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pre-emption is not transferable and the transferee cannot execute it. Somewhat different opinion was expressed by the learned Judges in *Jowala Sahai* v. *Ram Rakha*, (23). But it is not necessary to go into this matter in these appeals for the estate of the deceased—plaintiff is being represented by Dhara Singh and his sons as his legal representatives and that is in law sufficient representation of him. The second vendees can have recourse to any proceedings, in regard to which they are advised, to enforce the transfer in their favour. The question of a decision, in so far as the transfer in their favour is concerned, does not arise in these appeals.

In consequence the three appeals of the appellants-vendees are dismissed with costs.

Khosla, J.

R. P. KHOSLA, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before Inder Dev Dua and R. S Narula, JJ.

CHARAN DASS DOGRA AND OTHERS,—*Petitioners.*

versus

THE PUNJAB STATE AND OTHERS,—*Respondents.*

Civil Writ No. 1552 of 1965

1965

July, 30th

Constitution of India (1950)—*Art.* 226—*Scope and ambit of the power of the High Court—Alternative remedy—How far a bar to relief—Punjab Panchayat Samitis and Zila Parishads Act* (*III of* 1961—*S.* 5(2) (cc)—*Co-option of Women members—Whether must take place at meeting of the Samiti—Order of the High Court that the named woman should be co-opted—Whether has the effect of co-opting her without a meeting—Right of vote—Whether statutory—Punjab Panchayat Samitis* (*Co-option of Members*) *Rules* (1961)—*Rule* 4-*A—Whether has the effect of dispensing with the meeting—Panchayat institutions—Development of —Duty of the Officers in the matter pointed out—Desirability of removing ambiguity and lacuna from Law.*

Held, that Article 226 of the Constitution of India, widely worded as it is, confers on the High Court power of very comprehensive

(23) 78 P.R. 1896.

magnitude, and, save for the territorial restrictions which are expressly provided therein, there seems to be no other restriction imposed by the Constitution. But absence of express constitutional limitation by no means implies that this power must be exercised whenever it is invoked merely because it is permissible on the language of the Article to do so. Indeed, the general words of this Article in which the power is conferred on the High Court, have a content and a significance, covering the core of reality and justice as enshrined in the Preamble of the Constitution. That content and significance is enforcement of the rule of law and furtherance of the cause of substantial justice according to law. This must inevitably leave the question of interference under this Article to the judicial discretion if the High Court on the facts and circumstances of each given case. All laws are meant to be operative, as this thesis also constitutes one of the important facets of the rule of law. The High Court as the final and the highest Court of law and justice in the State, being invested by the Constitution with practically unrestricted power of issuing writs, orders and directions, is apparently expected not to decline exercise of this power arbitrarily if the true dictates of justice, consistently with the rule of law, in a given case, demand its exercise to further the cause of justice. On this premise, the conclusion is irresistible that mere existence of an alternative remedy cannot by itself or *per se* enjoin the High Court to decline interference on the writ side, but that the Court must consider and weigh in a disciplined and responsible manner, according to the rules of reason and justice, all the facts and circumstances before it and eliminating prejudice and sympathy, judicially determine whether or not interference would further the purpose of securing justice to the citizens for which this power is conferred. The broad guiding principles discernible from judicial precedents disclose that ordinarily a right created by a statute should be enforced through the machinery provided by the statute creating it, but if the remedy provided by the statute is not reasonably adequate, effective and speedy, the High Court would not hesitate to interfere provided the nature of the right and of its violation is such that the cause of justice would be better promoted by interference. If the nature of the dispute requires for its adjudication evaluation of evidence and determination of disputed facts, then the High Court is almost invariably disinclined to interfere and would prefer to refer the parties to the statutory or other alternative remedy provided : even in cases of clear-cut violations of law, the High Court would undertake to go into the merits of the controversy only if the statutory or alternative remedy is not adequate or efficacious so as to afford to the aggrieved party effective redress of his grievance : in other words ,if the aggrieved party is unable to get reasonably effective and speedy justice resorting to the alternative remedy. True dictates of justice on the facts and circumstances of the given case thus constitute the requisite yardstick which the High Court employs in determining in its discretion whether or not to exercise its constitutional prerogative.

Held, that the right to vote being statutory, created by a positive enactment, must be exercised in accordance with the relevant statutory provisions. In the present case, the co-option itself is a substitute for election : It is not a mere procedural formality which is directory and can be waived or dispensed with; it is on the contrary the basis and the foundation of the rights which a co-opted member acquires on co-option under the statute The right of a co-opted member to vote at other elections can be founded only on a proper and legal co-option just as the right of a duly elected member can only be founded on a proper and valid election and merely because a person has been held by the High Court to be entitled to co-option under the relevant statutory provisions does not dispense with the legal statutory formalities of co-option.

Held, that Rule4-A of the Punjab Panchayat Samitis (Co-option of Members) Rules, 1961, does not dispense with the formality of a proper legal co-option in accordance with section 5(2) (cc)(i) second privso of the Punjab Panchayat Samitis and Zila Parishads Act, 1961. On the other hand, this rule strengthens the view that a meeting must be formally convened for the purpose of co-option and the formality properly gone into.

