Present: Dalton J.

1930

In the Matter of an Application for a Writ of *Quo Warranto*.

MURUGESU *v.* MUTTUCUMARU.

Residence—Qualification of member—Constructive inhabitancy—Burden of proof—Village Communities Ordinance, No. 9 of 1924, s. 18 (b).

Evidence of constructive inhabitancy may be given in proof of residence within the meaning of section 18 (*b*) of the Village Communities Ordinance.

Where there has been no actual inhabitancy during part of the period, the onus is on the claimant to prove a constructive residence and in order to discharge that onus there must be an intention of returning after a temporary absence and a power of returning at any time without breach of any legal obligation.

APPLICATION for a writ of *quo warranto* in respect of the office of Chairman of the Village Committee of Karainagar subdivision. Petitioner, who was a resident of the division, contended that the respondent was not legally qualified for election as a committee member, and therefore as chairman.

H. V. Perera (with *A. Gnanaprakasam*), for petitioner.

Hayley, K.C. (with *Nadarajah* and *Ramachandram*), for respondent.

February 13, 1930. DALTON J.—

The petitioner asks that the respondent vacate his office as chairman and as member of the Village Committee of Karainagar and that a fresh election of such chairman and member be ordered. Petitioner is a resident of Karainagar, an elected member of the Village Committee, and an unsuccessful candidate for the position of chairman. In support of his petition he urges first, that respondent is not legally qualified for election as a committee member and therefore as chairman, and secondly, even if he be qualified, his election as chairman was irregular and null and void.

It is provided by section 18 (*b*) of Ordinance No. 9 of 1924 (The Village Communities Ordinance) that a person shall be disqualified to be elected or to be member of any committee unless he has been resident in the subdivision for a period of one year immediately prior to the date of his election.

The date of election of the Committee was June 11, 1929; the date of the meeting of the Committee at which the respondent was elected as chairman was July 4, 1929.

With regard to the first point raised, petitioner urges that respondent was not a resident of the subdivision of Karainagar for a period of one year immediately prior to June 11, 1929. In support

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of this allegation affidavits have been filed, and have been replied to by affidavits on behalf of the respondent. The facts I find proved by those affidavits are as follows:—

Respondent was a public servant who retired from Government service after 42 years' service in January, 1929. From 1922 to the date of his retirement he was employed as Chief Clerk, Fiscal's Office, Jaffna. Whilst so employed he rented a house, where he lived with his wife and children at Vannarponnai, a suburb of Jaffna and about 14 miles from Karainagar. During this time, and previously, he owned a house, fields, and gardens at Karainagar, his ancestral home, so it was stated, to which he went during convenient week ends, during all holidays, and when he was on leave, to reside there and to look after the cultivation of his fields and gardens which are stated to be fairly extensive. He remained there permanently after his retirement on pension in January, 1929. The house in Jaffna was occupied as a matter of convenience to himself, since it would have been possible, so far as the performance of his duties were concerned, for him to have travelled the 14 miles to and from Karainagar daily.

Affidavits were filed by the petitioner to support his contention that respondent did not reside at Karainagar at all in 1927 or 1928. One deponent, who from his position as a manager of a cigar factory should be a responsible person, actually states that petitioner was living in a house to the south of his at Vannarponai in 1927 up to January, 1929, " all the days of the week and all the months of the year." If he means that respondent was actually there at those times, as I gather he does mean, I am quite satisfied the affidavit is untrue. If it means he has a residence there, then it is not in any way inconsistent with petitioner's story.

Another affidavit filed by the petitioner by an inhabitant of Karainagar West is to the effect that in 1927, 1928, up to January, 1929, respondent did not live in his house at Karainagar, that it was unoccupied for some months and was also rented to a schoolmaster and subsequently to a tea boutique-keeper who stored tobacco there. A further affidavit definitely states " this house was rented for the last two or three years to a schoolmaster and then to a boutique-keeper who stored tobacco there during the year 1928." If this evidence is reliable then it seems to me respondent retained no place of residence in Karainagar in 1928. But I am satisfied it is untrue. In addition to the evidence of the respondent I have an affidavit from the schoolmaster himself, the truth of which I have no reason to doubt. Respondent's premises consist of a house with four rooms, a kitchen, three verandahs, and a large compound. From November, 1927, to August, 1928, he was allowed, he says, by the respondent the use of one room, the kitchen and a verandah free of charge ; that respondent reserved two rooms

for his own use, and rented out a fourth room for temporarily storing tobacco. During this period, of which two months only fall within the material twelve months, he states that respondent frequently returned to the house with his family and stayed there. These frequent visits are corroborated by the evidence of a resident of Jaffna and neighbour of the respondent who took charge of valuables left in Jaffna and who put one of his servants to sleep on the premises there. There is ample reliable evidence to support respondent's contention.

