Adalti Panchayat, as the case may be;
- (d) who, in the opinion of Government or of the officer to whom Government has delegated its power of removal, has been guilty of misconduct in the discharge of his duties;
- (e) whose continuance in office is, in the opinion of Government or of the officer to whom Government has delegated its powers of removal, undesirable in the interests of the public.

Explanation.—The expression 'misconduct' in clause (d) includes the failure of the Sarpanch without sufficient cause.—

- (i) to submit the judicial file of a case within two weeks of the receipt of the order of any Court to do so;
- (ii) to supply a copy of the order of the Gram Panchayat in an administrative or judicial case decided by it, within two weeks from the receipt of a valid application therefor."

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The argument is that according to section 102(2), a Panch or a Sarpanch can only be removed by the Government after such inquiry as it deems fit. This inquiry has to be either by the Government or by the Deputy Commissioner because under sub-section (1) of section 95, the Government has delegated the power of removal to the Deputy Commissioner. It is maintained that the Deputy Commissioner could not further delegate that power to the Sub-Divisional Officer, who held the inquiry. In view of section 95(6), this argument is wholly futile. The manner of inquiry has nothing to do with the power of removal excepting to this extent that the removing authority by inquiry satisfies its mind as to the grounds on which the removal would be justified in law. But there is nothing in section 102(2) to warrant the suggestion that the inquiry must be held by the Government or by its delegate. We see nothing wrong in the Government or its delegate getting the matter inquired from any agency that the Government or the delegate considers necessary. This view finds full support from the decision in *Piyare Lal's case*. Therefore, there is no substance in the principal contention that was canvassed before the learned Single Judge and, in our opinion, the learned Single Judge was right in repelling that contention.

The learned counsel for the Appellant, however, has brought to our notice a Bench decision of this Court in *The State of Punjab v. Bakhtawar Singh*, Letters Patent Appeal No. 23 of 1959, decided on 29th August, 1960. This decision fully applies to the facts of the present case. The decision was given with reference to identical provisions in the Punjab Municipal Act; those provisions being section 16 and rule 17 of the Municipal Election Rules, 1952. The corresponding provisions in the Gram Panchayat Act are sections 102 down below side by side:—

and 6(5). For facility of reference, both these provisions are set

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Section 16:

The State Government may, by notification, remove any member of committee—

- (a) if he refuses to act, or becomes in the opinion of the State Government, incapable of acting, or has been declared a bankrupt or an insolvent or has been convicted of any

Section 102:

The Deputy Commissioner may during the course of an enquiry, suspend a Panch, for any of the reasons for which he can be removed, and debar him from taking part in any act or proceedings of the said body during that period and order

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such offence or subjected by a criminal court to any such order as implies, in the opinion of the State Government a defect of character which unfits him to be a member;

- (b) if he has been declared by notification to be disqualified for employment in, or has been dismissed from, the public service and the reason for the disqualification or dismissal is such as implies in the opinion of the State Government a defect of character which unfits him to be a member;
- (c) if he has without reasonable cause in the opinion of the State Government absented himself for more than three consecutive months from the meetings of the committee;
- (d) if his continuance in office is, in the opinion of the State Government, dangerous to the public peace or order;
- (e) if, in the opinion of the State Government he has flagrantly abused his position as a member of the committee or has through negligence or misconduct been responsible for the loss, or misapplication of any money or property of the committee;
- (f) in the case of an elected member, if he has, since his election, become subject to any disqualification which, if it had existed at the time of his election, would have rendered

him to hand over the records, money or any property of the said body to the person authorised in this behalf.

(2) Government may after such enquiry as it may deem fit, remove any Panch—

- (a) on any of the grounds mentioned in sub-section (5) of section 6;
- (b) who refuses to act, or becomes incapable of acting, or is adjudged an insolvent;
- (c) who, without reasonable cause, absents himself for more than two consecutive months from the meetings of the Gram Panchayat or the Adalti Panchayat, as the case may be;
- (d) who in the opinion of Government or of the officer to whom Government has delegated its power of removal, has been guilty of misconduct in the discharge of his duties;
- (e) whose continuance in office is, in the opinion of Government or of the officer to whom Government has delegated its powers of removal, undesirable in the interests of the public.

