property and allot to each such person a portion of the property so partitioned having regard to the amount of net compensation payable to him."

The argument is that these words mean that either the whole property should be allotted to the petitioner, as was ordered by the Managing Officer, or else that it must be divided into three and even Rattan Singh, the original allottee, who has taken no part in the controversy since his appeal was dismissed by the Assistant Settlement Commissioner, should have been given the shop occupied by him. I do not consider that the words of rule 30 are meant to be applied as rigidly as this, and I cannot see any objection, in a case where there are three occupants of portions of a property which can only be conveniently sub-divided into two portions, why the claims of two occupants cannot be met. In this case as I have said it appears to be quite feasible to separate ground floor shop occupied by Kundan Lal from rest of the property whereas a sub-division into three portions would not be convenient since as was pointed out by the Assistant Settlement Commissioner the present petitioner can only have access to the upper portion of the property occupied by him through the portion formerly occupied by Rattan Singh. I would accordingly dismiss the petition and order the petitioner to pay the costs of Kundan Lal. (Counsel's fee Rs. 50.) The authorities who were made respondents have not been represented.

TEK CHAND, J.—I agree.

B.R.T.

LETTERS PATENT APPEAL

Before S. S. Dulat and A. N. Grover, JJ.

PIARA SINGH,—*Appellant.*

versus

THE PUNJAB STATE AND OTHERS,—*Respondents.*

Letters Patent Appeal No. 3 of 1962.

1962

March, 16th

Constitution of India—Article 226—Writ of Quo Warrant filed by an elector dismissed in limine—Another

petition on the same facts filed by a different elector—Whether barred by res judicata—*Alternative remedy by way of election petition—Whether bars relief under Article 226.*

Held, following the observations in *Daryao and others* v. *State of U.P. and others* (1), that *Prima facie* dismissal *in limine* even without passing a speaking order in that behalf may strongly suggest that the Court took the view that there was no substance in the petition at all, but in the absence of a speaking order it would not be easy to decide what factors weighed in the mind of the Court and that makes it difficult and unsafe to hold that such a summary dismissal is a dismissal on merits and as such constitutes a bar of *res judicata.*

Held, that where a petition is dismised *in limine* no decision as such is given and considerations of propriety would not be infringed by affording relief to a petitioner if he is entitled to it under the law.

Held, that it is within the discretion of the High Court to grant relief under Article 226 of the Constitution if the existence of an alternative remedy is not an insuperable bar. Where the alternative remedy by way of election petition cannot be availed of on account of the expiry of the period of limitation for filing it and it is found that the respondent, whose election is impugned, could not have been elected as a primary member of the Samiti under the statute, and has no right, therefore, to continue in office, an appropriate writ can be issued.

Letters Patent Appeal under Clause 10 of the Letters Patent against the order dated 30th October, 1961, passed by Hon'ble Mr. Justice Mehar Singh in Civil Writ No. 1333 of 1961.

B. R. TULI AND R. K. AGGARWAL, ADVOCATES, for the Appellants.

H. S. DOABIA, ADDITIONAL ADVOCATE-GENERAL, for the Respondent.

JUDGMENT

Grover, J.

GROVER, J.—This is an appeal under clause 10 of the Letters Patent against an order of a learned

Single Judge of this Court dismissing a petition under Article 226 of the Constitution.

The petition was filed by Piara Singh, who is a Sarpanch of village Machrai in Police Station Siri Hargobindpur. He also resides within the block of Siri Hargobindpur and is a voter and duly elected member of Panchayat Samiti of that block. By means of a notification dated 28th April, 1961, the Punjab Government constituted blocks in the District of Gurdaspur for the election of Panchayat Samitis pursuant to the provisions of clause (2) of section 2 of the Punjab Panchayat Samitis and Zila Parishads Act, 1961 (hereinafter to be referred to as the Act). Eleven blocks were constituted in the District of Gurdaspur. Batala is shown as block No. 10 in the Gazette notification while Siri Hargobindpur is shown as block No. 11 (Annexure 'A'). According to section 5(2) of the Act, a Panchayat Samiti shall consist of the following members :—

(a) primary members to be elected in the manner prescribed;

(b) Associate members;

(c) Co-opted members;

(d) Ex-officio members.

