

Sunil Kumar Kori & Anr vs Gopal Das Kabra & Ors.Etc on 27 September, 2016

Equivalent citations: AIR 2016 SUPREME COURT 4664, 2016 (10) SCC 467, AIR 2016 SC (CIVIL) 2952, (2017) 2 MPLJ 541, (2016) 7 MAD LJ 363, (2017) 1 ALL WC 124, (2016) 168 ALLINDCAS 148 (SC), (2017) 2 MAH LJ 491, (2016) 4 RECCIVR 662, (2016) 9 SCALE 392, (2017) 2 JCR 130 (SC)

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Bench: L. Nageswara Rao, Anil R. Dave

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 9728-9729 of 2016
(Arising out of SLP (C) No.20677-20678 of 2016)

SUNIL KUMAR KORI & ANR. Appellant(s)

Versus

GOPAL DAS KABRA & ORS. ETC. Respondent(s)

With

CIVIL APPEAL No. 9730-9731 of 2016
(Arising out of SLP (C) No.20687-20688 of 2016)

CANTONMENT BOARD, PANCHAMARHI Appellant(s)

Versus

GOPAL DAS KABRA & ORS. Respondent(s)

J U D G M E N T

L. NAGESWARA RAO, J.

Leave granted.

The issue that arises for consideration in the above appeals is the right to vote of persons living in illegally constructed buildings in a Cantonment area. Respondent No. 1 in the appeals is a permanent resident of Panchamarhi, who contested election to the Cantonment Board,

Panchamarhi in the year 2008 and was defeated by a margin of 292 votes. He filed Writ Petition No. 7169 of 2008 in the High Court of Madhya Pradesh at Jabalpur, seeking a direction to the authorities to prepare the electoral rolls of the Cantonment Board, Panchamarhi strictly in accordance with Rule 10 (3) of the Cantonment Electoral Rules, 2007 (hereinafter referred to as 'the Rules'). The said Writ Petition was disposed of on 08.07.2010 with a direction to the Cantonment Board, Panchamarhi to prepare the electoral rolls strictly in accordance with Rule 10 (3) for the years 2010-2011. The said judgment dated 08.07.2010 in Writ Petition No. 7169 of 2008 was confirmed by a Division Bench in Writ Appeal No. 798 of 2010 by a judgment dated 24.09.2010. Rejecting the submissions of the Cantonment Board, the Division Bench held as follows:

“In our opinion, the appellants are under no obligation in view of Rule 10 (3) of the Rules to allot house numbers in respect of structures which are unauthorized or illegal, substantial compliance of provisions of Rule 10 (3) is required to be made and that can be done by marking the encroachments as unauthorized construction and mention them accordingly in the electoral roll for the purpose of compliance of Rule 10 (3) of the Rules.”

2. Review Petition No. 972 of 2012 was filed for modification of the judgment dated 24.09.2010 in Writ Appeal No. 798 of 2010 which was allowed on 02.08.2013 and the following words were deleted:

“And mention them accordingly in the electoral roll for the purpose of compliance of Rule 10 (3) of the Rules.” A direction was given to the Cantonment Board to proceed with the preparation of electoral rolls in accordance with the provisions of the Act and the Rules.

3. Thereafter, two separate voters lists were prepared by the Cantonment Board. One list contained the names of persons staying in houses with numbers and the second list contained names of persons living in unauthorised houses without numbers. The First Respondent in the above appeals filed Writ Petition No. 20038 of 2013, questioning the preparation of two voters lists. He also filed Contempt Petition No. 2379 of 2013 for willful disobedience of the directions given by the High Court for preparation of voters list in Writ Petition No. 7169 of 2008. As the second voters list containing the names of the encroachers was withdrawn by the Board, Writ Petition No. 20038 of 2013 was disposed of and Contempt Petition No. 2379 of 2013 was closed on 17.02.2014. A notification dated 05.03.2015 was issued by the Government of India under Section 15 of the Cantonment Act, 2006 (hereinafter referred to as 'the Act') directing elections to be conducted to Panchamarhi Cantonment Board on 17.05.2015.

