

These assertions leave no room for doubt that the register was produced in Court on the 29th of October, 1969, and that the learned Subordinate Judge suspected its genuineness on wrong premises.

As it is, there is another very good reason for not suspecting the genuineness of the register. All the entries in it, which are 23 in number, appear on a single page and three of them, at serial Nos. 4, 15 and 20, are admitted along with the signatures of the Corporation's Inspector against them. All the other entries are said to bear the signatures of the Corporation's agents. Now if entry No. 20 is genuine, which is not disputed, there would normally be no reason to doubt the correctness of entries Nos. 1 to 19 especially when two of them are also admitted. Entry No. 21 relates to 204 bags and entry No. 23 to 1000 bags while entry No. 22 covers 3 bales of new bags, about which there is no dispute between the parties. The entries subsequent to the last admitted entry, therefore, cover 1204 once-used bags in all while the disputed number of bags is more than 10,000. By these observations I do not at all mean to restrict in any way the freedom of the learned trial Judge to assess the worth of the entries in the register if and when the same are properly proved, but these factors should have weighed with him in exercising his discretion in favour of the firm even if he thought that the firm was not entitled to produce in evidence without the leave of the Court.

10. For the reasons stated, I accept the petition set aside the impugned order and direct that the firm shall be allowed to produce the register and given a proper opportunity by the trial Court to prove its contents. The parties are directed to appear before it on the 22nd of May, 1970 and in the circumstances of the case, are left to bear their own costs.

K. S. K.

APPELLATE CIVIL

Before Mehar Singh, C.J. and B. R. Tuli, J.

AMAR NATH GAUTAM,—Appellant.

versus

STATE etc.,—Respondents.

L.P.A. 331 of 1966.

April 29, 1970.

The Punjab Panchayat Samitis and Zila Parishads Act (III of 1961)—Sections 6(i) and 15—Member of a Panchayat Samiti incurring disqualification under section 6(i) on conviction for an offence—Such conviction—

Amar Nath Gautam v. State, etc. (Tuli, J.)

Whether to be after entering the office—Period of sentence of one year—Whether relates to the period of sentence undergone.

Held, that section 15 of the Punjab Panchayat Samitis and Zila Parishads Act, 1961, does not mean that the member should have been convicted after entering upon his office but it means that if within five years of the date of nomination, he had been sentenced to a period of imprisonment exceeding one year and he served any part of that sentence during the period of those five years, he would be deemed to have become subject to the disqualification specified in section 6(i) of the Act and vacates his office under section 15. The period of one year relates to the period of sentence and not to the period of sentence undergone during the period of five years. (Para 5)

Letters Patent Appeal under Clause 10 of the Letters Patent of the Punjab High Court against the judgment of the Hon'ble Mr. Justice Prem Chand Pandit, dated 3rd May, 1966 passed in Civil Writ No. 661 of 1965.

N. K. SODHI, ADVOCATE, for the appellant.

NEMO, for the respondents.

JUDGMENT

B. R. TULI, J.—(1) The appellant was elected as a Primary Member of the Panchayat Samiti, Mukandpur, in 1961. On December 9, 1963, he was convicted under sections 109/466 and 120-B of the Indian Penal Code and sentenced to imprisonment for three years by the Assistant Sessions Judge, Delhi. Against his conviction and sentence the appellant filed an appeal in the Circuit Bench of the Punjab High Court at Delhi along with a bail application. His bail application was accepted and he was released on bail on December 11, 1963, after he had been in jail for three days. The second elections for Primary Members of the same Block Samiti were held in 1964. On June 16, 1964, he filed his nomination papers without any objection being raised by anybody. He was declared elected on June 22, 1964, as a representative of the Co-operative Societies within the area of the Panchayat Samiti. His election was duly gazetted on July 2, 1964. He then attended a meeting of the Primary Members convened by respondent 2, on February 3, 1965, for the purpose of co-opting members as provided in section 5 of the Punjab Panchayat Samitis and Zila Parishads Act, 1961 (hereinafter called the Act). In the meantime, on July 14, 1964, the defeated candidate filed an election petition challenging the appellant's election and the same was pending before the prescribed authority, respondent 2, on the date the writ

petition was heard by the learned Single Judge. The learned counsel for the appellant does not know the result of that election petition nor does he know the result of the criminal appeal filed by the appellant in the Delhi High Court.

