

(2015) 07 MP CK 0038

In the Madhya Pradesh High Court

Case No : Writ Appeal Nos. 204 and 288 of 2015

Union of India and Others

APPELLANT

Vs

Gopal Das Kabra and Others

RESPONDENT

Date of Decision : 21-07-2015

Acts Referred:

Cantonments Act, 2006 — Section 10(2), 2(d), 2(h), 2(i), 2(r)
Constitution of India, 1950 — Article 1(2), 1(3), 226, 243-O(e), 243P
Criminal Procedure Code, 1973 (CrPC) — Section 488(8)
Hindu Marriage Act, 1955 — Section 19(iii), 9

Citation : (2015) 07 MP CK 0038

Hon'ble Judges : A.M. Khanwilkar, C.J;K.K. Trivedi, J

Bench : Division Bench

**Advocate : Indira Nair, Senior Advocate and Rajas Pohankar, for the Appellant;
Vivek Rusia, Advocates for the Respondent**

Final Decision : Dismissed

Judgement

A.M. Khanwilkar, C.J—These two writ appeals take exception to the judgment of the learned Single Judge of this Court dated 22.04.2015 in W.P. No. 93/2015.

2. That writ petition was filed by one Gopal Das Kabra (respondent No. 1) seeking direction against the concerned Authorities to prepare voters list strictly in accord with Rule 10 of the Cantonments Electoral Rules, 2007 (hereinafter referred to as "the said Rules"), by removing the names of encroachers and residents of illegally constructed houses and which have not been allotted house number by the Cantonment Board, Pachmarhi. Consequential relief prayed, is that, the Authorities be restrained from conducting election to Ward of Members on the basis of the impugned voters list (Annexure-P/12).

3. The writ petitioner claims to be a permanent resident of Pachmarhi area. He had contested election of Cantonment Board, Pachmarhi in the year 2008 and was defeated by a narrow margin of 292 votes. He had filed W.P. No. 7169/2008 before this Court seeking similar direction against the concerned Authorities to

strictly adhere to Rule 10 while preparing the electoral rolls of Cantonment Board, Pachmarhi. That writ petition was disposed of on 08.07.2010 with direction to the Cantonment Board, Pachmarhi to strictly abide by Rule 10 while preparing electoral rolls for 2010-11.

4. The appellants/Authorities had challenged that decision by way of W.A. No. 798/2010. The Division Bench of this Court directed the Authorities to prepare the electoral rolls as per the mandate of Rule 10(3), to be arranged according to house numbers. The Division Bench rejected the argument of the Authorities that there are several encroachments on the land of Cantonment Board; for which proceedings have already been initiated, but the encroachers could not be evicted due to reasons beyond the control of the Board. It was argued on behalf of the appellants/Board that as it was not possible for the Board to prepare the electoral rolls of occupants of such unauthorized structures in absence of allotment of house numbers; and if house number was to be allotted, it would amount to regularizing the encroachment. The Division Bench, however, opined that there was no obligation on the Cantonment Board to allot house numbers in respect of the structures which are unauthorized or illegal. It went on to observe that substantial compliance of provisions of Rule 10(3) is possible by marking the encroachment as unauthorized construction. The Division Bench further observed that against the names of persons occupying unauthorized structures, that fact can be mentioned in the electoral rolls for the purpose of compliance of Rule 10(3) of the said Rules. However, by the subsequent order passed on 02.08.2013 in review petition filed by the writ-petitioner being R.P. No. 972/2012, the Court deleted the observations made in the order dated 24.09.2010, - which read "and mention them accordingly in the electoral rolls for the purposes of compliance of Rule 10(3) of the Rules".

5. The writ petitioner then filed a contempt petition bearing No. 742/2012, which was disposed of on 30.09.2013 with direction to the Authorities to take all necessary steps to comply with the decision of the Division Bench dated 24.09.2010 as modified on 02.08.2013, expeditiously. The writ petitioner then pursued the matter with the concerned Authorities and in the wake of fresh election to be held in or around December, 2014, apprehending that the Authorities may indulge in the same illegality in preparation of the electoral rolls, approached this Court by way of Writ Petition No. 93/2015, for the reliefs as mentioned hitherto.

6. It may be relevant to mention that, in the meantime pursuant to the directions given by the Court in PIL, the Authorities took action against the unauthorized structures and proceeded to demolish as many as around 1200 unauthorized structures in furtherance of the Court order (as noted in order dated 17.04.2015 in W.P. No. 11909/2013 (PIL)). Even after removal of the unauthorized structures, the names of persons who were occupying those structures have been retained in the electoral rolls. According to the writ petitioner, if the unauthorized structures were non-existent, treating the persons

who occupied the said structures as continuing to reside in that house, would be preposterous; and for which reason, names of such persons in any case should be effaced and deleted from the voters list prepared by the Authorities, for ensuring free and fair election.

