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September 7.

SMT. SHANNO DEVI

v.

MANGAL SAIN

(S. K. DAS, M. HIDAYATULLAH, K. C. DAS GUPTA, J. C. SHAH and N. RAJAGOPALA AYYANGAR, JJ.)

Migration to India--Citizenship, claim for—Intention of residing permanently—Election dispute—"Migrated to the territory of India", "Ordinarily resident", meaning of—Constitution of India, Art. 6.

The respondent was the successful candidate at the general election held in March, 1957, for the Punjab Legislative Assembly. The appellant who was one of the unsuccessful candidates, filed an election petition and challenged the validity of the respondent's election on the grounds, *inter alia*, that the latter was not a citizen of India and was, therefore, not qualified to stand for election. It was found that he was born of Indian parents sometime in 1927 in India as defined in the Government of India Act, 1935, in a village which since August 15, 1947, became part of Pakistan, that in 1944 he had moved from his home district to Jullunder in what is now the territory of India, and that after August 15, 1947, he definitely made up his mind to settle in India with the intention of residing there permanently. There was some evidence to show that he went to Burma in January, 1950, and made unsuccessful attempts to secure permission from the Government of Burma to stay there permanently. The question was whether the respondent could be deemed to be a citizen of India within the meaning of Art. 6 of the Constitution of India.

Held: (1) that the expression "migrated to the territory of India" in Art. 6 of the Constitution means "migrated at any time before the commencement of the Constitution to a place now in the territory of India".

(2) that in Art. 6 the words "migrated to the territory of India" mean "come to the territory of India with the intention of residing there permanently".

(3) that where a person moves from one country to another and has, at the time of moving, a intention to remain in the country where he moved only temporarily, but later on forms the intention of residing there permanently, he should be held in law to have migrated to that country at the later point of time.

(4) that for applying the test of being "ordinarily resident in the territory of India since the date of his migration" in Art. 6(b)(i), what is necessary to be shown is that during the period beginning with the date on which migration became

complete and ending with November 26, 1949, as a whole, the person has been "ordinarily resident in the territory of India". Whether he was not in India on January 26, 1950, or whether he formed an intention of taking up his permanent residence in Burma when he left for that place in January, 1950, was not relevant.

(5) That the words "ordinarily resident" in the Constitution mean "resident during this period without any serious break". It is not necessary that for every day of this period the person should have resided in India.

(6) that the respondent satisfied the requirements of Art. 6 of the Constitution and that his claim to be deemed a citizen of India must be upheld.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 247 of 1960.

Appeal from the judgment and order dated October 3, 1958, of the Punjab High Court in First Appeal from Order No. 131 of 1958.

A. V. Viswanatha Sastri and *Naunit Lal*, for the appellant.

U. M. Trivedi and *Ganpat Rai*, for the respondent.

1960. September 7. The Judgment of the Court was delivered by

Das Gupta J.

DAS GUPTA J.—What do the words "has migrated to the territory of India" in Art. 6 of the Constitution mean? That is the main question in this appeal. The appellant, Shanno Devi, was one of the unsuccessful candidates at the general election held in March 1957 for the Punjab Legislative Assembly. The respondent, Mangal Sain, was the successful candidate. The nomination papers of these and other candidates which were scrutinised on February 1, 1957, were accepted on the same date. The voting took place on March 12, and after counting of votes on March 14, 1957, the respondent, Mangal Sain was declared duly elected. On March 27, 1957, the appellant filed an election petition and challenged the respondent's election on various grounds, the principal ground being that the Returning Officer had improperly accepted the nomination paper of the respondent on the ground that he was not a citizen of India and was not qualified to stand for election. With the other grounds which

