a uniform rate of Rs. 12,000 per acre. They will also be entitled to solatium at the statutory rate of 10 per cent and interest on the enhanced amount at the rate of 6 per cent from the date of taking possession including the solatium thereof. The landowner-claimants would also be entitled to their coasts.

S.C.K.

Before S. S. Sandhawalia C.J. and I. S. Tiwana, J.

SWARAN DASS ETC.,—*Petitioners.*

versus

DEPUTY COMMISSIONER and others,—*Respondents.*

Civil Writ Petition No. 2742 *of* 1979.

September 25, 1979.

Punjab Municipal Act (III of 1911)—*Section* 24—*Municipal Election Rules* 1952—*Rule* 5(8) (b)—*Prescription of time for notifying the names of co-opted members—Whether mandatory—Publication of the notification beyond the prescribed time—Whether legal.*

Held, that construing the purpose, language and the context of the statutory provisions, there appear a wide variety of reasons which are all a pointer to the fact that the prescription of one week's time as provided by rule 5(8) (b) of the Municipal Election Rules 1952 was not intended to be mandatory. Section 24(1) of the Punjab Municipal Act, 1911 which is the parent provision does not even remotely specify the time within which the relevant notification is to be made. A reading of this section would show that whilst the issuance of the notification has been made mandatory, the time for doing so is not at all indicated by the section. The fact that the prescribing of time was left by the legislature to subordinate legislation is in a way suggestive of the fact that the time within which the notification was to be made was not considered by the legislature to be of a paramount importance. The word 'shall' in rule 5(8) (b) has been used therein with regard to the factum of the publication of the notification in the official gazette and not with regard to the one week's time mentioned therein. Section 24 has in no uncertain terms made the publication of the notification not only mandatory but as a pre-requisite before any of the elected or co-opted members

can enter upon the duties of his office. Rule 5(8), therefore, in peremptory terms laid this duty on the Deputy Commissioner to either forward the names to the Government for publication or in the case of municipalities of second or third class to himself notify the same in the gazette. The period within which the notification is to be published is a direction to the Deputy Commissioner to do so within reasonable despatch and the time prescribed is a week. This would cast a duty on the Deputy Commissioner to do so but cannot be read as so mandatory in terms that in case of failure so to do the most valuable right of co-option which has been equated to an election may be altogether lost. The prescription of time in rule 5(8), therefore, would on one hand cast a duty on the Deputy Commissioner and confer a right on the persons co-opted or elected to claim that their notification be made within the prescribed time or in a period reasonably close thereto. Thus, the prescription of time under rule 5(8) is merely directory and consequently no illegality arises from the publication of the notification beyond the prescribed time.

(Paras 5, 6 and 9).

Petition under Articles 227/227 of the Constitution of India praying that :—

(a) *to issue a writ of prohibition restraining respondent No. 1 to notify the names of respondents No. 3 and 4 in the Official Gazette.*

(b) *to issue a writ of mandamus directing respondent No. 1 to convene a meeting of the Municipal Committee Jandiala Guru to hold co-option again under Section 12(B) of the Act.*

(c) *to dispense with a requirement of prior notices on the respondents and to grant ad-interim stay of the notification of the names of respondents No. 3 & 4 and also to grant ad-interim stay of the holding of the election of the President.*

(d) *any other order, writ or direction which this Hon'ble Court deems fit in the circumstances of the case.*

(e) *Cost of the petition may also be awarded.*

S. C. Goyal, Advocate with O. P. Goyal, Advocate, *for the Petitioner.*

N. S. Bhatia, A.A.G., *for the State.*

J. R. Mittal, Advocate, *for respondent No. 2.*

M. S. Liberhan, Advocate, *for respondents Nos. 3 and 4.*

JUDGMENT

S. S. Sandhawalia, C.J.

(1) Whether the prescription of one week's time in Rule 5(8)(b) of the Punjab Municipal Election Rules, for the notification of the names of the co-opted members, is mandatory in terms is the solitary, though somewhat significant question, which arises in this set of four Civil Writ Petitions. Learned counsel for the parties are agreed that this judgment will govern all of them.