Held, that if the object and purpose of Panchayat legislation in pursuance of the Directive Principle contained in Article 40 of the Constitution is not to be defeated and if rural India is to be properly educated and trained in imbibing democratic temper and in organising and working the Panchayats as healthy units of self-government in full accord with our constitutional set-up, then petty power-politics should scrupulously be eliminated; and the administrative officers called upon to deal with the Panchayat elections should be persons possessing a proper judicial mind adequately detached from off-the-record influences like prejudice and sympathy, official or personal, and having requisite knowledge of the relevant law, so that the citizens whose rights are dealt with by them, may have faith and confidence in the efficaciousness and impartiality of our quasi-judicial process. Justice, even when administered by administrative officers, should, according to our jurisprudence, be seen to be done. Rule of law, which includes justice according to law, may not lightly be sacrificed at the alter of mere administrative convenience.

Held, that in a country where Rule of law prevails, it is of the utmost importance that law is expressed in plain and clear language and an endeavour should always be made to avoid ambiguities and lacunae. This is *sine qua non* for the success of Rule of law and for inculcating democratic temper in the citizens.

Petition under Articles 226/227 of the Constitution of India praying that a writ of certiorari, mandamus or *any other appropriate writ,*

order or direction be issued quashing the elections of the Chairman, Vice-Chairman and members of the Zila Parishad held on 24th May, 1965.

H. L. Sarin, S. C. Goyal and Miss Asha Kohli, Advocates, for the Petitioners.

R. Sachar, R. K. Chhibbar, and V. C. Mahajan, Advocates, for the Respondents.

ORDER

The following Order of the Court was delivered by: —

Dua, J.

Dua, J.—This writ petition has arisen out of the order passed by us on 12th May, 1965, in *Shri Jalpu Ram, etc.*, v. *The Deputy Commissioner, Kulu, etc.*, C.W. No. 536 of 1965, whereby we set aside the co-option of Smt. Sevti Devi and Smt. Devki Devi as Panches and directed that Smt. Chuneshwari Gaur, petitioner No. 2 in that writ petition, be co-opted as a member of the Panchayat Samiti, Naggar, in accordance with section 5(2) (cc) (i) second proviso of the Punjab Panchayat Samitis and Zila Parishads Act No. 3 of 1961 (hereinafter to be called as the Act). We also directed that it would be open to the authorities concerned to co-opt one more woman social worker amongst women and children in accordance with section 5(2)(cc) first proviso.

The three petitioners before us claim to be members of the Panchayat Samiti, Naggar at Katrain in Kulu district, having been elected as primary members of the said Samiti on 22nd January, 1965 from amongst the Panches and Sarpanches. The names of 16 members, who were elected as primary members representing Panches and Sarpanches were notified in the Punjab State Gazette on 1st February, 1965, the notification bearing the date 30th of January, 1965. Later, two other members Shri Bhagat Ram and Shri Mehar Chand were also elected as members of the above Samiti from Co-operative Societies; their names were also notified in the State Gazette on 1st February, 1965. After stating the relveant provisions of section 5, and after referring to sections 16 and 4-A of the Act, the petitioners have given the background in which C.W. No. 536 of 1965 was presented in this Court and then reproduced the actual words of the final directions given by

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this Bench in that case. It is then pleaded that the order of this Court is abundantly clear and there can be no doubt that Smt. Chuneshwari Gaur did not stand automatically co-opted by virtue thereof and that she had to be co-opted in accordance with the formalities prescribed by the Act. The General Assistant to the Deputy Commissioner, Kulu, Shri Jatinder Singh, respondent No. 3, according to the petitioners' averments, had issued a notice to the members of the Panchayat Samiti, Naggar, that election of the Chairman and Vice-Chairman of the said Samiti would be held on 24th May, 1965. Notice according to section 4 (apparently the word "section" seems to be wrongly typed for the word "rule") of the Punjab Panchayat Samitis and Zila Parishads Chariman and Vice-Chairman (Election) Rules, 1961, had been served on all the 24 members of the Samiti in question whose names had been notified in the Gazette. The Deputy Commissioner, Kulu, respondent No. 2, is alleged similarly to have issued a notice under rule 3 (again the word "section" is wrongly typed) of the said rules to all the members of the aforesaid Samiti intimating that 24th of May, 1965 was fixed for the election of two members of the Zila Parishad out of the primary members of the Samiti. Both these elections were to be held simultaneously at one sitting. Kumari Chuneshwari Gaur, respondent No. 8, had not been co-opted as a member of the aforesaid Samiti till 24th May, 1965 and indeed no meeting had been convened by the Deputy Commissioner or any other competent authority for the purpose of co-opting two lady members in place of those whose co-option had been set aside by this Court in C.W. No. 536 of 1965. Feeling anxious to participate in the election proceedings fixed for 24th May, 1965, Kumari Chuneshwari Gaur, respondent No. 8, is stated to have filed an affidavit before the Deputy Commissioner, Kulu, respondent No. 2, asserting that she stood automatically co-opted as a member of the Panchayat Samiti in question by virtue of the order of this Court and was, therefore, entitled to participate in the election proceedings and exercise her vote as a co-opted member at the meeting fixed for 24th May, 1965. The averment in her affidavit continued to assert that Smt. Sevti Devi and Smt. Devki Devi were, in view of this Court's decision, not entitled to participate and vote at the election fixed for 24th May, 1965. It is pleaded that in fact, according to the order of this Court, neither respondent No. 8 had been co-opted nor had Smt. Sevti Devi and Smt.