Explanation.—The expression 'misconduct' in clause (d) includes the failure of

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him ineligible under any rule for the time being in force regulating the qualifications of candidates for election, or if it appears that he was at the time of his election subject to any such disqualification;

- (g) if, being a legal practitioner, he acts or appears in any legal proceeding on behalf of any person against the committee, or on behalf of or against the Government where in the opinion of the State Government such action or appearance is contrary to the interests of the committee:

Provided that before the State Government notifies the removal of a member under this section, the reasons for his proposed removal shall be communicated to the member concerned, and he shall be given an opportunity of tendering an explanation in writing.

(2) A person removed under this section or whose election or appointment has been deemed to be invalid under the provisions of sub-section (2) of section 24, or whose election has been declared void for corrupt practices or intimidation under the provisions of section 255, or whose election the State Government or the Deputy Commissioner has under section 24 refused to notify, shall be disqualified for election for a period not exceeding five years:

Provided that a person whose election or appointment has been deemed

the Sarpanch without sufficient cause—

- (i) to submit the judicial file of a case within two weeks of the receipt of the order of any Court to do so;
- (ii) to supply a copy of the order of the Gram Panchayat in an administrative or judicial case decided by it, within two weeks from the receipt of a valid application therefor.

(3) A person who has been removed under sub-section (2) may be disqualified for re-election for such period not exceeding five years as Government may fix.

Section 6(5) of the Punjab Gram Panchayat Act

6(5) No person, who is not a member of the Sabha and who—

- (a) is not qualified to be elected as a member of the Legislative Assembly; or
- (b) has been convicted of any offence involving moral turpitude unless a period of five years has elapsed since his conviction; or
- (c) has been subjected to an order by a criminal court and which order in the opinion of Government or of the officer to whom Government has delegated

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to be invalid under the provisions of sub-section (2) of section 24, shall not be disqualified for election or appointment for a period exceeding two years from the date of disqualification.

(3) A person whose seat has been vacated under the provisions of section 14(e) may be disqualified for election for a period not exceeding five years.

The Punjab Municipal Election Rules

7. No person shall be eligible for election as a member of a Municipal Committee, who—

- (a) is not a qualified voter for any constituency of the Municipal Committee under rule 6, and has not attained the age of 25 years; or
- (b) in the case of a seat reserved for the Scheduled Castes is not a member of any of the Scheduled Castes in relation to the State of Punjab; or
- (c) is under contract for work, to be done for, or goods to be supplied to, the Municipal Committee; or
- (d) receives any remuneration out of fund for services rendered to the Municipal Committee; or of the Municipal Committee
- (e) has, within five years from the date fixed for the nomination of candidates under the provisions of rule 10 been prescribed from Government employment; or
- (f) has, within five years from the date fixed for the nomination of candidates under the provisions of rule 10 been serving

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its powers of removal, implies a defect of character unfitting him to be a Sarpanch or Panch, unless a period of five years has elapsed since the date of order; or

- (d) has been convicted of an election offence; or
- (e) has been ordered to give security for good behaviour under section 110 of the Code of Criminal Procedure, 1898; or
- (f) has been notified as disqualified for appointment in public service, except on medical grounds; or
- (g) is a whole-time salaried servant of any local authority or State or the Union of India; or
- (h) is registered as a habitual offender under the Punjab Habitual Offenders (Control and Refoms) Act, 1952; or
- (i) is an undischarged insolvent; or
- (j) has not paid the arrears of the tax imposed by the Gram Panchayat; or
- (k) is an employee of Sabha or Gram Panchayat; or
- (l) is a tenant or lessee holding a tenancy or lease under the Gram

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a sentence of imprisonment for not less than two years; or

Sabha or is in arrears of rent of any lease or tenancy held under the Gram Sabha, or is a contractor of the Gram Sabha;

- (g) is an undischarged insolvent; or is in arrears of any kind due from him (otherwise than as a trustee) to the Committee when a special demand in this behalf has been served upon him by the Committee; or

shall not be entitled to stand for election as or continue to be a Sarpanch or Panch.