2. As is evident from the above, the issue is primarily legal yet some reference to the relevant facts giving rise thereto is inevitable and it amply suffices to advert briefly to the averments in *Swarn Dass and others* v. *Deputy Commissioner, Amritsar, etc.* The Municipal Committee, Jandiala Guru is admittedly a B-Class Committee and elections therefore were held on June 10, 1979 whereby 13 Municipal Commissioners including the petitioners were declared elected. The names of the elected members were duly notified in the official gazette and the first meeting of the newly constituted Committee was held on July 13, 1979 under Rule 5 of the Municipal Election Rules, 1952 (hereinafter called the Rules) for administering the oath of allegiance to the members and further for making a co-option thereto. In this meeting two women members respondents Nos. 3 and 4 were declared co-opted under Section 13(b) of the Act by the convener of the Committee. However, their names were not notified within one week of this meeting, that is, by July 20, 1979 in accordance with the provisions of Section 24 of the Act read with Rule 5(8)(b) of the Rules. The pointed claim of the petitioners is that Rule 5(8)(b) being mandatory, the Deputy Commissioner became *functus officio* after the expiry of one week of the meeting and therefore, could not notify the names of the co-opted respondents Nos. 3 and 4 thereafter. Consequently, the subsequent notification of these names made on August 6, 1979,—(*vide* Annexure P/3) is challenged as being wholly invalid and it is claimed that the right of co-option has lapsed with the result that the State Government must now nominate two women members to the Committee. This stand is strenuously controverted on behalf of the contesting respondents.

3. It is obvious that the controversy must revolve around the statutory provisions and at the very out-set Section 24 of the Punjab

Municipal Act, 1911, and Rule 5(8) may be read:

"24. 1. Notifications of elections, appointments and vacancies—

(1) Every election, co-option and appointment of a member or election and appointment of a committee shall be notified in the Official Gazette and no member shall enter upon his duties until his election, co-option or appointment has been so notified and until 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:—

(Form of Oath given):

"Provided that appointment in the case of all Municipalities and election and co-option in the case of a municipality of the first class shall be notified by the State Government and election and co-option in the case of a municipality of the second or third class shall be notified by the Deputy Commissioner."

"Rule 5 (8). The Deputy Commissioner shall, within one week of the date of the meeting referred to in sub-rule (1) sub-rule (6) or sub-rule (7), as the case may be,—

(a) in the case of municipality of first class forward the names of the co-opted candidates to the State Government, who shall notify their co-option in the official Gazette within a period of seven days of the receipt of the names from the Deputy Commissioner;

(b) in the case of a municipality of the second class or third class notify their co-option in the official Gazette".

(4) Inevitably reliance was placed on the use of the word 'shall' in the above-quoted rule 5(8) on behalf of the petitioners for contending that both the issuance of the notification and the period within which it is to be done have been made mandatory thereby. This, however, need not detain one for long because by now it is a settled canon of interpretation that the use of the word 'shall' in a statute is not conclusive on the point of its being mandatory. Indeed there is a plathora of authorities that the words 'may' and 'shall' have

been used sometimes like interchangeable terms in the statute. It has been authoritatively laid down that an enactment in form mandatory might in substance be directory and this was so held in *Julius* v. *Bishop of Oxford* (1), which has been approved by their Lordships in *H. V. Kamath* v. *Ahmad Ishaque and others* (2), and repeatedly reiterated thereafter.

(5) No construing the purpose, language and the context of the statutory provisions, there appear a wide variety of reasons which are all a pointer to the fact that the prescription of one week's time was not intended to be mandatory. Reference in this connection may be first made to section 24(1) of the Act. The significant thing to notice herein is that this parent provision does not even remotely specify the time within which the relevant notification is to be made. A reading of its plain provision would show that whilst the issuance of the notification has been made mandatory, the time for doing so is not at all indicated by the section. That the emphasis accordingly is on the issuance of the notification is evident from the fact that this section provides that no member can enter upon his duties until his election has been notified along with the further condition that he had made the necessary oath or affirmation. If the intent of the legislature was to make the prescription of time within which a notification should issue then obviously it would have done so in section 24 itself or in other provisions of the Act. The fact that the prescribing of time was left by the legislature to subordinate legislation is in a way suggestive of the fact that the time within which the notification was to be made was not considered by the legislature to be of paramount importance.

