

limitation and then dispose of the appeal in accordance with law. In the circumstances, there will be no order as to costs.

B.R.T.

CIVIL MISCELLANEOUS

*Before Prem Chand Pandit, J.*

MUNICIPAL COMMITTEE, JAGADHRI,—*Petitioner*

*versus*

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

Civil Writ No. 2929 of 1965.

March 11, 1966.

*Punjab Town Improvement Act (IV of 1922)—Ss. 4 and 7—Trustees elected by the Municipal Committee—Tenure of—Whether expires with the term of the members of the Municipal Committee.*

*Held*, that the term of office of the trustees elected by the Municipal Committee is three years. The term of office of the members of the Municipal Committee is also three years and it is for this reason that the tenure of the trustees is fixed at three years. It means that whenever after the expiry of three years, a new Committee is constituted, the old members of the said Committee cease to be its members. Likewise, the tenure of the old trustees elected by the Municipal Committee comes to an end and their place has to be taken by the new members elected by the newly constituted committee. In the instant case, respondents 2 and 3 and Shri Chaman Lal were the trustees appointed by the State Government under the provisions of section 4 of the Town Improvement Act on 17th March, 1964. These persons were the members of the old Municipal Committee, which was constituted prior to 1947. Fresh elections to this Committee were held in May, 1964 and the newly elected members took their oath of office on 29th July, 1964. On this date, the old members of the Committee ceased to exist. Respondents Nos. 2 and 3 and Shri Chaman Lal, therefore, ceased to be trustees on this date. The Committee was, therefore, competent and entitled to elect three members as trustees.

*Petition under Articles 226 and 227 of the Constitution of India, praying that a writ of mandamus, certiorari, or any other appropriate writ, order or direction be issued quashing the Notification, dated 23rd June, 1965, issued by respondent No. 1 appointing respondent No. 4, as a trustee of Jagadhri Improvement Trust, Jagadhri and commanding respondent No. 1 to allow the petitioner to elect 3*

Municipal Committee, Jagadhri v. The State of Punjab, etc. (Pandit, J.)

*members of the Municipal Committee, Jagadhri, as trustees of Jagadhi Improvement Trust, under section 4(1)(b) and section 4(3) of the Punjab Town Improvement Act, 1922.*

H. L. SARIN, C. L. LAKHANPAL FOR HARBHAGWAN SINGH, MISS ASHA KOHLI AND BALRAJ BAHL, ADVOCATES, for the Petitioner.

L. D. KAUSHAL, SENIOR DEPUTY ADVOCATE-GENERAL, J. L. SETHI AND B. R. AGGARWAL, ADVOCATES, for the Respondents.

#### ORDER

PANDIT, J.—On 17th March, 1964, by virtue of the powers given to it under section 4(4) read with section 7(2) of the Punjab Town Improvement Act, 4 of 1922 (hereinafter called the Town Improvement Act), the Punjab Government appointed three members of the Municipal Committee, Jagadhri (district Ambala), namely, Sarvshri Ram Nath and Karam Singh, respondents 2 and 3, and Shri Chaman Lal, as the Trustees of the Jagadhri Improvement Trust, respondent No. 6, with effect from 16th March, 1964. These persons, admittedly, were the nominated members of this Committee, which had been constituted prior to 1947. At that time, there were only 8 members of the said Committee. Fresh elections to this Municipal Committee took place on 24th May, 1964, when the strength of the Committee was raised to 17 members. Sarvshri Ram Nath and Karam Singh were re-elected, but Shri Chaman Lal was not successful in the election. This election was notified on 12th June, 1964. On 29th July, 1964, all the 17 members took the oath of allegiance under section 24 of the Punjab Municipal Act No. 3 of 1911 (hereinafter called the Municipal Act). On 28th August, 1964, the Punjab Government addressed a letter to the Deputy Commissioner, Ambala, to ask the Municipal Committee, Jagadhri, to elect a new member of the Trust in place of Shri Chaman Lal, who had ceased to be one, because he was not re-elected. This had to be done within two months in the manner prescribed under section 4(3) of the Town Improvement Act. On 29th September, 1964, Dr. Om Parkash, the President of the Municipal Committee, respondent No. 5, wrote a letter to the Secretary to Government, Punjab, Local Government Department, Chandigarh, stating that the Government had taken a wrong position of the law in asking the Committee to elect only one person. As a matter of fact they were entitled to elect three members of the Committee for being appointed the Trustees of respondent No. 6. It was also mentioned in this letter that he was moving the Municipal Committee