In the present case we are only concerned with the provision relating to election of primary members, namely, clause (a) of sub-section (2) of section 5. Now, the primary members, as provided in the aforesaid provision, are to be elected in the following manner:—

(i) sixteen members from the block, by the Panches and Sarpanches of Gram Panchayats in the block from amongst themselves;

(ii) two members representing the Co-operative Societies within the jurisdiction of the Panchayat Samiti by the members

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of such Societies elected in the manner prescribed from amongst the members of these Societies.

(iii) one member representing the Market Committees in the block by the members of such Committees from amongst the producer members residing within the jurisdiction of the Panchayat Samiti.

In August, 1961, the election of the Panchayat Samiti took place for the aforesaid block. Respondent Satnam Singh, was elected as representing the Market Committees in the block from amongst the producer members residing within the jurisdiction of the Panchayat Samiti Siri Hargobindpur. The case of the petitioner was that before the election the Returning and Presiding Officer had issued instructions for the election of such a member from amongst the producer members of the Market Committees of Batala and Qadian and this fact was not denied by the respondents. The Market Committees were constituted by means of certain notifications issued under section 4(i) of the Punjab Agricultural Produce Markets Act, 1939. The area of jurisdiction of the Market Committees of Batala and Qadian as shown in the relevant notifications did not fall within the area of the jurisdiction of the Panchayat Samiti. According to the allegations in the petition the area of Market Committee, Batala, fell within the jurisdiction of Batala block and the Market Committee, Batala, was functioning within Batala Block Panchayat Samiti and had no concern with Siri Hargobindpur block. The Qadian Market Committee was functioning within the jurisdiction of Municipal Committee, Qadian and had nothing to do with Siri Hargobindpur block. The first and the main point that was agitated in the petition was that Satnam Singh respondent No. 4. was not eligible to be elected to the Panchayat Samiti of Siri Hargobindpur as the Market Committee, Qadian was not functioning within the jurisdiction of Siri Hargobindpur Block Panchayat Samiti although he was a producer member

of the Market Committee of Qadian. The other objection taken to his eligibility to stand for election was that he was a Sub-Registrar and as such was disqualified from being elected as a member of Panchayat Samiti under section 6(1)(b). Yet a third objection was taken, namely, that as he was a Municipal Commissioner of Qadian he could not stand for election to the Committee of any other notified area by virtue of rule 7-A of the Punjab Municipal Election Rules.

Along with the petition an application for stay was filed praying that respondent No. 4 be restrained from attending, voting at and taking part in the meeting of the Panchayat Samiti block Siri Hargobindpur held on 30th September, 1961, and in the subsequent meetings till the decision of the petition. This prayer was granted on 29th September, 1961 by the Motion Bench. The question of stay was ultimately decided on 13th October, 1961 by Mahajan J. The learned Judge accepted the suggestion of the Additional Advocate-General that the election fixed for 15th October, may not be postponed and may be allowed to be proceeded with but the result of the election be not announced as the same would be subject to the result of the writ petition. In case the petition succeeded, the election was to be considered as non-existent. The election of the Chairman and the Vice-Chairman was consequently held and respondent No. 4 is stated to have been elected as the Chairman of the Samiti.

It may be mentioned that the election of respondnt No. 4 took place on 23rd August 1961. Thereafter one Sikander Singh filed a petition under Article 226 challenging the election of respondnt No. 4 to the Siri Hargobindpur Panchayat Samiti on the same facts and raising the same grounds as were raised later on by the appellant, Piara Singh, in his petition. The stage at which Sikander Singh filed his petition was before the Co-option of members to the Samiti under section 5(2)(c) of the Act had taken place. That petition

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was dismissed by a Division Bench of this Court on 6th September, 1961.

The learned Single Judge decided the writ petition solely on the ground that since the petition fild by Sikander Singh on the same facts and raising the same grounds had been dismissed, the writ petition filed by Piara Singh subsequently was liable to be dismissed. The reasoning of the learned Judge may be given in his own words—

> "* * * *, the way in which I look at the matter is that two learned Judges of this Court sitting in a Division Bench have considered the same facts and the same grounds in relation to those facts and have dismissed a petition, so that decision as decision of this Court will apply when the same facts are repeated and relief is asked for on the very same grounds."

It is common ground that while dismissing Piara Singh's petition, the same learned Judge made a reference to a Division Bench of the main point which had been agitated in the petition, namely, what was the true import of the language employed in sub-clause (iii) of section 5(2)(a) of the Act. Three of such petitions were then placed before a Division Bench consisting of Capoor and Dua JJ. (Civil Writs Nos. 1305, 1306 and 1312 of 1961), who gave a considered judgment on 29th December, 1961. The view expressed by them in respect of section 5(2)(a)(iii) fully supports the contention raised in the petition of Piara Singh with regard to that provision.

