Before Sanjay Kishan Kaul, Chief Justice & Arun Palli, J.

INDERJIT SINGH AND OTHERS—*Petitioner*

versus

THE STATE OF HARYANA AND OTHERS—*Respondents*

CWP No. 3705 of 2007

February 18, 2014

Haryana Municipal Act, 1973 - Ss. 2A, 3A, 4, 5, 6, 8, 9 and 12 - Haryana Municipal Election Rules, 1978 - Rl. 19 (7) - Haryana Municipal De-limitation of Wards Rules, 1977 - Constitution of India, 1950 - Art. 243U - Power to abolish municipality - Petitioners assailed the notification vide which Government of Haryana abolished Municipal Committee, Sadhaura u/s 8 (1) of Haryana Municipal Act - Petitioners asserted Municipality was abolished without adherence to principles of audi alteram partem - Held, that unlike sections 3 to 6, provisions of Section 8 do not envisage any notice, opportunity of hearing or a right to file objections to inhabitants of local area before a notification to abolish a Municipality is issued - Further, Article 243U does not extend any such right to inhabitants of local area before dissolution of Municipality - Will of inhabitants and registered voters of area was taken cognizance of by State Government and consideration thereof preceded notification abolishing Municipality and reconstituting Gram Panchyat - Action of State Government, in its entirety, was in sync with statutory process and procedure.

Held, that to abolish a Municipality, all that what the State Government is required to do, is to issue a notification under the said provision. *Ex facie*, the provisions of Section 8 do not envisage any notice, opportunity of hearing or a right to file objections to the inhabitants of the local area before a notification to abolish a Municipality is issued. Though, such a right is duly acknowledged with due recognition to the inhabitants by setting out a well-conceived and comprehensive process under Sections 3, 4, 5 and 6. However, such

a right and process is conspicuous by its absence in Section 8 of the 1973 Act.

Further held, that in fact, it is by a conscious legislative decision that such a right is designedly not acknowledged under Section 8. Procedural requirement of hearing is not implied in the exercise of legislative power unless such a right or hearing was expressly provided.

(Para 26)

Further held, that the power exercisable, under Section 8 of the 1973 Act, by the Government is not an exercise of a judicial or quash judicial function where the very nature of function involves the principles of natural justice or in any case of an administrative function effecting the rights of an individual. We are, therefore, of the view that the issuance of a notification by the State Government under Section 8 to abolish any Municipality declared under Section 3 is an act legislative in character in discharge of legislative functions, in context of the provisions of the Act. Thus could be termed as conditional legislation.

(Para 29)

Further held, that while exercising the power under Section 8 of the 1973 Act, the principles of *audi alteram partem* or any right to file objections by the inhabitants of the area, can neither be presumed by necessary implication nor by implied legislative intent.

(Para 35)

Further held, that it is only when a democratically elected body such as Municipal Council is dissloved, a reasonable opportunity of hearing must precede the said dissolution. A further and deeper analysis of the constitutional provision as a whole also support the said perspective.

(Para 38)

Further held, that the general election was slated to be held on 02.03.2007. However, before the said elections could actually take place, vide notification under challenge dated 28.02.2007, the Government abolished the Municipal Committee, Sadhaura. Resultantly,

vide notification of an even date i.e. 28.02.2007, issued by the State Election Commissioner, Haryana, the election programme of all the Wards of Municipal Committee, Sadhaura was cancelled and it was declared that poll shall not be held on 02.03.2007. No notification with regard to the four elected unopposed candidates was never ever issued and nor election process was completed, as the election of remaining nine Wards was to be held on 02.03.2007. This being the position, there was no occasion to afford an opportunity of hearing to the Municipality, that is the body as contemplated and envisaged under Article 243-U of the Constitution. In instant case, the rights of the inhabitants to file objections under Section 8 of the 1973 Act is in question. Article 243-U does not extend any such right to the inhabitants of the local area before dissolution of Municipality.

(Para 39)

Further held, that the entire action and the exercise which had been gone into by the State Government was to re-establish the Gram Panchyat, Sadhaura in place of a Municipality. Abolishing the Municipality Sadhaura was just consequential. It needs to be reasserted that the mind, intent and the will of the inhabitants and the registered voters of the area was taken cognizance of by the State Government and consideration thereof preceded the notification abolishing the Municpality and reconstituting the Gram Panchayat. This action of the State Government, in its entirety, was in sync with the statutory process and procedure.

(Para 45)

V.K. Jain, Senior Advocate with Ravi Kumar Kadian, Advocate, *for the petitioners.*

Ajay Gupta, Additional Advocate General, Haryana, for respondents No. 1 to 4.

None for respondent No. 5.

Mahavir Sandhu, Advocate for respondents No. 6 to 136.

ARUN PALLI, J.

(1) Vide this judgment, we shall decide Civil Writ Petition No. 3705 of 2007 and three other connected petitions (CWP No. 17436 of

2006 and CWP Nos. 2356 & 5795 of 2007). The facts involved in all the four petitions being similar and the issue arising for consideration being common, the facts are being culled out from CWP No.3705 of 2007.

(2) The petitioners herein have assailed the notification dated 28.02.2007 (Annexure P-10), issued by the Government of Haryana, Department of Urban Development, vide which, in exercise of power under Section 8 sub-section (1) of the Haryana Municipal Act, 1973 (for the sake of brevity and convenience be referred to as, '1973 Act'), the Municipal Committee, Sadhaura was abolished. And also for setting aside the notification of an even date (Annexure P-9), issued by the State Election Commissioner, Haryana, in exercise of power under Section 3A of the 1973 Act and Rule 19(7) of the Haryana Municipal Election Rules, 1978, whereby, the election programme for all the wards of Municipal Committee, Sadhaura, District Yamunanagar, was cancelled and, consequently, the polls. Accordingly, a writ in the nature of mandamus was sought against the respondents to revive the Municipal Committee, Sadhaura and to hold elections as per the mandate of Article 246(U) of the Constitution and Section 12 of the 1973 Act.

(3) The brief narration of the background, which has led the parties to the present stage, would be in order.

(4) The petitioners claimed to be the residents of Sadhaura, District Yamunanagar in the State of Haryana. It was stated that petitioner No.1 was elected unopposed as Municipal Commissioner from Ward No.5, and the other petitioners were the contestants for being elected as Municipal Commissioners from different Wards.

(5) It is stated that the Municipal Committee, Sadhaura was constituted at the time of British Government on 22.08.1885, under the Municipal Act, 1884. The amenities were being provided by the Municipal Committee and after promulgation of the 1973 Act, the functions of the Municipal Committee and the local area within the Municipal limits were regulated as per the provisions of the said Act. There has never been any complaint with regard to the working of the Municipal Committee. However, for the first time, a show cause notice was issued by respondent No.1 (Government of Haryana) on 28.01.2000.

What was sought to be conveyed through the said notice was that while constituting the Municipalities under the provisions of Section 2A of the 1973 Act, one of the important considerations was to generate revenue for local administration and provide civic amenities in the area. Further, as a consequence of constitution of the Committee, the employees are posted and salaries etc. are to be paid to the employees of the Committee in accordance with the provisions of Section 38 of the Act. However, the Municipalities in the State of Haryana failed to generate sufficient revenue, and so much so, a few of the Municipalities were not even able to disburse the salary to its employees and also incapable of depositing the audit fee to the Director and even 1% fee to the Director, Local Body to its loan etc. Therefore, the Government of Haryana had taken a decision to abolish the Municipal Committees in the State. Resultantly, the Government of Haryana, Department of Development and Panchayat in exercise of its powers under by Section 7 sub-section (1) and Section 8 sub-section (1) of the Haryana Panchayati Raj Act, 1994, issued a notification dated 05.05.2000 (Annexure P-1) and declared one "Sabha Area" each for Bhawani Khera, Lohara, Siwani ..... Radaur and Sadhaura as mentioned in column No.3 of the Schedule given in the said notification. And for the Blocks and Districts mentioned in column Nos.1 and 2 of the Schedule established the Gram Panchayat under the names mentioned in column No.4 thereof.

