

Jiwan Singh and others v. Consolidation Officer, Sunam and another
 Mahajan, J.

opinion on the matter and would not, therefore, decide the second question, but leave it for decision in some appropriate proceedings.

The result, therefore, would be that this petition is allowed and a direction is issued to the consolidation authorities not to transfer possessions till the agricultural year next following the preparation of the record of rights in cases where there is no agreement between the owners and the tenants in the case of repartition.

The parties are left to bear their own costs.

Pandit, J.

PANDIT, J.—I agree with my learned brother that in cases where all the owners and tenants do not agree to enter into possession under Section 23(1) of the Act, possessions in the case of holdings allotted under repartition can only be transferred from the commencement of the agricultural year next following the preparation of the record-of-rights under Section 22(1) of the Act. This writ petition is consequently allowed.

K.S.K.

CIVIL MISCELLANEOUS

Before S. S. Dulat and Prem Chand Pandit, JJ.

SODAGAR SINGH,—*Petitioner.*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents.*

Civil Writ Application No. 1595 of 1960.

1962
 April 19th

Pepsu Panchayat Raj Act (VIII of 2008 Bk.)—S. 123—Order under—Whether should be passed after hearing the person concerned—Nature of such order—Whether administrative or quasi-judicial—Writ of certiorari—Whether can issue to quash such order.

Held, that there is nothing in section 123 or in any other connected provision of the Pepsu Panchayat Raj

Act, 2008 Bk., to indicate that there is any legal obligation cast on the Director to act in a judicial or quasi-judicial manner; nor is there any hint that the Director should before making his decision hear the person concerned. About the nature of the decision it is obvious that it is the Director who is required to be satisfied and his satisfaction concerns the undesirability of the person concerned to hold office in the interest of the public and there is nothing here to show that any enquiry in the presence of the person concerned is contemplated. The act of the Director is on the face of it an administrative act and it is difficult to import into his decision anything in the nature of a judicial or quasi-judicial function. His decision, therefore, cannot be disturbed by way of *certiorari* merely because he did not conform to some rule of natural justice.

Case referred by Hon'ble Mr. Justice Inder Dev Dua, on 18th August, 1961 to a larger Bench for decision owing to the importance of legal questions involved in the case. The case was finally decided by a Division Bench consisting of Hon'ble Mr. Justice S. S. Dulat and Hon'ble Mr. Justice P. C. Pandit, on 19th April, 1962.

Petition under Articles 226/227 of the Constitution of India praying that an appropriate writ, Order or direction be issued quashing the order of the Respondent No. 2, No. G-4-60/68520-34, dated the 5th August, 1961.

HARBHAGWAN KHUNGAR, ADVOCATE, for the Petitioner.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL, for the Respondents.

ORDR

DULAT, J.—The petitioner before us was the Sarpanch of the Nagar Panchayat of Sahal in the Patiala District. On 5th of August, 1960 he was ordered to be removed from that office by the Director of Panchayats acting under section 123 of the Pepsu Panchayat Raj Act, 2008 Bk. and the Director further ordered under sub-section (2) of section 123 that the petitioner will be disqualified for re-election for a period of three years.

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The petitioner therefore filed a petition under Article 226 of the Constitution, but by the time it came up for hearing the whole period of time for which he has been elected Sarpanch, had expired and the matter of his removal thus, is no longer of consequence. The only matter urged in the case therefore, concerns the disqualification for three years.

