

Darbara Singh per mensem, if at all, errs on the side of leniency.
 v.
 Karnail Kaur There is proof on the record that the husband is
 a man of substantial means.

R. P. Khosla, J.

In the result, therefore, while upholding the order and judgment of the Courts below, I would dismiss this petition.

K.S.K.

CIVIL WRIT

Before I. D. Dua, J. ...

LACHHMAN SINGH AND ANOTHER,—Petitioners.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents....

Civil Writ No. 212 of 1959.

Punjab Municipal Act (III of 1911)—Section 240—Rules framed under—Rules 6 and 8—“Roll”—Meaning of—Rules, whether contemplate the preparation of a distinct roll for each Constituency—Electoral right—Nature of—Creation of Constituencies—Purpose and procedure of—Electoral roll of State Legislature—Whether can form the basis of Municipal elections.

1959

May, 29th

Held, that the word “roll” mentioned in the Rules framed under Section 240 of the Punjab Municipal Act clearly means the roll of persons entitled to vote at an election held under these Rules.

Held, that Rule 8 contemplates the preparation of a distinct roll for each Constituency of a Municipal Committee and construing the provisions of Rules 6 and 8 together, it means that a separate and distinct roll of each Constituency of a Municipality must be prepared before a valid election can be held. The Courts would be disinclined to uphold an election obviously held on the basis of an imperfect, illegal and defective roll which has not been prepared in accordance with the provisions of law.

Held, that electoral right is not a fundamental or an inherent right, It is a political and statutory right conferred by a statute and therefore if a statute does not require a separate and distinct roll to be prepared for each

constituency no voter or elector can make a grievance of it before the Courts of law. At the same time when a provision of law relating to election of People's representatives to legislative or local bodies comes up for construction, in the absence of a clear and express provision to the contrary, these provisions should be construed to make the process of election effective and truly representative. The purpose for the creation of Constituencies or electoral divisions, normally speaking, is to effect a proper representation of the localities in question keeping in view both the extent of population and their pursuits etc. Administration of local bodies is said to serve as a training ground in the art of democratic form of Government based on the system of popularly elected representation. This purpose can be better advanced if proper roll, constituency-wise, is prepared so that the electorates of a Constituency are enabled to elect the fittest and the most desirable person from the area concerned. The creation of Constituencies must, therefore, be a matter for consideration by authorities concerned at the time of preparation of the roll in accordance with the statutory provision, the Constituencies should be created after proper notice to the electors and after giving them a proper opportunity to object to the inclusion or exclusion of their names from particular Constituencies sought to be created for the particular election.

Held, that electoral roll prepared for the purposes of election to the State Legislature may form the basis of the roll according to which municipal elections are to be held, but if the former roll is not Constituency-wise, then the roll of each municipal Constituency has to be specifically prepared in accordance with Punjab Municipal Act and the rules framed thereunder. The determination of the territorial limits of the Constituencies, in other words, their delimitation, is an essential and integral part of the process of preparation of the roll for each municipal committee and this cannot, under the law, be deemed to have been left to the sweet will or discretion of the Deputy Commissioner or of any other individual officer.

Chief Commissioner of Ajmer and another v. Radhey Shyam Dani (1); relied upon. *Parmeshwar Mahaseth and*

others v. State of Bihar and others (1); *Lekh Raj v. The Cantt. Board Jullundur Cantt.* (2); *Shiam Sunder and another v. The State of Punjab* (3); and *Bindra Ban and others v. Shiam Sunder and others* (4), referred to.

Petition under Articles 226/227 of the Constitution of India praying that a writ of co-warranto or any other writ, direction or order be issued declaring the elections of respondents Nos. 4 to 11 as wholly null and void.

H. S. DOABIA AND SURRENDER SINGH for Petitioners.

S. M. SIKRI, H. L. SIBAL AND HARBHAGWAN SINGH, for Respondents.

ORDER

Dua, J.

DUA, J.—In these connected writ petitions (Civil Writs 212 to 217 of 1959), we are concerned with the Municipal elections of Morinda Municipal Committee held this year and they will all be disposed of by this order.