(6) Post-abolition of Municipal Committee, many representations were stated to have been made by the Sarpanches, Municipal Commissioner and other respectables of the villages to reinstate the Municipal Committee, Chhachhrauli, Radaur and Sadhaura. The efforts yielded results, a letter dated 01.06.2005 (Annexure P-3) was issued by the Financial Commissioner and Principal Secretary to Government of Haryana, Department of Urban Development, vide which the Secretaries of the Minister of Irrigation; Minister of Health; and Minister of Industries, Haryana were informed regarding the proposed 3rd meeting of the Cabinet Sub-committee scheduled for 08.06.2005 to discuss the matter regarding reconstitution of 15 abolished Municpalities, namely, Sadhaura, Radaur and others. A copy of the said letter was also forwarded to the concerned Deputy Commissioners with a direction to inform the concerned MLAs, Ex. MLAs, Ex. Presidents and present Sarpanch and

prominent citizens of the said villages to attend the said meeting. The elections in the State of Haryana were held in the year 2005. The inhabitants of the villages Sadhaura and Radaur had represented to the Chief Minister to reinstate the Municipalities in the said villages. The Cabinet of the Government in November 2005 decided to reinstate the Municipal Committees, preceded by a report of the Committee constituted for the said purpose, which had recommended the reinstatement.

(7) A formal notification, in this regard, was issued on 28.03.2006 (Annexure P-5), whereby, the Government in exercise of its power under Sub-sections (1) and (6) of Section 3 of the 1973 Act, and with reference to the Haryana Government, Urban Development Department, notification dated 10.01.2006, declared the local area as mentioned in the schedule given in the said notification, to be a Committee in the name of Municipal Committee, Sadhaura.

(8) Under Section 12(2) of the 1973 Act, the elections are required to be held within one year from the date of constitution of the Committee, resultantly, respondent No.2 initiated the process of delimitation of Wards and vide letter dated 23.06.2006 (Annexure P-6), addressed to the Administrators of the concerned Committees, asked for the requisite data for the purpose of delimitation. Respondent No.1, in furtherance of the process, vide notification dated 27.07.2006 (Annexure P-7), in exercise of its power conferred by Section 9 and sub-sections (1), (2), (3) and (4) of Section 10 of the 1973 Act read with sub-rules (1) and (2) of Rule 3 of the Haryana Municipal Delimitation of Wards Rules, 1977, fixed the numbers of members to be elected for the Municipal Committees mentioned in the schedule set out therein. And vide another notification dated 24.11.2006 (Annexure P-8). For the purpose of election of its members, the Municipal Committee, Sadhaura was to be divided into 13 constituencies (Wards) out of which 3 constituencies (Wards) numbering 6, 12 and 13 were to be reserved for the members belonging to the Scheduled Castes out of which ward No.12 was to be reserved for Scheduled Castes Women and ward Nos.3 and 7 were to be reserved for women.

(9) The election process had started and the election was scheduled to be held on 02.03.2007. The petitioners had filed the

nominations from different Wards for contesting election. The Returning Officer, Sadhaura vide its letter dated 21.02.2007 informed the State Election Commissioner (respondent No.5) that after withdrawal of nominations on 20.02.2007, Smt. Narinder Kaur from Ward No.4, Sh. Inderjit Singh (petitioner No.1) from Ward No.5, Sh. Chand Ram and Sh. Ram Darshan were declared elected unopposed from Ward Nos.7 and 10, respectively. The polls for the remaining nine Wards were slated for 02.03.2007. The canvassing was over on 28.02.2007. Surprisingly, respondent No.1 issued a notification dated 28.02.2007 (Annexure P-10) under Section 8 sub-section (1) of the 1973 Act and abolished the Municipal Committee, Sadhaura without assigning any reason. The intimation was, accordingly, sent to all concerned. In the wake of this development, the State Election Commissioner also issued a notification of an even date i.e. 28.02.2007 (Annexure P-9) and in reference to the abolition of the Municipal Committee, Sadhaura, cancelled the election programme of all the Wards of Municipal Committee with a further indication that the poll shall not be held on 02.03.2007.

(10) This is how the petitioners petitioned this Court, being aggrieved, against the two notifications of an even date i.e. 28.02.2007, (Annexures P-9 and P-10), on multiple grounds as laid out in the petition. In short, the case set out by the petitioners is that abolition of Municipal Committee, Sadhaura without adherence to the principles of *audi alteram partem*, was illegal, arbitrary and against the constitutional mandate, therefore, the Municipal Committee was required to be restored.

(11) The case set out in the petition was duly contested by the official respondents as well as by private respondent Nos.6 to 135 by filing separate written statements. Respondents in unison prayed for dismissal of the petition for the reasons indicated in the written statements filed by them.

(12) That the State, in its written statement, explained and clarified that after the constitution of the Municipal Committee, Sadhaura, vide notification dated 28.03.2006, Sadhaura Gram Panchayat Sanghrash Committee, Sadhaura (Yamunanagar) submitted a detailed

representation to the State Government to withdraw the said notification for conversion of Sadhaura Panchayat into a Municipality. The report/ comments of Deputy Commissioner, Yamunanagar were sought on the said representation. The Deputy Commissioner, after seeking comments of the Block Development and Panchayat Officer, Sadhaura (Annexure R-1), recommended for constitution of the Gram Panchayat in place of Municipal Committee in village Sadhaura in public interest. On a consideration of the said report/comments, the Government decided to abolish the Municipal Committee, Sadhaura. It is stated that the Government as per the provisions of Section 8 sub-section (1) of the 1973 Act, is fully empowered to abolish any Municipality, by issuing a notification, without calling objections from the general public. It was also asserted that the decision to abolish the Municipality was taken after taking into consideration the representations made by various organizations and peoples representatives. So much so, Sadhaura Gram Panchayat Sangharsh Committee, Sadhaura (Yamunanagar) also prayed for revival of Gram Panchayat. Still further even at the time of Cabinet Sub-committee meeting, representative of Sadhaura objected to the revival of Municipality. So the decision of the State Government abolishing Municipality is well-reasoned, was a conscious decision which was in sync with the wishes of the electorate.

(13) In a separate written statement filed by respondent No.5 i.e. the State Election Commissioner, Haryana, it is stated that it was pursuant to the notification dated 28.02.2007 (Annexure P-10) issued by the State Government abolishing the Municipal Committee, respondents No.5 cancelled the election programme and the polls. However, it was asserted that although four members of the Municipal Committee from Ward Nos.4, 5, 7 and 10 were declared elected unopposed, yet no election process was completed as the election to the remaining nine Wards was to be held on 02.03.2007. Since in the intervening period, respondent No.1 abolished the Municipal Committee, no notification even with regard to these four members was issued.