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were taken in this petition we are no longer concerned as after the Election Tribunal rejected these several grounds they were not pressed before the High Court and have also not been raised before us. The Election Tribunal however held that Mangal Sain was not an Indian citizen at the time he was enrolled as a voter or at the time his nomination papers were accepted and even at the time when he was elected. Accordingly the Tribunal allowed the election petition and declared the respondent's election to be void. On appeal by Mangal Sain to the High Court the only point raised was whether the appellant was a citizen of India at the commencement of the Constitution. If he was a citizen of India at the date of such commencement, it was not disputed, he continued to be a citizen of India on all relevant dates, viz., the date of his enrolment as a voter, the date of acceptance of his nomination and the date of his election. If however he was not a citizen of India at the commencement of the Constitution he had not since acquired citizenship and so his election would be void. The respondent's case all along was that he was a citizen of India at the commencement of the Constitution under Art. 5 of the Constitution and apart from that he must be deemed to be a citizen of India at such commencement under Art. 6 of the Constitution. The Election Tribunal as already indicated rejected both these contentions. The learned judges of the High Court while indicating that they were inclined to think that the respondent's claim to citizenship of India under Art. 5 could not be sustained did not consider that matter in detail, but held that his claim to be deemed to be a citizen of India at the commencement of the Constitution under Art. 6 thereof must prevail. The primary facts as found by the Tribunal on the evidence led by the parties before it, have been correctly summarised in the judgment of the High Court in these words :—

"On the evidence led by the parties the learned Tribunal held that it was proved that Mangal Sain was born of Indian parents sometime in 1927 in village Jhawarian, District Sargodha, and that when he was only two years old he was taken by his parents from

Jhawarian to Mandlay in Burma wherefrom the entire family returned to Jullunder (Punjab) in 1942 when Burma was occupied by the Japanese forces during the Second World War. After having stayed for a few days in Jullunder, Mangal Sain, his parents and his brother went to their home district Sargodha where they stayed for about two or two and a half years. During this period Mangal Sain passed Matriculation examination from the Punjab University and after having himself matriculated he again returned to Jullunder, where he was employed in the Field Military Accounts Office from 8th December, 1944 to 7th August, 1946, when his services were terminated because of his continuous absence from duty. Mangal Sain's parents and his brother according to the findings of the learned Tribunal also returned from Sargodha to Jullunder and lived there for about two and a half years from some time in 1945 onwards before they again went over to Burma which country they had left in 1942 due to its occupation by the Japanese forces. While Mangal Sain was in service in the Field Military Accounts Office, he joined Rastriya Swayam Sewak Sangh movement and became its active worker. Sometime after his services were terminated, he shifted the scene of his activities to Hissar and Rohtak districts where he moved from place to place to organise the Rastriya Swayam Sevak Sangh movement. During this period apparently he had no fixed place of residence and he used to reside in the offices of the Jan Sangh and took his meals at various Dhabas. For about 4 months from June to September in the year 1948 Mangal Sain served as a teacher in Arya Lower Middle School, Rohtak. In July 1948 Mangal Sain submitted to the Punjab University his admission form for the University Prabhakar examination which form was duly attested by Prof. Kanshi Ram Narang of the Government College, Rohtak. Sometime in January 1949 he was arrested in connection with the Rastriya Swayam Sevak Sangh movement and was detained in Rohtak District Jail from 10th January, 1949, till 30th May, 1949. In August 1949 he again appeared in Prabhakar

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examination and was placed in compartment, he also appears to have organised Rastriya Swayam Sevak Sangh in the districts of Rohtak and Hissar during the years 1948-49 and he used to move about from place to place without having any fixed place of abode. The Tribunal further found that it was sometime in the end of 1949 or in January 1950 that Mangal Sain left India and went to Burma where his parents and other brothers were already residing. In that country he tried to secure permission to stay there permanently, but the Government of Burma did not agree and directed him to leave that country; in this connection he applied for a writ to the Supreme Court of Burma but his petition was disallowed. On the 29th October, 1951, Mangal Sain deposited with the competent authority in Burma the registration certificate granted to him under the Registration of Foreigners Act, 1948, and a few days later he came back to India and since then he has been living in this country and has been organising Rastriya Swayam Sevak Sangh movement in the districts of Hissar and Rohtak. In 1953 he was again arrested and detained in Rohtak jail as a detenue from the 8th February to 8th May, 1953, when he was transferred to Ambala jail".

On these facts the Tribunal further held that it cannot be said "that the respondent had an intention to settle in India permanently and that he had no intention of ever leaving it". Taking along with these facts the respondent's declaration in the affidavit (Ex. 5) to which we shall presently refer the Tribunal further held that "his own declaration in the affidavit (Ex. 5) and his conduct in going over to Burma and trying to settle there permanently furnish convincing proof that all along he had the intention to follow his parents and other relations to Burma and to settle there permanently". The Tribunal finally concluded by saying that "it is also quite clear that in the case of this respondent it cannot be said that he had no other idea than to continue to be in India without looking forward to any event certain or uncertain which might induce him to change his residence".