In Civil Writ 212 of 1959, Lachhman Singh and Jati Ram are the petitioners, Lachhman Singh being a voter in Ward No. 4 of Municipal Committee, Morinda, and Jati Ram, petitioner No. 2 being the defeated candidate in the election held on 26th of February, 1959. Respondents Nos. 4 to 11 are the successful candidates from the six Wards of the Municipal Committee. Nomination papers were filed on 5th of January, 1959; 24th of January, 1959, was the date fixed for withdrawal of candidature and polling took place on 26th of February, 1959. It is alleged in the petition that the State of Punjab respondent No. 1 published a notification, dated 11th of April, 1958, (Annexure 'A' attached to the petition) under section 240 of the Punjab

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- (1) A.I.R. 1958 Pat, 149
 - (2) 1958 P.L.R. 66
 - (3) A.I.R. 1958 Punj, 128
 - (4) A.I.R. 1959 Punj, 83

Municipal Act and rules made thereunder, by which the Municipality of Morinda was divided into six wards; before doing so, another notification, dated 14th/18th of May, 1957, containing draft rules had been published and objections were invited as required by the provisions of section 240 of the Act. Later on a notification, dated 30th of October, 1958, (Annexure 'B' annexed to the petition) superseded the earlier notification, dated 11th of April, 1958. It is averred in the petition that since the previous notification, dated 11th of April, 1958, was superseded, a fresh notification containing the draft rules was necessary under the law. The validity and legality of the notification, dated 30th of October, 1958, is assailed on this ground. It is then alleged in the petition, that before the delimitation of the Constituencies for the purposes of the impugned election, the boundaries of the wards as fixed previous to 1957 were entirely different and it was in the circumstances necessary that before any variation in the Wards could be made, there should have been a valid delimitation of the constituencies for the purpose of holding the impugned elections. The electoral rolls prepared for the Punjab Legislative Assembly for Morinda town published on 17th of December, 1958, were, according to the petition, adopted, as the electoral rolls for the elections in dispute, in an illegal manner. This electoral roll does not divide Morinda town into any Wards; it merely contains the names of voters without making any reference to the parts of the Municipal town of Morinda. This list, it is alleged, was really prepared for the purposes of elections to the Punjab Legislative Assembly from Rupar Constituency. It is then alleged that by means of a letter, dated 31st of December, 1958 (Annexure 'C' attached to the petition) the Deputy Commissioner, Ambala, directed the President of the Municipal Committee, Morinda, that the voters in the above electoral rolls

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should be distributed in six Wards as given in the *key-chart* attached to the letter. This *key-chart*, the petition continues, was prepared without giving any notice to the voters of the Morinda Municipal Committee and without inviting objections thereto. It was a document prepared by the Deputy Commissioner, Ambala, *ex parte* and was signed by the Election Kanungo, Tehsildar Elections, Ambala Returning Officer, Ambala, and Deputy Commissioner, Ambala. The electoral rolls and the *key-chart* are alleged to be null void and ineffective on the grounds that—

- (1) No objections were invited regarding entries in the electoral roll ; nor were any claims invited. In other words the procedure for revising the electoral rolls for the purpose of Municipal elections was not followed at all.
- (2) The adoption of the electoral roll prepared for the Assembly Constituency does not eliminate the further steps in the matter of the revision of the electoral roll as also the adjudication of claims for being enrolled and the objections thereto, and
- (3) The preparation of the electoral roll and the division of the roll by assigning electoral numbers in each Ward could be done only by the State Government under section 240 and not by the Deputy Commissioner, the Returning Officer, the Election Tehsildar or the Election Kanungo.

The *key-chart* is further alleged to be null and void on the ground that there is no provision of

law for making such a chart and section 240 of the Municipal Act does not justify the arbitrary selection of voters without any basis and assigning them to a particular Ward. The following mistakes are also pointed out in the said *key-chart* :—

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- (a) Voters have been declared in the Ward in which they do not reside;
- (b) Dead voters have been declared voters in defferent Wards; and
- (c) Voters no longer residing within the Municipal limits of the town were also declared voters in the said *key-chart*.

The arbitrary action of the Deputy Commissioner, etc., is alleged to be wholly unauthorised and unwarranted by the statutory provision or the rules made there-under. Reliance has also been placed on rule 6 of the Municipal Election Rules which lays down that no person should be held entitled to vote unless his name is entered as a voter in relation to the Ward concerned. The counsel has also in this connection referred me to the definition of "Roll" and "Constituancy" contained in rule 2(d) and (a) respectively. "Roll" means the roll of persons entitled to vote at an election under these rules and "Constituancy" means a class or ward, for the representation of which a member or members is or are to be or has or have been elected under these rules. The counsel submits that the electoral roll in question does not divide itself into wards and the letter from the Deputy Commissioner is absolutely of no avail because, apart from other reasons, the Government does not even take responsibility either for issuing that letter or for the accuracy of its contents. It is also submitted that the impugned rolls in the municipal elections in question were never legally

