

writ petition) which also talks of some exchange of land having taken place and the jamabandis for the years 1983-84 and 1988-89 show that the petitioners are in possession of the land by reason of exchange. It is true that the petitioners have not been recorded as owners in the jamabandis but *prima facie* they have raised the question of title and in my opinion, the Assistant Collector was not justified in not disposing of such a plea under section 13-A of the Act. At that stage, the Assistant Collector 1st Grade is only to be satisfied *prima facie* and it is only after he converts himself into a Tribunal under section 13-A of the Act that the parties could have produced evidence in support of their respective claims. If the petitioners fail to prove their title, they would be ejected from the land in dispute as unauthorised occupants. If, on the other hand, they succeed in establishing their ownership as claimed by them now, the petition filed by the Gram Panchayat would have to be dismissed. In my opinion, in the present case not only a question of title was raised but even *prima facie* proved so as to necessitate a decision under section 13-A of the Act. In this view of the matter, the impugned orders as passed by the Assistant Collector 1st Grade and the Collector in appeal are quashed. The case is remanded to the Assistant Collector 1st Grade, Kurukshetra with a direction, to first dispose of the question of title in terms of the provisions of section 13-A of the Act. It is made clear that nothing stated herein is the expression of my views in regard to the merits of the case and the Assistant Collector 1st Grade will have to decide the issue on the basis of the evidence that may be led before him by the parties. Consequently, the writ petition is allowed with no order as to costs. The parties through their counsel are directed to appear before the Assistant Collector 1st Grade Kurukshetra on 18th November, 1991 for further proceedings.

*J.S.T.*

*Before Hon'ble A. L. Bahri & N. K. Kapoor, JJ.*

**BABU RAM AGGARWAL,—Petitioner.**

*versus*

**THE COMMISSIONER & SECRETARY TO GOVERNMENT OF HARYANA & OTHERS,—Respondents.**

*Civil Writ Petition No. 15057 of 1993*

*6th January, 1994*

*Constitution of India 1950—Arts. 226/227—Haryana Municipal Act S. 21 & 27—meeting convened to consider no confidence motion—*

*Only 2 members attended—Meeting adjourned on ground of lack of quorum—Action adjourning meeting challenged—Since no rules framed under Sub-section (1) of Section 21, the provisions with regard to quorum not attracted in case of no confidence motion—Meeting called to consider no-confidence motion cannot be said to be within ambit of ordinary business of Municipal Committee—Order adjourning meeting set aside.*

*Held, that it is the admitted case of the parties that all the 21 members of the Municipal Committee were duly served for a meeting to be held on 1st December, 1993. Strictly speaking, the meeting called to consider no confidence motion does not come within the ambit of an ordinary meeting or special meeting as matter does not relate to the transaction of the business of the Municipal Committee. Motion for no confidence cannot be considered an ordinary business of the Municipal Committee. Since no rules have been framed under sub-section (1) of Section 21, the provision with regard to quorum is not attracted in the case of no confidence motion meeting.*  
(Para 6)

*Haryana Municipal Act—S. 21—No confidence motion—Due intimation given to all members—Only two attended out of 21—Natural inference that motion stood rejected.*

*Held, that all the twenty-one members were intimated of the intended meeting who some how did not come present except the two. Natural inference would be that motion stood rejected.*  
(Para 6)

S. K. Mittal, Advocate, for the Petitioner.

Arun Nehra, Addl. A.G. Haryana, for the Respondent.

#### ORDER

N. K. Kapoor, J.

The petitioner has sought issuance of a writ of certiorari for quashing the impugned notice dated 1st December, 1993, Annexure P-2,—vide which respondent No. 3 adjourned the meeting called to consider the no-confidence motion on the ground that it lacked the requisite *quorum*.

Pursuance to the notice of motion issued by the Court to the Advocate General, Haryana, respondents put in appearance and filed written statement challenging the maintainability of the writ petition as well as merit of the petition. Since the matter was urgent, the same was taken up for final adjudication at the motion hearing.

The petitioner was elected as President of the Municipal Committee, Narnaul, and as per averments in the petition he had been discharging the duties, honestly and sincerely as President of the Municipal Committee. Municipal Committee has 19 elected members and 2 members have been nominated. Thus the total strength of the members of the Municipal Committee, Narnaul, is 21. Members belonging to the opposite group of the petitioner submitted a requisition to the Deputy Commissioner, Narnaul, for calling a meeting for passing the No-Confidence Motion against the petitioner. Before such a meeting could be convened by Deputy Commissioner, members opposing the petitioner chose to file C.W.P. No. 12640 of 1993 "Mukat Bihari Sanghi v. State of Haryana" seeking *mandamus* to the Deputy Commissioner for convening the meeting of the Municipal Committee. It is during the motion hearing of the petition that the S.D.O. (C) Narnaul as per order of the Deputy Commissioner, Narnaul, issued a notice on 22nd November, 1993 under section 21 (2) of the Haryana Municipal Act, 1973 for convening the meeting of Municipal Committee to consider no confidence motion on 1st December, 1993, at 11.00 a.m. Since the meeting had been convened, the writ petition was dismissed as infructuous. In view of the notice issued by the S.D.O. (C) respondent No. 3, two members came present on 1st December, 1993 at 11.00 a.m. at the office of the Municipal Committee, Narnaul. The Chairman of the Committee i.e. S.D.O. (C) respondent No. 3 adjourned the meeting for 10th December, 1993 on the ground of non completion of *quorum*. It is this order which is being challenged in this writ petition.