4. A provisional voters list was prepared in which the encroachers were also included and objections were invited. Respondent No. 1 preferred objections to the provisional voters list and requested the authorities to exclude the names of the encroachers from the voters list. As his objections were not considered and the voters list was issued, the First Respondent filed Writ Petition No. 93 of 2015 challenging the voters list. According to Respondent No. 1, the voters list was prepared in willful disobedience of the directions issued by the High Court in Writ Petition No. 7169 of 2008 and in

violation of Rule 10 (3) of the Rules. The Cantonment Board filed their reply contending that the voters list was prepared in accordance with the provisions of Rule 10 (3) of the Rules and the names of the encroachers were included in the list along with the regular residents. The Cantonment Board averred that no restriction can be placed on the right to vote of encroachers. The Cantonment Board contended that Section 28 of the Act contemplates that a person who was not less than 18 years and who was residing in the Cantonment area for a period of not less than six months was entitled to vote. By a judgment dated 22.04.2015, a Single Judge of the High Court of Madhya Pradesh allowed Writ Petition No. 93 of 2015 and directed the Respondents therein to prepare a voters list as per Rule 10(3) of the Rules by removing the names of the encroachers and inhabitants of illegally constructed houses. Writ Appeal No. 204 of 2015 was filed by the Union of India and others challenging the judgment dated 22.04.2015 in Writ Petition No. 93 of 2015. By an interim order dated 24.04.2015, a Division Bench of the High Court gave liberty to the Appellants therein to continue with the election programme on the basis of the published voters list, subject to the outcome of the appeal. Election to the Panchamarhi Cantonment was conducted on 17.05.2016 and the results were declared.

5. By a judgment dated 21.07.2015, a Division Bench of the High Court of Madhya Pradesh dismissed Writ Appeal Nos. 204 of 2015 filed by the Union of India and others and Writ Appeal No. 288 of 2015 filed by Kamal Kishore Dhoot. The judgment of the learned Single Judge dated 22.04.2016 in Writ Appeal No. 93 of 2015 was upheld. The interim relief that was granted on 24.04.2015 was vacated and the Cantonment Board was directed to conduct elections on the basis of a revised electoral roll to be prepared in accordance with the directions given by the High Court in which the names of only qualified electors should be included. After a detailed examination of the provisions of the Act and the Rules, the Division Bench held that an encroacher cannot be an elector. The Division Bench also held that the Writ Petition which was filed challenging the voters list was maintainable. The Cantonment Board filed SLP (C) No. 26491 of 2015 assailing the judgment dated 21.07.2015 in Writ Appeal Nos. 204 of 2015 and 288 of 2015 which was dismissed by an order dated 21.09.2015. Review Petition No. 3470 of 2015 in SLP (C) No. 26491 of 2015 was disposed of by this Court on 16.11.2015 directing the Cantonment Board to approach the High Court by filing a Review Petition. Liberty was given to the Cantonment Board to approach this Court in case of dismissal of the Review Petition by the High Court. Review Petition No. 950 of 2015 filed by the Cantonment Board was dismissed by the High Court on 17.03.2016. The Review Petitioners contended that the encroachers are permitted to vote in the elections to Legislative Assembly and Parliament and non inclusion of their names in the voters list for elections to Cantonment Board would result in an anomalous situation. The High Court rejected the said submission by holding that the right to vote of the encroachers in the elections to the Cantonment Board was decided on an interpretation of the provisions of the Cantonment Act and the Rules made thereunder, whereas the elections to the Legislative Assembly and Parliament are governed by the Representation of the People Act, 1950. Another point raised by the Petitioners in the Review Petition was that the voters list for Ward No. 7 was not in dispute and the election to Ward No. 7 ought not to have been set aside. Taking note of the fact that the dispute pertained only to Wards No. 1 to 6, the High Court directed the appropriate authority to examine the matter and take a decision as to whether fresh elections have to be conducted for Ward No. 7 also. The High Court rejected the submission that there was a violation of principles of natural justice as all interested parties were not heard. The High Court held that as the

judgment under review was on interpretation of the Act and Rules there was no necessity of impleading candidates who contested in the elections. In any event, the High Court held that the election was directed to be conducted subject to the outcome of the appeal and as the appeal was allowed, the election that was conducted was non est. The above appeals are filed challenging the judgment dated 21.07.2015 in Writ Appeal No. 204 of 2015 and order dated 17.03.2016 in Review Petition No. 950 of 2015.