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Devki Devi been debarred from taking part in the election proceedings fixed for 24th May, 1965. Respondent No. 8, according to the averments in the present writ petition, had stated wrong facts in her affidavit in order to exercise a right of franchise in the meeting to be held on 24th May, 1965. Relying on Kumari Chuneshwari Gaur's affidavit, the Deputy Commissioner, Kulu, respondent No. 2, is stated to have passed an order on the same day to the effect that Smt. Sevti Devi and Smt. Devki Devi were debarred from participating in the election of Chairman/Vice-Chairman of Naggar Panchayat Samiti and its two Zila Parishad members and that Kumari Chuneshwari Gaur, respondent No. 8, was entitled to participate and vote in the said election as a co-opted lady member, as declared by this Court. The Deputy Commissioner, respondent No. 2, according to the petitioners before us, had been misled by wrong assertions in the affidavit sworn by respondent No. 8. It is this order which is being assailed as wrong, illegal and *mala fide,* secured as a result of undue influence which Thakar Beli Ram, a member of the Punjab Legislative Council, and Shri Lal Chand Prarthi, M.L.A., had over the Deputy Commissioner. These two legislators, were openly opposing the petitioners in the election fixed for 24th May, 1965. The allegation of *mala fides* is further sought to be supported by the averment that the impugned order was passed on a Sunday. Respondent No. 8, it is further averred in the writ petition, had represented in her affidavit that she had received two letters from her counsel, Shri Rajinder Sachar, and that the Deputy Commissioner, Kulu, respondent No. 2, had also placed reliance on the said letters. A perusal of both the letters reveals that they have not been sent by the counsel but had, on the other hand, been written and signed by his clerk. These two letters were also not addressed to Kumari Chuneshwari Gaur, one of them having been addressed to Thakar Beli Ram, and the other to Shri Thakar Tej Singh, who has been impleaded as respondent No. 7, in the present proceedings. These letters, according to the petitioners, strengthen their plea of *mala fides* and the keen interest taken by Thakar Beli Ram in the whole affair. Shri Jatinder Singh, General Assistant to the Deputy Commissioner, respondent No. 3, who was the Presiding Officer for conducting the election fixed for 24th May, 1965, is also stated to have disallowed on the date of the meeting objections raised as per Annexure "H" to the competence of Kumari Chuneshwari

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Gaur to cast her vote at the election of Chairman and Vice-Chairman of the Samiti in question. The order disallowing the objections has been attached as Annexure "I". As a result of the said election, Shri Mohan Lal, respondent No. 4 was elected as Chairman of the Panchayat Samiti, Naggar, defeating petitioner No. 2, by one vote, the former having secured 12 votes and the latter 11 votes. According to the petitioners' averments, if respondent No. 8 had not taken part in the election, there would have been an equality of votes amongst the two candidates and the matter would have been decided by drawing lots, and also if Smt. Sevti Devi and Smt. Devki Devi had not been illegally debarred, petitioner No. 2 would have secured 13 votes and respondent No. 4 only 11 votes. For the election of Vice-Chairman, respondent No. 5, Shri Mehar Chand, was elected defeating one Shri Chattar Dass and it is vaguely averred that allowing respondent No. 8 to take part in the election and debarring Smt. Sevti Devi and Smt. Devki Devi from so taking part have also been instrumental in the success of respondent No. 5. Petitioners Nos. 1 and 3 have also lost to respondents Nos. 6 and 7 by a margin of one vote each only in the election of the members of the Zila Parishad. The result of this election would also have been different had Kumari Chuneshwari Gaur not been permitted to take part in the said election. It is largely on the basis of these averments that the petitioners have approached this Court with a prayer that a writ of *certiorari* or other suitable writ, order or direction, may go quashing the elections of the Chairman, Vice-Chairman and members of the Zila Parishad held on 24th May, 1965. A writ of *mandamus* has also been prayed directing stay of the election of the Zila Parishad, Kulu, which was stated likely to be held on or before 15th June, 1965. The election of the Zila Parishad, Kulu, and the functioning of the Panchayat Samiti, Naggar, is also required to be stayed. This petition was presented to this Court on 2nd June, 1965 and a notice, as required by the rules of this Court, intimating the opposite party of the motion for stay was duly given. On 4th June, 1965, S. K. Kapur, J., declined interim stay during the vacation observing that it was not advisable to interfere at that stage. Shri Rajinder Sachar appearing for respondents Nos. 4 to 8, opposing the stay, urged that:—

(a) the votes were by secret ballot and it was not possible to say as to for whom respondent No. 8 had voted;

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(b) the election petition having been provided in the rules, there should be no interference on the extraordinary side in these proceedings; and

(c) even if any formality of co-option had to be gone through, its omission should not be considered a good ground for interference because her right to be co-opted could not be disputed.

On 16th July, 1965, the writ petition came up before a Bench of this Court of which I was a member and after issuing a rule, it was directed that this writ petition be heard by the same Bench which had disposed of C.W. No. 536 of 1965. Shri Sachar was present on behalf of respondents Nos. 4 to 8. Stay was not pressed by the petitioners at that stage.