The primary Submission of the learned counsel for the petitioner is that the order of the S.D.O. (C) adjourning the meeting to 10th December, 1993 is against law. Referring to Section 21 of the Haryana Municipal Act, the counsel urged that there is no such stipulation in section 21 of the Act which envisages adjournment of a no-confidence meeting. Since no rules have been framed as was envisaged under section 21 (1) of the Act, the matter has to be construed in the light of section 21 as it exists. The fact that only two persons came present itself signifies, that the petitioner had the confidence of the majority of the members of the Municipal Committee. In any case, there being no provision under the Act to adjourn such a meeting for lack of *quorum*, the order Annexure P-2 is unsustainable in law.

The counsel for the respondents in support of the action initiated by respondent No. 3 adjourning the meeting to December 10, 1993 urged that since meeting called for consideration of no confidence motion did not fulfil the mandatory requirement of section 27 (1) of the Act which envisages *quorum* for such a meeting. The

order adjourning the meeting was perfectly just and proper in the circumstances of the case. In any case, if one goes by the assertion of the petitioner that he has the requisite majority to support him, no legitimate grouse could be made of the adjournment to consider such a motion. The learned counsel further argued that the Act envisages two types of meeting i.e. (i) general ; and (ii) special. In both these meetings *quorum* has been stipulated. The provisions of section 21 of the Act have to be read in the light of provisions contained in section 27 of the Act. Construed so, the order passed by respondent No. 3 is perfectly just and legal.

We have considered the submissions of the respective counsel in the light of the material on record. Facts are, in fact, not in dispute. The members opposing the petitioner as President of the Municipal Committee expressed no confidence in him and so sought a direction from this Court against the Deputy Commissioner, Narnaul, to convene such a meeting. The desired relief having been granted by the Court yet did not choose to pursue the matter any further as has been noticed in Annexure P-2 when only two members out of 21 members of the Municipal Committee came present pursuant to the notice issued to them to attend such a meeting. It is the admitted case of the parties that all the 21 members of the Municipal Committee were duly served for a meeting to be held on 1st December, 1993. Strictly speaking, the meeting called to consider no confidence motion does not come within the ambit of an ordinary meeting or special meeting as matter does not relate to the transaction of the business of the Municipal Committee. Motion for no confidence cannot be considered an ordinary business of the Municipal Committee. Since no rules have been framed under sub-section (1) of section 21, the provision with regard to *quorum* is not attracted in the case of no confidence motion meeting. This court in the case of *Surjit Mehta and others v. The State of Haryana and others* (1), had the occasion to consider the provisions of sections 21 and 25 of the Act. After exhaustively examining the provisions contained in section 21, 25 of the Act and Rule 70 of the Haryana Municipal Election Rules, 1978, the motion against the President could be passed by 2/3rd members of the Committee, minor infraction of some procedural provision would not invalidate any such motion as the person who has been voted out can still claim majority as and when such a meeting is called to elect a person in his place. In that case, the Court was considering the effect of non-service of some of the petitioners who thus complained of insufficiency of time for canvassing. In the

present case, all the twenty-one members were intimated of the intended meeting who some how did not come present except the two. Natural inference would be that motion stood rejected.

We do not find any merit in the contention of the learned counsel for the respondents that the meeting called to consider no confidence motion could be adjourned for lack of alleged *quorum* as we are of the definite view that no such *quorum* is envisaged by the provisions of the Act. Resultantly, we allow this writ petition and quash the order Annexure P-2. No order as to costs.

J.S.T.

Before Hon'ble V. K. Bali, J.

GURCHARAN SINGH,—*Applicant Petitioner.*

*versus*

M/S RAGHBIR CYCLE PVT. LTD. ETC.,—*Respondents.*

*Company Application No. 46 of 1993.*

*in*

*Company Petition No. 134 of 1987*

19th April, 1994.

*Company (Court) Rules, 1959—Rule 9 C.P.C. Order 23, Rule 3, Section 151—Arbitration Act—Sections 8, 20 and 21—Company petitions pending—Application under Rule 9 for appointment of an Arbitrator—Such application filed by both the parties—Order appointing the arbitrator—Award rendered—Objections to award Challenging the appointment of arbitrator.*

*Held.* that all the interested parties had agreed that the matter in difference between them by referred to Arbitration. The applications were filed in writing. It cannot, thus, be said that the order passed on the applications of all the interested parties to the company petitions, referred to above, was not under the provisions of Arbitration Act or that the Award was also outside the rules contained in the Arbitration Act.

(Para 41)

That apart, having asked appointment of Arbitrator in writing and participating before the Arbitrator without raising any kind of objection, whatsoever, would not permit objectors to contend that the order passed appointing Arbitrator and the award itself were not under the provisions of Arbitration Act. The conduct of objectors amounts to acquiescence.

(Para 42)