7. The learned Single Judge by the impugned judgment has allowed the writ petition and has directed the Authorities to publish updated voters list as per Rule 10, by dropping the names of encroachers and residents, who were in occupation of illegally constructed houses. The learned Single Judge, in the impugned judgment, has noted that in the previous round of litigation, inspite of direction given by the Court, the Authorities/Board prepared a common voters list enlisting the names of residents occupying legal structures. In substance, it is held that the voters list must contain names of persons residing in authorised structures bearing house numbers allotted by the competent Authority. The learned Single Judge has opined that on conjoint reading of Rule 9 and Rule 10, it mandates preparation of voters list only of persons occupying houses which have been recognized by the Cantonment Board as legal by allotting house numbers. Before the learned Single Judge, reliance was placed on Section 28 of the Cantonments Act, 2006 (for brevity "Act of 2006") to contend that exclusion of persons from the voters list merely because they were occupying illegal structures/houses, was not envisaged by the said provision. This contention has been negated by the learned Single Judge in the light of observations made by the Division Bench of this Court in the earlier round of litigation. Accordingly, direction has been issued by the learned Single Judge to the Authorities/Cantonment Board to correct the voters list in conformity with Rule 10 by removing the names of encroachers and residents, residing in illegal houses which do not bear house numbers allotted by the Cantonment Board, Pachmarhi. Against this decision, present appeals have been filed by the Authorities/Cantonment Board and persons aggrieved by the direction so issued by the learned Single Judge.

8. In the appeal filed by the Authorities/Board while issuing notice on the appeal on 24.04.2015, the Court passed interim order allowing the appellants/Board to continue with the election program on the basis of already published voters list but made it clear that the same will be subject to the outcome of the present appeals. We were informed that the election results, however, have not been notified as per the provisions of the Act of 2006.

9. The principal challenge in the present appeals, is that, the direction issued by the learned Single Judge violates Section 28(1) of the Act of 2006. It will result in denial of opportunity to large number of persons who are otherwise eligible to be enlisted as voters. Further, the learned Single Judge has misconstrued and misapplied the observations of the Division Bench in its order dated 24.09.2010, which has been modified by the subsequent order dated 02.08.2013. According to the appellants, on conjoint reading of the two orders, it is amply clear that the Board is obliged to prepare electoral rolls by including the name of every person

who was resident in the concerned constituency, irrespective of the fact that he was occupying the structure bearing house number or it was unauthorized structure. According to the appellants, the expression "resided" in Section 28(1) must be understood in that context, for providing inclusive representation to all the residents in the constituency. According to the appellants, the judgment of the Division Bench in the case of Mohan Mahavar and Others and Vijay Kumar Mahavar and Another Vs. Union of India (UOI) and Others, (2009) 1 MPHT 407 : (2009) 2 MPLJ 348 was directly on the point concerning the election to Cantonment Board.

10. Per contra, counsel for the original writ petitioner/respondent has supported the conclusion reached by the learned Single Judge and submits that the election to constitute Cantonment Board, Pachmarhi held in April-May 2015 on the basis of the voters list, which includes the names of persons who were occupying unauthorized and illegal structures in the concerned constituency and moreover even after the structures occupied by them have already been demolished, was nothing short of rigging of elections by posting names of large number of unqualified or ineligible persons. That by no standards can be said to be free and fair election. He has relied on the factum of compliance report filed by the Authorities/Board before this Court in W.P. No. 11909/2013(PIL) and companion cases to buttress his submission that the Cantonment Board has admitted of having demolished as many as around 1200 unauthorized/illegal structures. In continuity, it is submitted that it is unfathomable that a person who does not have any house in the concerned constituency can be considered as resident, to be enlisted as voter for participating in the election to constitute the Cantonment Board.

11. After having heard the counsel appearing for the respective parties including the intervener, the moot question which arises for our consideration is, who can qualify to be a voter and for inclusion of his name in the electoral rolls prepared in terms of Section 27 of the Act of 2006? Secondly, whether the issue is already answered against the Authorities/Board in the previous round of litigation (W.P. No. 7169/2008) filed by the same petitioner and decision of the Division Bench in W.A. No. 798/2010 passed on 24.09.2010 as modified on 02.08.2013 in review petition? We may also have to ponder on the argument about the legal exposition in the case of Mohan Mahavar and others (supra).