6. We have heard Mr. Vikas Singh, learned Senior Counsel appearing for the Cantonment Board, Ms. Kiran Suri, learned Senior Counsel appearing for the other Appellants, Mr. P.S. Patwalia, learned Additional Solicitor General appearing for Union of India and Mr. Harsh Parashar, Advocate for Respondent No. 1 in both the appeals. Mr. Vikas Singh submitted that Sections 27 and 28 of the Act provide for preparation of electoral rolls and qualifications of the electors respectively. According to him, the nature of residence of a person in the Cantonment area is not relevant. Even an encroacher is entitled for inclusion in the electoral roll if he is not less than 18 years of age and has resided in the Cantonment area for a period of not less than six months, preceding the qualifying date. He submitted that Section 28 (2) provides for disqualifications and that placing a restriction on the right to vote of an encroacher tantamounts to an additional disqualification. He also submitted that the provisions of the Act pertaining to elections have to be strictly construed and there is no place for either equity or common law to be applied. He also stated that Rule 10 which provides for preparation of the electoral roll is procedural in nature and the substantive rights conferred on a person by the statute cannot be defeated by the Rule. Mr. Vikas Singh contended that the Writ Petition challenging the voters list was not maintainable. He relied upon Rule 54 which provides for an election to be challenged only by way of an election petition. He also submitted that the provisions pertaining to preparation of electoral rolls in the Cantonment Act, 2006 and the Representation of the People Act, 1950 are in pari materia. He further submitted that the election process was complete and the results were also declared by the time the Writ Appeal was heard by the High Court, in which event the High Court ought not to have set aside the election.

7. Ms. Kiran Suri, learned Senior Counsel appearing for the other Appellants adopted the submissions made by Mr. Vikas Singh. She further submitted that the Appellants in Civil Appeal No. of 2016 arising out of SLP (C) No. 20677-20678 of 2016 were not parties to the Writ Petition and the Writ Appeal. They filed SLP (CC) No. 17256-17257 of 2015 against the judgment of the Division Bench dated 24.04.2015 in Writ Appeal No. 204 of 2015. Pursuant to the liberty given by this Court, they filed a Review Petition before the High Court. She also stated that the Appellants secured majority in the elections that were conducted on 17.05.2016 pursuant to interim order passed by the High Court on 24.04.2015. She urges that the High Court judgment warrants interference in view of the fact that the Appellants in Civil Appeal No. of 2016 were already declared elected with substantial majority. Mr. P.S. Patwalia, learned Additional Solicitor General, supported the Appellants and submitted that the judgment of the High Court is required to be set aside as the elections to the Cantonment Board were held and results declared.

8. Mr. Harsh Parashar, Advocate appearing for Respondent No. 1 submitted that one of the objects of the Cantonment Act is removal of encroachments. He supported the judgment of the High Court and submitted that Section 2 (zt) defines 'residence' which clearly shows that only lawful residents

are entitled for inclusion in the voters list. He also submitted that the judgment of the High Court in Writ Petition No. 7169 of 2008 became final and the Cantonment Board prepared the voters list contrary to Rule 10 (3) of the Rules and the directions issued by the High Court in the said judgment. As the elections to the Cantonment Board were conducted pursuant to an interim order which was made subject to the outcome of the Writ Appeal, no benefit can be claimed by the Appellants from such election. He also submitted that an encroacher on Cantonment land and an inhabitant of an illegal structure cannot claim any right to vote as the statute does not confer such a right. He referred to Rule 55 of the Rules to submit that an election petition cannot be filed for inclusion or non inclusion in the electoral roll. According to him, the Writ Petition challenging the electoral roll was maintainable. As the directions given by the High Court were in conformity with the provisions of the Cantonment Act and the Rules made thereunder, interference with the judgment of the High Court is unwarranted.