The question to be decided is whether the facts constitute residence at Karainagar within the meaning of section 18 of the Ordinance. The principles to be applied in such a case have been set out in *Soysa v. Perera* [1] and the authorities there cited. Actual inhabitancy during every one of the days of the period is not necessary, but it is sufficient if a constructive inhabitancy be made out. If there was in fact no actual inhabitancy during part of the time, as is admitted here, the onus is on the claimant to prove a constructive residence, and in order to discharge that onus there must be an intention of returning after a temporary absence and a power of returning at any time without breach of any legal obligation. There is no doubt here of that intention and power being proved. It is not denied that a man may have several residences and, without referring to the numerous cases on the point dealt with in *Rogers on Elections*, I might mention *Stanford v. Williams*,[2] which is similar to the case before me in several respects. Upon the facts proved here I have no doubt that respondent has shown that he was resident within the subdivision of Karainagar during the material twelve months.

The second allegation made by petitioner is to the effect that respondent's election as chairman on July 4 is null and void. The chair at that meeting was taken by Mr. Nagalingam, one of the fifteen elected members, he having been nominated at the meeting on June 11 as convener of the member's meeting to be held for the election of chairman. In support of the alleged irregularity petitioner first of all states that Mr. Nagalingam acted as chairman without the sanction or approval of any of the other members and without authority. He then alleges that when the names of three candidates for the post of chairman, of whom he was one, were proposed and seconded, the acting chairman allowed every member to vote for more than one candidate, and as a result of this " plural voting, " as he calls it, the respondent was elected chairman. The petitioner then goes on to allege that the acting chairman secreted the document in which the votes and proceedings of the meeting were recorded and sent a different, and therefore entirely false, report of the proceedings to the Government Agent.

[1] *22 N. L. R. 464.*

[2] *80 L. T. 490.*

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It is somewhat difficult to understand from petitioner's affidavit what was the method of voting that he alleges was made use of. I infer, however, that he means that each proposal was put to the meeting separately, and he alleges that respondent received twelve votes, another candidate five, and himself only four. He then adds these together and says there were more votes than voters. If the proposals were put forward separately and voted upon separately, petitioner cannot add the total number of votes on the several proposals together and call that plural voting. It is possible of course that he does not mean that, but his affidavit as to what actually took place is difficult to understand. It is supported in exactly the same words (the two affidavits being in identical terms throughout) by one other member present at the meeting.

Against these allegations I have a certified copy of the minutes of the proceedings from the acting chairman, and in addition an affidavit from him as to what took place. Petitioner, it must be noted, has not suggested any reason why Mr. Nagalingam should secrete the alleged true minutes of the proceedings and fabricate entirely false minutes. It could hardly be done secretly as alleged, for all the persons present, members and others, must be in the secret. The certified minutes confirm petitioner's statement that three names were proposed and seconded, first that of respondent and then petitioner and another. The latter two proposals are in the minutes called amendments of the first proposal. The two so-called amendments were first put to the meeting and lost. The minutes do not record the number of votes. Then the original proposal was put, and carried by a large majority. Again the number of votes is not recorded, but from the affidavit of the acting chairman one gathers that the election of the respondent was carried by eight votes to five ; the large majority referred to in the minutes is therefore three. Only thirteen of the fifteen members voted, and the deponent denies that there was any plural voting at all. He also denies that he secreted any document relating to the meeting. This version of the votes obtained by respondent is supported by the affidavit of the member who proposed the name of the respondent.

It is subject for remark that petitioner at the meeting on July 4 never objected to the name of respondent being put forward as chairman, as being a person not qualified to be a member of the committee. There is evidence to show that he was fully aware even before June 11 that respondent's name was going to be put forward for election to the Committee. He purports to explain the absence of any objection to respondent on July 4 by saying that that was not the proper place to take such an objection, as the respondent had in fact been elected a member of the committee. But petitioner's affidavit and actions show he is not such a stickler for legal

niceties as that. Disappointment at his own defeat, in my opinion, is the correct explanation of his subsequent act in seeking to upset the election of his opponent. That disappointment has further in my opinion led him on to make false charges against the acting chairman. He has failed to substantiate his charge that the election of respondent as chairman was irregular. Failing thus on both points the *order nisi* must be discharged with costs against the petitioner.

Rules discharged.