12. Taking the last point first, the question decided in the case of Mohan Mahavar and others (supra) was essentially as to whether the members of Armed Forces and other Defence personnel residing in the unit lines and other buildings in the cantonment were qualified to be enrolled as electors and for inclusion of their names in the electoral rolls of Cantonment. The observations in this decision will have to be understood in that context and will be binding precedent in respect of similar issue. The Court, however, was not called upon to consider the question which has now been agitated before us in these appeals, namely, whether a person occupying illegal/unauthorized structure in the Cantonment area can

claim to have any right to be enrolled in the electoral rolls prepared for the concerned constituency. The issue, which arises for our consideration, if we may say so, came up for consideration at the instance of the same writ petitioner in W.P. No. 7169/2008; albeit, in relation to the electoral rolls prepared by Cantonment Board, Pachmarhi for the year 2003 and 2009-10. The learned Single Judge whilst disposing that writ petition had observed that a fair reading of Rule 10 would reveal that the respondent-Board besides preparing the electoral roll by dividing it into separate parts for each ward, was also under obligation to arrange the names of electors in each part according to their house numbers. On that basis, the learned Single Judge directed the Cantonment Board to conduct the election strictly on the basis of electoral rolls prepared as per the mandate of Rule 10 of the said Rules.

13. To be precise, about the view expressed by the learned Single Judge, we deem it apposite to extract the relevant portion of the order dated 08.07.2010 in W.P. No. 7169/2008, which reads thus:

"A fair reading of the aforesaid Rules reveals that the respondent Board besides preparing the electoral roll by the dividing it into separate part for each ward are also under an obligation to arrange the name of electoral in each part of according to house numbers.

Trite it is that when the Rules provide for doing of things in certain manner the functionaries are bound to follow the same.

Having thus considered the petition is disposed of with a direction to respondent No. 1 to strictly adhere to the provisions contained in Rule 10 of the Rules 2007 while preparing the electoral roll of 2010-11 of the Cantonment Board, Pachmarhi.

The petition is disposed of in above terms. However, no costs."

(emphasis supplied)

14. This decision was challenged in W.A. No. 798/2010 by the Cantonment Board. The argument of the Cantonment Board came to be rejected by the Division Bench vide judgment dated 24.09.2010. The relevant extract of said judgment reads thus:

"Learned counsel for the appellant while assailing the order of the learned Single Judge made two fold submissions, firstly that the writ petition ought to have been entertained as it pertains to election dispute for which appropriate remedy is the election petition, secondly that there are several encroachments on the land of Cantonment Board for which proceedings have already been initiated, however, encroachers could not be evicted as no adequate police force was made available to the Cantonment Board. Learned counsel therefore submitted that appellant No. 1 is not in a position to comply with Rule 10(3) of the Rules, as house numbers cannot be allotted to encroachers and the same would amount to regularizing the encroachment.

We are not impressed with the submission put-forth by the learned counsel for the appellants. Rule 19(3) of the Rules mandates that name of electorals in each part of the roll shall be arranged according to house numbers. 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 unauthorised 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 unauthorised construction and mention them accordingly in the electoral roll for the purposes of compliance of Rule 10(3) of the Rules.

So far as the contention of the learned counsel for the appellants that the appropriate remedy for the respondents was to file an election petition is concerned, suffice it to say that the respondents have not questioned or challenged the election in any manner. Respondents in the writ petition had only sought enforcement of the Rules and for this reason, the election petition was not an appropriate remedy.

For the aforementioned reasons, we do not find any reason to differ with the view taken by the learned Single Judge. The appeal deserves to and is hereby dismissed."

(emphasis supplied)

15. It is indisputable that the appeal preferred by the Cantonment Board was rejected and that the Cantonment Board has allowed that decision to attain finality. It is the writ petitioner who resorted to remedy of review petition, in the context of some confusion created by the Cantonment Board on the basis of observation found in the abovesaid order of the Division Bench. The Division Bench of this Court vide order dated 02.08.2013 passed in the review petition, modified the observation found in the last sentence of 3rd last paragraph of the order dated 24.09.2010 on the following terms:--

"Having heard learned counsel for the parties, the order passed on 24.9.2010, in Writ Appeal No. 798/2010, is modified to the extent that the following words appearing in the first paragraph of second page of the order, which reads as under:

"and mention them accordingly in the electoral roll for the purpose of compliance of Rule 10(3) of the Rules" shall stand deleted.

In view of the aforesaid, the respondents and the competent authority are now free to proceed to prepare the electoral roll in accordance to the statutory requirement. Accordingly, the review application stands disposed of."

16. Even this order has been allowed to attain finality by all concerned. The effect of the modification, in no way, extricates the Cantonment Board from preparing the electoral rolls strictly in conformity with Rule 10, as interpreted by the learned Single Judge and which reasoning was affirmed by the Division Bench whilst rejecting the argument of the appellants essentially based on

impracticability and impermissibility of allotting house numbers to encroachers/illegal structures.

17. Going by the view taken in this decision, by necessary implication, the argument now canvassed by the Cantonment Board or the persons aggrieved by the decision impugned in these appeals, was negatived. In that, the grievance of the same writ petitioner in the said proceeding was about wrongful inclusion of names of large number of persons who were occupying illegal/unauthorized structures, which did not bear house numbers given by the Cantonment Board.