(14) Private respondents No.6 to 135, in their detailed written statement, opposed the case as well as the cause set out by the petitioners. Briefly, it was stated that there were representations made by Gram Panchayat Sangharsh Committee Sadhaura, inhabitants and the

registered voters praying for withdrawing the notification vide which Sadhaura Panchayat was converted into Municipal committee. Pursuant to this, the State Government called for the report/comments from the Deputy Commissioner, who in turn recommended for constitution of Gram Panchayat in place of Municipal Committee in public interest. The inhabitants of the town in huge numbers met the Government and made representations for abolishment of the Municipal Committee. It was stated that the Municipal Committee for the last many years was not generating sufficient funds to provide the basic amenities and facilities to the inhabitants of the town and was not even able to pay salaries to its employees. On the contrary, if the Gram Sabha is constituted under the Haryana Panchayati Raj Act, then, the said body would get sufficient grants from the Welfare fund of the State Government for providing basic amenities and facilities. According to the census figures of 2001, the total population of this town was about 13,174 out of which there was 7,000 registered voters. Out of the said 7,000 voters, about 6,000 voters of all the Wards are in favour of the abolishment of Municipal Committee, Sadhaura and for the reconstitution of the Gram Panchayat. They wardwise, put their signatures on the representation made by the inhabitants of the town, jointly to the Government. On the basis of this material and the opinion of the public at large, the Government had taken a decision to abolish the Committee in public interest. A true extract of the translated copy of wardwise list of the registered voters, who signed and thumb marked in favour of the constitution of the Gram Panchayat in the town Sadhaura in place of Municipal Committee was annexed as Annexure R-6/1 and the same reads as thus:

"**Ward No.1**

Sr. No.	Name	Ward No.	Signature
1	Pritam Singh Sandhu	1	Sd/-
2 to 209	Krishan Kumar Oberoi and other 207 persons		Signatures

Ward No.2

1	Garib Dass Saini son of Kartara Ram Saini	2	Sd/-
2 to 391	Mukesh Kumar Saini son of Shri Devender Saini & other 389 persons		Signatures
Ward No.3			
1	Ram Murti Panch	3	Sd/-
2 to 214	Som Nath and other 212 persons		Signatures
Ward No.4			
1	Ravi Bhushan Batra	4	Sd/-
2 to 152	Jawahar Lal Batra and other 150 persons		Signatures
Ward No.5			
1	Hari Chand	5	Sd/-
2 to 263	Jagdish Chander and other 261 persons		Signatures
Ward No.6			
1	Madan Lal Aggarwal	6	Sd/-
2 to 177	Raghubir Saran and other 175 persons		Signatures

Ward No.7			
1	Som Parkash Sharma	7	Sd/-
2 to 263	Saroj Bala and other 261 persons		Signatures
Ward No.8			
1	Goverdhan Lal Sharma	8	Sd/-
2 to 357	Satya Rani and other 355 persons		Signatures
Ward No.9			
1	Jagan Nath Sharma	9	Sd/-
2 to 331	Krishan Chand Sharma and other 329 persons		Signatures
Ward No.10			
1	Sukhbir Singh	10	Sd/-
2 to 264	Sukhwinder Kaur and other 262 persons		Signatures
Ward No.11			
1	Ganesh Dass	11	Sd/-
2 to 333	Baljinder Singh and other 331 persons		Signatures

Ward No.12			
1	Wazir	12	Sd/-
2 to 252	Ramesh Kumar and other 250 persons		Signatures
Ward No.13			
1	Rajinder Kumar	13	Sd/-
2 to 333	Seema Rani and other 331 persons		Signatures
Ward No.14			
1	Kulwant Singh Sethi	14	Sd/-
2 to 319	Harjit Singh Sethi and other 317 persons		Signatures
Ward No.15			
1	Ramesh Chand	15	Sd/-
2 to 361	Bala Rani and other 359 persons		Signatures
Ward No.16			
1 2 to 316	Alka Saini Richa Saini and other 314 persons	16	Sd/- Signatures
Ward No.17			
1	Harpal Singh	17	Sd/-
2 to 258	Saroj and other 256 persons		Signatures

Ward No.18			
1	Sanjiv Kumar	18	Sd/-
2 to 328	Jitender Kumar and other 326 persons		Signatures
Ward No.19			
1	Chand Ram	19	Sd/-
2 to 304	Pankaj Saini and other 302 persons		Signatures
Ward No.20			
1	Deepak	20	Sd/-
2 to 467	Ram Saran and other 465 persons		Signatures

Total: 5893 voters."

(15) It was also clarified that three Municipal Commissioners, who were declared elected unopposed, namely, Ram Darshan, Chand Ram and Narinder Kaur, had also expressed their consent for the abolishment of the Municipal Committee. The fourth elected Municipal Commissioner (petitioner No.1) also withdrew his name from the array of parties by making a formal application before this Court along with some other petitioners. It was also asserted that the grievance of the petitioners, that the Government before issuing a notification under Section 8 of the 1973 Act and abolishing the Municipality, did not afford any opportunity to the inhabitants to file objections and a right of hearing, was wholly misplaced.

(16) Now, the State Government issued a notification dated 27.06.2007, in exercise of the power conferred by Sub-section (1) of Section 7 and Sub-section (1) of Section 8 of the Haryana Panchayati Raj Act, and declared the village Sadhaura to be a Sabha Area and established the Gram Panchayat by the name of Sadhaura. A copy of the said notification was annexed as Annexure R-6/2.

(17) We have heard learned counsel for the parties and perused the records.

(18) Mr. V.K. Jain, learned Senior counsel for the petitioners, made a detailed reference to the various provisions of the Haryana Municipal Act, such as Sections 3, 4, 5, 6 and 8. By drawing our attention to Section 3 of the Act, he contends that wherever the State Government propose any local area to be Municipality under this Act, the same is to be preceded by a notification. The said notification shall define the limits of the local area to which it relates and has to be affixed in some conspicuous places within the said local area, as envisaged in the provisions. An emphasis is laid upon Sub-section (5) to contend that the whole purpose of issuing such a notification and its affixation with necessary details is to apprise the inhabitants of the area of such proposal and solicit their objections thereto. It is only on consideration of the said objections and passing a formal order, the State Government may, by notification, declare the local area to be a Municipality. Likewise, even for the purpose of altering the limits of Municipality to include any local area or for the purpose of excluding any local area from the Municipality, the Government has to afford an opportunity to the inhabitants and solicit their objections followed by a due consideration, as envisaged under Sections 4, 5 and 6 of the 1973 Act.

(19) In essence, his contentions is since Sections 3, 4, 5 and 6 of the 1973 Act provide or promise an opportunity to the inhabitants of the area to file objections and be heard, the same rights and process has to be presumed even for the purposes of abolishing a Municipality under Section 8 of the 1973 Act. He further contends, concededly, before issuing the notification dated 28.02.2007 (Annexure P-10), the objections were never invited, no opportunity of hearing was afforded to the inhabitants of Municipal area, thus, the same was wholly illegal, arbitrary and against the principles of *audi alteram partem* and also violative of the provisions of the 1973 Act. In support of his contention, he has placed reliance upon the following decisions:

"(1) ***S.L. Kapoor v. Jagmohan and others(1)***

(1) (1980) 4 SCC 379

(2) ***Baldev Singh and others v. State of Himachal Pradesh and others(2)***

(3) ***Harjinder Singh and others v. State of Punjab(3)***

(4) ***Vee Kay Oils Pvt. Ltd. v. State of Punjab and others(4)***

(5) ***Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others(5)***

(6) ***Jagroop Singh v. State of Punjab(6)***

(7) ***The State of Punjab v. Dewan Chand and others(7)***

(8) ***Kathi Raning Rawat v. State of Saurashtra(8)***

(9) ***Shri Ram Krishna Dalmia v. Shri Justice S.R. Tendolkar and others(9)"***

(20) We may also notice that our attention is also drawn to Article 243-U, in part 9A of the Constitution. It is sought to be contended that under Article 243-U, every Municipality, unless sooner dissolved under any law for the time being in force shall continue for five years from the date appointed for its first meeting and no longer. However, he lays stress upon the proviso of Article 243-U, which suggests that a Municipality shall be given a reasonable opportunity of being heard before its dissolution. He, therefore, contends that in the absence of reasonable opportunity of being heard, dissolution of the Municipality cannot be conceived and in case of any breach or infraction of the constitutional mandate the dissolution renders itself indefensible and unsustainable in law.

(21) We may however record, although a challenge is formally laid in the petition to the vires/constitutional validity of the provisions of Section 8 of the 1973 Act, however, learned Senior counsel for the petitioners, very fairly gave up the same during the course of the arguments. Accordingly, we are not required to examine the said question in the present proceedings.