On these findings of fact the Tribunal held that the respondent could not be deemed to be a citizen of India under Art. 6 of the Constitution.

On these same primary facts mentioned above, Mr. Justice Dua who delivered the leading judgment of the High Court recorded his conclusion thus :—

"I can draw but only one conclusion from the evidence on the record, that the appellant who had moved from his home district to Jullunder had, after the 15th August, 1947, no other intention than of making the Dominion of India as his place of abode. On the 15th August, 1947, therefore the appellant's migration from Jhawarian to the territory of India was clearly complete, whatever doubts there may have been before that date, though I would be prepared even to hold that he had moved away from his village in 1944 and had migrated to the eastern districts of the Punjab".

Mr. Justice Falshaw agreed with this conclusion.

On these conclusions the learned Judges held that the respondent's claim to be deemed a citizen of India at the commencement of the Constitution must succeed.

The main contention on behalf of the appellant is that the conclusion of the High Court, that when the respondent moved away from his village in 1944 and that at any rate after the 15th August, 1947, he had no other intention than of making the Dominion of India his place of abode, was arbitrary. It was also contended that in any case the migration under Art. 6 of the Constitution has to take place after "the territory of India" as contemplated in the Constitution had come into existence. Lastly it was contended, though faintly, that the respondent had not in any case complied with the requirements of being ordinarily a resident in the territory of India since the date of his migration. The respondent's counsel besides challenging the correctness of the above contention further urged that the words "migrated to the territory of India" in Art. 6 only means "come to the territory of India" and does not mean "come to the

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territory of India with the intention of permanently residing there".

The extreme contention raised by Mr. Sastri on behalf of the appellant that migration under Art. 6 must take place after the territory of India came into existence under the Constitution cannot be accepted. It has to be noticed that Art. 6 deals with the question as to who shall be deemed to be a citizen of India at the commencement of the Constitution. That itself suggests, in the absence of anything to indicate a contrary intention, that the migration which is made an essential requirement for this purpose must have taken place before such commencement. It is also worth noticing that cl. (b) of Art. 6 which mentions two conditions, one of which must be satisfied in addition to birth as mentioned in cl. (a) and "migration" as mentioned in the main portion of the Article being proved, speaks in its first sub-cl. of migration "before the 19th day of July 1948" and in sub-cl. (ii) migration "after the 19th day of July 1948". The second sub-cl. requires that the person must be registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him therefor to such officer before the commencement of the Constitution. The proviso to that Article says that no person shall be so registered unless he has been resident in the territory of India for at least six months immediately preceding the date of his application. It is clear from this that the act of migration in Art. 6 must take place before the commencement of the Constitution. It is clear therefore that "migrated to the territory of India" means "migrated" at any time before the commencement of the Constitution to a place now in the territory of India.

This brings us to the important question whether "migrated to the territory of India" means merely "come to the territory of India" or it means "come to the territory of India to remain here" or in other words, "come to the territory of India with the intention of residing here permanently". There can be no doubt that the word "migrate" taken by itself is

capable of the wider construction "come from one place to another" whether or not with any intention of permanent residence in the latter place. It is beyond controversy that the word "migrate" is often used also in the narrower connotation of "coming from one place to another with the intention of residing permanently in the latter place". Webster's Dictionary (Second Edition, 1937) gives the following meaning of the word "migrate":—"To go from one place to another; especially, to move from one country, region, or place of abode or sojourn to another, with a view to residence; to move; as the Moors who migrated from Africa to Spain". The Corpus Juris Secundum published in 1948 gives the same meaning except that it also gives "to change one's place of residence" as one of the meanings. The word "Immigrate" which means "migrate into a country" and its derivatives "Immigrant" and "Immigration" have received judicial consideration in several Australian and American cases, in connection with prosecutions for contravention of Immigration laws.

The Courts in Australia, were of opinion, on a consideration of the scheme and subject-matter of their laws in question that the word "Immigrant" in the Immigrant Registration Act, 1901, and in s. 51 of the Australian Constitution means a person who enters Australia whether or not with the intention of settling and residing there (Vide *Chia Gee* v. *Martin* (1)). The American courts however took the view in *United States* v. *Burke* (2), *Moffitt* v. *United States* (3) and *United States* v. *Atlantic Fruit Co.* (4) on a consideration of the purpose and scheme of the legislation, that "Immigrant" means a person who comes to the United States with a view to reside there permanently.