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adopted and indeed no objections were ever invited even for assigning voters to the various wards. In support of his contention the counsel has principally relied on two cases. In *the Chief Commissioner of Ajmer and another v. Radhe Shyam Dani*, (1) the Ajmer Marwara Municipalities Regulation (6 of 1925) and Ajmer State Municipalities Election Rules, 1955, were considered by the Supreme Court. Support is sought by the counsel from the following observations of Bhagwati, J., in para 12 of the report:—

“It is of the essence of these elections that proper electoral rolls should be maintained and in order that a proper electoral roll should be maintained it is necessary that after the preparation of the electoral roll opportunity should be given to the parties concerned to scrutinize whether the persons enrolled as electors possessed the requisite qualifications. Opportunity should also be given for the revision of the electoral roll and for the adjudication of claims to be enrolled therein and entertaining objections to such enrolment. Unless this is done, the entire obligation cast upon the authorities holding the elections is not discharged and the elections held on such imperfect electoral rolls would acquire no validity and would be liable to be challenged at the instance of the parties concerned. It was in our opinion, therefore, necessary for the Chief Commissioner to frame rules in this behalf, and in so far as the rules which were thus framed omitted these provisions they were defective.”

(1) A.I.R. 1957 S.C. 304

The second case on this point is *Parmeshwar Lachhman Singh Mahaseth and others v. State of Bihar and others*, and another v. The State of Punjab and others
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(1). Head-notes (b) and (c) have been referred to by the petitioner's counsel. It was held in the reported case that the publication of the notification in the Gazette as required by rule 7 of the Bihar Municipal Elections and Election Petitions Rules is the very foundation of the Municipal Election, and the non-compliance with the provisions is calculated to deprive many electors of their right to vote at the election. The publication of this notification really gives the District Magistrate jurisdiction to hold elections of the Commissioner of the Municipality. The provision of Rule 7 was thus held mandatory, non-compliance with which invalidated the entire election. It was further held in that case that the relevant provisions of the Election Rules and the Bihar and Orissa Municipal Act do not dispense with the preparation of a separate register of voters, ward by ward, of course, on the basis of the electoral roll of the Assembly constituency. Such a separate register had to be prepared for each ward and published before the holding of elections was notified. Where this was not done the municipal elections held on the basis of the Assembly electoral rolls were considered invalid. For the decision reliance was placed on *Radhey Shyam Dani's case* (2), quoted above. In support of the contention that a writ is the proper remedy, Mr. Doabia has placed reliance on *Lekh Raj v. The Cantonment Board, Jullundur Cantt. etc.* (3), a decision by Grover, J., and on *Shiam Sunder and another v. The State of Punjab* (4), a decision by Bishan Narain, J., affirmed on appeal by Bhandari C.J., and Chopra J., in *Bindra Ban and others v. Shiam Sunder and others* (5). I may also notice an-

(1) A.I.R. 1958 Pat, 149
 (2) A.I.R. 1957 S.C. 304
 (3) 1958 P.L.R. 66
 (4) A.I.R. 1958 Punj. 128
 (5) A.I.R. 1959 Punj. 83

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other contention raised by Mr. Doabia in his attack on the notification, dated 30th of October, 1958. He has submitted that this notification did not comply with the provisions of sections 240 and 258 of the Punjab Municipal Act because there was no previous publication which is mandatory and that the boundaries of one ward were completely changed.

Mr. Sikari, learned Advocate-General, has, while dealing with the last contention noted above, submitted that by virtue of section 21(5) of the Punjab General Clauses Act the publication, in the official Gazette, of a rule is conclusive proof that the rule has been duly made. He has also submitted that printer's errors can always be corrected and that such a correction cannot be made a ground of attack in proceedings by way of a writ. It has also been submitted that no prejudice can possibly be caused to any one by such a mistake being corrected. I am inclined to agree with the Advocate-General and I would thus repel this contention raised by the petitioner. He has next contended that the constituencies for the Municipal Committee in question are, by virtue of rule 6, the same as they exist in the electoral roll for the Legislative Assembly of the Punjab State. He has tried to distinguish the Supreme Court case and the Patna case on the ground that rules 8 and 9 of the Punjab Municipal Election Rules lay down a provision of law, very much different from those, which were the subject-matter of the above decisions. Rule 8 which is in the following terms:—

“The roll of each constituency of a municipality shall be the electoral roll for the Punjab Legislative Assembly in relation to the said constituency operative on the date fixed by the Deputy Commissioner

for the submission of nomination papers under rule 10”