Shri Sachar on behalf of respondents Nos. 4 to 8 has raised a preliminary objection that an election petition against the election held on 24th May, 1965, being competent under the law, this Court should not interfere under Article 226 of the Constitution but should leave the aggrieved party to pursue the remedy provided by the statute. Reference has in this connection been made to Rule 3 of the Punjab Panchayat Samitis and Zila Parishads (Election Petition Rules), 1961 (hereinafter to be described as the Election Petition Rules). According to this rule, the election of any person as a member, Vice-Chairman or Chairman of the Panchayat Samiti or Zila Parishad, as the case may be, is open to challenge by an elector through an election petition on the ground, *inter alia* that the result of such elector's election has been materially affected by the breach of any law or rule for the time being in force or on the ground that there has been a failure of justice. Under Rule 4, the election petition has to be presented within 20 days from the date of announcement of the result of the election to the Deputy Commissioner within whose jurisdiction the Panchayat Samiti or Zila Parishad is situate, and it is the Deputy Commissioner who is the prescribed authority under section 121 of the Act. This section, it may be pointed out, is the substantive provision in the Act on the subject of election petitions.

This preliminary objection has been sought to be met by Shri Sarin by the argument that in the present writ petition, the order of Shri Gurdarshan Singh, Deputy Com-

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missioner, Kulu, respondent No. 2, passed on 23rd May, 1965 (Annexure "E" to the writ petition) is also being challenged and the prescribed authority under Rule 4 of the Election Petition Rules being also the Deputy Commissioner, it may be difficult for the said officer to bear upon the question in controversy a detached and a judicial mind, with the result that the alternative remedy cannot be described to be effective and cogent enough to justify refusal by this Court to consider the merits of this petition in the present proceedings. It has in this connection been emphasised that the existence of an alternative remedy does not *per se* operate as an absolute legal bar to the exercise of jurisdiction of this Court to issue writs, orders or directions under Article 226 of the Constitution. This Article, it is pointed out, is couched in very wide terms and the exercise of power under it, is not subject to any restriction save the territorial jurisdiction which is in express terms contained therein. The matter, so argues the counsel, is pre-eminently one of judicial discretion depending on the facts and circumstances of each case, and it is argued that on the facts and circumstances of the present case, the dictates of justice demand that this Court should deal with and dispose of the writ petition on the merits. On a question by this Court, Shri Sarin has conceded that no election petition has been filed and the limitation has since expired. In support of his submission, the learned counsel has placed reliance on *Devi Ram* v. *State of Punjab* (1), *Bhagirath Singh* v. *The State of Punjab and others* (2), *Dharam Chand* v. *The State of Punjab and others* (3), and *Babu Ram* v. *The State of Punjab and others* (4).

The legal position appears to me to have been settled beyond controversy by the Supreme Court and has been consistently followed by various Benches of this Court in numerous cases. Article 226 of the Constitution, widely worded as it is, confers on this Court power of very comprehensive magnitude, and save for the territorial restrictions which are expressly provided therein, there seems to be no other restriction imposed by the Constitution. But absence of express constitutional limitation by no means

(1) 1964 P.L.R. 1185.
(2) I.L.R. (1965) 1 Punj. 466=1965 P.L.R. 413.
(3) I.L.R. (1962) 2 Punj. 27=1962 P.L.R. 586.
(4) I.L.R. (1962) 1 Punj. 176.

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implies that this power must be exercised whenever it is invoked merely because it is permissible on the language of the Article to do so. Indeed, the general words of this Article in which the power is conferred on this Court, have a content and a significance, covering the core of reality and justice as enshrined in the Preamble of our Constitution. That content and significance, as I understand it, is enforcement of the rule of law and furtherance of the cause of substantial justice according to law. This must inevitably leave the question of interference under this Article to the judicial discretion of this Court on the facts and circumstances of each given case. All laws are meant to be operative, as this thesis also constitutes one of the important facts of the rule of law. This Court as the final and the highest Court of law and justice in the State, being invested by the Constitution with practically unrestricted power of issuing writs, orders and directions, is apparently expected not to decline exercise of this power arbitrarily if the true dictates of justice, consistently with the rule of law, in a given case, demand its exercise to further the cause of justice. On this premise, the conclusion is irresistible that mere existence of an alternative remedy cannot by itself or *per se* enjoin this Court to decline interference on the writ side, but that the Court must consider and weigh in a disciplined and responsible manner, according to the rules of reason and justice, all the facts and circumstances before it and eliminating prejudice and sympathy, judicially determine whether or not interference would further the purpose of securing justice to the citizens for which this power is conferred. The broad guiding principles discernible from judicial precedents disclose that ordinarily a right created by a statute should be enforced through the machinery provided by the statute creating it, but if the remedy provided by the statute is not reasonably adequate, effective and speedy, this Court would not hesitate to interfere provided the nature of the right and of its violation is such that the cause of justice would be better promoted by interference. If the nature of the dispute requires for its adjudication evaluation of evidence and determination of disputed facts, then this Court is almost invariably disinclined to interfere and would prefer to refer the parties to the statutory or other alternative remedy provided: even in cases of clear-cut violations of law, this Court would undertake to go into the merits of the controversy only if the statutory or alternative remedy is not adequate or

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efficacious so as to afford to the aggrieved party effective redress of his grievance : in other words, if the aggrieved party is unable to get reasonably effective and speedy justice by resorting to the alternative remedy. True dictates of justice on the facts and circumstances of the given case thus constitute the requisite yardstick which this Court employs in determining in its discretion whether or not to exercise its constitutional prerogative.

