pleasure of the respondent provided he fulfilled all the conditions stated in the rent-note as conditions laying obligations on him, and merely because for breach of one of the conditions he may have made himself liable to ejectment, that does not alter the nature of the duration of the tenancy as one not being for a term exceeding one year. The answer to the quesion in this case then is that the rent-note, Exhibit P. 1, is a lease for a term exceeding one year and is compulsorily registerable under section 17(1)(d) of Act 16 of 1908.

The learned counsel for the appellant has referred to his application, unders ection 151 and Order 41, rule 27, of the Code of Civil Procedure for leading additional evidence in this case and he says that, that has something to do with his argument with regard to the doctrine of part performance. My learned brother, Mahajan, J., has pointed out in his order of reference that this is a matter that was never raised before any of the Courts below. Anyhow, now that the one question referred to a larger Bench has been answered, any further matter, that needs to be urged on behalf of the appellant, may be urged at the hearing of this second appeal.

B.R.T.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

KARNAIL SINGH,—*Petitioner*

versus

MAGISTRATE, 1ST CLASS, HOSHIARPUR AND OTHERS,—*Respondents*

Civil Writ No. 2638 of 1965

August 25, 1966

Punjab Gram Panchayat Act, 1952 (IV of 1953)—Person entered as ghair maurusi *in respect of land owned by Panchayat in the* khasra girdawari—*Whether entitled to stand for election as, or continue to be, a Sarpanch or Panch of the Panchayat*—Ghair maurusi—*Meaning of—Mere entry as* Ghair maurusi *tenant—Whether sufficient to establish tenancy at will—Rent column left blank or stating zero rent payable—Whether means no rent payable.*

Held, that no part of the word *ghair maurusi* brings within its dictionary meaning any reference to tenancy and by practice this expression has been used for tenants-at-will in all revenue records. But all that such an entry means is that the cultivator is neither an owner nor an occupancy tenant of the land in question. In the absence of any other evidence, the entry alone is not sufficient to establish the liability of the cultivator to pay rent to the owner of the land, either on facts or by operation of law. Hence a person entered as *ghair maurusi* in the *Khasra Girdawari* in respect of the land owned by a Panchayat does not, merely on account of such an entry, get disqualified from standing for election as a Sarpanch or Panch of the Panchayat unless liabilty to pay rent to the Panchayat is proved. Whether it is written in the "rent" column that no rent is payable or it is written that zero rent is payable or the column is left blank, in all these cases it is meant that there is no entry relating to liability to pay rent in the revenue papers, and in the absence of any evidence to show that rent was, in fact, payable, it has to be held that no rent was payable.

Petition under Articles 226 and 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 order of respondent No. 1 and setting aside the election of Sarpanch of Gram Panchayat Rurkee Muglan held on 2nd January, 1964.*

KULDIP SINGH, ADVOCATE, for the Petitioner.

A. S. BAINS, ADVOCATE, for the Respondents.

ORDER

NARULA, J.—The short question, which falls for decision in this writ petition under Articles 226 and 227 of the Constitution is whether a person, who is recorded in the *khasra girdawari* as *"gair maurusi"*, can be treated without any other evidence to be a tenant-at-will or a lessee holding a tenancy within the meaning of clause (1) of sub-section (5) of section 6 of the Punjab Gram Panchayat Act, 1952 (Punjab Act No. IV of 1953) (hereinafter called the Act) so as to disentitle him to stand for election as, or continue to be, a Sarpanch or Panch of a Panchayat in the Punjab.

The facts leading to the filing of this writ petition lie in a very narrow compass. Nomination papers for election to the office of Sarpanch of the Gram Panchayat of Rurkee Mughlan were filed on January, 1 1964, by the petitioner as well as by Gurdial Singh and Darshan Singh, respondents 2 and 3. The petitioner's nomination

paper was rejected by the Returning Officer in scrutiny proceedings on the same date, on the ground that the petitioner was a tenant of the Gram Panchayat. This left Gurdial Singh and Darshan Singh, respondents, in the field. At the polling on January 2, 1964, Gurdial Singh was declared elected as he secured 499 votes as against Darshan Singh, for whom only 214 votes were cast. The petitioner questioned the result of the election in an election petition on various grounds including the allegation that his nomination paper had been illegally rejected by the Returning Officer. The election petition was contested by the returned candidate. The Illaqa Magistrate (hereinafter referred to as the Election Tribunal) framed as many as five issues, out of which we are concerned with issue No. 1 only, which is in the following terms:—

(1) Whether the nomination papers of the petitioner were improperly rejected on the ground of his being a tenant of the Gram Panchayat, Rurkee Mughlan ?