18. Assuming for the sake of argument, we have to decide the issue for the first time in the present proceedings, the answer would remain the same. Before we examine the relevant provisions of the Act of 2006, to answer the moot question posed hitherto, it may be necessary to recapitulate that Cantonments are not covered under the State Municipal Laws nor meant to be local self- governments under Part IX or IXA of the Constitution of India as such. Indeed, the Cantonments may be established in a given State or Union Territory, but it would still be outside the State Municipal Laws, being Central territories under the Constitution. Article 1(2) of the Constitution refers to the States and Union Territories as specified in the First Schedule to the Constitution. Article 1(3) refers to the territory of India, which comprises of the territories of the States; the Union territories specified in the First Schedule; and such other territories as may be acquired. For governing and administering the Cantonments, the Parliament has enacted the Cantonments Act, 2006 whilst repealing the Cantonments Act, 1924. It will be useful to refer to the statement of objects and reasons for enacting the Cantonments Act, 2006, the same reads thus:

"INTRODUCTION

The law relating to administration of Cantonments was being administered by the Cantonments Act, 1924 (2 of 1924). The said Act had been amended more than twenty times. To impart greater democratisation and improvement of their financial base to make provision for development activities it was found necessary to frame a comprehensive new legislation. Accordingly, the Cantonments Bill was introduced in the Parliament.

STATEMENT OR OBJECTS AND REASONS

The Cantonments Act, 1924 (2 of 1924) makes provisions relating to the administration of cantonments.

As cantonments are Central territories under the Constitution, the civil bodies functioning in these areas are not covered under State municipal laws.

2. In view of the present day, aspirations and needs of the people residing in cantonment areas and in order to bring in modern municipal management procedures/techniques in such areas, it is proposed to enact a new legislation by replacing the Cantonments Act, 1924 to provide for -

- (i) greater democratization;
- (ii) reservation of seats in Cantonment Boards for women and the Scheduled Castes/Scheduled Tribes;
- (iii) better financial management;
- (iv) extension of centrally sponsored development schemes to such areas;
- (v) management of defence lands and their audit etc.

3. The new legislation has been modified with a view to re-enact the existing Act in the context of Seventy-Fourth Constitutional Amendment and to provide for better urban management in cantonment as recommended by the Standing Committee of Parliament on Defence and the Action Taken Note of the Government on their recommendations. Broadly, the proposed modifications could be categorized as under:--

(i) Greater Democratisation;- The Bill envisages enhanced representation for elected members to make proper balance between the elected and nominated one. Reservation of seats in the Cantonment Boards for women and the Scheduled Castes/Scheduled Tribes would also fall in this category. In this proposed Bill, parity has been brought between the official and elected members of the Board and with this, the number of elected members would increase. The enhanced representation for elected members will cater for increased civil population in the cantonment areas.

(ii) Land Management;- Over the years, the defence land ownership has increased to 17.31 lakh acres out of which about 2 lakh acres of such lands are situated within 62 notified cantonment being managed under the existing Act. There is no statute to cover the management of about 15 lakh acres of defence lands lying outside the cantonments. As on date, these defence lands are regulated by executive instructions (not covered under any statute), issued by the Central Government from time-to-time through Acquisition, Custody, Relinquishment, etc. of Military Lands in India (ACR) Rules, 1944, which are non-statutory in nature.

The Management of Cantonment Board properties and the defence lands outside the Cantonments is different from each other in a sense that the former is covered under the existing Act and the Cantonment Property Rules, 1925 made thereafter, whereas, there is no such legislation or rules for the latter. The Standing Committee of Parliament (12th Lok Sabha) recommended that provisions may be made in the Cantonments Act itself regarding management of defence lands, their records, consolidation of earlier policies and land audit.

Statutory provisions have accordingly made and a new Chapter on management of defence lands has been added in the Bill. The provisions contained in this chapter will, inter alia, enable the Central Government to notify the defence lands, consolidate land management policies and records in regard to defence

lands, carry out land audits to detect abuse if any, non-utilisation and sub-optimal utilization of lands.

The Standing Committee of Parliament has also recommended making legal provisions to tackle encroachments on defence lands situated all over the country.

Accordingly, the problem of encroachment is not proposed to be tackled through the provisions contained in Clauses 239, 248, 249, 253 and 257 of the proposed Bill. This would be in addition to the powers available to the Government under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971.

(iii) Development impetus;- In addition, provisions have been made which would give necessary impetus to development activities, To keep pace with recent developments, provisions have also been made for developmental and welfare activities like (town-planning, old age homes, houses for disabled and working women hostels, rain water harvesting, non-conventional energy and other miscellaneous developmental activities which are important to sustain the environment and taking steps for social development.

(iv) Resource Generation- Provisions have been incorporated in the new Bill to streamline financial administration, improve finance base and change the tax mechanism keeping in view the needs of modern municipal administration. Provisions have also been made for a Cantonment Development Fund in which, any sum received from Government or an individual or association (by way of gift or deposit) or from centrally sponsored scheme, may be credited.

