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I.L.R. PUNJAB AND HARYANA

2015(1)

*Before Sanjay Kishan Kaul, Chief Justice &
Augustine George Masih, J.*

DAVINDER KUMAR AND ANOTHER—Petitioners

versus

STATE OF PUNJAB AND ANOTHER—Respondents

CWP 21676 of 2010

September 11, 2013

Constitution of India, 1950 - Art. 226/227 - Punjab Municipal Act, 1911 - S. 4(1) - Punjab Land Preservation Act, 1900 - S. 4 - Constitution of Nagar Panchayat - Transitional area - Initial notification dated 24.1.2008 was issued by State Government declaring certain local area to be transitional area for purpose of constituting a Nagar Panchayat - Objections were filed that relevant factors in respect of such area were not considered and that by an earlier notification dated 31.01.1983, some areas of Gram Panchayats had been declared as protected areas as per Section 4 of Punjab Land Preservation Act, 1900 - Held, that initial notification was issued having regard to population density, revenue generation for local administration, employment, economic factors - After hearing objections final notification was issued - Further notification dated 31.1.1983 was issued only for limited period of 20 years and had not been extended and consequently lapsed - Notification dated 24.1.2008 cannot be faulted - Further held, that constitution of Nagar Panchayat being in nature of legislative process, Court cannot interfere if statutory provisions are complied with.

Held, that initial notification dated 24.1.2008 was issued by the Punjab Government within its legislative competence having regard to the factors mentioned, i.e., population and density of the area, the revenue generation for local administration, the percentage of employment in/agricultural activities, economic importance and development of the area in a planned manner, describing the boundaries as were specified in the said notification to declare the local area specified therein, including the villages to be a transitional area for the purpose of constituting Nagar Panchayat at Talwara.

(Para 10)

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Further held, that the notification dated 31.1.1983 was issued under Section 4 of the Punjab Land Preservation Act, 1900 but a perusal of the same would show that it was only for a period of 20 years. There is nothing on the record to show or even suggest that the said notification has either been extended or a fresh notification declaring this as a protected area has been issued. On expiry of the period of twenty years, the notification stands lapsed. The plea, therefore, cannot sustain.

(Para 14)

Puneet Bali, Senior Advocate with Ranjit Saini, Advocate, *for the petitioners.*

Gaurav Garg Dhuriwala, DAG, Punjab, for the State.

AUGUSTINE GEORGE MASIH, J.

(1) By this order, we propose to decide Civil Writ Petition Nos.21676 and 21699 of 2010, referred to above, as common questions of fact and law are involved.

(2) Challenge in these writ petitions is to the notification dated 24.1.2008, Annexure P-2, vide which under Section 4(1) of the Punjab Municipal Act, 1911 (for short, “the Act”), Governor of Punjab was pleased to declare local area as described in the said notification to be a transitional area for the purpose of constituting Nagar Panchayat at Talwara (Township) and invited objections from the inhabitants within a period of 30 days of the publication of the notification as also to the notification dated 27.10.2010, issuing declaration to constitute Nagar Panchayat, Talwara, District Hoshiarpur and rejecting the objections submitted by the residents/Gram Panchayats against the proposed inclusion in the transitional area.

(3) As per the pleaded facts, because of the political affiliation of the villagers of the area, a proposal was mooted for setting up a Municipal Committee, which comprised of the villages of 10 Panchayats, namely, Talwara, Bhera, Dohar, Ram Nangal, Shri Pandiyan, Adampur Motian, Chingrawan, Chak Pandain, Chak Mirpur and Haler in Tehsil Mukeria, District Hoshiarpur. On coming to know about the said fact, representation dated 19.10.2007 was submitted jointly by these Gram Panchayats opposing the same. This did not have any effect and the

Department of Local Government, Punjab, proceeded to issue notification dated 24.1.2008 under Section 4(1) of the Act, declaring the local area comprising of Villages Talwara, Bhara, Ram Nagar, Dohar, Shri Pandiyan, Adampur Mottian and Chingrawan as a transitional areas for constituting Nagar Panchayat at Talwara Township. The petitioners, through their Gram Panchayats, submitted objections, which were invited as per the said notification within 30 days. The said objections were rejected and a notification dated 27.10.2010 under Section 4(1) of the Act, declaring the local area mentioned therein to be a transitional area for the purpose of Nagar Panchayat, Talwara.

