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be stretching the language to say that it is the right of travel, even though not exercised, that makes it a street. Again, if a distinction has to be drawn between a street and a private passage it may be that the former is intended for use by the public while the latter is intended for the exclusive use and benefit of particular persons. No doubt, some authorities do say that if there is a succession of houses and buildings, at least on one side of it, with some degree of continuity and proximity it may be a street in the popular sense but the meaning has to be resolved by construction and in my opinion the Legislature has chosen the test of accessibility to the public as one of the principle deciding factors and, I, therefore, choose to adhere to it.

Having regard to the finding of fact in this case that only two owners of the property who were joint but later separated had their buildings on this passage and that no member of the public had any access or right to enter upon the street, the learned Additional Senior Subordinate Judge was right in holding that it was a private property and could not be termed as "street" within the meaning of section 3(13) of the Municipal Act. In this view no other question arises with the result that the appeal must fail and is dismissed with costs.

B.R.T.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur, J.

RAJ KUMAR AND OTHERS,—*Petitioners*

versus

THE STATE OF PUNAJB AND OTHERS,—*Respondents*

Civil Writ No. 2553 of 1964.

Punjab Municipal Act (III of 1911)—S. 24—Oath of allegiance not taken by an elected member of a municipal committee within statutory period because no meeting was held for the purpose—Whether makes his membership invalid—Words and Phrases—"Omit" and "refuse"—Meaning of.

Held, that the oath of allegiance as mentioned in sub-section (2) of section 24 of the Punjab Municipal Act is relatable to the requirement of sub-section (1) which says that an oath of allegiance has to be taken at a meeting before a member can enter upon his duties after his election. There must, therefore, be a meeting before the question of omission or refusal to take the oath can arise. A person may conceivably omit deliberately to take the oath at a meeting, as when he may be absent unavoidably on account of illness or business and such an omission like a refusal would entail the penalty of the election being deemed to be invalid. But when no meeting is convened for the purpose, a member cannot be said to have omitted to take the oath of allegiance. His membership, therefore, does not become invalid.

Held, that the juxtaposition of the words "omits" and "refuses" in sub-section (2) of section 24 of the Act, indicates strongly the essential element of volition and excludes an omission which is not an act or failure on the part of the person himself.

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 directing respondents Nos. 1 to 3 to order fresh election to the Municipal Committee, Ludhiana as provided by clause 3 of section 24 of the Act.

RAJINDER SACHAR, ADVOCATE, for the Petitioners.

A. C. HOSHIARPURI, ADVOCATE, for the ADVOCATE-GENERAL AND SRI CHAND GOYAL, ADVOCATE, for the Respondents.

ORDER

SHAMSHER BAHADUR, J.—This is a petition of 17 persons who claims to be voters of the Ludhiana Municipality to challenge the continuance of respondents 4 to 48 as members of the Municipal Committee, Ludhiana, to which they were notified to have been elected on 1st of July, 1964.

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Though there are other reasons for the challenge, as stated in the petition, the only ground which has been urged by Mr. Sachar, the learned counsel for the petitioners, is that the forty respondents who were elected to the Municipal Committee, Ludhiana, not having taken the oath within the statutory period prescribed in section 24 of the Punjab Municipal Act

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(hereinafter referred to as the Act) their election consequently should "be deemed to be invalid" under subsection (2) of section 24 of the Act. In order to appreciate the argument of Mr. Sachar, the provisions of section 24 may be briefly set out:—

"24(1). Every election or appointment of a member or president of a committee shall be notified . . . and no member shall enter upon his duties until his election or appointment has been so notified and until, notwithstanding anything contained in the Indian Oaths Act, 1873, he has taken or made, at a meeting of the committee, an oath or affirmation of his allegiance to India, in the following form, namely—

* * *

(2) If any such person omits or refuses to take or make the oath or affirmation as required by subsection (1) within three months of the date of the notification, his election or appointment, as the case may be, shall be deemed to be invalid unless the State Government for any reason which it may consider sufficient extend the period within which such oath or affirmation may be taken or made."