The Standing Committee of Parliament (12th Lok Sabha) had also made a recommendation for extension of centrally sponsored development schemes in cantonments for uniform development of States. Provisions in clauses 10 and 108 of the Bill have therefore been made making every Board a "deemed municipality" for the purpose of Article 243-O(e) of the Constitution. This would enable the Cantonment Boards to avail benefits and advantages of centrally sponsored schemes for social and economic development as are presently available to other municipalities in various States.

Under Article 285 of the Constitution, the properties of Central Government are exempted from all taxes imposed by local authorities in the States. Representations were received that for the services rendered by the local bodies and the financial implications involved, some payment in the form of service charges may be made to them. Consequently, the Central Government issued certain executive orders making provision for payment of service charges to local bodies since 1954.

There is no specific statutory provisions to give legal backing to the said decision/orders made by the Government in this regard from time-to-time. It is, therefore, proposed to make a provision in the Bill for payments to be made to the Cantonment Boards for service charge by the Central and the State Governments, after ascertaining the same.

4. The Bill seeks to achieve the above objectives."

(emphasis supplied)

19. We may usefully refer to the preamble of the Act of 2006, which reads thus :

"An Act to consolidate and amend the law relating to the administration of cantonments with a view to impart greater democratization, improvement of their financial base to make provisions for developmental activities and for matters connected therewith or incidental thereto."

20. It must be borne in mind that being a special law for effective and just administration of Central territories, the provisions must be understood in the context of the legislative intent for enacting such a special law. Notably, the Cantonment Board is incorporated and constituted under the Act of 2006, which is deemed to be a municipality under clause (e) of Article 243P of the Constitution only for the purposes set out in Section 10(2) of the Act. As per Chapter IV of the Act, the Cantonment Board is made responsible for effective and just administration of Cantonment lands, which are primarily required for defence or military installations. Indeed, because of the vastness of the Cantonment areas, protecting the territories of Cantonment lands is a serious challenge. Encroachments in Cantonment areas may pose serious threat to the existing Defence or Military installations and impede its development plans. Any approach that may encourage unauthorized occupation and encroachments in the Cantonment area, therefore, would be counter-productive and must be eschewed. Indeed, the Act of 2006 itself recognizes that portion of the Cantonment area may be carved out as a civil area, to be notified by the Central Government under Section 46(1) of the Act of 2006. That does not mean that liberal approach must be adopted to bestow rights on the encroachers/occupants of unauthorized structures including in the civil area of the Cantonment. To ensure efficient and just land management and developmental activities of the Cantonments, by the Cantonment Board, the provisions such as in Chapter III and IV of the Act of 2006 have been introduced. That would necessarily mean that the Board is primarily responsible to ensure that only lawful and permissible activities in the Cantonments (which are Central territories and meant for Defence or Military installations) are allowed.

21. Reverting to Section 28 of the Act, it provides for qualification of electors. The said section reads thus:

"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 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."

(emphasis supplied)

22. On a bare reading of this provision, it is clear that any person having resided in the Cantonment for a period of not less than six months immediately preceding the qualifying date, is entitled to be an elector unless he is disqualified because of applicability of any of the condition specified in Sub-section (2). In the Act of 2006, expression "resided" has been used, unlike the expression "ordinarily resident" used in Section 19(b) of the Representation of the People Act, 1950 governing the qualification of an elector. The expression "resided" has not been defined in the Act. What is defined, however, is the expression "resident", in section (2)(zt). The reads thus:

"2(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;"

(emphasis supplied)

23. The Dictionary meaning of word/expression "resided" as found in The Major Law Lexicon by P. Ramanatha Aiyar, 4th Edition 2010, reads thus:

"Resided. The word "resided" is not defined by the Act. In its dictionary sense of

the word, "to reside", means, to dwell permanently or for a long period, temporary place of residence or a casual place of stay is thus excluded from being called a residence. T. Sareetha Vs. T. Venkata Subbaiah, AIR 1983 AP 356 : (1983) 2 APLJ 37 . Lalithamma Vs. R. Kannan, AIR 1966 Kar 178 [Hindu Marriage Act (25 of 1955). S.19(iii), 9]

The expression "resided" appearing in the section is wide enough to cover temporary as well as permanent residence. What would constitute residence within the meaning of S.488 would depend on the facts of each case. It is neither permissible nor possible to fix any period of time which would raise an inference of a residence sufficient to attract the jurisdiction of the CrPC under S. 488 . Tulsiram Dewaji Vs. Smt. Narbadabai, AIR 1958 MP 255 : (1958) CriLJ 1188 . The word "resided" in S. 488(8), CrPC, (5 of 1898) implies something more than a mere brief or flying visit and would include temporary as well as permanent residence. Abdul Hamid Sadiq Vs. Bibi Ashrafunnissa, AIR 1965 Patna 344 : (1965) CriLJ 236 .