9. The endeavour of the First Respondent has been for preparation of voters list for election to the Cantonment Board in accordance with the provisions of the Act and the Rules. He was successful in Writ Petition No. 7169 of 2008 as the High Court directed the preparation of electoral rolls in accordance with Rule 10 (3). When two voters lists were prepared by the authorities, he again approached the High Court by filing a Writ Petition as well as a Contempt for willful disobedience of the directions issued by the High Court in Writ Petition No. 7169 of 2008. The authorities withdrew the separate voters list containing the names of persons residing in houses which were illegally constructed due to which the Writ Petition and the Contempt were closed. Thereafter, the authorities prepared a consolidated voters list in which persons residing in houses with numbers and persons living in illegally constructed houses also were included. The challenge to the said voters list has culminated in the above appeals. The point that falls for our consideration is the right to vote of encroachers and other persons living in illegally constructed houses within a Cantonment area.

10. This Court in *Jyoti Basu & Ors v. Debi Ghosal & Ors* reported in (1982) 1 SCC 691 held that “A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right.”

11. As the right to elect is dealt with in Section 27 and 28 of the Act they are reproduced as under:

“27. Electoral rolls. - (1) The Board or, where a Board is not constituted in any place declared by notification under sub-section (1) of section 3 to be a cantonment, the Officer Commanding the station, shall prepare and publish an electoral roll showing the names of persons qualified to vote at elections to the Board and such roll shall be prepared, revised and finally published in such manner and on such date in each year as the Central Government may by rule prescribe.

(2) Every person whose name appears in the final electoral roll shall, so long as the roll remains in force, be entitled to vote at an election to the Board, and no other person shall be so entitled.

(3) When a cantonment has been divided into Wards, the electoral roll shall be divided into separate lists for each Ward.

(4) If a new electoral roll is not published in any year on the date prescribed, the Central Government may direct that the old electoral roll shall continue in operation until the new roll is published.

28. Qualification of electors. - (1) Every person who, on such date as may be fixed by the Central Government in this behalf by notification in the Official Gazette hereinafter in this section referred to as "the qualifying date", is not less than eighteen years of age and who has resided in the cantonment for a period of not less than six months immediately preceding the qualifying date shall, if not otherwise disqualified, be entitled to be enrolled as an elector.

Explanation.-When any place is declared a cantonment for the first time, or when any local area is first included in a cantonment, residence in the place or area comprising the 15 cantonment on the aforesaid date shall be deemed to be residence in the cantonment for the purposes of this sub-section.

(2) A person notwithstanding that he is otherwise qualified, shall not be entitled to be enrolled as an elector if he on the qualifying date-

(i) is not a citizen of India, or

(ii) has been adjudged by a competent court to be of unsound mind, or

(iii) is an undischarged insolvent, or

(iv) has been sentenced by a Criminal Court to imprisonment for a term exceeding two years for an offence which is declared by the Central Government to be such as to unfit him to become an elector or has been sentenced by a Criminal Court for any offence under Chapter IXA of the Indian Penal Code (45 of 1860):

Provided that any disqualification incurred by a person under clause

(iv) shall terminate on the lapse of three years from the expiry of the sentence or order.

(3) If any person having been enrolled as an elector in any electoral roll subsequently becomes subject to any of the disqualifications referred to in sub-section (2), his name shall be removed from the electoral roll unless, in the case referred to in clause (iv), the disqualification is removed by the Central Government."

12. Section 27 of the Act prescribes the manner of preparation, revision and publication of electoral rolls. It is clear from Section 28 that a person who is not less

than 18 years of age and who has resided in a Cantonment area for a period of not less than six months immediately preceding the qualifying date shall be entitled to be enrolled as an elector. The word 'resided' is not defined in the Act, but its grammatical variation 'resident' is defined in Section 2 (zt) which is as follows:

“(zt) "resident", in relation to a cantonment, means a person who maintains therein a house or a portion of a house which is at all times available for occupation by himself or his family even though he may himself reside elsewhere, provided that he has not abandoned all intention of again occupying such house either by himself or his family;” The other relevant definition is in Section 2 (zc) which is as follows: (zc) "inhabitant", in relation to a cantonment, or local area means any person ordinarily residing or carrying on business or owning or occupying immovable property therein, or declared as such by the Chief Executive Officer and in case of a dispute, as decided by the District Magistrate;