In the background of this legal position, the facts and circumstances recapitulated earlier may be considered. The only basis of the present writ petition is the misconstruction of the order of this Court and a misrepresentation of the same by Kumari Chuneshwari Gaur when applying for permission to exercise her vote at the election held on 24th May, 1965. No evidence is to be led and no disputed facts are to be judicially determined. Election petition is provided for in section 121 of the Act. Rule 3 of the Election Petition Rules provides that the election of any person as a member, Vice-Chairman or Chairman of a Panchayat Samiti, etc., may be called in question by an elector through an election petition on the ground that such person has been guilty of a corrupt practice specified in the Schedule or has connived at or abetted the commission of any such corrupt practice or the result of whose election has been materially affected by the breach of any law or rule. for the time being in force or there has been a failure of justice. Challenge to the right of Kumari Chuneshwari Gaur to cast her vote, it is argued, would be covered by the clause in Rule 3 "the result of whose election has been materially affected by the breach of any law or rule for the time being in force." In order to adjudicate upon the objection covered by this clause, the prescribed authority, which happens to be the Deputy Commissioner, would have to consider the correctness of his own order, dated 23rd May, 1965, by means of which he allowed Kumari Chuneshwari Gaur to participate and vote in the election mentioned above. In my opinion, this circumstance constitutes a strong factor which would, to an extent, induce this Court to dispose of the writ petition on the merits and not to refer the petitioners to an election petition. It is noteworthy that the order of the prescribed authority finally disposing of an election petition under the Election Petition Rules, is not subject to any appeal or revision. Besides, an election petition under the Election Petition Rules is

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likely to take longer for its disposal than the present writ petition, and in view of the fact that some more elections under the law relating to the Panchayat Samitis and Zila Parishads are likely to take place within a very short period, this would also constitute an important factor justifying disposal of the writ petition on the merits by this Court.

On behalf of the respondents, Shri Rajinder Sachar has with his usual eloquence tried to impress upon us the fact that Kumari Chuneshwari Gaur was indisputably entitled to be co-opted under the orders of this Court and mere absence of the formality of going through the procedure of co-opting her under the statutory provisions should not be given much importance by this Court and the right of vote exercised by her without formal co-option should not be set aside by this Court on writ side. It is strongly emphasised that there is no substantial injustice done in this case and even after co-option, the petitioners position cannot be improved.

The respondents' contention sounds attractive on first blush, but on deeper thought, it appears to me to be untenable. What is administered in this Republic by this Court is justice according to law and a statutory right of vote has to be acquired in accordance with the statutory provisions: there is no inherent or fundamental right of vote vesting in any citizen. Kumari Chuneshwari Gaur, therefore, though qualified to be co-opted, had to be co-opted in accordance with law before she could exercise her right of vote as a co-opted member. Unless, therefore, the order of this Court can be held to have automatically conferred on her the status of a co-opted member, she could not possess the status of such member without a formal co-option in accordance with the Act and the relevant statutory rules. Such co-option is not a mere idle formality but the real foundation of the right to vote.

Turning now to the order of this Court, I can do no better than reproduce the exact concluding words of the judgment, dated 12th May, 1965 in C.W. No. 536 of 1965:—

> "For the foregoing reasons, this petition succeeds and allowing the same, I set aside the impugned order

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and direct that Shrimati Chuneshwari Gaur be co-opted as a member of the Panchayat Samiti, Naggar, in accordance with section 5(2) (cc) (i) second proviso and set aside the co-option of respondents Nos. 3 and 4. It would of course be open to the authorities concerned to co-opt one more woman social worker amongst women and children in acordance with section 5(2) (cc) first proviso."

These words leave no doubt that this Court had not declared Kumari Chuneshwari Gaur to have been automatically co-opted as a member of the Panchayat Samiti: indeed, a direction was issued that she be co-opted in accordance with section 5(2) (cc) (i) second proviso. The representation made by her to the Deputy Commissioner was apparently based either on ignorance or on a complete misreading of this order, which is crystal clear and would, in my view, conclude the matter, not only on the preliminary point, but also, to a large extent, on the main point on the merits against the respondents. As it is doubtful if anyone concerned had actually read the order, the representation does not appear to be *bona fide.*

It is somewhat surprising that even the learned Deputy Commissioner, when passing the impugned order on 23rd May, 1965, did not insist, as in my opinion, it was appropriate for him to do, on production before him of a copy of this Court's order, and that he should have passed his order without himself reading and appreciating the exact language of this Court's direction, on which alone Kumari Chuneshwari Gaur based her right, particularly when the parties before him were not agreed as to the contents and scope of those directions. It is true that production of a certified copy of this Court's order would, perhaps, under the prevailing practice, have taken a long time; but it would in the circumstances have served the purpose just as well, if the counsel appearing in the case or some other member of the bar or some other responsible and reliable person entitled to do so, had inspected the record of C.W. No. 536 of 1965, in this Court, and after reproducing the relevant portion of the order had himself certified it to be a true copy. There could have been little difficulty in adopting this course. It is necessary to point out that the learned Deputy Commissioner was called upon to adjudicate on a matter of considerable importance to the statutory

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right of the parties, and this demanded application of his judicial or quasi-judicial mind, but the manner in which this function has been performed betrays unawareness on his part of the essential ingredients of judicial process according to which he was expected to come to a decision on the point in controversy. On the facts and circumstances of the case in hand, this is one reason the more, which has contributed in inducing me to consider an election petition not to be an equally efficacious remedy. The election petition was to be disposed of apparently by the same Deputy Commissioner who had expressed his opinion on the same point and had directed respondent No. 3 to comply with his order; the petitioners' assertion to this effect has not been controverted before us.