Where both the parties are working at two different places having their separate residential houses, both places would be fit for the residence of the spouses, if they visit each other, such visits cannot be termed as casual or flying, and they would come under the terms "resides" and "resided". Pritma Sharma Vs. Mohinder S. Bhardwaj, AIR 1984 P&H 305 : (1984) 2 ILR (P&H) 292 ."

See also (1) last resided; (z) ordinarily resided."

24. Besides the meaning of expression "resident", it may also be useful to refer to some other words defined in Section of the Act, such as Section 2(d) which reads thus :

"2(d) "building" means a house, outhouse, stable, latrine, shed, hut or other roofed structure whether of masonry, brick, wood, mud, metal or other material, and any part thereof, and includes a well and a wall other than a boundary wall but does not include a tent or other portable and temporary shelter;"

Section 2(h) reads thus :

"2(h) "civil area" means an area declared to be a civil area by the Central Government under Sub-section (1) of section 46;"

Section 2(i) reads thus :

"2(i) "civil area committee" means a committee appointed under section 47;"

Section 2(r) reads thus :

"2(r) "entitled consumer" means a person in a cantonment who is paid from the Defence Service Estimates and is authorized by general or special order of the Central Government to receive a supply of water for domestic purposes from the Military Engineer Services or the Public Works Department on such terms and conditions as may be specified in the order;"

Section 2(x) reads thus :

"2(x) "Group Housing" means a group of houses for dwelling purposes and may comprise all or any of the following: namely (a) a dwelling unit, (b) open spaces intended for recreation and ventilation, (c) roads, paths, sewers, drains, water supply and ancillary installations, street lighting and other amenities, (d) convenient shopping place, schools, community hall or other amenities for common use;"

Section 2(y) reads thus :

"2(y) "Government" in relation to this Act means the Central Government;"

Section 2(zb) reads thus :

"2(zb) "hut" means any building, no material portion of which above the plinth level is constructed of masonry or of squared timber framing or of iron framing;"

Section 2(zc) reads thus :

"2(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;"

Section 2(zi) reads thus :

"2(zi) "occupier" includes an owner in occupation of, or otherwise using his own land or building;"

Section 2(zl) reads thus :

"2(zl) "owner" includes any person who is receiving or is entitled to receive the rent of any building or land whether on his own account or on behalf of himself and others or an agent or trustee, or who would so receive the rent or be entitled to receive it if the building or land were let to a tenant;"

Section 2(zw) reads thus :

"2(zw) "shed" means a slight or temporary structure for shade or shelter."

25. On conjoint reading of Sections 28 and 2(zt), in particular, it is clear that the person should have had resided during the specified period in a "house" or a portion of a house "which is at all times available for occupation by himself or his family" and he has not abandoned all intention of occupying such house by himself or his family, only whence he would qualify to be an elector unless disqualified by application of any condition specified in Sub-section (2) of Section 28 of the Act. The qualification is linked to the factum of occupation of a "house" in the Cantonment area during the specified period.

26. The expression "house", however, has not been defined in the Act. That expression in common parlance is very wide, as can be noticed from the Major

27. Be that as it may, to qualify the expression "resident" in the Cantonment during the specified period, the person must maintain therein a house or portion of a house which is at all time available for his occupation by himself or his family. To "maintain a house", pre-supposes that it must be a house in existence on the qualifying date (in this case 01.04.2014); and which has been erected after taking due permission and recognized by the appropriate Authority of the Cantonment Board consequent to allocation of house number. Inasmuch as, a house, a building or a house in the building can be permitted and so recognized by the competent Authority of the Cantonment, only if it is erected after due permission as mandated in Section 234 of the Act and also numbered by the appropriate Authority of the Cantonment in terms of Section 259 of the Act. In law, only such house can be reckoned by the Board and will be available for lawful occupation at all times. The expression, "at all times available for occupation" in Section 2(zt), can neither be said to be superfluous nor unintended. A priori, the expression "resided" employed in Section 28, deserves and must be given strict interpretation as occupation of a house or a portion of a house which has been erected after obtaining due permission/sanction of the appropriate Authority and is so recognized by the appropriate Authority by allotting house number therefor. Only such house can be said to be available for occupation at all times. Any other interpretation would be counter-productive and would encourage the floating population encroaching upon the Cantonment areas which need to be effectively secured and protected because of the sensitive Defence or Military installations thereat. It is not unknown, that for political reasons, the Cantonment Authorities are often forced to turn Nelson's eye to the encroachments on the Cantonment lands - both in the civil area and also in the notified areas, for obvious reasons. Precisely, this grievance is the subject matter of Public Interest Litigation being W.P. No. 11909/2013 and connected matters, in which, this Court had to direct the appropriate Authority to remove all the unauthorized structures by following due process.