The first point that has been canvassed by Mr. Tuli for Piara Singh appellant is that the learned Single Judge was in error in feeling almost bound by the dismissal *in limine* of the writ petition filed by a totally different party, namely, Sikander Singh. It is pointed out that in his order of reference relating to the other petitions the learned Single Judge himself expressed a view which supported the contention raised on behalf of

the appellant and that merely because a petition filed by another person had been dismissed *in limine*, it did not follow that the appellant's petition should have been also dismissed. Our attention has been invited to *Daryao and others* v. *State of U.P. and others* (1), wherein their Lordships have dealt with the various situations that may arise when a petition under Article 226 is dismissed. It has been laid down that if such a petition is considered on the merits as a contested matter and is dismissed the decision thus pronounced would continue to bind the parties unless it is otherwise modified or reversed by appeal. If the petition is dismissed not on the merits but because of the laches of the party applying for the writ or because it is held that the party had an alternative remedy available to it, then it would not constitute a bar to a subsequent petition under Article 32 of the Constitution. If a writ petition is dismissed *in limine* and an order is pronounced in that behalf, whether or not the dismissal would constitute a bar would depend upon the nature of the order. If the order is on the merits, it would be a bar; if the order shows that the dismissal was for the reason that the petitioner was guilty of laches or that he had an alternative remedy, it would not be a bar, except in certain cases. If the petition is dismissed *in limine* without passing a speaking order, then such dismissal cannot be treated as creating a bar of *res judicata*. It is true that *prima facie* dismissal *in limine* even without passing a speaking order in that behalf may strongly suggest that the Court took the view that there was no substance in the petition at all, but in the absence of a speaking order it would not be easy to decide what factors weighed in the mind of the Court and that makes it difficult and unsafe to hold that such a summary dismissal is a dismissal on merits and as such constitutes a bar on *res judicata*. Although these observations were made with regard to the competency of a petition under Article 32 when a petition under Article 226 containing similar allegations and praying for

(1) A.I.R. 1961 S.C. 1457.

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similar relief had been dismissed by the High Court, their Lordships examined the effect of dismissal of a petition under Article 226 from various angles and it was made clear that the conclusions reached were confined to the point of *res judicata*. It can be plausibly argued that since Sikander Singh's petition was dismissed by this Court *in limine* without making a speaking order, the bar of *res judicata* would not be attracted at all but Piara Singh was not a party to Sikander Singh's petition and by no stretch of reasoning could his petition be dismissed because Sikander Singh's petition containing similar allegations and facts had been previously dismissel *in limine*. The learned counsel for respondent No. 4 pointed out that it may not be within the bounds of propriety to allow a petition under Article 226 at the instance of another party when a previous petition on the same facts and circumstances has been dismissed. That may be so if any decision is given involving any principle but where a petition is dismissed *in limine* no decsion as such is given and considerations of propriety would not be infringed by affording relief to a petitioner if he is entitled to it under the law. With great respect to the learned Single Judge, his view on this point cannot be sustained.

Capoor and Dua JJ.. in *Mansa Ram* v. *The Deputy Commissioner, Hissar and others* (2), and the connected petitions had to consider the question whether a Market Committee which is located outside an area of a particular block could be said to be "in the block" for the purposes of the same sub-clause if one or more producer members of such Committee resided within the block. After a full and complete discussion, Capoor J., who delivered the judgment, came to the conclusion that natural and grammatical interpretation should be given to the words "in the block" and if there was no Market Committee in the block itself, then no member could be elected by the producer members residing in the block but belonging to Market Committees outside the block. The following

(2) I.L.R. (1962) 1 Punjab 392.

conclusion of Capoor J., may be reproduced in his own words:—

> "After considering the arguments of the learned counsel for the parties, I am of the view that the words "market committees in the block" as used in sub-clause (iii) under consideration should be given the natural and grammatical meaning as "market committees situated within the block," in the sense that either the whole or part of the notified area lies within that block of the Panchayat Samiti to which election is to be made."