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according to Mr. Sikri, lays down that electoral roll for the Punjab Legislative Assembly in relation to each constituency of a Municipality operative on the date fixed for the submission of nomination papers, shall be the roll of each such constituency. Rule 10 empowers the Deputy Commissioner to fix dates for nomination of candidates and for their scrutiny. It is submitted that the scheme of the Punjab Act and the rules made thereunder is very much different from the scheme of the relevant law interpreted in the Supreme Court and Patna cases. Territorial residence is according to the Punjab Rules, the determining factor, and all those voters who reside in a particular geographical area, according to the Assembly roll, are voters in the constituency comprising that area. It is emphasised that as soon as the Government fixes the geographical limits of the wards, all the voters residing within those limits should be considered to be the voters in that constituency. In the instant case, it is said, that the list of such limits of wards was actually published on 17th of December, 1958 for the elections to be held in February, 1958. Once these limits have been fixed it is contended that nothing more need be formally done and there is no necessity for revising any electoral roll. No express provision of law empowering the above fixation of limits has however been suggested. In support of his argument Mr. Sikri has drawn my attention to paras 7, 10 and 11 of the judgment of the Supreme Court in Radhey Shyam Dani's case (1). If a date is fixed, as has been done in the instant case, on which the existing electoral roll for the Legislative Assembly is to be considered to be the roll for the

(1) A.I.R. 1957 S.C. 304

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Municipality concerned, there is no point in taking any steps for revising it, so argues the Advocate-General. Particular reference has been made to the following portion of para 11 of the judgment for making out the distinction drawn by Mr. Sikri.—

“Rule 9 provided that no person shall be deemed to be an elector for the purpose of the Rules unless his name appeared in the electoral rolls mentioned above. That had reference obviously to the second condition prescribed in section 30, sub-section (2) of the Regulation but did not go far enough. It did not say that a person whose name appeared in the electoral rolls for the Parliamentary constituency was to be deemed to be an elector for the purposes of the Rules so as to obviate the necessity of fulfilling the first condition therein prescribed and rightly so, because, if it did say so, it would be in conflict with section 30, sub-section (2) of the Regulation”.

The counsel argues that such is not the case with the Punjab Rules. Section 43 of the Ajmer and Merwara Act has also been referred to in this connection. Similar distinction has been pointed out by the counsel in the Patna case and it has been contended that there is no provision in the Punjab Act equivalent to section 15 of the Patna Act. In the end it is submitted that the petitioner himself participated in the elections without any protest and there are no substantial defects in the electoral roll and therefore it can by no means be considered to be a fit case for a writ.

Mr. Sibal appearing for the other respondents has adopted the arguments of Mr. Sikri and has

laid great stress on the petitioner's omission to approach this Court before the elections were held. He has submitted that when Morinda had only a Small Town Committee even then no separate roll was prepared and the serial numbers of the electoral roll for the Assembly were the basis of election of the Small Town Committee. Mr. Doabia has, in reply drawn my attention to the fact that the rolls on the basis of which the impugned elections have been held do not contain even the locality of the residence of the voters.

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In my opinion, this petition has to be allowed. Section 240 of the Punjab Municipal Act empowers the Government to frame forms and make rules. The various heads suggested for the purpose of making rules include—(b) the division of municipalities into wards, or of the inhabitants into classes, or both ; (c) the number of representatives proper for each ward or class; (d) the qualification of electors and of candidates for election ; (e) the registration of electors; (f) the nomination of candidates, the time of election and the mode of recording votes and (g) regulating the procedure for elections etc. * * *. It also contemplates making of rules regarding corrupt practices at elections and investigation into allegations of corrupt practices and declaring elections void. Rule 6(a) lays down that, subject to the provisions of rule 8, no person shall be entitled to vote unless the name of such person is included in the electoral rolls for the Legislative Assembly of the State of Punjab in relation to the constituency concerned. The constituency concerned obviously means a class or ward, for the representation of which members are or have been elected under the rules. According to rule 8, the roll of each constituency of a Municipality shall be the electoral roll for the Punjab Legislative Assembly in relation to the

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said constituency operative on the date fixed by the Deputy Commissioner for the submission of nomination papers under rule 10. The word "roll" clearly means the roll of persons entitled to vote in an election under these rules. In my view, rule 8 does contemplate the preparation of a distinct roll for each constituency of a Municipal Committee. The roll which has been placed on the record does not even purport to be the roll of the constituencies in which the municipality in question has been divided. Therefore, the roll for the Punjab Legislative Assembly on which reliance has been placed is not the roll in relation to the constituencies of the Municipality in question and it thus can not fall within the purview of the relevant rule. That a duly prepared separate roll of each constituency is contemplated by these rules also finds some support from the language used in rule 11 read with Form I framed by the Government. According to these provisions a person desirous of being nominated as a candidate has to deliver to the authority concerned a nomination paper contemplated in Form I appended to the rules and subscribed by him as assenting to the nomination and also by two persons as proposer and seconder whose names are included in the roll of the constituency concerned. In Form I the candidate has to include his constituency for the electoral roll of which he is registered as an elector. He has also to insert his own number of such electoral roll. In *Radhey Shyam Dani's case* (1), the observations of Bhagwati, J., on which reliance has been placed by Mr. Doabia are, in my opinion, not confined to the particular provisions of law contained in the Ajmer Merwara Municipalities Regulation and Ajmer State Municipalities Election Rules as is suggested by the learned Advocate-General.