(2) On February 16, 1965, the election for the offices of the Chairman, Vice-Chairman and Members of Zila Parishad was to take place for which a meeting was called by the Deputy Commissioner which was to be presided over by Shri Teja Singh, P.C.S., Settlement Officer, Jullundur. The appellant was also a candidate for election as Member of the Zila Parishad, but on the day of election he was not allowed to take part in the proceedings on the ground that he had vacated office under section 15 of the Act on account of his conviction and sentence of three years. The appellant stated in his petition that he had some differences with the Minister-in-charge, Community Development, and this order was brought about by the said Minister. In the return it has been denied that the Minister or his partymen had any differences with the appellant or wanted to prevent his election to the Zila Parishad. It has been explained that the Minister received a representation from one Shri Hussan Chand, dated February 11, 1965, on the basis of which he telephoned to the Deputy Secretary, Development, that action should be taken against the appellant in accordance with law in view of his conviction and sentence of three years. In spite of that order the appellant contested the election for membership to the Zila Parishad and also exercised his vote in the election of Chairman and Vice-Chairman. Since the petitioner was not allowed to act as a member of the Panchayat Samiti, he filed the writ petition in this Court which was dismissed on May 3, 1966, by the learned Single Judge and the present appeal under clause 10 of the Letters Patent is directed against that judgment.

(3) Two submissions have been made by the learned counsel for the appellant namely,—

- (i) that section 15 of the Act comes into operation only if a Member of Panchayat Samiti, after and not before, entering upon his office becomes subject to any of the disqualifications specified in section 6; and
- (ii) that in any case the appellant had not become subject to any of the disqualifications specified in section 6 of the Act inasmuch as, though convicted, he had not been serving a

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sentence of imprisonment for an offence involving moral turpitude for not less than one year within five years from the date of his nomination.

(4) We find no force in these submissions of the learned counsel. For the decision of both these submissions, reference has necessarily to be made to section 6(i) and section 15 of the Act which read as under :—

“S. 6. No person shall be eligible for election as a Primary Member if such person

(i) has, at any time within five years from the date specified for the nomination of candidates, been serving a sentence of imprisonment for an offence involving moral turpitude for not less than one year; or

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S. 15. The Chairman, Vice-Chairman or a Member of a Panchayat Samiti after entering upon his office, shall forthwith cease to be the chairman, Vice-Chairman or the Member, as the case may be, and his office shall become vacant if—

(a) he becomes subject to any of the disqualifications specified in section 6; or

* * * * *

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(5) Whether a member of a Panchayat Samiti has vacated his seat after entering upon his office, reference has to be made to section 6(i) of the Act in this case. In our opinion, section 15 does not mean that the appellant should have been convicted after entering upon his office but it means that if within five years of the date of nomination, he had been convicted of an offence involving moral turpitude and had been sentenced to a period of imprisonment exceeding one year and he served any part of that sentence during the period of those five years, he would be deemed to have become subject to the disqualification specified in section 6(i) of the Act. As the facts stated above show, the appellant had been convicted within five years of the date of nomination and he had been convicted of an offence involving moral turpitude for which he was awarded a sentence of more

than one year. It is not necessary that he should have served a period of one year of sentence during the course of those five years. In our view the period of one year relates to the period of sentence and not to the period of sentence undergone during the period of five years. It is thus clear that the learned Single Judge came to a correct conclusion on both the contentions raised before him and reiterated before us. The answer to the second contention depends on the interpretation of section 6(i) of the Act which interpretation I have set out above and in view of that interpretation there is no force in the second submission of the learned counsel as well. The appellant was not eligible for being nominated for election as a member of the Panchayat Samiti in June, 1964, and having been elected, his seat became vacated under section 15 because of the disqualification incurred by him under section 6(i) of the Act.

(6) For the reasons given above, there is no merit in this appeal which is dismissed, but without any order as to costs.

MEHAR SINGH, C.J.—I agree.

N. K. S.

APPELLATE CIVIL

Before A. D. Koshal, J.

TIKAN,—Appellant.

versus

DHARAMVIR SINGH etc.—Respondents.

R.S.A. No. 106 of 1963.

May 1, 1970.

Punjab Pre-emption Act (1 of 1913)—Section 15(1)(a) fourthly—Agricultural land in possession of a tenant—Landlord creating usufructuary mortgage in respect of the land—Tenant paying rent to the mortgagee without surrendering earlier or creating fresh tenancy—Land sold by the landlord—Such tenant—Whether has a right to pre-empt the sale.

Held, that in cases of usufructuary mortgages created over land in possession of tenants, the tenants, from the time the mortgage comes into being, attorn to the mortgagee. The mortgagee having become entitled