

Zile Singh v. The Deputy Commissioner, Sonapat, etc. (Tewatia, J.)

respect, am unable to agree to that principle. Following the Division Bench judgment in *Ismail's case* (supra), which is binding on this Court, it is held that the order of the Sub-Divisional Magistrate asking for the report of the police, is legal and proper. The petition under section 482, of the Code of Criminal Procedure, 1973, is hereby dismissed.

N. K. S.

CIVIL MISCELLANEOUS

Before D. S. Tewatia, J.

ZILE SINGH,—*Petitioner.*

versus

THE DEPUTY COMMISSIONER, SONEPAT, ETC.,—*Respondents.*

Civil Writ Petition No. 1070 of 1975.

July 8, 1975.

Punjab Gram Panchayat Act (IV of 1953) as amended by Haryana Legislature Amendment Act 29 of 1971—Sections 5 and 9—Election of Panches set aside by prescribed authority—Member co-opted by such panches—Whether can continue to be member of Gram Panchayat—Challenge to such co-option—Whether to be made through a formal application.

Held, that co-option is nothing but the election of one of the members of the Gram Panchayat; the only difference being that in the case of co-option the electoral college consists of the Panches elected by the Gram Sabha while in regard to the other elected members every adult member not less than 21 years of age of Gram Sabha forms the electoral college which elects the Panches to the Gram Panchayat. If none of the Panches who constituted the electoral college which co-opts a member of the Gram Panchayat was legally elected as Panch, then the co-option by them is automatically rendered as *void ab-initio*. The co-opted member is not entitled to enjoy the full term of five years as envisaged by section 9 of the Punjab Gram Panchayat Act, 1953. The co-option being rendered *void ab-initio* by implication as a result of the order of the prescribed authority setting aside the entire election to the Gram Panchayat, it is not at all necessary to challenge co-option through a formal application before the prescribed authority.

(Paras 7, 8 and 9)

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of Mandamus or any other appropriate writ, order or direction be issued to the respondents No. 1 and 2 directing them to take steps for the co-option of a Lady Panch of the Gram Panchayat, Chirasmī by the Panches elected on 19th January, 1975, before holding the election of the Sarpanch, in accordance with law and the petitioner be exempted from filing the certified copies of Annexures 'P-1', 'P-2' and 'P-3', as the same cannot be readily or immediately available and in view of the urgency of the matter necessitating prayer for ex-parte interim relief, issue and service of advance Notice of Motion of the petition on the respondents be dispensed with and during the pendency of the writ petition, election of the Sarpanch of the Gram Panchayat, Chirasmī as well as the operation of the Notice vide Annexure 'P-4' calling the meeting for electing a Sarpanch on 15th March, 1975, be stayed.

Surinder Sarup, Advocate, for the Petitioner.

H. S. Hooda, Advocate, for the Respondents.

JUDGMENT

Tewatia, J.—(1) The short point, though an interesting one, that arises for determination in this writ petition is as to whether a Co-opted member of the Gram Panchayat could continue to be the member of the Gram Panchayat even after the election of all the Panches, who had elected her, was set aside as illegal and fresh election is held for the Gram Panchayat in question.

(2) To appreciate the point, the background in which this question has arisen be noticed. The petitioner along with others was elected Panch to Gram Panchayat of village Chirasmī in the election held in the month of June, 1971. In a co-option in pursuance of section 5 of the Punjab Gram Panchayat Act as amended by Haryana Legislature Amendment Act No. 29 of 1971 (hereinafter referred to as the Panchayat Act), Shrimati Shanti (respondent No. 3 was co-opted as the woman Panch. The relevant provision of section 5 of the Panchayat Act is in the following terms:—

"5(1) * * * * *

(2) Every such Gram Panchayat shall consist of such number of Panches not being less than five or more than nine as Government may determine taking into account the population of Sabha area and such Panches shall be elected by

Zile Singh v. The Deputy Commissioner, Sonapat, etc. (Tewatia, J.)

the Sabha, in the prescribed manner, from amongst its members:

Provided that if no woman is elected as a Panch of any Gram Panchayat the elected Panches shall co-opt, in the manner prescribed, as panch a woman member of the Sabha who is qualified to be so elected; and

“(3) Every woman co-opted as a Panch under the proviso to sub-section (2) shall have the right to vote at a meeting of the Gram Panchayat.

(4) * * * * *

(5) * * * * *

(6) Immediately after the election of Panches and co-option of woman Panch, if any, a Sarpanch shall be elected by the Panches from amongst themselves in the manner prescribed.”