We have referred to these cases on the meaning of the word "Immigration" to show that there can be no doubt that the word "migrate" may have in some contexts the wider meaning "come or remove to a

(1) (1905) 3 C.L.R. 649. (2) (1899) 99 Federal Reports 895.
(3) (1904) 128 Federal Reports 375. (4) (1914) 212 Federal Reports 711.

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place without an intention to reside permanently" and in some context the narrower meaning "come or remove to a place with the intention of residing there permanently". The fact that the Constitution-makers did not use the words "with the intention to reside permanently" in Art. 6 is however no reason to think that the wider meaning was intended. In deciding whether the word "migrate" was used in the wider or the narrower sense, it is necessary to consider carefully the purpose and scheme of this constitutional legislation. The Constitution after defining the territory of India and making provisions as to how it can be added to or altered, in the four articles contained in its first Chapter proceeds in the second Chapter to deal with the subject of citizenship. Of the seven articles in this chapter the last Article, Art. 11, only saves expressly the right of Parliament to make provisions as regards acquisition and termination of citizenship and all other matters relating to citizenship. Of the other six articles, the first, Art. 5, says who shall be citizens of India at the commencement of the Constitution; while Arts. 6 and 8 lay down who though not citizens under Art. 5 shall be deemed to be citizens of India. Art. 10 provides that once a person is a citizen of India or is deemed to be a citizen of India he shall continue to be a citizen of India, subject of course to the provisions of any law that may be made by Parliament. Art. 9 provides that if a person has voluntarily acquired citizenship of any foreign State he shall not be a citizen of India or deemed to be a citizen of India. Art. 7 also denies the right of citizenship to some persons who would have otherwise been citizens of India under Art. 5 or would be deemed to be citizens of India under Art. 6.

The primary provision for citizenship of India, in this scheme is in Art. 5. That follows the usual practice of insisting on birth or domicile which shortly stated means "residence with the intention of living and dying in the country" as an essential requirement for citizenship; and confers citizenship on a person fulfilling this requirement if he also satisfied another requirement as regards his birth within what

is now the territory of India or birth of any of his parents within this area or ordinary residence in this area for a continuous period of five years immediately preceding the commencement of the Constitution. If there had been no division of India and no portion of the old India had been lost this would have been sufficient, as regards conferment of citizenship apart from the special provision for giving such rights to persons of Indian origin residing outside India. But part of what was India as defined in the Government of India Act, 1935, had ceased to be India and had become Pakistan. This gave rise to the serious problem whether or not to treat as citizens of India the hundreds of thousands of persons who were of Indian origin—in the sense that they or any of their parents or any of their grand-parents had been born in India —but who would not become citizens under Art. 5. The Constitution-makers by the provisions of Art. 6 decided to treat as citizens some of these but not all. Those who had not come to the new India before the date of the commencement of the Constitution were excluded; those who had so come were divided into two categories—those who had come before the 19th July, 1948, and those who had come on or after the 19th July, 1948. Persons in the first category had in order to be treated as citizens to satisfy the further requirement of "migration" whatever that meant, and of ordinary residence in the territory of India since they "migrated" to India; while those in the second category had, in addition to having migrated, to be residents for not less than six months preceding the date of the application for registration as citizens which application had to be filed before the date of the commencement of the Constitution. But while the primary provisions in the Constitution as regards the citizenship for people born at a place now included in India and people whose parents were born at a place now in India insist on the requirement of intention to reside here permanently by using the word "domicile", Art. 6 which under the scheme of the Constitution deals with what may be called "secondary citizenship" and says about some persons that