(6) Coming now to rule 5(8) it is perfectly capable of the construction that the word 'shall (even if presumed to be mandatory) used therein is with regard to the factum of the publication of the notification in the official gazette and not with regard to the one week's time mentioned therein. As has been noticed earlier section 24 had in no uncertain terms made the publication of the notification not only mandatory but as a pre-requisite before any of the elected or co-opted members can enter upon the duties of his office. Rule 5(8), therefore, in pre-emptory terms laid this duty on the Deputy Commissioner to either forward the names to the Government for

(1) (1980) 5 A.C. 214.
(2) A.I.R. 1965 S.C. 233.

publication or in the case of municipalities of second or third class to himself notify the same in the gazette. It was rightly pointed out that there was no magic in the period of seven days so that if the same were to be exceeded by a few hours then the whole process of co-option may fall. The period within which the notification is to be published is a direction to the Deputy Commissioner to do so within reasonable despatch and the time prescribed is a week. This would cast a duty on the Deputy Commissioner to do so but cannot be read as so mandatory in terms that in case of failure so to do the most valuable right of co-option which has been equated to an election may be altogether lost. The prescription of time in rule 5(8), therefore, would on one hand cast a duty on the Deputy Commissioner and confer a right on the persons co-opted or elected to claim that their notification be made within the prescribed time or in a period reasonably close thereto.

(7) The anamolous results that may flow from a contrary view are also worthy of notice. Undoubtedly a valid co-option under section 12A, 12B, 12C, 12D and 12E vests valuable rights in the co-opted persons who thereby would be equated with the elected members of the municipality. If it were to be held that by the mere non publication of the notification within a week the co-option would be nullified then dangerous results would inevitably follow. It, therefore, would be in the hands of the Deputy Commissioner to defeat the whole process by delaying the notification in the gazette beyond the prescribed period of one week. This apart, there may be sometimes inevitable and uncontrolable reasons which may prevent publication in the gazette within this supposedly inflexible period of time. Equally in the process even the ministerial staff through whose hands the process must inevitably pass may by their negligence, inadvertence or recalcitrance nullify the vaulable electoral rights of the co-opted member by delaying the publication beyond seven days. I believe these fortuitous factors are not to be easily brought in to defeat the basic intent of the legislature by a process of strained interpretation.

(7a) What appears to be plain on principle and the statutory provisions has also equally the support of authority. In *Suraj Parkash* v. *The State of Punjab, etc.*, (3), it has been rightly observed that the notification a name in the official gazette is merely

(3) 1972 current Law Journal 923.

meant to convey the information to the general public of the fact that the person stood elected to the municipal committee. Therefore, publication appears to be a ministerial function to merely declare the factum of the election. Again the fact that the object and purpose of such a provision is to cast a duty on the Deputy Commissioner and to vest a right to claim publication in the elected members is evident from the observations of the Division Bench in *Laxmi Narain Sah and others* v. *State of Bihar and another* (4), wherein a mandamus was issued by the Bench to public the names of the petitioners in the official gazette forthwith.

(8) In fairness to Mr J. R. Mittal, his reference to *Jai Bhagwan Sharma and others* v. *Matu Ram and others* (5), and *Lekh Raj and others* v. *The State of Punjab and others* (6), must be noticed. In *Jai Bhagwan Sharma's case* (supra) what fell for interpretation was an altogether different provision under rule 3(3) of the Punjab Municipal Election Rules 1952 and the issue was focussed on the point of the calculation of ten clear days thereunder. *Lekh Raj's case* (supra) merely followed the same and held on facts that the publication of election programme having taken place within less than ten days, as prescribed, was consequently violative of the rules. Neither of the two cases has any direct bearing on the question before this Bench. Same must also be said with regard to *Gurtej Singh* v. *Punjab State, etc.*, (7), which does not even remotely construe either section 24(1) or rule 5(8).

(9) In the light of the above-mentioned discussion the answer to the question formulated at the very outset is returned in the negative and it is held that prescription of time under rule 5(8)(b) is merely directory and consequently no illegality arises from the publication of the notification beyond the prescribed time. All the writ petitions are, therefore, held to be without merit and we hereby dismiss them. The parties are however, left to bear their own costs.

N.K.S.

(4) A.I.R. 1972 Patna 176.
(5) 1963 current Law Journal 548.
(6) 1966 current Law Journal 186.
7) 1976 current Law Journal (Civil) 548.