to elect three members instead of one to serve as Trustees. It was requested that the legal position taken by him in the said letter might be confirmed at an early date. This letter was replied by the said Secretary on 29th December, 1964, saying that the Government did not agree with the legal position taken by respondent No. 5. In the meantime, however, on 18th October, 1964, six newly elected members of the Committee made a requisition to respondent No. 5 under section 25(2) of the Municipal Act for convening a meeting on 24th October, 1964, at 4.00 p.m. in the Town Hall, Jagadhri, for electing three trustees of respondent No. 6. It is common ground that due to certain differences with respondent No. 5 no meeting could be held on the said date. However, on 25th October, 1964, nine members of the Committee held a meeting at 11.00 a.m. in the house of Shri Jai Parkash and passed a resolution electing Shri Lekh Raj Gulati as a Trustee. Another resolution was also passed in which two others, namely, Sarvshri Ram Nath and Ganga Ram, were also elected the Trustees. On 27th October, 1964, an intimation was sent to the Government about these two resolutions by the said 9 members of the Committee. In December, 1964, the Government wrote to the Deputy Commissioner, Ambala, saying that they did not recognise the election of Shri Lekh Raj Gulati, as valid as the meeting in which he was elected was not properly constituted. The Deputy Commissioner was further asked to recommend a panel of persons from amongst whom the appointment of the Trustee in terms of section 4(4) of the Town Improvement Act could be made by the Government. It appears that no reply was given to the other resolution passed by the nine members by which Sarvshri Ram Nath and Ganga Ram also had been elected. The said panel was submitted and on 23rd June, 1965, the Government appointed Shri Charan Dass, respondent No. 4, as a Trustee under section 4(4) read with section 7(2) of the Town Improvement Act. This led to the filing of the present writ petition under Articles 226 and 227 of the Constitution by the Municipal Committee, Jagadhri, through Shri Brij Haritash, its Executive Officer, on 29th November, 1965. Two prayers have been made in this writ petition (1) that the notification, dated 23rd June, 1965, by which respondent No. 4 was appointed a Trustee should be quashed and (2) that a writ of *mandamus* be issued to the State of Punjab, respondent No. 1, ordering it to permit the petitioner-Committee to elect from amongst its members three members as Trustees of respondent No. 6 under section 4(3) of the Town Improvement Act, in place of respondents 2 to 4 who had no legal right to hold the office of Trustees and who could not be permitted to function as such.

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After hearing the counsel for the parties, I am of the opinion that this writ petition must be accepted. According to section 4 of the Town Improvement Act, the Trust shall consist of seven trustees, namely, (a) a Chairman, (b) three members of the Municipal Committee and (c) three other persons. The Chairman and three persons referred to in clause (c) have to be appointed by the State Government. The members of the Municipal Committee mentioned in clause (b) have to be elected by the Committee. Under sub-section (4), if the Municipal Committee does not elect the persons by the date fixed by the State Government in this behalf, the State Government is authorised to appoint trustees. Under section 6 of this very Act, the term of office of every trustee elected by the Municipal Committee is three years or until he ceases to be a member of the Municipal Committee, whichever period is less. Under section 13 of the Municipal Act, the term of office of the elected members has to be fixed by the State Government by rules made under the Act, but it shall not exceed three years. By virtue of Rule 5 of the Municipal Election Rules, 1952, the term of office of a member of a Committee has to be three years from the date he takes his seat or until the date of the meeting appointed under the provisions of Rule 5 for the administration of oath of allegiance to members of a newly constituted Committee, whichever period is less. From the above provisions, it is quite clear that the term of office of the trustees elected by the Municipal Committee is three years. The term of office of the members of the Municipal Committee also is three years and it is for this reason that the tenure of the trustees is fixed at three years. It means that whenever after the expiry of three years, a new Committee is constituted, the old members of the said Committee cease to be its members. Likewise, the tenure of the old trustees elected by the Municipal Committee comes to an end and their place has to be taken by the new members elected by the newly constituted committee. In the instant case, respondents 2 and 3 and Shri Chaman Lal were the trustees appointed by the State Government under the provisions of section 4 of the Town Improvement Act on 17th March, 1964. These persons were the members of the old Municipal Committee, which was constituted prior to 1947. Fresh elections to this Committee were held in May, 1964 and the newly elected members took their oath of office on 29th July, 1964. On this date, the old members of the Committee ceased to exist. Respondents Nos. 2 and 3 and Shri Chaman Lal, therefore, ceased to be trustees on this date. The Committee was, therefore, competent and entitled to elect three members as trustees. The Government, on the other hand, asked

them to elect only one person by a particular date. Since the Committee did not do so as desired by the Government by the appointed date, it appointed respondent No. 4 by notification, dated 23rd June, 1965, acting under section 4(4) of the Act. The Committee was rightly insisting that it had a right to elect three persons and not only one as trustees. The Government had taken a wrong view of the law. It was, therefore, not justified in taking action under section 4(4) of the Town Improvement Act on the failure of the Municipal Committee to elect one person by the date fixed. The election of respondent No. 4, therefore, is also, in my opinion, not valid. The notification, dated 23rd June, 1965, consequently, deserves to be quashed.

The result is that the writ petition succeeds, the impugned notification, dated 23rd June, 1965, is quashed and a writ of *mandamus* is issued to the State of Punjab, respondent No. 1, directing them to permit the petitioner-Committee to elect three members as trustees of respondent No. 6 under section 4(3) of the Town Improvement Act in place of respondents 2 to 4 who have no legal right to hold the office of trustees. There will, however, be no order as to costs.

*B.R.T.*

CIVIL MISCELLANEOUS

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

SURINDER SINGH AND ANOTHER,—Petitioners

*versus*

THE STATE OF PUNJAB, AND OTHERS,—Respondents

Civil Writ No. 1636 of 1963.

March 14, 1966.

*Ex parte order—Power to set aside—Whether inheres in every judicial or a quasi-judicial Tribunal—Maxim actus curiae naminem gravabi—Mistake of Court—Whether can be rectified—Pepsu Tenancy and Agricultural Lands Act (XIII of 1955)—S. 32-P—Pepsu Lands Commission constituted under—Whether has inherent powers to set aside ex parte order in suitable cases.*

*Held*, that the power to set aside an *ex parte* order made to the prejudice of a party by a judicial or a quasi-judicial Tribunal without hearing him cannot be