A perusal of the definition of 'resident' would show that it covers only a person who maintains a house or a portion of the house which is at all times available for occupation by himself or for his family, even if he is residing elsewhere. The point to be considered is whether the house to be maintained by a person should be a house built after taking previous sanction of the Board. As per Section 2 (d), a building means a house. Section 234 of the Act provides that no person shall erect a building on any land in a Cantonment without the previous sanction of the Board. According to Section 247 illegal erection of a building is an offence, punishable with a fine which may extend to fifty thousand rupees. A building erected illegally is liable to be demolished as per a direction that may be issued under Section 248 of the Act. As per the definition of the word 'resident' a house which is to be maintained by a person at all times for his or his family's occupation is a building constructed after previous sanction of the Board. Only a person who resides in such a building is entitled for registration as a voter. We have considered the other provisions of the Act as it is settled law that the Court is entitled and indeed bound to consider any other parts of the Act which throw light on the intention of the legislature while construing the terms of a provision. See *Municipal Corporation of City of Hubli v. Subha Rao Hanumatharao Prayag* reported in (1976) 4 SCC 830 at paragraph 9.

13. The learned Senior Counsel for the Cantonment Board submitted that the provisions pertaining to election in the Act have to be strictly construed with which proposition we agree. In *Banwari Dass v. Sumer Chand* reported in (1974) 4 SCC 817 at paragraphs 20 and 21 it was held by this Court that statutory provisions of election law are to be strictly construed and its requirements strictly observed. It was further submitted by the learned Senior Counsel for the Appellants that the principles of equity and common law are strangers to election law. That an Election Petition is not an action at common law, nor in equity is no more *res integra*. The said principle is applicable to adjudication of election disputes and not for interpretation of election law. Construing Section 28 on the basis of the above well accepted principles of statutory construction, we are of the opinion that the word 'resident' should receive a narrow construction in comparison to its synonym 'inhabitant'. We are of the opinion that a person should be a resident of a legally constructed house for being entitled to be enrolled as an elector.

14. The word 'inhabitant' as defined in Section 2 (zc) of the Act is very wide, covering persons who ordinarily reside or carry on business or occupy immovable property. Whereas the word 'resident' means a person who maintains a house at all times which is available for occupation. As discussed above, the house that he maintains has to be one which was constructed after obtaining a sanction in accordance with the provisions of the Act. There is no restriction in the width of the word 'inhabitant' and even persons staying in houses which are illegally constructed will fall within its purview. The fact that the word 'resided' and not 'inhabited' is employed in Section 28 for the purpose of eligibility of persons to become voters makes it clear that persons who were ordinarily residing and carrying on business for temporary periods in illegally constructed houses are not eligible to vote. All persons living in the Cantonment area are covered by the expression 'inhabitant' and their rights are dealt in the Act. For example, Section 70 provides for objections to be filed by an inhabitant to the preliminary proposals for imposition of a tax under Section 66. Likewise, Section 157 of the Act contemplates safety measures in case of outbreak of epidemic diseases covering inhabitants. Likewise, Section 180 deals with free patients and Section 197 referring to supply of water mention that persons to be benefited would be inhabitants.

15. It is well settled principle of interpretation that different words will have different meanings, depending upon the context. Though the words 'resident' and 'inhabitant' are understood to be synonyms, for the purpose of the Act they carry different meanings. In *Gibson v. Skibs A/S Marina and Orkla Grobe A/B and Smith Coggins, Ltd.* reported in (1966) 2 All ER 478 it was held that "[p]rima facie one would expect that when two different words, although practically synonymous in ordinary use, are employed in different parts of the same regulation dealing with the same kind of topic, they are intended to have some different meaning." This Court held in *Kailash Nath Agarwal v. Pradeshia Industrial & Investment Corporation of UP Ltd.* reported in (2003) 4 SCC 305 at paragraph 20 that "[t]he general rule is that when two different words are used by the same statute, prima facie one has to construe these different words as carrying different meanings."