(4) It is the contention of the petitioners that while taking into consideration the objections, the object for which the local area is to be notified as a transitional area has not been considered. The requirement, as per Section 4(1) of the Act, is that the State Government shall take into consideration the density of the population of the area, revenue generated for local administration, percentage of employment in non-agricultural activities, economic importance etc. but none of these factors have been taken into consideration. The contention is that if the Talwara Township area, which belongs to the Bhakra Beas Management Board (for short, “the Board”), which is an independent self contained and sufficient township is excluded, the remaining area would not fulfil the parameters and the requirements of Section 4(1) of the Act. Some of the areas, which were initially notified *vide* notification dated 24.1.2008 have been excluded in the subsequent notification dated 26.10.2010, while the area of Gram Panchayats, where the petitioners reside in, have been included. Plea has also been raised that some of the areas of these Gram Panchayats has been declared as protected area as per Section 4 of the Punjab Land Preservation Act, 1900 *vide* a notification dated 31.1.1983 and, therefore, the said area cannot be included in the transitional area. Rejection of the objections filed by the petitioners has also been assailed as being without application of mind and justification.

(5) In the reply, which has been filed by the State of Punjab, the assertions made by the petitioners have been rebutted and denied. It has been stated that the Government has the power to include or exclude any area from the municipal limits. Various parameters, as have been laid down in Section 4(1) of the Act, have been taken into consideration

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before including the area in the transitional area and thereafter objections, which were called for, have been considered by the competent authority. Personal hearing was also given to the objectors, who were heard on 21.5.2008. Subsequent objections dated 21.9.2010 were also taken into consideration before publishing the final notification dated 27.10.2010. No merit was found in the said objections. However, wherever some justification was found, the said area has been excluded from the ambit of final notification.

(6) The stand of the respondents is that the Board has not raised any objection of inclusion of the said area in the Nagar Panchayat. The inhabitants of the area, including the people living in the Board area, are supporting the inclusion of the said area as this would lead to better civic amenities to the population. The State Government has taken into consideration various factors as have been mentioned in Section 4(1) of the Act and in exercise of the said powers, the two impugned notifications have been issued.

(7) Learned Senior counsel appearing for the petitioners has emphasized with reference to the reply filed by the respondents, wherein the proforma for requisite information to be supplied alongwith request for extension of the municipal limits by the Urban Local Bodies has submitted that with regard to the density of the population, institutions and commercial activities, commercial establishments, employment, nature of public service and revenue, the major constituent thereof is the Board Township. He emphasized that the said Township is an exclusive Township, which was developed by the Board, on which the control of the Nagar panchayat, Talwara, as has been constituted, would not exist. If the said area is excluded from the notification or not taken into consideration, the remaining area is totally an agriculture area with very little employment and commercial establishments and, therefore, the inclusion of the area of the villagers is not justified and the notifications *qua* these villages deserve to be quashed. He has further submitted that the rejection of the objections submitted by the residents of the villages through their Gram Panchayat is unjustified and without any basis. The area is a protected area as per notification dated 31.1.1983 and, thus, could not be included in the impugned notifications and, therefore, the same deserve to be quashed.

(8) Counsel for the respondents has emphasized that the constitution of the Nagar Panchayat is primarily a legislative function and in support of this contention, he has placed reliance upon the judgment of the Supreme Court in *Sundarjas Kanyalal Bhatija v. Collector, Thane, Maharashtra(1)*. He further contends that the Court should not interfere with such a notification, if statutory provisions, which are required to be complied with, have been done so. Rules of natural justice are not applicable to the legislative action but in the present case, the objectors have been duly heard by the competent authority. He, on this basis, submits that the writ petition deserves to be dismissed.