The petitioners' learned counsel has very forcefully argued that Kumari Chuneshwari Gaur deliberately misrepresented to the Deputy Commissioner that she had received a letter from her counsel at Chandigarh informing her, that under the orders of this Court, she stood automatically co-opted as a member of the Samiti and, therefore, entitled to participate and vote in the election of Chairman etc., to be held on 24th May, 1965. It is emphasised that there is no such letter on the record from her counsel; instead there are two letters from the clerk of the counsel, one addressed to the local lawyer Thakar Tej Singh, Advocate, and the other to Thakar Beli Ram, M. L. C., but they also do not support her assertion. This Court, it is contended, should not ignore this deliberate misrepresentation by a person, who is seeking co-option as a member of the Samiti. The affidavit, dated 29th July, 1965, attested on 30th July, 1965, of Thakar Tej Singh, Advocate, and delegate to Zila Parishad, Kulu, from the Panchayat Samiti, Naggar, respondent No. 7, also opposes the present writ petition on the plea that the result of this Court's order in C.W. No. 536 of 1965, is that respondent No. 8 (Kumari Chuneshwari Gaur) is to be deemed to have been co-opted at the meeting held on 10th February, 1965 and that her co-option is automatic and inevitable. It is further pointed out on behalf of the petitioners that an election petition would now be barred by limitation and to refer the petitioners to an election petition would mean that respondent No. 8 would benefit from her conscious and deliberate misrepresentation to support the exercise of right to vote by her, which she did not in law possess. In

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order to properly organise and develop our Panchayats and to educate the ignorant village people on healthy democratic lines, it is desirable that members of our Panchayats, etc., should possess the requisite standard of moral fibre in their character; and exercise of vote by deliberate misrepresentation accordingly deserves to be considered with disfavour by this Court. On the last aspect great stress has been laid.

In my opinion, the fact that the election petition has since become barred by time may operate and react both ways. Whereas on the one hand it may be said that the petitioners cannot now have relief under the statute and, therefore, referring them to an election petition would be denial of justice; on the other hand, it can equally strongly be urged that the petitioners have merely to thank themselves for creating this situation and losing their statutory right by coming to a wrong forum and letting time to expire. I am, therefore, disinclined to consider the ground of time bar as conclusive.

If once this Court has decided in its judicial discretion to go into the merits of the controversy, in my view, it may also be relevant for this Court, while determining the question whether or not to grant relief sought by the petitioners to give due consideration to the fact that it was by a wholly unsupportable misrepresentation that Kumari Chuneshwari Gaur secured for herself the status of a co-opted member, and actually voted as such.

The respondents have also faintly drawn my attention to Rule 4-A of the Punjab Samitis (Co-option of Members) Rules, 1961, as amended on 23rd September, 1964, which, so far as relevant for our purpose, lays down that, "notwithstanding anything contained in Rule 4, no quorum shall be necessary for the purpose of co-opting members under clause (cc) of sub-section (2) of section 5 from amongst women or persons.......... securing the highest number of votes and their names shall be determined and declared by the Presiding Officer in the presence of members, if any, attending the meeting convened under Rule 3; provided that if on account of equality of votes secured by women candidates or those ...., it cannot be

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determined as to who amongst them is or are to be co-opted, the matter shall be decided by the Presiding Officer in the presence of members, if any, by drawing lots, and the candidate or candidates whose name or names is or are drawn first, shall be declared to have been duly co-opted." It is contended that the existence of this rule suggests that co-option is a mere idle formality and even if no formal co-option takes place, the mere decision by the Deputy Commissioner should legally result in a valid co-option. I am not impressed by this submission. In the absence of any binding precedent or more persuasive and convincing argument, I am unable to hold that the existence of Rule 4-A dispenses with the formality of a proper legal co-option in accordance with section 5(2) (cc) (i) second proviso as directed by this Court in the earlier proceedings. On the other hand, this rule apparently strengthens the view that a meeting must beformally convened for the purpose of co-option and the formality properly gone into. A woman who has contested and secured no vote may not legitimately claim a better position that women who have secured the highest number of votes for the purpose of rule 4A. It may also be relevant to state in this connection that along with Kumari Chuneshwari Gaur, one more woman interested in social work had also to be co-opted as contemplated by section 5(2) (cc) second proviso. It was, therefore, only in the fitness of things to co-opt two women in accordance wtih section 5(2) (cc) (i) second proviso as construed by this Court in C.W. No. 536 of 1965.

The foregoing decision, as observed earlier, seems to me also to conclude the main point so far as the merits of the writ petition go. The right to vote being statutory, created by a positive enactment, must be exercised in accordance with the relevant statutory provisions. In the present case, the co-option itself is a substitute for election: it is not a mere procedural formality which is directory and can be waived or dispensed with; it is on the contrary the basis and the foundation of the rights which a co-opted member acquires on co-option under the statute. The right of a co-opted member to vote at other elections can be founded only on a proper and legal co-option just as the right of a duly elected member can only be founded on a proper and valid election and merely because a person may be held by this to be entitled to co-option under the relevant statutory provisions does not dispense with the

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legal statutory formalities of co-option. In the present case, however, the position is rendered almost beyond controversy because this Court has clearly and explicitly given a direction that respondent No. 8 be co-opted in accordance with section 5(2) (cc) (i) second proviso. To ignore this direction given in an order sustaining her claim to co-option and the provisions of law providing for co-option, as construed by this Court, is, in the present case, a grave breach of the rule of law, and this Court would be failing in its duty on the facts and circumstances before it to decline suitable relief to the petitioners. The impugned order of respondent No. 2 Deputy Commissioner, dated 23rd May, 1965, declaring Kumari Chuneshwari Gaur as a co-opted member, the resulting impugned order dated 24th May, 1965, by respondent No. 3, General Assistant of the Deputy Commissioner, allowing Kumari Chuneshwari Gaur to exercise her right of vote in accordance with the order of the Deputy Commissioner, dated 23rd May, 1965, thus deserve to be quashed and set aside and we order accordingly.