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(2) (1987) 2 SCC 510

(3) 2002(1) RCR (Civil) 610

(4) 1994(3) RRR 196

(5) (1978) 1 SCC 405

(6) 1995(2) RRR 453

(7) AIR 1979 P&H 46

(8) AIR 1952 SC 123

(9) AIR 1958 SC 538

(22) Per contra, the counsels for the State and private respondents contend in unison that under Section 8 of the 1973 Act, the Government is fully empowered to abolish any Municipality and per se the provision does not even remotely contemplate affording any opportunity of filing objections to the inhabitants or a right of being heard. It is contended that even though the provisions of Sections 3, 4, 5 and 6 contemplate soliciting objections from the inhabitants, the same intent cannot be read into the provisions of Section 8 of the 1973 Act particularly when the Legislature has not chosen to provide any such right. Learned counsel for the respondents have also place reliance upon the following decisions:

> *"(1)* ***The Tulsipur Sugar Co. Ltd. v. The Notified Area Committee, Tulsipur(10);***
>
> *(2)* ***Gram Sabha Begowal v. The State of Punjab and others,(11) ; and***
>
> *(3)* ***Balbir Singh Chauhan and others v. State of Haryana and others(12) .****"*

(23) We have heard the counsel for the parties and have examined the provisions referred to above.

(24) In essence, what arises for our consideration is, since Sections 3, 4, 5 and 6 promise and postulate an opportunity for the inhabitants of the area to file objections and be heard, before creation of a Municipality or inclusion of certain area therein or exclusion of certain area therefrom, the said right and process could at all be presumed and adhered to even for the purpose of abolishing Municipality under Section 8. Is such a presumption possible or permissible in law by necessary implication or implied legislative intent ? Particularly when Section 8 does not contemplate or conceive any such process.

(25) It may be apposite, at this stage, to refer to the provisions of Section 8 of the 1973 Act, which read as thus:

> *"****Power to abolish municipality.—****(1) The State Government may, by notification, abolish any municipality declare under section 3.*

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(10) AIR 1980 SC 1882

(11) AIR 1981 Punjab 101

(12) 1991 PLJ 127

(2) When a notification is issued under this section in respect of any municipality, this Act, and all notifications, rules, bye-laws, orders, directions and power issued, made or conferred under this act, shall cease to apply to the said municipality, the balance of the municipal fund and all other property at the time of the issue of the notification vested in the committee shall vest in the State Government and the liabilities of the committee shall be transferred to the State Government.

(3) Where any municipality is abolished under Sub-section (1) and subsequently the area comprising the municipality so abolished is declared to be a Sabha area under Sub-section (1) of Section 4 of the Punjab Gram Panchayat Act, 1952, the assets and liabilities referred to in sub-section (2) shall vest in the Gram Panchayats of the Sabha area from the date of its establishment under section 5 of the Punjab Gram Panchayat Act, 1952.

Explanation *- For the purposes of this sub-section, the assets shall include all arrears of taxes, tolls, ceases, rates, dues and fees imposed under this Act or any rule or bye-law which fell due to the committee of the municipality immediately before the date of its abolition and the same shall be recoverable by the Gram Panchayat as if these were arrears due to the Gram Panchayat."*

(26) A bare analysis of the afore-reproduced provisions irresistibly show that to abolish a Municipality, declared under Section 3 of the 1973 Act, all what the State Government is required to do is to issue a notification under the said provision. *Ex facie*, the provisions of Section 8 (supra) do not envisage any notice, opportunity of hearing or a right to file objections to the inhabitants of the local area before a notification to abolish a Municipality is issued. Though, such a right is duly acknowledged with due recognition to the inhabitants by setting out a well-conceived and comprehensive process under Sections 3, 4, 5 and 6. However, such a right and process is conspicuous by its

absence in Section 8 of the 1973 Act. Once, the Legislature in its legislative wisdom has not chosen to provide any such right under Section 8, the same cannot be presumed or read into, as it would amount to legislating or re-writing the provision, which indisputably is beyond the domain of this Court. What is not expressly provided cannot be presumed by necessary implication. It cannot, however, be remotely suggested that the Legislature by default omitted to provide the right to file objections and be heard under Section 8. In fact, it is by a conscious legislative decision that such a right is designedly not acknowledged under Section 8. Procedural requirement of hearing is not implied in the exercise of legislative power unless such a right or hearing was expressly provided. Our view and opinion is further strengthened by the observations made by the Full Bench of this Court in a case reported as ***Mota Singh and others v. The State of Punjab and others(13)***, which read as thus:

> "*At the very outset, it deserves to be highlighted that the rules of natural justice are not embodied rules. They cannot be raised to pedestal of either constitutional or fundamental rights so as to override the mandate of the Legislature whether express or by necessary intendment. These rules can operate only in areas not covered by a law validly made and cannot supplant the law. Equally well settled it is that the Legislature can exclude the rules of natural justice either expressly or by necessary implication. It has, therefore, been rightly said that these rules come in only in areas where the mandate of the Legislature is otherwise silent. Therefore, if a statutory provision, either specifically or otherwise, excludes the application of any or all the principles of natural justice. There would be no warrant for a court to ignore the statuary mandate and nevertheless thrust the rules of natural justice into the concerned provision. See paragraph 7 of the report in Union of India v. J. N. Sinha, AIR 1971 SC 40.*
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> *Construing the provision of S. 13(8) to (12) in the light of the aforesaid cardinal principle, it appears to be evident that the*

(13) 1984 RRR 266

Legislature when enacting the same was itself more than amply conscious of the rules of natural justice and the requirement or necessity of notice to the parties affected by the order of amalgamation. Section 13, sub-section (9), expressly laid down that no order of amalgamation under the preceding sub-section would be passed unless a copy of the proposed order had been duly despatched under certificate of posting to the society or societies concerned as also the creditors thereof. The Legislature in its wisdom, therefore, had specified both the nature and the content of the notice, the parties which in its view were necessarily to be informed thereof and even the mode in which the notice was to be sent.

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It may equally he kept in mind that the judgment of the Division Bench in Amarheri Co-operative Agricultural Service Society's case 1976 Pun LJ 302: (AIR 1976 Punj & Har 345) was pronounced two years prior to the present enactment and it is a well-known canon of construction that as a matter of law the Legislature is presumed to know the previous state of the law and the authoritative construction placed thereupon by the Courts. In that judgment it had been held that the rule of natural justice require that both the members and the creditors were also entitled to be served with a copy of the proposed order. Nevertheless, the Legislature in its wisdom when adding sub-section(9) to section 13 of the statute designedly included the societies as such and their creditors but made no mention of the necessity of any notice or the service of the proposed order on individual members. The inevitable inference would, therefore, be that whilst extending the scope of the service of the proposed order on societies alone (as existing in the State of Haryana), the Punjab Legislature in its wisdom included within its ambit the category of creditors only and by necessary implication excluded therefrom the class of individual members of all the societies."

(27) For a further and in-depth consideration of the issue, we deem it expedient and necessary to analysis the nature and character of the power, which the Government exercises under Section 8 of the 1973 Act. A plain reading of the provisions, which we have reproduced in the earlier part of the judgment, suggests in no uncertain terms, that the State Government by a notification can abolish the Municipality declared under Section 3. Sub-section (2) of Section 8 takes the position further, as it conveys, that on issuance of a notification under sub-section (1), in respect of any Municipality, the 1973 Act and all notifications, rules, bye-laws, orders, directions and powers issued, made or conferred under the said Act shall cease to apply to the said Municipality. The balance municipal fund and all other properties, which vested in the Committee, on an issuance of the said notification, shall vest in the State Government and the liabilities of the Committee shall be transferred to the State Government.