Evidence was led by both sides, after which the Election Tribunal dismissed the election petition by an order, dated August 16, 1965 (Annexure A). It is the above-said order of the Election Tribunal, which has been impugned in this writ petition filed on October 18, 1965, and admitted on October 20, 1965. Respondent No. 2 has filed a return to the rule (issued by this court) consisting of his own affidavit. He has generally denied the relevant allegations in the writ petition and has merely stated that "the petitioner was a tenant of the Gram Panchayat in dispute at the time of the filing of the nomination papers", and that, therefore, he was disqualified to contest the election.

Though in the writ-petition, the finding of the Election Tribunal on the second issue relating to some procedural defect in the election proceedings on account of shifting of the polling station from one village to the other was attacked, yet the said point was expressly given up at the hearing of the petition by the learned counsel for the petitioner. I think, the petitioner has been rightly advised to give up that point as he has no *locus standi* to impugn the poll proceedings in which the petitioner did not take any part.

It has, however, been vehemently urged by Mr. Kuldip Singh that, on the facts found by the Election Tribunal, the petitioner could

not in law be found to be a tenant within the meaning of the Act. In the petition it had been expressly claimed that the petitioner was not a tenant for two reasons. Firstly, it was urged that he was an owner of the land in question because of proprietary rights therein having been acquired by him be means of a Sanad, and, secondly, on the ground that even if it could be presumed that he was not the owner of the land and the land belonged to the Gram Panchayat and the petitioner was in occupation, thereof, this did not amount to constitute a tenancy between him and the Panchayat. At the hearing of the petition, the claim to ownership was rightly not pressed for the purpose of this case on account of the observation of the Election Tribunal in the impugned order to the following effect:—

> "At the time of arguments, the counsel for the petitioner did not challenge the ownership of the said *khasra* number by the Gram Panchayat. It was also not disputed by the petitioner that this *khasra number* is in his possession."

The Election Tribunal proceeded to decide the crucial question involved in the case by observing that the petitioner had pressed before him the argument that since he was not paying any rent to the Panchayat, he could not be said to be a tenant of the land in question. The Election Tribunal thought that the judgment of this court (Khanna, J.), in *Maman Singh* v. *The Resident Magistrate, Gohana and others* (1), was not relevant for deciding this matter and that the case fell within the four corners of the ratio of the unreported judgment by P. D. Sharma, J., dated April 19, 1965, in *Hakam Singh* v. *Mohar Singh and others*, Civil Writ, 866 of 1964 The Election Tribunal has nowhere recorded a clear finding to the effect that on the evidence produced before him, it was proved that the petitioner was, in fact, liable to pay any rent to the Panchayat. He has relied solely on the copy of the *khasra girdawari* produced before him, in which *khasra* No. 18/14 is recorded to be owned by the Panchayat, but is shown to be cultivated by Karnail Singh, petitioner, and others on account of "*allotment hai babat gair maurusian*". His finding on the material point in this respect, based on the said *khasra girdawari,* is recorded in the impugned order in the following words:—

> "Since the rent column being empty, we have, per force, to rely upon the cultivation column to determine as to in

(1) 1965 P.L.R. 161.

which capacity the petitioner is occupying the land. The cultivation column shows Karnail Singh, petitioner, along with others to be in cultivating possession of khasra No. 18/14 of Gram Panchayat in the capacity of tenant. Hence, this issue is also decided in favour of the respondents."

The argument of Mr. Kuldip Singh is that in order to disentitle a candidate to stand for election as a Sarpanch or Panch under the Act on account of the disqualifications referred to in clause (1) of sub-section (5) of section 6, thereof, it is necessary to give a finding to the effect that he is a 'tenant'. He then asserts that the word "tenant" not having been given any special definition in the Act, we have to fall back on the meaning of this expression as ascribed to it in sub-section (5) of section 4 of the Punjab Tenancy Act, 1887. Relevant part of the said definition is in the following terms:—

"(5) 'tenant' means a person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that other person; but it does not include—

* * * * * *."