Shri Sachar has also eloquently stressed before us that unless the petitioners fully establish that respondent No. 8 had voted for respondents No. 6 and 7, their election cannot be set aside, for, according to the learned counsel, respondent No. 8 might well have voted for petitioners Nos. 1 and 3, and in that event, the result of the impugned election can by no means be considered to have been materially affected; nor can it be said with certainty that there has been a failure of justice, within the contemplation of Rule 3 of the Punjab Panchayat Samitis and Zila Parishads (Election Petition Rules) 1961. The impugned election should, therefore, not be quashed, whatever may be the fate of the impugned orders permitting respondent No. 8 to vote at the election.

The submission is attractive as put, but the pleadings before me do not seem to sustain the contention. A reference to the trend of the writ petition, and particularly to the positive allegations in paragraphs 13 to 16 would show that the petitioners' case is that the vote of respondent No. 8 turned the scales of the election against the aggrieved petitioners. It is significant that though respondent No. 8 has in common with respondents Nos. 4 to 7 engaged the same counsel who is representing them in contesting this

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petition, she has not cared herself to file any written statement controverting the averments in the writ petition. This omission on her part, as would be clear does not seem to be accidental or due to oversight. It is perhaps designed and purposeful.

In paragraph 13 of the writ petition, it is asserted in unambiguous terms that if respondent No. 8 had not taken part in the election, there would have been equality of votes amongst the two candidates and the matter would have been decided by lots and if Smt. Sevti Devi and Smt. Devki Devi had not been illegally debarred from voting, petitioner No. 2 would have secured 13 votes and respondent No. 4 only 11 votes. In paragraph 14 of the petition, similar assertions have been adopted. In the written statement by respondents Nos. 2 and 3 (the Deputy Commissioner and his General Assistant), it is stated that the election was held by secret ballot as required by Rule 8 of the Chairman and Vice-Chairman Election Rules and, therefore, it is incorrect that any illegal action was taken to secure success for respondents Nos. 4 to 7. In the affidavit dated 29th July, 1965, sworn by Thakar Tej Singh in the present writ proceedings, in paragraph 20, it is denied that by the votes cast by respondent No. 8, the result of the election has been materially affected, and it is pleaded that this question is one of evidence which cannot be led in proceedings under Article 226. In paragraph 22 also, it is affirmed that the result of the election would have been the same even if respondent No. 8 had not been allowed to vote.

On these pleadings and in the absence of any written statement by respondent No. 8, who is in the best position to throw light on this point—if so inclined—and who is duly represented before us by the same counsel who is appearing for respondents Nos. 4 to 7, I am inclined to sustain the petitioners' submission that if respondent No. 8 had not voted, there would have been equality of votes cast in support of the rival contestants. I am not unmindful of the fact that the votes for the election of Chairman and Vice-Chairman are required to be taken by ballot as provided by Rules 7 and 8 of the Chairman and Vice-Chairman Election Rules, but this does not by itself by any means debar this Court from drawing reasonable inferences on the state of pleadings and the affidavits before

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it, particularly from the unexplained omission of respondent No. 8 to controvert the petitioners' averments. This omission appears to us to be designed, for any erroneous affirmation by her could have easily been found out and checked by production of the record of the ballot-papers. Indeed, it is not the respondents' case—and it has not been so argued—that under the law respondent No. 8 is prohibited from stating as to for whom she had cast her vote, when that fact is the main pivot round which centres the respondents' submission that the impugned election does not deserve to be quashed by this Court in the exercise of its writ jurisdiction, the ineligibility of respondent No. 8 to vote notwithstanding. Whether or not she or some other person could be required to state as to for whom she had voted, a question on which I express no opinion, there is nothing urged at the bar that respondent No. 8 is under any legal disability from giving this information to this Court in the present proceedings, when it is a relevant fact, or that it is not open to this Court to draw a reasonble inference from her deliberate and conscious omission in this respect, in the circumstances of the present case.

There is one point to which also, before concluding I must advert. It has been pleaded in the return filed by respondents Nos. 2 and 3 that none of the members of the Panchayat Samiti, Naggar, objected to the participation of Kumari Chuneshwari Gaur, respondent No. 8, in the oath taking ceremony which was conducted by the Presiding Officer, respondent No. 3, before holding the election of Chairman/Vice-Chairman of Panchayat Samiti, Naggar, etc., and its two members. It is suggested that once oath is administered, then prior procedural defaults or deviations become immaterial. I am unable to accede to this contention because if there is no co-option in accordance with law, then mere administration of oath cannot serve as a substitute for a lawful co-option.

In fairness to the learned counsel for the respondents, I ought also to refer to the following decisions cited by him in support of the contention that procedural infirmities or omissions may be ignored and not relied on for invalidating the exercise of vote by Kumari Chuneshwari Gaur in the impugned election:—

Montreat Street Railway Company v. *Normandin* (5) and *Jharia Water Board* v. *Jagdamba Loan*

(5) A.I.R. 1917 P.C. 142.