(28) The above being the nature of power exercised by the Government, *ex facie*, the same could neither be administrative nor quasi-judicial but has to be inevitably classified as legislative in character. We find it expedient to refer to certain crucial observations made by Hon'ble the Supreme Court, in context of the issue, in ***State of Punjab v. Tehal Singh and others(13)***, which read as thus:

> *"5. Before we consider the main question, it is necessary to trace out the nature of power, that the State Government exercises under provisions of Section 3 and 4 of the Act. The said power could either be legislative, administrative or quasi-judicial .*
>
> *6. In Rameshchandra Kachardas Porwal and Ors. Etc v. State of Maharashtra and Ors. etc. , it was held that making of a declaration by notification that certain place shall be principal market yard for a market area under the relevant agricultural produce Market Act was an act legislative in character. In Union of India and Anr. v. Cynamide India Ltd. and Anr. , this Court while making distinction between legislative, administrative and quasi-judicial held thus:*

(14) AIR 2002 SC 533

"A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases; an administrative act is the making and issue of a specific direction or the application of a general rule to a particular case in accordance with the requirements of policy. Legislation in the process of formulating a general rule of conduct without reference to particular cases and usually operating in future; administration is the process of performing particular acts, of issuing particular orders or of making decisions which apply general rules to particular cases'. It has also been said: "Rule making is normally directed toward the formulation of requirements having a general application to all members of a broadly identifiable class" while, "an adjudication, on the other hand, applies to specific individuals or situations". But this is only a broad distinction, not necessarily always true. Administration and administrative adjudication may also be of general application and there may be legislation of particular application only. That is not ruled out. Again, adjudication determines past and present facts and declares right and liabilities while legislation indicates the future course of action. Adjudication is determinative of the past and the present while legislation is indicative of future. The object of the rule, the reach of its application, the rights and obligations arising out of it. Its intended effect on past, present and future events, its form, the manner of its promulgation are some factors which may help in drawing the line between legislative and non-legislative acts.

7. The principles of law that emerge from the aforesaid decisions are-(1) where provisions of a statue provide for the legislative activity, i.e. making of a legislative instrument or promulgation of general rule of conduct or a declaration by a notification by the Government that certain place or area shall be part of a Gram Sabha and on issue of such a declaration certain other statutory provisions come into an action forthwith which provide for certain consequences; (2) where the power to be exercised by the Government under provisions of a statute does not

concern with the interest of an individual and it relates to public in general or concerns with a general direction of a general character and not direct against an individual or to a particular situation and (3) lay down future course of actions, the same is generally held to be legislative in character."

(29) In the wake of the above, we unhesitatingly record that the power exercisable, under Section 8 of the 1973 Act, by the Government is not an exercise of a judicial or quashi-judicial function where the very nature of function involves the principles of natural justice or in any case of an administrative function effecting the rights of an individual. We are, therefore, of the view that the issuance of a notification by the State Government under Section 8 to abolish any Municipality declared under Section 3 is an act legislative in character in discharge of legislative functions, in context of the provisions of the Act. Thus could be termed as conditional legislation.

(30) Now the other question, which comes to fore, for our consideration is, if the power exercised by the Government under Section 8 is legislative in character, is the State Government, while exercising the said power obligated to adhere to the principles of audi alteram partem ? To our minds, the answer is in negative. The rules of natural justice are not applicable to the legislative action, plenary or subordinate. Procedural requirement of hearing is not implied in the exercise of legislative power unless hearing was expressly provided. We may again refer to certain observations which the Hon'ble Court had recorded in paragraph 9 of the judgment in ***State of Punjab v. Tehal Singh and others*** (supra), which read as thus:

"9. Once it is found that the power exercisable under Sections 3 and 4 of the Act respectively is legislative in character, the question that arises is whether the State Government, while exercising that power, that rule of natural justice is required to be observed? It is almost settled law that an act legislative in character - primary or subordinate, is not subjected to rule of natural justice. In case of legislative act of legislature, no question of application of rule of natural justice arises. However, in case of subordinate legislation, the legislature may provide

for observance of principle of natural justice or provide for hearing to the resident of the area before making any declaration in regard to the territorial area of a Gram Sabha and also before establishing a Gram Sabha for that area. We have come across many enactments where an opportunity of hearing has been provided for before any area is excluded for one Gram Sabha and included it in different Gram Sabhas or a local authority. However, it depends upon the legislative wisdom and the provisions of an enactment. Where the legislature has provided for giving an opportunity of hearing before excluding an area from a Gram Sabha and including it in another local authority or body, an opportunity of hearing is sine qua non and failure to give such an opportunity of hearing to the residents would render the declaration invalid. But where the legislature in its wisdom has not chosen to provide for any opportunity of hearing or observance of principle of natural justice before issue of a declaration either under Section 3 or Section 4 of the Act, the residents of the area cannot insist for giving an opportunity of hearing before the area where they are residing is included in another Gram Sabha or local authority. In Rameshchandra Kachardas Porwal & Ors. v. State of Maharashtra (supra), this court held as thus:

"In one of the Bihar cases it was further submitted that when a market yard was disestablished at one place and established at another place, it was the duty of the concerned authority to invite and hear objections. Failure to do so was a violation of yard at one place and establishing it elsewhere was therefore, bad. It was objections before a "market area" was declared under the Act, so should objection be invited and heard before a 'market yard' was established at any particular place. The principles of natural justice demanded it. We are unable to agree. We are here not concerned with the exercise of a judicial or quasi-judicial function where the very nature of function involves the application of the rules of natural justice, or of an administrative function affecting the rights of persons,

wherefore, a duty to act fairly. We are concerned with legislative activity; we are concerned with the making of a legislative instrument, the declaration by notification of the Government that a certain place shall be a principal market yard for a market area, upon which declaration certain statutory provisions at once spring into action and certain consequences prescribed by statute follow forthwith. The making of the declaration, in the context, is certainly an act legislative in character and does not oblige the observance of the rules of natural justice."

10. In the present case, the provisions of the Act do not provide for any opportunity of hearing to the residents before any area falling under a particular Gram Sabha is excluded and included in another Gram Sabha. In the absence of such a provision, the residents of that area which has been excluded and included in a different Gram Sabha cannot make a complaint regarding denial of opportunity of hearing before issue of declarations under Sections 3 and 4 of the Act respectively. However, the position would be different where a house of a particular resident of an area is sought to excluded from the existing Gram Sabha and included it in another Gram Sabha. There the action of the Government being directed against an individual, the Government is required to observe principles of natural justice. From the aforesaid reasons, we are of the view that no opportunity of hearing was required to be given before making declaration either under Section 3 or Section 4 of the Act by the Government."

(31) In sequel to what has been stated above, we may also refer to another decision by a Full Bench of this Court in the case of ***Gram Sabha Begowal v. The State of Punjab and others(14)***. It may be noticed that in the said case Gram Sabha Begowal had approached the Court with a grievance that in village Begowal, tehsil and district Kapurthala, a Gram Sabha was constituted under the Punjab Gram Panchayat Act, 1952. Fresh elections for the Gram Panchayat was notified for 16.08.1978, but the elections were not held as the

(14) AIR 1981 Punjab 101

Government proposed to declare the area in village Begowal as notified area under Section 241 of the Punjab Municipal Act, 1911. A notification dated 19.10.1978, published in the Gazettee on 27.10.1978, declaring the local area comprising village Begowal in Kapurthala district, to be a notified area for the purpose of the said Act, was issued. The challenge to the vires of Sections 241 and 242 of the said Act was laid on the following grounds:-

> *"2. While there is an elaborate procedure provided in Sections 4 and 7 of the Act of declaring a municipality, for altering the limits thereof and for exclusion of some local area from it, after inviting objections to the aforesaid proposals and for taking a final decision after considering those objection, according to the petitioners, no such provisions made while issuing the notification under Sections 241 and 242 of the Act and the Execution had been given arbitrary power to create a notified area and to apply the Act or some part of it without affording an opportunity to the inhabitants to place their whishes before the State Government before taking a final decision Since one procedure, has been laid down in Ss. 4 to 7 and a different procedure has been laid in Sections 241 and 242 of the Act, Sections 241 and 242 are ultra vires Art. 14 of the constitution."*

(32) The Full Bench while dealing with the aforesaid, arrived at the following conclusion:

> *"9. The next point which arises for consideration is that although in Ss. 4 to 7 of the Act a provision for hearing of objections has been made, but no similar provision has been made in S. 241 and, therefore, what is its effect. No provision of law can be struck down as ultra vires merely because it does not contain a provision for affording a hearing to the persons concerned. No violation of the principles of natural justice arises in constructing the statutory provisions. The Supreme Court and the other High Courts in this country have applied the principles of natural justice wherever the civil rights of a citizen are sought to be affected in his absence but that cannot be enlarged so as to conclude that all legislation which does not provide*

for a hearing would be ultra vires. A perusal of Ss. 4 to 7, 10 and 241 of the Act would show that while the statute provides for a hearing in Sections 5 to 7, no hearing is provided while taking action under Section 241 of the Act. Therefore, what ever it was thought fit the legislature provided for a hearing to the inhabitants of the locality and a provision was made therefor but wherever it was not thought fit for affording a hearing, no such provision was made neither on principle nor on authority it has been supported by the petitioners that those section which do not provide for a hearing would be ultra vires Article 14 of the Constitution.

xx xx xx

10. The aforesaid view finds further support from the Tulsipur Sugar Co. Ltd. v. The Notified Area Committee, Tulsipur, AIR 1980 SC 882. In that case, the Supreme Court was interpreting Section 3 of the U. P. Town Areas Act (2 of 1914), which authorised the Stated Government to declare any town, village, suburb, bazaar for the purposes of the Act. The State Government had issued a notification under this provision notifying a town area and the notification was challenged on the ground that since no provision was made in Section 3 for publishing notice of the proposed notification and for considering any representation or objections filed in that behalf by the members of the public, the notification was liable to be struck down. The Supreme Court ruled as follows:–

> *"Section 3 does not provide that the State Government should give previous Publicity to its proposal to declare any area as a town area and should make such declaration after taking into consideration any representation or objection filed in that behalf by the members of the public. Nor Section 3 of the Act by the State Government to follows the principles of natural justice i.e. to give publicity to its proposal to declare any area whether any declaration under S. 3 of the Act should be made or not after taking into consideration the representation or objections*

submitted by the members of the public in that regard. Therefore, the failure to comply with such procedure would not invalidate any declaration under Section 3. The power of the State Government to make a declaration under Section 3 is legislative in character because the application of the rest of the provisions of the act to the Geographical area which is declared as a town area is dependent upon such declaration. Section 3 of the Act in the nature of a conditional legislation. The maxim 'audi alteram partem' does not become applicable to the case by necessary implication.

A notification issued under Section 3 which has the effect of making the Act applicable to a geographical area is in the nature of a conditional legislation and it cannot be characterised as a piece of subordinate legislation. Therefore, it is not necessary for the State government to follow the same procedure which is applicable to the promulgation of rules under Section 39 of the Act. It is not possible to equate a declaration to be made under Section 3 with rules made under Section 39."

"The decision of the Supreme court in Tulsipur Sugar Co's case (Supra), is on all fours with the present case. In both the cases the challenge is to the creation of a notified area/ town area on the ground that it was done without affording an opportunity of filing objection against the proposed action of the State Government. Therefore, for the reasons recorded in the said judgment of the Supreme Court, we do not find any merit in the second point raised on behalf of the petitioners and hold that Section 241 of the Act is not ultra vires Article 14 of the constitution merely because there is no provision therein for inviting objections from the inhabitants of the area before declaring a notified area.

11. Therefore, for the reasons recorded above, we hold that Sections 241 and 242 of the Act are not ultra vires Article 14 of the Constitution."

(33) We may also refer to another decision by a Single Bench of this Court in case reported as ***Balbir Singh Chauhan and others v. State of Haryana and others(16).*** In the said case the challenge, incidentally, was to the notification issued by the Government under Section 8 of the Haryana Municipal Act:

> *"5. Before adverting to examine the validity of Section 8 of the Haryana Act is would be pertinent to examine the progress of the judicial view on the matter of creation and abolition of Municipal Committees and Corporations in this country. The Courts have been upholding the action of the State authorities when they have complied with the formality indicated by the Legislature in the relevant statutes. Thus in the case of Tulsipur Sugar Co. Ltd. v. The Notified area Committee, 1985 RRR 139 (SC) : AIR 1980 Supreme Court 882, it was observed that the power of the State Government in creating a Notified Area Committee is legislative in character because the application of the provisions of the Act to the geographical Area which is declared as town area is dependent upon such declaration. Similarly, in Baldev Singh v. State of Himachal Pradesh, AIR 1987 Supreme Court 1239 : 1988 (1) RRR 491, the Supreme Court insisted on the compliance of the provisions of the Act only. These decisions were considered in the case of Sunderjas Kanyalal Bhathija and others v. The Collector, Thane, Maharashtra and others, AIR 1990 Supreme Court 61 : 1989 (2) RRR 111 (SC), wherein the Court held that the function of the Government in establishing a Corporation under the Act is neither executive nor administrative but it is a legislative process. Paras 23 and 24 which deal with aspect of the matter read as under:–*
>
> > *"23. Reverting to the case, we find that the conclusion of the High Court as to the need to reconsider the proposal to form the Corporation has neither the attraction of logic nor the support of law. It must be noted that the function*

(16) 1991 PLJ 127

of the Government in establishing a Corporation under the Act is neither executive nor administrative. Counsel for the appellants was right in his submission that it is legislative process indeed. No judicial duty is laid on the Government in discharge of the statutory duties. The only question to be examined is whether the statutory provisions have been complied with. If they are complied with, then, the Court could say no more. In the present case the Government did publish the proposal by the draft notification and also considered the representations received. It was only thereafter, a decision was taken to exclude Ulhasnagar for the time being. That decision became final when it was notified under Section 3(2). The Court cannot sit in judgment over such decision. It cannot lay down norms for the exercise of that power. It cannot substitute even "its juster will for theirs."

24. Equally, the rule issued by the High Court to hear the parties is untenable. The Government in the exercise of its powers under Section 3 is not subject to the rules of natural justice any more than is legislature itself. The rules of natural justice are not applicable to legislative action, plenary or subordinate. The procedural requirement of hearing is not implied in the exercise of legislative powers unless hearing was expressly prescribed. The High Court, therefore, was in error in directing the Government to hear the parties who are not entitled to the heard under law."

6. In view of the aforementioned judgment in which the case law dealing with the subject of creating corporate municipal authorities was reviewed, there seems to be no merit in the contention of the petitioner. The petitioners in this case were duly heard. Objections were invited and after hearing the objections the final notification Annexure P5 was issued. This function which the State Government performs being legislative the proof which is required to undo such an act through judicial

process requires very high standard and that is definitely missing in this case. The State Government even though not obliged to hear the objections gave opportunity to all concerned as is apparent from notification Annexure P4. Objections were invited and thereafter final notification was issued vide Annexure P5. Therefore, no argument survives for sustaining the attack of the petitioner.

xx xx xx

11. Thus the Supreme Court did not notice one aspect that there is basically no difference between the end result which ensures when action is taken either under Sections 10 or 244 of the Punjab Municipal Act, 1911. However, without expressly over-ruling the decision given in Dewan Chand's case (supra) the Supreme Court did not approve of the judgment in the case of jaswant Singh Multani (supra) and while over-ruling the same came to the conclusion that provisions of Section 244 under which the Notified Area Committee is abolished are a valid piece of legislation. If this be the view of the Supreme Court with regard to the provisions of Section 244 of the Punjab Municipal Act, then it is difficult to hold that the provisions of Section 8 of the Haryana Municipal Act are in any way tainted with the vice of arbitrariness."

(34) We also have the advantage to refer to another decision of this Court in CWP No.14023 of 2011 titled ***Ajay Kumar and others v. State of Punjab and others,*** decided on 08.05.2012, where, the learned Single Judge held that once it has been held that the process of declaration of an urban area into a Municipal Corporation is essentially a legislative function, the only ground on which it can be challenged is the ground of unconstitutionality or ultra vires.

(35) In the wake of the above conspectus of the whole issue, we are indeed conclusively convinced that while exercising the power under Section 8 of the 1973 Act, the principles of *audi alteram partem* or any right to file objections by the inhabitants of the area, can neither be presumed by necessary implication nor by implied legislative intent.