The main contention in support of the petition, which seeks the quashing of the Director's order disqualifying the petitioner for three years, is that before such action could be taken it was incumbent on the Director to afford the petitioner an opportunity of showing cause against the proposed action. The argument is that the power vested in the Director under sub-section (2) of section 123 of the Act is, in nature, judicial or quasi-judicial and the Director must, therefore, act in accordance with the rules of natural justice and afford an opportunity to the person affected by the order to be heard. It is admitted that the language of section 123 does not require, the officer of the Panchayat concerned to be heard. The order in the present case was made as the Director of Panchayats was satisfied that the petitioner's continuance in office 'was undesirable in the interest of the public' and sub-section (1) of section 123 of the Act expressly provides that on such satisfaction the Director can order his removal, and sub-section (2) then provides that the Director may disqualify such person for re-election for a period not exceeding five years. There is nothing in this provision, nor anything in any other connected provision of the Act to indicate that there is any legal obligation cast on the Director to act in a judicial or quasi-judicial manner; nor is there any hint that the Director should before making his decision hear the person concerned. About the nature of the decision it is obvious that it is the Director who is required to be satisfied and his satisfaction concerns the undesirability of the person concerned to hold office in the interest of the public and there is nothing here to show that any enquiry in

the presence of the person concerned is contemplated. The act of the Director is on the face of it an administrative act and it is difficult to import into his decision anything in the nature of a judicial or *quasi-judicial* function. There is in the Punjab Municipal Act a very similar provision contained in section 14 of that Act which authorises the State Government to require any member of municipal committee, to vacate his seat on the ground of public interest. This Court had occasion to consider the nature of the power exercisable by the State Government under section 14 of the Punjab Municipal Act in a recent case, *Ram Dayal v. The State of Punjab*, Civil Writ No. 1194 of 1961, decided on the 16th of March, 1962 and the Division Bench of which I was a member came to the conclusion that the State Government, when taking a decision under section 14 of the Punjab Municipal Act, does not perform any judicial or *quasi-judicial* function, but merely performs an administrative act and no writ of certiorari lies against such an act or decision. We followed a previous decision of this Court in *Harnam Singh Modi v. The State* (1), where also this Court had held that action taken under section 14 of the Punjab Municipal Act was administrative. We also found support for our view in a decision of the Supreme Court in *Radheshyam Khara and another v. The State of Madhya Pradesh and others* (2). Nothing has been said in the present case to cast any doubt on our decision in *Ram Dayal v. The State of Punjab*, and if it be that when the State Government acting under the Punjab Municipal Act removes a municipal commissioner from his office in public interest, the decision is merely administrative and not judicial or *quasi-judicial*, it seems to follow that when the Director of Panchayats in similar circumstances and acting in the interest of the public removes an officer of a Panchayat and disqualifies him for future office for a stated period, he merely performs an administrative function and there is, therefore, no obligation on the Director to

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(1) 1958 P.L.R. 394.

(2) A.I.R., 1959 S.C. 107.

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act in a judicial or *quasi-judicial* manner. His decision, therefore, cannot be disturbed by way of *certiorari*. It is, in the circumstances, not possible for this Court to disturb the decision made by the Director merely because he did not conform to some rule of natural justice. No other question is being raise in the case. The petition must, therefore, fail and I would dismiss it but, in the circumstances, make no order as to costs.

Pandit, J.

PREM CHAND PANDIT, J.—I agree.

B.R.T.

APPELLATE CIVIL

Before Shamsher Bahadur, J.

BISAKHA SINGH AND OTHERS,—Appellants.

versus

UNION OF INDIA AND ANOTHER,—Respondents.

Regular Second Appeal No. 656 of 1960.

1962
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April 19th

Evacuee Interest (Separation) Act, (LXIV of 1951)—Ss. 2(d) and 9—Administration of Evacuee Property Act (XXX of 1950)—S. 8—Competent Officer—Whether can extinguish the mortgage of composite property after the expiry of sixty years from the date of mortgage where the Act LXIV of 1951 came into force within that statutory period.

Held, that the Competent Officer has the power to order extinguishment of mortgage of composite property under section 9 of the Evacuee Interest (Seperation) Act, 1951, in a case where the said Act had come into force before the expiry of sixty years from the date of mortgage. If, however, the statutory period of sixty years had expired before the commencement of the said Act, the matter would have been different.

Regular second appeal from the decree of the Court of Shri Pritam Singh Pattar, Senior Sub-Judge, with enhanced appellate powers, Ambala, dated the 22nd day of