It may also be observed that rule 5 of the Municipal Election Rules, 1952, says that:—

"5(1). The Deputy Commissioner or any gazetted officer appointed by him in this behalf shall, as soon as possible after the notification of the appointment and election of the members of such Committee, fix . . . a date for the first meeting of a newly-constituted committee, stating in such notice that at such meeting the oath of allegiance will be administered to the members present, and that the President and Vice-Presidents or Vice-President will be elected, the afore-mentioned officer presiding over such meeting until after the election of the President and Vice-President; . . . and the administration of the oath of allegiance and the election.

of the President and Vice-Presidents shall be recorded as part of the proceedings in the minutes of the meeting."

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It seems obvious that a person who has been elected member of a Municipal Committee cannot enter upon his duties till an oath of allegiance has been taken in a meeting which is to be convened for this purpose by the Deputy Commissioner or his nominee. It is to be emphasised that the oath has to be taken at a meeting and not at any place which may be chosen by an elected member. The meeting was convened for 30th of November, 1964, when the oath of office was duly administered to respondents 4 to 43. It is contended by Mr. Sachar that the oath should have been taken on or before the 1st of October, 1964, within three months from 1st of July, 1964, when the notification was made. For reasons which it is not necessary to elucidate the first meeting could not be convened by the Deputy Commissioner before the 30th of November, 1964. It may be of interest to note that the respondents who had been elected kept striving to have the meeting for administration of the oath convened at the earliest possible time, but as a result of some stay orders the meeting could not be convened before 30th of November, 1964.

The question which arises for determination is whether the language of sub-section (2) of section 24 of the Act justifies a declaration from this Court that the election of respondents 4 to 43 "shall be deemed to be invalid"? It is an essential pre-requisite that a person so elected should omit or refuse to take the oath of allegiance within three months from the date of the notification before his election can be deemed to be invalid. concededly, the respondents have never refused to take the oath. Mr. Sachar submits that while there is an element of volition in the act of refusal, an omission, on the other hand, includes a mere failure or non-compliance with the requirement of taking the oath within three months from 1st of July, 1964. It is to be noticed that the oath of allegiance as required by sub-section (1) of section 24 should have been refused or omitted by the person who is to be punished by the deeming clause. The oath of allegiance in sub-section (2) is relatable to the requirement of sub-section (1) which says that an oath of allegiance has to be taken at a meeting before a member can enter upon his duties after his

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election. There must, therefore, be a meeting before the question of omission or refusal to take oath can arise. A person may conceivably omit deliberately to take the oath at a meeting, as when he may be absent unavoidably on account of illness or business and such an omission like a refusal would entail the penalty of the election being deemed to be invalid. The juxtaposition of the words 'omit' and 'refuses' indicates strongly, in my opinion the essential element of volition and excludes an omission which is not an act or failure on the part of the person himself. Such a construction of the word 'omits' which appears to be reasonable on first principles also finds support from the dictionary meaning of word 'omission'. In Shorter Oxford English Dictionary, the word 'omission' is defined as 'non-performance or neglect of action or duty' or 'the action of omitting'. Now, in both these concepts of the word, some conscious act is necessarily implied. Omission or refusal has to be by a person and unless it is condoned by the Government, the deeming clause would operate. There is no occasion for the State to condone an act of omission where the person has not been given a chance to take the oath. When no meeting was convened, how could a person be said to have omitted to take the oath of allegiance in it. The construction which is sought to be placed on the word 'omission' by Mr. Sachar is opposed to the plain meaning of the word given in the dictionary, as also in its connotation and context.