(36) The judgments, upon which reliance is placed by the learned Senior counsel, are of no aid and assistance to the cause of the petitioners and do not advance their case. The *ratio decidendi* in the said decisions was altogether different. The definite premise on which the said decisions are founded is, where the civil rights of a citizen are sought to be effected in his absence or inflicts a civil consequence, the observance of the principle of natural justice is insisted upon. Such is, certainly not the case here. In ***S.L. Kapoor v. Jagmohan and others(17)*** evidently, an order was passed by the Lieutenant Governor, in exercise of powers conferred by Section 238(1) of the Punjab Municipal Act, 1911 (as applicable to New Delhi), whereby, a supersession of the Committee was ordered with immediate effect and a person was appointed to exercise and perform all powers and duties of the Committee. In the said case, the members of the New Delhi Committee were appointed by the Governor of Union Territory, Delhi under Section 12 of the Punjab Municipal Act for a period of one year and it was well before the expiry of this period of one year, an order was passed superseding the Committee. The reasons assigned in support of the supersession were that the Committee was incompetent to perform and had made persistent default in performance of duties imposed on it and the same had abused its power resulting in wastage of Municipal funds. The decision of Hon'ble the Supreme Court in the aforesaid judgment proceeds on a premise that now even an administrative order, if involves civil consequences, must comply with the rules of natural justice. And in its comprehensive connotation everything that affects a citizen in his civil life inflicts a civil consequence. So is the position vis-a-vis other decisions relied upon by the learned senior counsel.

(37) The only other contention advanced by the learned senior counsel, with reference to the proviso to Article 243-U of the Constitution, is that Municipality shall be given a reasonable opportunity of being heard befor its dissolution. Therefore, the notification under challenge in the present case being in the teeth of the aforesaid proviso was wholly unsustainable as no opportunity of being heard was provided.

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(17) (1980) 4 SCC 379

Before we proceed further, we deem it fit and appropriate to refer to Article 243-U in extenso, which reads as thus:

> *"**243-U Duration of Municipalities, etc.** (1) Every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer:*
>
> *Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution.*
>
> *(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Municipality at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in clause (1).*
>
> *(3) An election to Constitute a Municipality shall be completed,—*
>
> *(a) before the expiry of its duration specified in clause (1);*
>
> *(b) before the expiration of a period of six months from the date of its dissolution:*
>
> *Provided that where the remainder of the period for which the dissolved Municipality would have continued is less than six months, it shall not be necessary to hold any election under this clause for constituting the Municipality for such period.*
>
> *(4) A Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would leave continued under, clause (1) had it not been so dissolved."*

(38) The true and the only meaningful construction of the aforesaid constitutional provision and its proviso in particular, could be that a reasonable opportunity before its dissolution is conceived and contemplated for the Municipality, which to our minds is an elected body of representatives. It is only when a democratically elected body such as Municipal Council is dissolved, a reasonable opportunity of hearing must precede the said dissolution. A further and deeper analysis

of the constitutional provision as a whole also support the said perspective. We may also draw strength to support our view and understanding by a reference to the meaning of a Municipality, as provided in the *Black's Law Dictionary (6th Edition) at page 1018* and the same reads as thus:

> "*Municipality. A legally incorporated or duly authorized association of inhabitants of limited area for local governmental or other public purposes. A body politic created by the incorporation of the people of a prescribed locality invested with subordinate powers of legislation to assist in the civil government of the state and to regulate and administer local and internal affairs of the community."*

(39) We are reminded to point out here that in the present case, the general election, as a consequence of the notification dated 28.03.2006 (Annexure P-5) and the relevant provisions of the 1973 Act, was slated to be held on 02.03.2007. However, before the said elections could actually take place, vide notification under challenge dated 28.02.2007 (Annexure P-10), the Government abolished the Municipal Committee, Sadhaura. Resultantly, vide notification of an even date i.e. 28.02.2007, issued by the State Election Commissioner, Haryana, the election programme of all the Wards of Municipal Committee, Sadhaura was cancelled and it was declared that poll shall not be held on 02.03.2007. We may also notice that neither notification even with regard to the four elected unopposed candidates was never ever issued and nor election process was completed, as the election of remaining nine Wards was to be held on 02.03.2007. This being the position, there was no occasion to afford an opportunity of hearing to the Municipality, that is the body as contemplated and envisaged under Article 243-U of the Constitution. In any case, we are only examining the rights of the inhabitants, if any, to file objections under Section 8 of the 1973 Act and in our considered opinion, the proviso to Article 243-U does not extend any such right to the inhabitants of the local area before dissolution of Municipality.

(40) That there is yet another aspect, which warrants our notice and needs to be set-forth at this stage. Part II Chapter III of the Haryana

Panchayati Raj Act, 1994 takes within its sweep "SABHA AREA ESTABLISHMENT AND CONSTITUTION OF GRAM PANCHAYATS". Section 7 of the Haryana Panchayati Raj Act under the said Chapter reads as thus:

> *"**7. Demarcation of sabha area.–**(1) The Government may, by notification, declare any village or a part of a village or group of contiguous villages with a population of not less than five hundred to constitute one or more sabha areas:*
>
> *Provided that Government may in exceptional cases, by reasons to be recorded in writing, relax the limit of population of 500:*
>
> Provided further that neither the whole nor any part of a–
>
> *(a) municipality constituted under the Haryana Municipal Act, 1973;*
>
> *(b) cantonment;*
>
> *shall be included in a sabha area unless the majority of voters in any municipality desire the establishment of a Gram Panchayat in which case the assets and liabilities, if any, of the Municipality shall vest in the Gram Panchayat and the Municipality shall cease to exist.*
>
> ***(underlining is ours)***
>
> *(2) The population shall be ascertained on basis of last preceding decennial census of which the relevant figures have been published.*
>
> *(3) Government may, by notification, include any area in or exclude any area from the sabha area.*
>
> *(4) If the whole of the sabha area is included in a municipality or a contonment, the Gram Panchayat shall cease to exist and the assets and liabilities of it shall vest in the municipality or cantonment, as the case may be.*
>
> *(5) If the whole of the sabha area is included in the Faridabad Complex under the Faridabad Complex (Regulation and Development) Act, 1971, the Gram Panchayat shall cease to*

exist and its assets and liabilities shall vest in the Faridabad Complex."

(41) A bare analysis of the afore-reproduced provision irresistibly show that either the whole or a part of a Municipality constituted under the 1973 Act can be included in a Sabha area, if the majority of voters in any Municipality desired the establishment of Gram Panchayat. In that event, the assets and the liabilities, if any, of the Municipality shall vest in the Gram Panchayat and the Municipality shall cease to exist. Meaning thereby in place of a Municipality, a Gram Panchayat can be established and in that eventuality the area of the Municipality shall be included in a Sabha area. All what is required to be ensured is the desirability of the majority of voters in the said Municipality. Such a process is clearly discernible from the bare reading of the aforesaid provision of the Act.

(42) Evidently, in the present case, after the issuance of a notification dated 28.03.2006 (Annexure P-5) vide which Municipality Sadhaura was established, the inhabitants and the registered voters of the area and even the Gram Panchayat Sangarsh Committee Sadhaura made enmasse representations to the Government for withdrawing the notification for conversion of Sadhaura Panchayat into a Municipality. The inhabitants of the town met the State Government in huge gatherings and represented for the abolishment of the Municipality Sadhaura. This being so, the State Government called for a report/comments from the Deputy Commissioner, Yamunanagar. And who, after having sought the comments of the Block Development and Panchayat Officer, Sadhaura, recommended for constitution of the Gram Panchayat in place of a Municipal Committee in village Sadhaura in public interest. The following reasons were assigned by the BDPO in his communication dated 15.02.2007 in support of his report:

"*With reference to in compliance of your orders conveyed on telephone on dated 15.02.2007 which are with reference to Director, Urban Local Bodies, Haryana, Chandigarh letter No.1AE-2007/5664 dated 15.02.07 addressed to D.C., Ambala, the report is submitted as under:–*

1. That as per census figures of 2001 total population of Sadhaura is 13176 out of which population of scheduled castes is 2589 which is established in the radius of one kilometer. This village is at a distance of 30-35 kilometer from District Headquarter, Yamuna Nagar and is far away 40 to 50 KM from National Highway/Railway.