The learned counsel contends that on the assumption on which the case was decided by the Election Tribunal, the petitioner could, at best, be found to be holding land belonging to the Gram Panchayat, but there is neither any evidence of any special contract nor any evidence of the petitioner having incurred any liability to pay rent of the land in question to the Panchayat. He has referred me to the judgment of a Division Bench of the Lahore High Court (Tek Chand and Agha Haidar, JJ) in *Ghulam Murtaza* v. *Nagina and other* (2) wherein it was observed regarding such entries in revenue papers as below:—

"It has also been found that the entries in the revenue papers, showing them as tenants-at-will had been made in accordance with the usual practice that every person in possession, whose title as owner has not been recognised by the revenue authorities, is shown as such."

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(2) A.I.R. 1930 Lah. 991.

Similarly, in *Sher and others* v. *Phuman Ram and others* (3), it was observed by Bhide, J., that no presumption of correctness can be attached to the entries in the revenue records showing the defendants as tenants-at-will under the plaintiffs, where the plaintiffs do not allege that the defendants are their tenants.

In the column of cultivation, the petitioners are not recorded as tenants as such but only as *"gair maurusian"* by virtue of allotment. According to the dictionary meaning, word *"maurusi"* means 'inherited, hereditary, partimonial or ancestral'; the meaning of *"maurus"* being 'to receive by inheritance'. The word *"gair"* means 'other, another', etc. The words *"gair maurusi"*, as such, are not given in the dictionary. Though, therefore, no part of the word of *"gair maurusian"* brings within its dictionary meaning any reference to tenancy, it is not disputed that, by practice; this expression has been used for tenants-at-will in all revenue records. That may indeed be so and I am deciding this case on the assumption that the relevant entry in the "cultivation" column of the *khasra girdawari*, records the petitioner as a "tenant-at-will by virtue of allotment". But in the light of the law laid down in the cases of *Ghulam Murtaza* and of *Sher and others* (supra), all that such an entry means is that the cultivator is neither an owner nor an occupancy tenant of the land in question.

In *Maman Singh's case*, not only was the person concerned described as being in occupation as a tenant, but it was recorded in the column of rent that he was in such occupation without payment of any rent on account of previous possession (*bila lagan bawaja kabza sabka*). On those facts, it was held by Khanna, J., that we have to look to the column of "rent" in the revenue papers because it is the entry in that column which goes to show as to whether the person is occupying the land as a tenant, and if so, on how much rent, or, whether he is occupying the land in any other capacity. The learned Judge found that since, in the case before him, the revenue papers themselves showed that no rent was being paid and that the occupation was without payment of rent because of previous possession, the person would not fall within the definition of "tenant" as the revenue entry in the "rent" column in the *jamabandi* militated against the conclusion that Maman Singh was

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(3) 1940 P.L.R. 497.

a tenant. On that basis, it was held that since Maman Singh was recorded as occupying the land without payment of rent and as there was nothing to show that the non-payment of the rent was because of any special contract, and, on the contrary, it was clear that the non-liability to pay rent was due to old possession of the land, Maman Singh did not fall within the definition of "tenant". Mr. Kuldip Singh contends that *Maman Singh's case* is on all fours with that of the petitioner, as the relevant column in the *khasra girdawari* being the "rent" column and the said column being admittedly, blank, the amount of rent payable by the petitioner to the Panchayat, if any, is deemed to be written in the revenue papers as "nil". Putting no figures in the relevant column or saying "nil" or putting the figure zero in that column, amounts to the same thing. It would, therefore, have to be inferred that so far as the revenue papers are concerned, they did not show that the petitioner was liable to pay any rent. A case may be different where the revenue entry in the "rent" column shows that rent is payable, but it has not been able to ascertain its quantum or rate. I think, it was in such a category that *Hakam Singh's case* decided by Sharma, J., fell. The judgment of Khanna, J., was brought to the notice of Sharma, J., but the learned Judge rightly held that the facts of the two cases were different as in *Hakam Singh's case* the relevant entry in the "rent" column was to the effect :—*"bawaja la ilmi"*