Mr. Anand Swaroop, who appears on behalf of the State before us, had argued the case before the other Bench as well and had raised all possible contentions which failed. He has sought to reiterate a point which he raised there based on the repeal of the Punjab Agricultural Produce Markets Act, 1939, by a similar Act No. 23 of 1961. It is also submitted by him that a notification has been issued under section 5 of the new Act expressing an intention to alter the limits of the Market Committees of Batala and Qadian, the new limits being coincident with the limits of the block of Siri Hargobindpur. But it is admitted that no notification has yet been issued under section 6 of that Act and, therefore, the limits of the Market Committee under the previous notifications remain the same as before. A faint attempt was made to challenge the correctness of the decision of Capoor and Dua JJ., but all the contentions of Mr. Anand Swaroop were fully examined by that Bench and we have not been persuaded to take a different view and refer the matter to a larger Bench as has been pressed before us.

In view of what has been stated above, the appellant is entitled to say that his petition should succeed. It would, therefore, be wholly unnecessary to decide the other point on which a good deal

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of argument was addressed by the learned counsel for the parties that respondent No. 4 was disqualified to be elected as a member of the Samiti owing to the provisions contained in section 6, clause (b), according to which no person shall be eligible for election as a primary member if he is in the employment of the Government. According to the appellant, respondent No. 4 being an Honorary Sub-Registrar having been appointed under the provisions of the Registration Act and the Registration Manual was in the employment of the Government and was consequently ineligible for election. If the petition can be allowed on the conclusion at which we have arrived on the first point it would be wholly unnecessary to decide this point or any other point.

The only question is whether certain objections which have been taken to any relief being granted in exercise of extraordinary powers under Article 226 have any force. The learned counsel for respondent No. 4 has pointed out that in the petition those members of the Samiti who were co-opted as provided by section 5(2)(c) of the Act have not been impleaded as parties. Their co-option took place after the writ petition filed by Sikander Singh had been dismissed and before the appellant had filed his petition. If now the election of respondent No. 4 is set aside, then the co-option of those members would also become illegal because the aforesaid respondent participated in their co-option. The other objection raised is that it was open to the appellant to file an election petition challenging the election of respondent No. 4 and in the presence of such an alternative remedy no writ should be granted. It has also been brought to our notice that respondent No. 4 has been elected as the Chairman which shows that he has a lot of support in the Samiti and, therefore, even if his election is set aside, he is bound to be re-elected again. Lastly it is said that the appellant is a close associate of Sikander Singh being the Manager of his land situate in village Machrai and both belong to the same political party. For these reasons the petition filed by

the appellant should be deemed to be a second petition filed by Sikander Singh himself or, at any rate, this petition should be treated as having been filed at the instance of Sikander Singh.

The last objection may be disposed of first. The appellant filed a replication which has been duly verified in which the aforesaid allegations have been denied and it is stated to be wrong that the appellant is the Manager of any land belonging to Sikander Singh. It is admitted, however, that both these persons belong to the same political party viz., the Indian National Congress, but that by itself would not show that the subsequent petition was filed at the instance of Sikander Singh. The appellant being a member of the Panchayat Samiti himself has a *locus standi* to challenge the election of respondent No. 4 to the Samiti and we are not satisfied on the material placed before us that it is at the instance of Sikander Singh that the appellant has filed the petition under Article 226. There is no force in the third objection either inasmuch as the appellant has been elected to the Samiti as a member representing the Market Committees in the block. As there are no Market Committees in the block at present, there can be no question of it being certain that he would be re-elected even if the present election is set at naught as no member can be elected for the time being representing the Market Committees in the block. The first two objections, however, require closer examination and consideration. Now, there can be no doubt that parties whose election would be affected by a writ being granted should be impleaded, but in the present case it is not the co-option of the members which has been challenged. The participation of respondent No. 4 in co-option proceedings may or may not have invalidated their co-option. Section 5(2)(c) is to the effect that members are to be co-opeted in accordance with the provisions of section 16 comprising—

> "(i) two women interested in social work among women and children, if no woman is elected under clause (a) :
>
> Provided that if only one woman is so elected, then one more woman shall be co-opted;

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(ii) four persons belonging to Scheduled Castes and Scheduled Tribes, if no such person is elected under clause (a) :

Provided that if only one, two or three persons are elected under clause (a), then three, two or one such person respectively shall be co-opted; * * *".