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Co., Ltd., (6). The Privy Council decision given in a case from Quebec deals with the omission of the Sheriff to revise the list of Jurors and this omission or non-observance of the relevant provisions was held not to be basic and did not render the trial as *coram non judice.* Obiviously it has nothing to do with the problem which confronts us. The Patna case also seems to be of no avail, being clearly distinguishable. Reference has been made to the following quotation from Maxwell on Interpretation of Statutes reproduced at p. 541 column 2 of the report:—

> "When a public duty is imposed and the statute requires that it shall be performed in a certain manner, or within a certain time, or under other specified conditions, such prescriptions may well be regarded as intended to be directory only in cases when injustice or inconvenience to others who have no control over those exercising the duty would result if such requirements were essential and imperative."

As an illustration of this rule, three instances have been reproduced which, it is unnecessary, to read, it is, however, clear that this passage from Maxwell cannot have any applicability to the case before us and it was this rule of law contained in the above passage which was approved and followed by the Patna High Court.

Before finally closing the judgment, it may appropriately be observed that if the object and purpose of Panchayat Legislation in pursuance of the Directive Principle contained in Article 40 of the Constitution is not to be defeated and if rural India is to be properly educated and trained in imbibing democratic temper and in organising and working the Panchayats as healthy units of self-government in full accord with our constitutional set-up, then petty power-politics should scrupulously be eliminated; and the administrative officers called upon to deal with the Panchayat elections should be persons possessing a proper judicial mind adequately detached from off-the-record influences

(6) A.I.R. 1938 Pat. 539.

like prejudice and sympathy, official or personal, and having requisite knowledge of the relevant law, so that the citizens whose rights are dealt with by them, may have faith and confidence in the efficaciousness and impartiality of our *quasi*-judicial process. Justice, even when administered by administrative officers, should, according to our jurisprudence, be seen to be done. In the case in hand, this Court's earlier order had clarified the legal position by interpreting a somewhat ambiguous provision of law. It was eminently a fit case in which the learned Deputy Commissioner should have refrained from coming to any decision without himself reading the order and fully understanding the direction issued by this Court under Article 226 of the Constitution. To speculate on his part about the precise direction issued by this Court, on the basis of which alone the right to co-option was being claimed by Kumari Chuneshwari Gaur, respondent No. 8, without caring to read the order, is not easy for us to appreciate. We have not been given any cogent explanation as to why the impugned election would not wait for a few days to enable the learned Deputy Commissioner and the parties affected to read the order so as to be better able to understand this Court's direction and thereafter to act in accordance therewith. Rule of law, which includes justice according to law, may not lightly be sacrified at the altar of mere administrative convenience. That this should have happened even when lawyers and legislators were there to assist the learned Deputy Commissioner, is somewhat perplexing, if not also disappointing.

We are expressing no opinion on the question as to the effect of omission to co-opt one more woman, interested in social work among women and children, on the constitution of the Samiti, because that aspect has not been properly canvassed before us.

I should also bring to the notice of the authorities concerned the desirability of removing ambiguity and lacuna in the provision of law which concerns us in the present controversy. It may be remembered that in a country where rule of law prevails, it is of the utmost importance that law is expressed in plain and clear language and an endeavour should always be made to avoid ambiguities and lacunae. This indeed is the *sine-qua-non* for the success of Rule of law and for inculcating democratic temper in the citizens, both in private and official spheres.

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The result, therefore, is that this petition succeeds and allowing the same, we quash and set aside (i) the impugned order of respondent No. 2, dated 23rd May, 1965, declaring Kumari Chuneshwari Gaur as a co-opted member, (ii) the resulting impugned order, dated 24th May, 1965, by respondent No. 3, allowing Kumari Chuneshwari Gaur to exercise the right of vote in accordance with the order of the Deputy Commissioner, dated 23rd May, 1965, and (iii) the impugned election, held on 24th May, 1965. In the circumstances of the case, however, there would be no order as to costs.

B.R.T.

CIVIL MISCELLANEOUS.

Before P. D. Sharma, J.

SARAN DASS SON OF PT. BHIKU RAM,—*Petitioner.*

versus

THE UNION OF INDIA AND OTHERS,—*Respondents.*

Civil Writ No. 185-D of 1962

1965

August, 5th

Evacuee Interest (Separation) Act (LXIV of 1951)—*S.* 2(*d*)(*i*) *Landlord—Whether a co-sharer with the occupancy tenant of the land.*

Held, that a landlord cannot become a co-sharer with the occupancy tenant of the land as the rights of landlord are distinct from the rights of the occupancy tenant and at no stage the rights of one coalesce into the rights of the other. For a person to be called as a cosharer with another person in the land it is necessary that both the persons should have rights of the same character in the land. The rights of landlord and occupancy tenant in any parcel of the land can by no stretch of imagination be called as of allied nature; on the other hand, these are exclusive of each other.

Petition under Articles 226 *and* 227 *of the Constitution of India praying that this Hon'ble Court may be pleased to quash the illegal and* ultra-vires *order dated the 7th April,* 1962, *passed by respondent No.* 1 *rejecting the application filed by the petitioner under section* 33 *of the Displaced Persons (Compensation and Rehabilitation) Act,* 1964 *and for the issue of a Writ in the nature of* Certiorari, Mandamus *or any other appropriate writ.*