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they will be deemed to be citizens of India, does not mention "domicile" as a requirement. Can it be that the Constitution-makers thought that though in the case of persons born in what has now become India or those any of whose parents was born in what is now India as also in the case of person who had been residing here for not less than five years in what is now India, it was necessary to insist on domicile before conferring citizenship, that was not necessary in the case of persons whose parents or any of whose grand-parents had been born in what was formerly India but is not now India? In our opinion the Constitution-makers could not have thought so. They were aware that the general rule in almost all the countries of the world was to insist on birth or domicile as an essential pre-requisite for citizenship. They knew that in dealing with a somewhat similar problem as regards citizenship of persons born out of what was then the territory of Irish Free State, the Constitution of the Irish Free State had also insisted on domicile in the Irish Free State as a requirement for citizenship. There can be no conceivable reason for their not making a similar insistence here as regards the persons who were born outside what is now India, or persons any of whose parents or grand-parents were born there. Mention must also be made of the curious consequences that would follow from a view that an intention to reside permanently in the territory of India and is not necessarily in Art. 6. Take the case of two persons, one of whom was born in what is now India and has all along lived there and another person who though born in what is now India went to live in areas now Pakistan and then moved back to areas in what is now India. The first named person would have to satisfy the requirement of domicile at the commencement of the Constitution before he is a citizen; but the second person would not have to satisfy this condition. It would be unreasonable to think that such a curious result could have been intended by the Constitution-makers.

For all these reasons it appears clear that when the framers of the Constitution used the words "migrated

to the territory of India" they meant "come to the territory of India with the intention of residing there permanently". The only explanation of their not expressly mentioning "domicile" or the "intention to reside permanently" in Art. 6 seems to be that they were confident that in the scheme of this Constitution the word "migration" could only be interpreted to mean "come to the country with the intention of residing there permanently". It is of interest to notice in this connection the proviso to Art. 7. That article provides in its first part that a person who would be a citizen of India or would have been deemed to be a citizen of India in Arts. 5 and 6 would not be deemed to be a citizen if he has migrated from the territory to Pakistan after March 1, 1947. The proviso deals with some of these persons who after such migration to Pakistan have returned to India. It appears that when this return is under a permit for re-settlement or permanent return—that is, re-settlement in India or return to India with the intention to reside here permanently—the main provisions of Article 7 will not apply and for this under Art. 6 of the Constitution such a person would be deemed to have migrated to India after the 19th July, 1948. That the return to India of such migrant has to be under a permit for re-settlement or permanent return in order that he might escape the loss of citizenship is a strong reason for thinking that in Art. 6 the intention to reside in India permanently is implicit in the use of the phrase "migrated to the territory of India".

It may sometimes happen that when a person moves from one place to another or from one country to another he has, at the point of time of moving, an intention to remain in the country where he moved only temporarily, but later on forms the intention of residing there permanently. There can be no doubt that when this happens, the person should at this later point of time be held to have "come to the country with the intention of residing there permanently". In other words, though at the point of time he moved into the new place or new country he cannot be said to have migrated to this place or country

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he should be held in law to have migrated to this later place or country at the later point of time when he forms the intention of residing there permanently. This view of law was taken both by the Election Tribunal and the High Court and was not seriously disputed before us.

The Election Tribunal and the High Court therefore rightly addressed themselves to the question whether in 1944 when Mangal Sain first came to Jullunder in what is now the territory of India from his home in Jhawarian now in Pakistan he had the intention of residing in India permanently and even if he at that point of time had no such intention, whether after he had come in 1944 to what is now the territory of India, he had at some later point of time formed the intention of residing here permanently. On this question, as already indicated, the Election Tribunal and the High Court came to different conclusions. While the Election Tribunal held that Mangal Sain had at no point of time the intention of residing in India permanently, the High Court was prepared to hold that even when he moved from his home in 1944 to the eastern districts of Punjab he had the intention of residing there permanently, and held that at least after August 15, 1947, he had no other intention than of making the Dominion of India his place of abode, and residing here permanently. It has been strenuously contended before us that in coming to this conclusion the High Court has acted arbitrarily and has ignored important evidence which, it is said, showed clearly that the respondent had no intention of residing permanently in India. In considering such an argument, it is proper for us to bear in mind the provisions of s. 116B of the Representation of the People Act which lays down that the decision of the High Court on appeal from an order of the Election Tribunal in an election petition shall be "final and conclusive". It has been pointed out in more than one case by this Court that while these provisions do not stand in the way of this Court's interfering with the High Court's decision in a

