

1950

*Present: Gunasekara J.*

PUNCHI SINGHO, Petitioner, and B. H. PERERA, Respondent

*S. C. 478—Application for a Writ of Quo Warranto**Writ of quo warranto—Office already vacant at the time application is made—Does writ lie?*

An application for a mandate in the nature of a writ of *quo warranto* does not lie where the respondent to the application has already resigned from the office in respect of which the application is made and no advantage will be gained by the issue of the writ.

**A**PPPLICATION for a writ of *quo warranto* in respect of the election of a member to represent Ward No. 7, Bamunumulla, of the Adikari Pattu Village Committee.

*M. M. Kumarakulasingham* with *A. B. Perera* for the petitioner.*H. W. Jayewardene* for the respondent.*Cur adv. vult.*

May 29, 1950. GUNASEKARA J.—

At an election held on the 9th May, 1949, for the purpose of electing a member to represent Ward No. 7, Bamunumulla, of the Adikari Pattu Village Committee, the respondent was declared to have been elected

<sup>1</sup> (1939) 19 C. L. Rec. 7.

and he subsequently assumed office and functioned as the member for that ward. The petitioner, who had been one of the other candidates for election and is a registered voter, asks for a declaration that the election was void and that the respondent's functioning as a member was illegal. The ground of the application is that under Section 10 (1) of the Local Authorities Elections Ordinance No. 53 of 1946, the respondent is, and at all material times has been, disqualified by reason of his being the holder of a public office under the Crown in Ceylon.

A similar application made by the petitioner upon the same ground was rejected with costs on the 19th December, 1949, because he was not in a position to show that an order had been published in the *Government Gazette* in terms of Section 2 (2) of the Ordinance applying its provisions to this Village Committee. The petitioner was granted leave, however, to make a fresh application on condition that he hypothecated a sum of Rs. 315 with the Registrar of this Court as security for costs. He complied with this condition on the 7th January, 1950, and filed the present application on the 16th January.

It appears that in the meantime, on the 20th December, 1949, the respondent had resigned his membership of the Village Committee and that on the 3rd February, 1950, the Elections Officer gave notice in terms of Section 27 (2) of the Local Authorities Elections Ordinance, No. 53 of 1946, that a by-election would be held to fill the vacancy. The office was already vacant when the petitioner made his present application for a mandate in the nature of a writ of *quo warranto* and it has not been shown that there is any advantage to be gained by the rule being made absolute. The case of *Reg. v. Bizard (1866) L.R. 2 Q.B. 55*, in which a rule was made absolute although the defendant had resigned his office before the rule *nisi* was obtained, is distinguishable, for there the relator claimed the office for himself as having been duly elected: "If the purpose of these proceedings were merely to vacate the office, so that a fresh election might take place, it is obvious that the resignation of the office would effect that purpose just as well as the removal of the person from the office by *quo warranto*. In this case, however, the relator not only denies the validity of the defendant's election, but he claims to have been himself elected into the office" (*per Cockburn, C.J.* at p. 57).

I would discharge the rule for the reason that the office was vacant at the time of the application. It is apparent, however, that the respondent resigned only after the petitioner had by the earlier application drawn attention to his disqualification, and that at the time of his resignation on the 20th December, he had reason to expect that the petitioner would make the present application if he were kept in ignorance of the fact of the resignation. I am satisfied that the present application would not have been made if the respondent had only informed the petitioner that he had resigned his membership of the Village Committee. On the other hand, if the petitioner had acted with circumspection, he could have ascertained before he made his present application whether the respondent continued to hold office. In these circumstances I think it is proper that each party should bear his own costs. The rule is discharged.

*Rule discharged.*