16. Mr. Vikas Singh, learned Senior Counsel submitted that the provisions of the Representation of the People Act, 1950, the Registration of Electors Rules, 1960 and the provisions contained in Section 28 of the Act are similar. A person who ordinarily resides in a constituency is entitled to be registered as a voter in accordance with Section 19 of the Representation of the People Act, 1950. The phrase 'ordinarily resident' is defined in Section 20 of the Representation of the People Act, 1950 which reads as follows:

20. Meaning of "ordinarily resident".- (1) A person shall not be deemed to be ordinarily resident in a constituency on the ground only that he owns, or is in possession of, a dwelling house therein.

(1A) A person absenting himself temporarily from his place of ordinary residence shall not by reason thereof cease to be ordinarily resident therein.

(1B) A member of Parliament or of the Legislature of a State shall not during the term of his office cease to be ordinarily resident in the constituency in the electoral roll of which he is registered as an elector at the time of his election as such member, by reason of his absence from that constituency

in connection with his duties as such member.

In Election Commission of India and Anr. v. Dr. Manmohan Singh and Ors. reported in (2000) 1 SCC 591 this Court approved the findings of the High Court on the interpretation of word 'ordinarily resident' which read as under:

“87. Accordingly, this writ application is disposed of holding as follows:

(i) That the 'ordinarily resident' in a constituency as mentioned in the Representation of the People Act, 1950 shall mean a habitual resident of that place or a resident as a matter of fact in regular, normal or usual course. It means an usual and normal resident of that place. The residence must be permanent in character and not temporary or casual. It must be as above for a considerable time, he must have the intention to dwell permanently. He must have a settled abode at that place for a considerable length of time for which a reasonable man will accept him as the resident of that State.

(ii) A person holding a declared office as provided by the Act of 1950 can file a declaration in Form 6 and such a declaration shall have to be accepted as correct and the burden does not lie on such a person to produce evidence to the contrary; that burden lies on the authority who disputes it, regarding holding of declared office.

(iii) Apart from inquiry regarding holding a declared office, such a declaration made by the holder of declared office cannot be subjected to any inquiry as the statute by creating a deeming provision/ fiction has given that privilege/right to the holder of a declared office to make declaration regarding 'ordinarily residence' of a place that must be deemed to be final.

(iv) The orders dated 1-3-1994 (Annexure J), notice dated 2-2-1994 and 16-2-1994 (Annexures D and F) and the order dated 3-3-1994 (Annexure I) shall stand quashed being without authority of law and having been issued without jurisdiction, and in violation of laws as indicated above.”

17. The scope of word 'resident' as defined in the Cantonment Act, 2006 is completely different from that of 'ordinarily resident' as defined in the Representation of the People Act, 1950. The restrictive definition of a 'resident' in the Act is peculiar to the Cantonments whereas the definition of 'ordinarily resident' is very wide. Even if a person is residing in an unauthorised structure he will be entitled to be included in the electoral rolls under the Representation of the People Act.

18. Having considered the ambit of word 'resident' as defined by the Act we proceed to deal with the Rules which provide for the manner of preparation of the electoral rolls. The thrust of the Writ Petitions filed by the First Respondent is that the electoral rolls have to be prepared strictly in accordance with Rule 10 (3) of the Rules. For better appreciation of the point it would be necessary to reproduce the relevant Rules which are as follows:

“ CHAPTER II ELECTORAL ROLLS

8. Registration. No person shall be entitled to be registered in the electoral roll for more than one Ward and no person shall be so registered for any Ward more than once.

9. Qualification of elector. Every person who is eligible for enrolment as an elector under sub-section (1) of section 28 of the Act, and is not otherwise disqualified under sub-section (2) of the said section shall be enrolled as an elector.

10. Preparation of electoral rolls .

(1) The Board or where a Board is not constituted, the Officer Commanding the Station, shall prepare on Ist July of each year, in English and in the language commonly used in the District in which Cantonment is located, an electoral roll in Form I. (2) The electoral roll shall be divided into separate parts for each Ward. (3) The names of electors in each part of the roll shall be arranged according to house numbers.

Explanation. - For the purposes of this sub-rule, any building or unit line used for the purpose of lodging troops shall be deemed to be a house. (4) The names of electors in each part of the electoral roll shall be numbered as far as practicable, consecutively with a separate series of numbers beginning with number one.”