(9) We have heard the counsel for the parties and on consideration of the submissions made by them, are not inclined to interfere in the matter as the notifications, according to us, have been issued in accordance with the provisions as contained in Section 4(1) of the Act. The said provisions read as follow:-

“4. Specification of local areas to be smaller urban areas or transitional areas and Constitution of Municipal Councils and Nagar Panchayats.- (1) *The State Government may, having regard to population of the area the density of the population therein, the revenue generated for local administration the percentage of employment in non-agricultural activities, the economic importance or such other factors, as it may deem fit, specify, by notification in the Official Gazette, any area to be a transitional area or a smaller urban area for the purposes of this Act:*

Provided that no military cantonment or any part thereof shall be included in such transitional area or a smaller urban area:

Provided further that such an urban area or part thereof, as the State Government may, having regard to the size of the area and municipal services being provided or proposed to be provided by an industrial establishment in that area and such

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other factors as it may deem fit, by notification, specify to be an industrial township shall not form part of a transitional area or a smaller urban area.”

(10) The above requirement of the statute has been complied with, we say so in the light of the fact that initial notification dated 24.1.2008 was issued by the Punjab Government within its legislative competence having regard to the factors mentioned *i.e.* population and density of the area, the revenue generation for local administration, the percentage of employment in/agriculture activities, economic importance and development of the area in a planned manner, describing the boundaries as were specified in the said notification to declare the local area specified therein, including the villages to be a transitional area for the purpose of constituting Nagar Panchayat at Talwara.

(11) The inhabitants of the transitional area were called upon to submit their objections, if any, in writing within a period of 30 days of the date of the publication of the notification. The residents of the villages of the area, through their Gram Panchayats, filed their objections. Objections were filed by the residents of Villages Talwara, Bhera, Ram Nangal, Dohar Siri Pandian, Adampur Mottian and Chingerwan. The Regional Director, Local Government Department, Jalandhar, on 22.4.2008, forwarded objections to the Government to the notification dated 24.1.2008 received in the office of Municipal Council, Mukarian. Objectors were afforded an opportunity of personal hearing on 21.5.2008 by the competent authority. *Vide* order dated 30.11.2009, these objections were rejected. Another set of objections dated 21.6.2010 were received by the Department, in which request was made to exclude villages of Chingarwan, Dohar, Shri Pandiyan, Adampur Mottian, Ramnangal and Bhera from the limits of the proposed Nagar Panchayat, Talwara. These objections were considered on 21.9.2010. Thereafter, final notification dated 27.10.2010, Annexure P-4, was published by the Government.

(12) Due procedure, as provided for under the statute, stands complied with and, therefore, the notification cannot be faulted with. Various factors, which were required to be taken into consideration, were duly considered by the respondents, as is evident from Annexure R-1, which has been appended alongwith the reply. A perusal of the same clearly indicates that the relevant factors to be taken into consideration by the competent authority have been so given due consideration.

(13) Contention of the counsel for the petitioners with regard to the area excluding the Township of the Board to be more of an agricultural area and, therefore, deserves to be deleted, cannot be accepted in the light of the fact that the Board has not objected to the notification for inclusion of the said area in the Nagar Panchayat. Rather, it is the stand of the respondents that the local residents of the area are in favour of it being included in the Nagar Panchayat as it will provide better civil amenities to them. Further, the total area, which is to be included in the Nagar Panchayat, has to be taken as a unit as the whole and not any specified areas in isolation as to the feasibility. The Section does not specify each of identities to be taken into consideration separately nor is it the requirement under the statute. Therefore, the submission of the counsel for the petitioners deserves rejection.

(14) A plea sought to be raised is that the area of the villages included in the impugned notifications is part of the protected area as per the notification dated 31.1.1983 issued under Section 4 of the Punjab Land Preservation Act, 1900 but a perusal of the same would show that it was only for a period of 20 years. There is nothing on the record to show or even suggest that the said notification has either been extended or a fresh notification declaring this as a protected area has been issued. On expiry of the period of twenty years, the notification stands lapsed. The plea, therefore, cannot sustain.

(15) Constitution of Nagar Panchayat, being in the nature of legislative process, the Court should not interfere if the statutory provisions have been complied with, as has been held by the Supreme Court in *Sundarjas Kanyalal Bhatija's case* (Supra). We have found that the respondents have duly complied with the provisions mandated under the Act, which are applicable, thus, resulting in failure of the grounds sought to be canvassed laying challenge to the impugned notifications.

(16) We, thus, do not find any merit in these writ petitions and, therefore, dismiss the same. The parties to bear their own costs.

S. Gupta