28. Giving liberal meaning to the expression "resided" in section 28 of the Act, to also include encroachers and occupants of unauthorised structures would enable the "floating population", which may be quite significant in some areas, to participate in electing representatives on the Board who will care more for their votary and take populist decisions (obviously a case of conflict of interests). Inclusion of such elected representatives may inevitably jeopardise the legislative intent of introducing stern measures for effective and just management of Cantonment lands (spread over to the extent of 17.31 lakh acres of defence lands as on the date of introduction of the Bill to enact the Act of 2006). Further, participation of encroachers/unauthorised occupants - which will be large in number because of the increasing encroachments on the Cantonment lands, is not only a threat to the just and proper land management of the Cantonment but also, inevitably, impact the conduct of free and fair elections in the concerned Constituency. The inclusion of elected representatives on the Cantonment Board

is to cater for safeguarding the interests of civil population in the civil areas of the Cantonment. The civil population would necessarily mean - those who abide by the Rule of law and have erected houses in the Cantonment areas with due approvals and the house so constructed has been recognized by the Cantonment Authorities by allotting house number. Any other view would result in awarding premium on the illegal activity of such persons which often is accomplished in an organized manner. That will be anathema to the intent of the Act of 2006 to preserve and protect the Cantonment lands in larger national interests and also for security reasons because of sensitive defence or military installations on such lands.

29. It is well established position that right to vote or to be enrolled as an elector in the electoral rolls, is only a statutory right. It is not a fundamental right. In other words, when it comes to participation in the installation of democratically elected representatives for the good governance of the Cantonment areas, that claim must be subservient to the rigours stipulated in provisions such as Section 28 of the Act.

30. It is unfathomable that a person who does not have a lawful house in the Cantonment area or whose house has already been demolished by the Authority in furtherance of the direction given by this Court or is liable to be so demolished, can by any stretch of imagination be treated as qualified to be an elector.

31. There is thin distinction between the expressions "resident" and "inhabitant", as defined in the Act. The expression "inhabitant" as defined in Section 2(zc) would also reinforce the view that we have taken. In that, inhabitant means a person who is "ordinarily residing" or carrying on business or owning or occupying immovable property in the Cantonment area. A person, who does not occupy a lawful immovable property (house) or has been dispossessed after removal of the unauthorised structure earlier occupied by him after following due process, by no standards can claim to be qualified to be enlisted in the electoral rolls. The view taken by us is also reinforced by the statutory Rules framed under the Act 2006, titled "Cantonment Electoral Rules, 2007. Chapter-II deals with the electoral rules. The same reads thus:

"CHAPTER II

ELECTORAL ROLLS

8. Registration - No person shall be entitled to be recognized 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 1st 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 1.

(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 purpose 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.

11. Manner of ascertaining names of electors for inclusion in the electoral roll -

(1) The Chief Executive Officer may for the purpose of preparing the electoral roll, send letters of request in Form I-A to the occupants of dwelling houses in the Cantonment and every person receiving any such letter shall furnish the information called for therein to the best of his ability.

(2) The Chief Executive Officer shall ascertain the names of members of the Armed Forces and other personnel residing in the unit lines or other buildings, who are eligible for registration in the electoral roll of the Cantonment, from the Officer Commanding the Station or the Officer Commanding the Unit, as he deems necessary.

12. Notice of publication of electoral rolls - (1) Copies of the electoral roll prepared under rule 10 shall be displayed at the notice board of the office of Cantonment Board, and at the same time notice of their preparation shall be displayed in Form II at the notice Board of the said Office and as such places throughout the Cantonment, there being at least one such place in each ward, as the Board, or where a Board is not constituted, the Officer Commanding the Station, may specify.

(2) The notice shall also specify the mode in which claims and objections are to be preferred and disposed of."

(emphasis supplied)

32. Rule 10 mandates that the names of electors in each part of the roll shall be arranged in accordance with "house number" and into separate parts for each Ward. Rule 11 also recognizes that a person "occupying a dwelling house" may be considered for being included in the electoral roll. The use of expression "house number" is not a mere formality. House number, is allotted by the appropriate Authority as required under Section 259 to recognize such house as legal and permissible for occupation at all times in the Cantonment area.

33. We are of the opinion, that the mandate of Section 28 read with Section 2(zt) of the Act and read with Rule 10 of the Rules, is that, the person must not only have resided in the Cantonment for a period not less than six months, before the qualifying date, but must also have maintained a house or a portion of house erected after due approvals and is so recognized by the appropriate Authority by allocating house number therefor. Only such house would fulfill the requirement of being available at all times for occupation for himself or his family.

34. The argument of the appellants that the sweep of provisions in the Rules referred to above, is in excess of the provisions of the Act in particular Sub-section (2) of Section 28, in our opinion, is completely ill-advised. The requirement of occupation of a lawful house as is recognized by the Cantonment, is discernable from the conjoint reading of Section 28 and 2(zt) read with Section 234 and 259. The person must be occupant of a dwelling house, which has been permitted to be erected in the Cantonment area and has been so recognized by the appropriate Authority of the Cantonment consequent to allocation of house number therefor.