19. It is evident from a plain reading of Rule 10 (3) that the names of electors shall be arranged according to house numbers. It is clear that persons who are living in illegally constructed houses which are not assigned any number will not be entitled for inclusion in the electoral roll to be prepared in accordance with Rule 10 (3). Rule 10 (3) is not in conflict with Section 28 of the Act. On the other hand, Rule 10 (3) is strictly in conformity with Section 28 making only persons living in houses with numbers eligible to vote. The submission on behalf of the Appellant that Rule 10 (3) defeats the substantive rights conferred by Section 28 is not correct and is rejected.

20. We proceed to deal with the maintainability of the Writ Petition. The contention on behalf of the Appellant is that there is a procedure that is prescribed for claims and objections to the voters list in Chapter III of the Rules and that the only remedy open to a person to challenge the voters list is by way of filing an election petition under Rule 54. We are unable to agree with the said submission as the proviso to Rule 55 provides that no election petition is maintainable either for inclusion or exclusion in the electoral rolls.

21. Ms. Kiran Suri, learned Senior Counsel appearing for the other Appellants submitted that the election was conducted on 17.05.2016 pursuant to an interim order and the Appellants in Civil Appeal No. of 2016 were elected with a substantive majority. She argued that the High Court should have allowed the Writ Appeal taking note of the above facts. The High Court held that no rights accrue to successful candidates in the election conducted pursuant to an interim order,

after the election was set aside. The High Court also held that it was made clear in the interim order that the election would be subject to the outcome of the Writ Appeal. We agree with the said conclusion of the High Court and approve the directions that were issued by it for preparation of fresh voters list strictly in accordance with Rule 10 (3) of the Rules.

22. The judgment dated 08.07.2010 in Writ Petition No. 7169 of 2008 was confirmed by a Division Bench and it became final. A direction was issued in the said Writ Petition for preparation of a voters list strictly in accordance with Rule 10 (3). The said direction was confirmed by a Division Bench in an appeal filed by the Cantonment Board. It was held that the Board had no obligation to allot house numbers to unauthorized or illegal structures and substantial compliance of Rule 10 (3) can be done by marking the encroachments as unauthorized structures. Initially the Division Bench also directed inclusion of persons living in such structures in the electoral roll for the purpose of compliance of Rule 10 (3) after mentioning that they are encroachers. In the review filed for modification, the Division Bench deleted the said direction of inclusion of encroachers in the voters list after mentioning that they are encroachers. There is no substance in the contention of the Cantonment Board that direction of the Division Bench after modification enables them to include encroachers in the voters list. The finding recorded by the Division Bench is that encroachers are not entitled for allotment of house numbers to illegal structures and such structures will be marked as unauthorized. The Cantonment Board has not been authorized to include the encroachers in the voters list. We are of the opinion that the clear directions in Writ Petition No. 7169 of 2008 would disentitle the persons living in illegally constructed houses from being included in the voters list.

23. Before parting with the case it is our duty to deal with the very disturbing fact of encroachments on defence land. During the course of hearing, it was brought to our notice that there were several encroachments and a large number of illegally constructed houses in the Cantonment area. We were also informed that there is a Public Interest Litigation pending in the High Court of Madhya Pradesh and Jabalpur and pursuant to the interim directions in the said Writ Petitions a substantial number of illegally constructed houses were demolished. The Cantonments Act, 2006 re-enacted the existing Act of 1924 after taking into consideration the recommendations made by the Standing Committee of Parliament on Defence. One of the recommendations made by the Standing Committee of Parliament is to tackle encroachments on defence lands situated all over the country. In paragraph 12 above, we have referred to Section 247 and 248 of the Act which provide for demolition of illegally erected buildings and penalties for making illegal construction. Section 34 (1) (e) of the Act also provides for removal of a member of the Board who aids or abets encroachment and the illegal constructions on the defence land. We are of the considered view that avowed legislative policy and the provisions of the Act relating to encroachments should be strictly implemented. Prompt action has to be taken by the concerned authorities for removal of the illegally constructed buildings in the Cantonment area. The Cantonment Boards should be vigilant and ensure that no further encroachments are made on defence land.

24. For the aforesaid reasons, the Civil Appeals are dismissed.

.....J. [ANIL R. DAVE]J. [L. NAGESWARA RAO] New Delhi,
September 27, 2016.