(1) A.I.R. 1957 S.C. 304

These observations are in general terms and they truly emphasise the real essence of elections. Unless, therefore, the law relating to municipal elections in the Punjab expressly and unambiguously does away with the preparation of electoral rolls for the various constituencies into which a Municipality is to be divided, I would be disinclined to uphold the legality of annexure 'C' and of the procedure adopted in the present case for holding the impugned elections without delimiting the constituencies according to law. It is true that electoral right is not a fundamental or an inherent right. It is a political and statutory right conferred by a statute and, therefore, if a statute does not require a separate and distinct roll to be prepared for each constituency no voter or elector can make a grievance of it before the Courts of law. At the same time when a provision of law relating to election of People's representatives to legislative or local bodies comes up for construction, in the absence of a clear and express provision to the contrary, these provisions should be construed to make the process of election effective and truly representative. The purpose of the creation of constituencies or electoral divisions, normally speaking is to effect a proper representation of the localities in question keeping in view both the extent of population and their pursuits, etc. The creation of the constituencies must, therefore, be a matter for consideration by the authorities concerned at the time of the preparation of the roll in accordance with the statutory provisions; the constituencies should, in this view, be created after proper notice to the electors and after giving them a proper opportunity to object to the inclusion or exclusion of their names from particular constituencies sought to be created for the particular election. The electoral roll prepared for the purposes of election to the State Legislature may form

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the basis of the roll according to which municipal elections are to be held but if the former roll is not constituency-wise, then, in my view, the roll of each municipal constituency has to be specifically prepared in accordance with the Punjab Municipal Act and the rules. The determination of the territorial limits of the constituencies, in other words their delimitation, is an essential and integral part of the process of preparation of the roll for each municipal constituency, and, in my view, this cannot under the law, be deemed to have been left to the sweet will or discretion of the Deputy Commissioner or, for that matter, of any other individual officer. It may be noted that annexure 'C' and the key chart have not been contended to have been issued under any law, and the Government has expressly disowned responsibility for the accuracy of the contents of the above key chart.

Administration of local bodies is also said to serve as a training ground in the art of democratic form of Government based on the system of popularity elected representation. This purpose can also be better advanced if a proper roll, constituency-wise, is prepared under rule 8 so that the electorates of a constituency are enabled to elect the fittest and the most desirable person from the area concerned. I would, therefore, be inclined to construe the provisions of rules 6 and 8 to mean that a separate and distinct roll of each constituency of a Municipality must be prepared before a valid election can be held. I am not unmindful of the objection that one of the petitioners, who fought and lost the election, has approached this Court after having tried his luck under the impugned roll; but the other petitioner is a mere voter and this Court would be disinclined to uphold an election obviously held on the basis of an imperfect, illegal and defective roll which has not

been prepared in accordance with the provisions of law. The defect seems to be material with respect to an essential particular. Non-interference in these circumstances would amount to inflicting on the citizens of Morinda a Municipality which is not their truly representative body, which result can hardly be countenanced by this Court.

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For the reasons given above, this writ is allowed and the impugned election set aside. In the peculiar circumstances of the case, there will be no order as to costs.

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REVISIONAL CIVIL

Before A. N. Bhandari, C. J.

SAIN DASS,—Petitioner.

versus

PT. SANT RAM,—Respondent.

Civil Revision No. 94 of 1959.

Evidence Act (I of 1872)—Section 116—Scope of—Tenant—Whether and when can deny his landlord's title—Sub-tenant—Whether discharged by payment of rent to the paramount landlord.

1959
July, 13th.

Held, that Section 116 of the Evidence Act accords statutory recognition to the well-known doctrine that during the existence of the relationship of landlord and tenant the tenant is estopped from denying his landlord's title or from asserting that another person has a better title than the landlord. This doctrine has no application where the landlord's title has expired or been extinguished or where there has been a fraud on the part of the landlord in the execution of a lease, or where the tenant did not obtain or retain possession under the lease or by virtue of it, or where he has been evicted by title paramount. A person who is evicted by such a title is at liberty to deny