35. Even the argument, as advanced by the appellants, that such interpretation would be rewriting of Section 28 of the Act if examined in the context of Section 34(1)(e) of the Act, providing for removal of a member from the Board for having himself done or aided or abetted encroachments and illegal constructions on defence land in contravention of the provisions of the Act and the Rules and Bye-laws made thereunder, does not commend to us. The fact that the acts of commission or omission ascribable to Section 34(1)(e), has not been specified as disqualification in Section 28(2) does not mean that the person who has himself done or aided or abetted encroachment and illegal construction on the Cantonment land should be treated as qualified to be an elector. We have elaborately examined the relevant provisions of the Act and on conjoint reading of those provisions have no manner of doubt that to qualify to be an elector the person must have occupied a lawful house which is recognized by the appropriate Authority of the Board by allocation of house number therefor and thus can be said to be available for occupation for all times. Notably, Section 34 deals with an entirely different situation. It is an enabling provision vesting power in the Central Government to remove a member from the Board. There is marked difference between the provisions stipulating qualification and disqualification. The provision such as Section 34 deals with disqualification incurred even after election of that person as member of the Board. The qualification provided in Section 28 is regarding the entitlement for being enrolled in the electoral rolls. Suffice it to observe that there is no substance in this argument. Similarly, we are not impressed by the argument that Rule 10 only prescribes for the procedure for preparation of the voters list. Indeed, it is a provision regarding the manner of preparation of electoral rolls but will have to be conjointly read with the other provisions in the Act and the Rules framed thereunder. The provisions in the Act and Rules by itself are indicative of the view that we have taken and elaborated in the earlier part of the judgment.

36. We may now advert to the factual position mentioned across the Bar during the course of arguments which itself justifies the approach adopted by us. As has been pointed out earlier, the Cantonment Board has admitted of having demolished as many as over 1200 (Twelve Hundred) illegal structures in furtherance of the direction issued by this Court in Public Interest Litigation. It was also pointed out to us that as against 781 voters in the given Constituency after the demolition of unauthorised structures, 479 persons who were occupying unauthorised structures have ceased to be residing in the Cantonment area. In absence of maintaining a lawful house which has been allocated house number in the Cantonment area, it is incomprehensible as to how such person can claim to be an elector. For the same reason, the fact that wrongful inclusion of name of elector has not been specified as a ground to challenge the election of the returned candidate in Rule 55, it would not necessarily follow that the election can be lawfully conducted on the basis of such large number of ineligible persons enrolled as electors. We may agree for the time being that no remedy has been provided in the Act of 2006 to question the conduct of election on the basis of such palpably defective, if not bogus electoral rolls. In the case of Chief Commissioner, Ajmer Vs. Radhey Shyam Dani, AIR 1957 SC 304 : (1957) 1 SCR 68 , the Constitution Bench of the Supreme Court has held that the essence of elections is preparation of proper electoral rolls as per the stipulations provided therefor. Further, holding elections without discharging such obligation would be amenable to challenge at the instance of the parties concerned. Again in the case of Bar Council of Delhi and Others Vs. Surjeet Singh and Others, AIR 1980 SC 1612 : (1980) 4 SCC 211 : (1980) 3 SCR 946 , the Supreme Court rejected similar objection and instead held that remedy under Article 226 can be invoked in such cases. We say so because the Cantonment Board is deemed to be a municipality within the meaning of Article 243P(e) only for the purposes set out in Section 10(2) of the Act. The election to install an elected representative on the Board is conducted by the Officials of the Board under the provisions of the Act and Rules framed thereunder and not by the State Election Commission, for which the constitutional bar of interfering with the election process will not be applicable.

37. Taking overall view of the matter, therefore, we agree with the conclusion reached by the learned Single Judge in allowing the writ petition and directing the appellants-Authorities/Board to conduct the ensuing election strictly on the basis of the electoral rolls prepared as per the mandate of Rule 10 of the Rules of 2007, consisting of persons who have resided in lawful houses to which house number has been allocated by the appropriate Authority of the Cantonment, for a period of not less than six months immediately preceding the qualifying date. Any other approach, in law, will be contrary to the spirit of the conduct of free and fair elections for electing the representative to espouse the cause of civil population, and who in turn are required to swear by the oath to abide by the Rule of Law.

38. Accordingly, these appeals must fail. Hence, the same are dismissed being

devoid of merits. Accompanying applications are also disposed of on the same terms. The interim relief is vacated with directions to the Board to conduct elections on the basis of freshly prepared (revised) electoral rolls forthwith, in conformity with the provisions of the Act and the Rules framed thereunder by including the names of only qualified electors keeping in mind the observations made in this judgment.

Ordered accordingly.