(3) Prior to her co-option, one Hari Chand, an unsuccessful candidate, challenged the validity of the entire election held in June, 1971 on the ground that his nomination papers had been wrongly and illegally rejected. The prescribed authority,—*vide* its order dated 6th August, 1973, allowed his election petition and set aside the election held in June, 1971. The petitioner in the present writ petition and others challenged the order of the prescribed authority by way of Civil Writ Petition No. 3573 of 1973 (*Zile Singh and others v. The State of Haryana and others*), which petition was finally decided by a Full Bench of this Court wherein the order of the prescribed authority was sustained, and that led to the holding of fresh elections to the aforesaid Panchayat on 19th January, 1975, in which the present petitioner, along with respondents Nos. 4 to 8, was elected a Panch.

(4) The petitioner moved the Deputy Commissioner, Sonapat (respondent No. 1), through an application dated 30th January, 1975, to fix a date for the co-option of the woman Panch. The Deputy Commissioner, instead of fixing the date for the co-option of the woman Panch, ordered the holding of the election of the Sarpanch on 15th March, 1975, at 10.00 A.M., notice whereof was issued to the

petitioner and other Panches by the Block Development and Panchayat Officer (respondent No. 2), which is annexed to the petition as Annexure P. 4. The petitioner then moved this Court by way of the present writ petition for the issuing of a *mandamus* to the Deputy Commissioner to fix a date for the co-option of the woman Panch before ordering the election of the Sarpanch.

(5) In the return filed on behalf of Shrimati Shanti (respondent No. 3), the plea taken is that once co-opted as a member of the Gram Panchayat, she was entitled to continue as a member for 5 years—the term fixed for a member of the Panchayat under section 9 of the Panchayat Act unless the co-option was set aside by the prescribed authority.

(6) Neither the Act nor the Rules framed thereunder provide for the contingency which has arisen in the present case; nor prior to this, any Court has had the occasion to pronounce upon the controversy of the kind. So, the point being truly *res integra* shall have to be decided on first principles and on the basis of a view appealing to reason and common sense.

(7) Apparently, co-option is nothing but the election of a Woman member as one of the members of the Gram Panchayat, the only difference from her male counter-part lay in the fact that in her case electoral college consists of the Panches elected by Gram Sabha, while in regard to the elected male members thereof, every adult member not less than 21 years of age of Gram Sabha forms the electoral college which elects the Panches to the Gram Panchayat.

(8) Once it is ruled that none of the Panches who constituted the electoral college which co-opted Shrimati Shanti (respondent No. 3) as woman member of the Gram Panchayat, was legally elected as Panch, then the co-option of Shrimati Shanti (respondent No. 3) by them stood automatically rendered as *void ab-initio*.

(9) As to the plea of respondent No. 3 that she was entitled to enjoy full term of 5 years envisaged by section 9 of the Panchayat Act unless her co-option as Lady member was set aside by the prescribed authority, it must be observed that the said plea has no legs to stand on. Her co-option being rendered void *ab initio* by

Banarsi Dass v. Faquir Chand etc. (R. S. Narula, C.J.)

implication as a result of the order of the prescribed authority by which it set aside the entire election to the Gram Panchayat held on 29th June, 1971, it was not at all necessary to challenge her co-option as lady member through a formal application before the prescribed authority.

(10) Since the election of the Sarpanch could be held only after the co-option of lady member as envisaged by sub-section (6) of section 5 of the Panchayat Act, the notice, Annexure P. 4, to the Panches to assemble in a meeting on 15th March, 1975 at 10.00 A.M., to elect the Sarpanch was clearly in contravention of the aforesaid provisions of the Panchayat Act.

(11) For the reasons stated, I allow this writ petition and direct the Deputy Commissioner, Sonapat, to fix a date for the co-option of a woman Panch by the Panches and only thereafter require the Panches to assemble in a meeting to elect the Sarpanch. The Deputy Commissioner is further directed that the entire process culminating in the election of the Sarpanch be completed within two months from today. The parties are, however, left to bear their own costs.

H. S. B.

REVISIONAL CIVIL

Before R. S. Narula, Chief Justice.

BANARSI DASS,—*Tenant-Petitioner.*

versus

FAQUIR CHAND, ETC.,—*Respondents.*

Civil Revision No. 1417 of 1971

July 9, 1975

East Punjab Urban Rent Restriction Act (III of 1949)—Sections 2(c) and 13(2) (ii)—Payment of rent to one of the heirs of original landlord—Tenant—Whether absolved from liability to pay rent—'Written consent'—Whether has to be prior to the actual act of sub-letting.

Held, that one of the heirs of the original landlord falls within the statutory definition of the expression "landlord" contained in