- (h) is a whole-time salaried official in the service of any District Board, Municipal Committee, Notified Area Committee or Cantonment Board, or holds any office of profit under the Government of India or the Government of any State other than an office declared by the Legislature of the State by law not to disqualify its holder for being chosen as a member of the Legislative Assembly of the State; or

- (i) who is disqualified for such membership as a result of his election having been set aside under these rules; or

- (j) is disqualified for membership of any District Board, Municipal or Notified Area Committee or Cantonment Board, as a result of removal from such board or committee or as a result of his election for membership of such board or committee having been declared void for corrupt practices; or

- (k) has at any time within five years from the date fixed for the nomination of candidates under the provisions of rule 10 been convicted of any offence

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under section 171-E or 171-F of the Indian Panel Code, or having been disqualified from exercising any electoral right for a period of not less than five years in connection with an election of the State Legislature is, on the said date of nomination, still subject to the disqualification:

Provided that the Punjab Government may exempt any person or class of persons from the disqualification contained in clauses (c), (d), (e), (f), (g), (i) or (j) except in case of disqualification as a result of removal from membership of any District Board, Municipal or Notified Area Committee or Cantonment Board, of this sub-rule:

Provided further that nothing contained in (d) shall debar a person, who receives as President, salary sanctioned by the State Government under section 53 of the Act, from standing for election or re-election as a member of the Committee.

7-A. No person shall vote in more than one constituency or stand for election in more than one local authority and in case of his voting or standing otherwise his votes or candidatures as the case may be, shall be void.

Explanation.—In this rule, the expression 'Local Authority' shall mean, a Municipal Committee, a District Board and a Notified Area Committee."

While dealing with the above provisions in the Punjab Municipal Act in *The State of Punjab v. Bakhtawar Singh*, to which decision I was a party, it was observed as follows:—

* * * * *

It will be noticed from the various clauses of this section that it gives powers to the Government to remove a

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sitting member for any misconduct committed by him during the term of that office. It has no reference to any misconduct previous to the term of that office unless that misconduct is a statutory bar to his election to the Municipal Committee, and that would be a matter which would disqualify the member from contesting the election and would certainly be not a ground for his removal after he has been duly elected. This was the view which the learned Single Judge took of the matter, and, in our opinion, this is the correct view to take. There is another way of looking at the matter. The elections are a part of the democratic set-up. The electors are given the option to return their nominee and it is open to them while returning a member to return him or not to return him, because if they are satisfied that the person is not a fit person to be returned, they will not cast their vote in his favour, but once they return a member, they have no power, according to law, to turn him out if during the term of his office he is guilty of misconduct. It is for that reason precisely that section 16 of the Municipal Act has been enacted and power has been confined by the Legislature on the Government to disqualify a member who is guilty of misconduct or of breach of certain matters provided for in this section. It has no relevancy to his conduct before he was elected. That is a matter for which the electors are the sole judge unless that matter is a disqualification for his standing for the election. That would debar him from contesting the election.

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These observations apply to the facts of the present case with equal force. Therefore, there is no escape from the conclusion that the appellant could not be removed for his acts and omissions during the course of his second term of office after he had been elected for the third term.

The learned counsel for the appellant raised another contention that the order of suspension will not revive after this Court strikes down the order of removal and in support therefor, he relies upon the decision in *K. K. Jaggia v. The State of Punjab* (2). This decision

(2) I.L.R. (1966) 1 Punj. 302.

does support his contention. There will be no question of the order of suspension staying after we have quashed the order of removal.

The learned counsel for the respondent contended that the contention, on the basis of which this petition is being allowed, was not raised by the learned counsel before the learned Single Judge and, therefore, the appellant cannot be allowed to urge the same before the Letters Patent Bench. It may be mentioned that this contention was specifically raised in the Writ petition. But it appears that it was not specifically urged before the learned Single Judge. Moreover, the contention being one purely of law, it can be raised in the Letters Patent appeal. We have accordingly allowed this contention to be raised.

In view of the decision of this Court in *The State of Punjab v. Bakhtawar Singh*, the decision of the learned Single Judge is set aside and the impugned order removing the appellant from the office of the Sarpanch is quashed with order as to costs throughout.

MEHAR SINGH, C.J.—I agree.

K.S.K.

APPELLATE CIVIL

Before Mehar Singh, C.J. and Daya Krishan Mahajan, J.

KISHORE CHAND,—Appellant

versus

DHARAM PAL,—Respondent

Regular Second Appeal No. 2 of 1965.

August 25, 1966

Registration Act (XVI of 1908)—S. 17(1)(d)—Rent note providing that tenant will pay rent month by month and if rent is paid continuously, he will not be liable to ejectment—Whether a lease for a term exceeding one year and requires registration.

Held, that in a lease the right to enjoy the demised property for consideration is transferred by the lessor in favour of the lessee and the lessor lays his conditions of limitation, if any, on the extent of the right transferred. The