Section 16 provides that the Deputy Commissioner concerned, or any gazetted officer appointed by him in this behalf, shall, as soon as possible after notification of election of primary members, call a meeting of such members in the manner prescribed for the purpose of co-opting members required by clause (c) of sub-sections (1) and (2) of section 5. The number of members who are to participate in the co-option in a meeting to be held by the Deputy Commissioner under section 16 is not small and it cannot be said with certainty how the election of co-opted members would have been materially affected by the participation of one person who was not entitled to sit in the meeting as a primary member. It is clear from the written statement of respondent No. 4 himself that the co-option of five members who had to be co-opted was unanimous. This means that the participation of the aforesaid respondent could have had no effect on the co-option of those five members, one way or the other. In the present petition it is only the election of respondent No. 4 as a primary member which is being challenged and consequently the non-impleadment of the co-opted members cannot entail the dismissal of the petition. It was admitted by the counsel for the respondents that the objection as to non-impleadment of the co-opted members was not raised in the written statements which were filed by them. If any such objection had been raised, the petitioner could have obtained an order of this Court for impleading the aforesaid persons as respondents. The objection raised must be repelled.

As regards the existence of an alternative remedy by way of an election petition, it is pointed out that the Punjab Panchayat Samitis and Zila Parishads (Election Petition) Rules, 1961, were

not in force on 23rd August, 1961 when the election took place. They came into force with effect from 26th August, 1961. This, however, does not mean that the petitioner could not have filed an election petition after the rules had been promulgated. It is not possible to lose sight of the fact that the remedy by way of an election petition may not be available now owing to the time within which the election petition had to be filed having expired long ago. It is within the discretion of this Court to grant relief if the existence of such a remedy is not an insuperable bar. As found before, respondent No. 4 could not have been elected as a primary member of the Samiti under the statute. He has no right, therefore, to continue in office and in such circumstances a writ of *quo warranto* can issue. In *Amir Chand and others* v. *Dhan Raj and others* (3), a Bench of this Court has held that this Court has power under Article 226 to determine the validity of the impugned election by means of a petition for a writ of *quo warranto* or other suitable writ or direction. According to Halsbury's (Vol. 11) paragraph 281, it is in the discretion of the Court to refuse or to grant an information in the nature of a *quo warranto* and it is not granted as a matter of course. The Court might in its discretion decline to grant a *quo warranto* information where it is vexatious to do so and where an information is futile in its results, or where there was an alternative remedy which was equally appropriate and effective, but in paragraph 279 it is stated that even in a case where an election petition is the only remedy when an election is objected to on the ground that the person whose election is questioned was disqualified at the time of the election, yet the remedy by injunction in lieu of *quo warranto* is available where a person becomes disqualified after election, or where there is a continuing disqualification in other words, where the objection is a continuous holding of the office by the person disqualified. In *Lajpat Rai and others* v. *Khilari Ram and others* (4), it has been laid down that the existence of

(3) 1960 P.L.R. 679.

(4) 1960 P.L.R. 377 : I.L.R. (1960) 2 Punj. 192.

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an alternative adequate or suitable remedy is not *per se* an absolute bar to a petition under Article 226. It is only a material circumstance to be taken into account on the facts of each case, it being in the judicial discretion of the Court whether or not to afford the extraordinary relief. It has in this connection to consider *inter alia* the nature and extent of the right violated, the nature and extent of the injury caused thereby, the delay in approaching the Court, and whether the alternative remedy is equally adequate, inexpensive, efficacious and speedy. The decision in *N. P. Ponnuswami* v. *Returning Officer, Namakkal Constituency* (5), was considered by the Bench and was distinguished on the ground that it dealt with the effect of Article 329 of the Constitution. The later decision of a Full Bench of this Court in *Shri Dev Parkash* v. *Babu Ram and others* (6), does not lay down any dissenting view in respect of the observations made with regard to the existence of an alternative remedy while granting relief under Article 226. It is undoubtedly true that normally this Court will decline to interfere if the remedy by way of an election petition can be availed of but as there is no insurmountable bar in the way of granting relief, I am of the view that in the present case since the matter has been heard by a learned Single Judge before whom no such objection appears to have been raised and has now come before us under clause 10 of the Letters Patent, it will be just and expedient to exercise our powers under Article 226 of Constiution because respondent No. 4 has absolutely no right to continue as a primary member of the Samiti.

For all the reasons given above, this appeal is allowed and an appropriate writ or direction shall issue directing the respondents to treat the election of respondent No. 4 as a member of the Samiti void, illegal and ineffective. In the circumstances, there will be no order as to costs.

Dulat, J.

S. S. DULAT, J.—I agree.

R.S.

(5) A.I.R. 1952 S.C. 64.
(6) I.L.R. (1961) 2 Punjab 860 : 1961 P.L.R. 485.