Mr. Sachar has sought reinforcement for his argument by some English decisions where the Courts tried to save the infant defaulters from the penalty of forfeiture by making a distinction between 'omission' and 'neglect'. Those decisions were made in the peculiar circumstances and cannot be called in aid to support the proposition contended for by Mr. Sachar. *In re Quintin Dick* (1), Romer, J., held that the expression 'refuse or neglect' is not equivalent to 'fail' or 'omit' as it implies a conscious act of volition. It is sought to be deduced therefrom that the word 'omission' like 'failure' does not imply a conscious act of volition and the legislature having coupled it with 'refusal' in sub-section (2) of section 24, the result must necessarily follow in the election being declared invalid even where a person, as in the present instance, is not responsible for the failure to take the oath within the

(1) [1926] 1 Ch. 992.

statutory period of three months from the date of notification. In the other authority relied upon by Mr. Sachar *In re Hughes* (2), Simonds, J., (as Lord Simonds then was) appears to have made a distinction between an omission *per se* and a conscious omission. Simonds J., though he followed the authority of Romer, J., in *In re Quintin Dick* said at page 299 thus:—

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“I am, therefore, entitled to hold, in accordance with what would have been my own unguided opinion and consistently, as I think, with the judgment of Romer, J., *In re Quintin Dick*, that in the present case ‘neglect’ does not cover every case of failure but only that case where the person, acting consciously, omits to do that which he ought to do as a condition of receiving the testator’s bounty.”

‘Neglect’, in other words, was held at par with a conscious omission and an element of volition in both cases is, therefore, implied. In his very careful choice of words, Simonds, J., has not taken into account a mere act of omission without an element of consciousness or volition. More to the point is another English decision of the Common Pleas Division, *The London and South Western Railway Company v. Flower and others* (3), in which the unanimous view of the three Judges was, in the words of Brett, J., that an omission to fasten liability must mean that the default occurred without the knowledge of the person concerned. Denman, J., observed thus:—

“I am of the same opinion. The word ‘omission’ in the 14th section is not, in my judgment, applicable to even the plaintiffs’ view of the facts, for no one can be said to omit to do a thing when he is without reasonable means of ascertaining the circumstances making it proper to do the thing.”

The third member of the Bench, Lindley, J., introduced the element of ‘unawareness’ in the default while construing the act of ‘omission’.

I am of the view that ‘omission’ mentioned in subsection (2) of section 24 envisages the prior meeting of the

(2) [1943] I Ch. 296.

(3) [1876] 45 Law Journal Reports Page 54.

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committee where oath was to be taken and that essential requirement not having been fulfilled, the question of the election being declared invalid could hardly arise. The petition, in my view, being wholly misconceived is dismissed with costs.

K.S.K.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur, J.

DIWAN SINGH,—*Petitioner*

versus

THE UNION OF INDIA AND OTHERS,—*Respondents*

Civil Writ No. 1447 of 1962.

Displaced Persons (Compensation and Rehabilitation) Rules (1955)—Rule 65—Compensation in lieu of rural properties of less than Rs 10,000—Whether admissible to a claimant whose allotment of agricultural land has been cancelled.

Held, that under Rule 65 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, a displaced person, who has been allotted land of four acres or less, is not entitled to any compensation for rural properties of less than Rs 10,000 left in Pakistan. But if his allotment of land has been cancelled, he will be entitled to receive compensation in lieu of his claim for rural properties even if their value is less than Rs 10,000.

Petition under Article 226 of the Constitution of India, praying that an appropriate writ, order or direction be issued quashing the orders of the respondents and directing them to proceed according to law and transfer the Industrial Establishment No. 26, Ludhiana to the petitioner against its reserve price as a lawful occupant thereof towards the satisfaction of his claim application bearing registration No. P/Ludhiana/5307.

H. S. WASU AND L. S. WASU, ADVOCATES, for the Petitioner.

J. N. KAUSHAL, ADVOCATE-GENERAL AND M. R. AGNIHOTRI.,
ADVOCATE, for the Respondents.

ORDER

SHAMSHER BAHADUR, J.—What is sought to be challenged in this petition under Article 226 of the Constitution of India is the order of the Settlement Commissioner cancelling the claim of Diwan Singh for allotment of rural land under rule 65 of the Displaced Persons (Compensation and Rehabilitation) Rules, on the ground that he had already been allotted agricultural land as compensation.

As stated in the petition, the petitioner Diwan Singh is a displaced person and got a verified claim of Rs. 7,036

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