The meaning of that expression would be that the person, who made the entry, was not able to ascertain the rate of rent. This would, impliedly, mean that rent was definitely payable but the amount could not be ascertained. In the instant case, there is no such entry in the "rent" column. The said column had, admittedly, been left blank. Whether in a judgment of a Court it is said that the parties would bear their own costs, or there would be no order as to costs, or a judgment is completely silent as to the matter of costs the meaning is the same that there is no order as to costs. Applying the same analogy to the matter in dispute before me, I hold that whether it is written in the "rent" column that no rent is payable or it is written that zero rent is payable or the column is left blank, in all these cases it is meant that there is no entry relating to liability to pay rent in the revenue papers, in question, and in the absence of any evidence to show that rent was, in fact, payable, it has to be held that no rent was payable. I have not been able to appreciate, how the Election Tribunal interpreted the relevant blank

entry relating to liability to pay rent, as an entry meaning that there was definite liability to pay rent. This appears to me to be an error of law apparent on the face of the order of the Election Tribunal. Things would have been different if the Election Tribunal had believed any single witness or any other piece of evidence produced before it and held on the basis of such evidence that the petitioner was liable to pay rent to the Panchayat and was, therefore, a tenant within the meaning of that expression. In fact, the Election Tribunal has no where recorded any finding of fact about the liability of the petitioner to pay rent to the Panchayat. The Tribunal contented itself merely with the absence of any entry to the contrary in the "rent" column of the *khasra girdawari*. No one had appeared on behalf of the Panchayat to claim before the Election Tribunal that the petitioner was Panchayat's tenant. The petitioner had vehemently denied the suggestion. It is admitted that the entire land, of which the *khasra* number in dispute forms part, was allotted to the petitioner by the Rehabilitation authorities, that the said authorities had granted a Sanad for the same to the petitioner and that in consolidation proceedings, the *khasra* number in question, out of that land, fell to the lot of the Panchayat, but no agreement to pay rent was proved to have been entered into between the petitioner and the Panchayat. Nor has any law been shown to me by operation of which the petitioner might have automatically become liable to pay rent of the field in question to the Panchayat in these circumstances. There was, therefore, no evidence before the Election Tribunal on which it could hold that the petitioner was liable to pay rent to the Panchayat.

Though it is a matter of regret that the petitioner did not disclose in the writ petition that he had given up the case of claiming ownership to *khasra* No. 18/14 for the purposes of getting the issue in question decided before the Election Tribunal. I do not think, he has disentitled himself to relief in this case merely on that ground though the said consideration has certainly weighed with me in the matter of disallowing costs to him in spite of his success in this case. It is certainly not for this court in exercise of its writ jurisdiction to set aside a finding of fact of an Election Tribunal, howsoever glaring may be the errors of fact contained therein. But if the finding of the Election Tribunal on a question of fact is based on no legal evidence at all, as in this case, this court would never hesitate to quash the impugned order in a fit case in order to maintain the rule of law.

In the above circumstances, I hold that the finding of the Election Tribunal to the effect that the petitioner was a tenant of the Gram Panchayat, in the absence of any evidence to show that he was liable to pay rent, is not based on any legal evidence, and, therefore, vitiates the whole of the impugned order. This writ petition is, accordingly, allowed, and the impugned order of the Election Tribunal is set aside. The Election Tribunal will now re-decide the case in accordance with law on the basis of the evidence already on record with him, keeping in view the observations made in this judgment.

In the circumstances referred to above, there would be no order as to costs.

K.S.K.

REVISIONAL CIVIL

Before A. N. Grover, J.

M/s ISHAR DAS SAHNI AND BROTHERS,—*Petitioner.*

versus

UNION OF INDIA AND OTHERS,—*Respondents*

Civil Revision No. 535-D of 1966

September 1, 1966

Arbitration Act (X of 1940)—Ss. 8, 19 and 33—Arbitration agreement—Whether lapses because of the inactivity of the parties to get the arbitration proceedings completed—Appointed arbitrator dying or refusing to act—Agreement showing intention not to supply vacancy—Arbitration agreement—Whether can be declared to be ineffective.

Held, that mere delay in getting arbitration proceedings completed after the arbitration agreement is not sufficient to justify a finding that the arbitration agreement has ceased to be effective or has lapsed. Delay would certainly be a relevant factor and may even be an important circumstance for the purpose of arriving at that conclusion but mere inactivity or inaction of the