2. That atmosphere of Sadhaura area is just like village and maximum people depend upon agricultural labour and there is no trade at large scale. This is a small town and people are running small shops and this is not a industrial area and people are financially backward.

3. That during the tenure of Gram Panchayat in Sadhaura, many developmental works were completed and at that time almost all streets were cemented. Grants received during the tenure of Gram Panchayat was much more than during the tenure of Municipal Committee.

4. That burden of taxes upon people during Gram Panchayat was less because people were supposed to pay only chulha tax. Development tax and house tax, plan fees etc. were abolished. Therefore, it will be in the public interest to constitute Panchayat in Sadhaura village.

5. That area of Chhachrauli and Radaur where Municipal Committee was in existence earlier, is much more than Sadhaura where Gram Panchayat has been constituted. Hence, there is no justification to constitute Municipal Committee in Village Sadhaura.

6. Expenditure of staff etc. remains higher in case of Municipal Committee whereas only sanitation expenses are borne by Panchayat and as a result of this maximum fund can be utilized on development works.

7. That there is only one source of income i.e. from Chulha tax and rent from the shops in this village and there is no other income source and no shamlat land exist.

8. That this area will be covered under rural area in case of Panchayat in Sadhaura and as a result of this people will get facility of 50% reservation in Government service and other facilities whereas this benefit is less in urban areas."

(43) Still further, it is demonstrated in paragraph 6 of the preliminary objections of the written statement filed by respondent Nos.6 to 135 that as per the census figures of 2001, the total population of this town was about 13,174 out of which the number of total registered voters was about 7,000. Out of the said 7,000 registered voters, about 6,000 voters of all the Wards were in favour of the abolishment of Municipal Committee, Sadhaura and in place thereof prayed for constitution of the Gram Panchayat. All of them had put their signatures on the representations moved by the inhabitants of the town jointly to the respondent Government vide Annexure R-6/1, which we have extracted in paragraph 8 of the judgment. On the basis of this material and opinion of the public at large, the Government had taken the decision to abolish the Municipal Committee in the larger public interest.

(44) Vide notification dated 28.02.2007 (Annexure P-10), the Municipal Committee, Sadhaura was abolished, and vide notification dated 27.06.2007 (Annexure R-6/2), the Gram Panchayat Sadhaura was established under Section 7 and sub-section (1) of Section 8 of the Haryana Panchayati Raj Act. The relevant extract of the said notification reads as thus:

"**No. S.O. 54/H.A. 11/1994/Ss.7 and 8/2007**:—*In exercise of the powers conferred by sub-section (1) of section 7 and sub-section (1) of section 8 of the Haryana Panchayati Raj Act, 1994 (Haryana Act 11 of 1994), the Governor of Haryana hereby declares the village specified in column 3 of the Schedule given below, to be Sabha area and establishes Gram Panchayat by the name Sadhaura as mentioned in column 4 of the said Schedule for the said sabha area in block and district as mentioned in columns 1 and 2 respectively of the said Schedule."*

(45) As demonstrated above, it is clear that the entire action and the exercise which had been gone into by the State Government

was to re-establish the Gram Panchayat, Sadhaura in place of a Municipality. Abolishing the Municipality Sadhaura was just consequential. It needs to be reasserted that the mind, intent and the will of the inhabitants and the registered voters of the area was taken cognizance of by the State Government and consideration thereof preceded the notification abolishing the Municipality and reconstituting the Gram Panchayat. This action of the State Government, in its entirety, was in sync with the statutory process and procedure as referred to above.

(46) The above position also draws strength from certain crucial observations made by this Court in **Balbir Singh Chauhan's** case (supra), which read as thus:

> *"13. The matter can be looked from another point as well. Is the abolition of 'C' class municipality and creation of a Gram Panchayat such a step which is not known to law ? In this regard, the provisions of the Punjab Gram Panchayat Act, 1952, may be noticed. Section 4 of the Gram Panchayat Act deals with the establishment of a Gram Panchayat and it does contemplate the creation of Panchayat if majority of voter in a Notified Area Committee or Municipality of 'C' class desire establishment of a Gram Panchayat in which case the assets and liabilities of the Notified Area Committee or the Municipal Committee, as the case may be, shall vest in the Gram Panchayat thereafter established and the Notified Area Committee or the Municipality shall cease to exist. Section 4 of the Punjab Gram Panchayat Act, 1952, as applicable to the State of Haryana, reads as under:–*
>
> > *"4. Demarcation of Sabha areas.—(1) Government may, be notification, declare any village or group of contiguous villages with a population of not less than five hundred to constitute one or more sabha areas :–*
> >
> > *Provided that neither the whole nor any part of –*
> >
> > *(a) a Notified Area under Section 258 of the Haryana Municipal Act, 1973, or*

(b) a Cantonment; or

(c) a Municipality of any class;

shall be included in a Sabha area unless the majority of voters in any Notified Area or Municipality of the Third class desire the establishment of Gram Panchayat in which case the assets and liabilities, if any, of the Notified Area Committee or the Municipal Committee, as the case may be, shall vest in the Gram Panchayat thereafter established and the Notified Area Committee shall cease to exist :

Provided further that the Government may, in any particular case, relax the limit of five hundred.

(2) Government may by notification include any area or exclude any area from the Sabha area.

(3) If the whole of the Sabha area is included in the Municipality, Cantonment or Notified Area under Section 258 of the Haryana Municipal Act, 1973, the Gram Panchayat shall cease to exist and its assets and liabilities shall be disposed of in the manner prescribed.

14. Thus, in view of Section 4 of the Punjab Gram Panchayat Act (as applicable to Haryana) the abolition of a 'C' class Municipality and bringing into existence a Gram Panchayat is not such a retrograde step which is to be looked down upon. As a matter of fact, the Legislature has duly recognised the fact that it is possible to convert 'C' class Municipality into a Gram Panchayat and if this be the position the action of the State Government is supported by this statutory provision as well. Not only this, the Directive Principles of State Policy as contained in Article 40 of the Constitution contemplate strengthening of village Panchayats. Article 40 of the Constitution reads as under:–

"40. Organisation of village panchayats. - The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self- government."

(47) Thus, looking from any point of view, the act of the State Government in abolishing a 'C' Class Municipality and restoring old status is not only supported by the Statutory provisions contained in the Punjab Gram Panchayat Act, 1952 but the object is laudable if Article 40 of the Constitution is also taken into consideration.

(48) In the wake of the above, we find no merit in the writ petitions and the same are, accordingly, dismissed leaving the parties to bear their own costs.

A Jain

Before M. Jeypaul & Anita Chaudhary, JJ.

TARLOK SINGH—*Petitioner*

versus

STATE OF PUNJAB—*Respondents*

CRA-D No. 159-DB of 2009

September 17, 2013

Indian Penal Code, 1860 - Ss.201, 302 and 364 - Circumstantial evidence/Benefit of doubt - Appellant was tried for kidnapping and murdering his daughter and her lover H - Bodies of both were found from canal - Prosecution relied upon circumstantial evidence, viz., absence of appellant from his house, refusal of appellant to accept dead body of his daughter, not attending her funeral and disclosure and recovery of kappa and tractor trolley - However, police failed to collect any evidence as to who had actually provided information to family of complainant about kidnapping though a call was made on mobile phone of complainant's son - Held, that though above circumstances pointed needle of suspicion towards appellant, prosecution had failed to bring crucial circumstances and there was no link in circumstances set up by them to establish guilt of accused beyond reasonable doubt - Benefit of doubt given to appellant - Appellant acquitted.

Held, that the police failed to collect any evidence as to who had actually provided the information to the family of the complainant