fit case, it would be proper for us to bear these provisions of the Representation of the People Act in mind when the correctness of such a decision is challenged before this Court. It is unnecessary for us to consider whether the view of the High Court that even in 1944 Mangal Sain could be said to have been migrated to the eastern districts of Punjab can be successfully challenged or not. Even assuming that that conclusion is out of the way, the further conclusion of the High Court that having moved from his home district to Jullunder in 1944 Mangal Sain had after August 15, 1947, no other intention than of making the territory of India his place of abode would be sufficient to prove his migration to the territory of India from what is now Pakistan. We have been taken through the materials on the record relevant to this question and we can see nothing that would justify our interference with the High Court's conclusion on this point. Much stress was laid by the appellant's counsel on the fact that Mangal Sain left Indian shores for Burma in January, 1950, and after his arrival there made an application under s. 7(1) of the Union Citizenship Act, 1948, (of Burma) giving notice of his intention to apply for a certificate of naturalization and his statement therein that he intended to reside permanently within the Union of Burma. Assuming however, that in October, 1950, or even in January, 1950, when he left for Burma, Mangal Sain had formed the intention of taking up his permanent residence in Burma, that is wholly irrelevant to the question whether in 1947 he had the intention of residing permanently in India. Learned counsel for the appellant also drew our attention to a statement made in this very application that Mangal Sain had returned to Burma with his mother in 1947. The High Court has after considering this statement held that he had not so returned in 1947. We see no reason to differ with this finding of the High Court. In our opinion, there is nothing on the record to justify any doubt as regards the correctness of the High Court's decision that after August 15, 1947, Mangal Sain who had earlier moved from a place now in Pakistan to Jullunder in India definitely made up

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his mind to make India his permanent home. Whether or not in January, 1950, he changed that intention is irrelevant for our purpose.

Our conclusion therefore is that the High Court is right in holding that Mangal Sain satisfies the first requirement of Art. 6 of the Constitution of "migration to the territory of India from the territory now included in Pakistan". It is not disputed and does not ever appear to have been disputed that Mangal Sain was born in India as defined in the Government of India Act, 1935, and thus satisfies the requirement of cl. (a) of Art. 6.

There can be no doubt also that since the date of his migration which has for the present purpose to be taken as August 15, 1947, Mangal Sain has been "ordinarily residing in the territory of India". Mr. Sastri contended that to satisfy the test of being "ordinarily resident in the territory of India since the date of his migration" it had to be shown that Mangal Sain was in India on January 26, 1950. We do not think that is required. It is first to be noticed that Art. 6 of the Constitution is one of the Articles which came into force on November 26, 1949. For applying the test of being "ordinarily resident in the territory of India since the date of his migration", it is necessary therefore to consider the period up to the 26th day of November, 1949, from the date of migration. It is not however even necessary that on the 26th day of November, 1949, or immediately before that date he must have been residing in the territory of India. What is necessary is that taking the period beginning with the date on which migration became complete and ending with the date November 26, 1949, as a whole, the person has been "ordinarily resident in the territory of India". It is not necessary that for every day of this period he should have resided in India. In the absence of the definition of the words "ordinarily resident" in the Constitution it is reasonable to take the words to mean "resident during this period without any serious break". The materials on the record leave no doubt that there was no break worth the name in Mangal Sain's residence in the

territory of India from at least August 15, 1947, till the 26th November, 1949.

We have therefore come to the conclusion that the High Court was right in sustaining Mangal Sain's claim to be deemed a citizen of India under Art. 6 of the Constitution and, in that view was also right in allowing his appeal and ordering the dismissal of the Election Petition.

In the view we have taken as regards Mangal Sain's claim to citizenship under Art. 6 of the Constitution it is not necessary to consider whether his claim to citizenship under Art. 5 of the Constitution was also good.

We therefore dismiss the appeal with costs.

Appeal dismissed.

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(B. P. SINHA, C. J., J. L. KAPUR, P. B. GAJENDRAGADKAR, K. SUBBA RAO and K. N. WANCHOO, JJ.)

Rent Control—Restrictions against eviction of tenants—Decree for possession of house—Delivery given in the absence of tenant—Executing Court ignoring restrictions—Legality—Repugnance—Mysore House Rent and Accommodation Control Order, 1948, ss. 9 and 16 and Transfer of Property Act, 1882 (Act IV of 1882),—Code of Civil Procedure (Act V of 1908) ss. 47, 151.

The appellants in execution of a decree passed in their favour for possession over a house obtained possession thereof on July 22, 1951. The order for delivery of possession was made without notice to and in the absence of the respondent. The respondent made an application in the Executing Court under ss. 47, 144 and 151, Code of Civil Procedure for setting aside the ex-parte order of delivery and for redelivery of possession of the house to him or in the alternative, for an order to the appellants for giving facilities for removing the moveables from the house. The Executing Court upheld the contention of the appellant that