
(2022) 12 BOM CK 0072
In the Bombay High Court
Case No : Writ Petition No.365 Of 2022

Ajay Shrikishna Parab

APPELLANT

Vs

State Of Maharashtra And Others

RESPONDENT

Date of Decision : 16-12-2022

Acts Referred:

Maharashtra Land Revenue Code, 1966 — Section 2(43), 4

Citation : (2022) 12 BOM CK 0072

Hon'ble Judges : R. D. Dhanuka, J;S. G. Dige, J

Bench : Division Bench

Advocate : Prajakt M. Arjunwadkar, S. Bane

Final Decision : Allowed

Judgement

S. G. Dige, J

1. Rule. Ms. Bane, learned AGP, waives service on behalf of respondent Nos.1 to 4. By consent, Rule is made returnable forthwith and the matter is heard finally.

2. By this writ petition, the petitioner seeks to challenge the impugned communication and order dated 4th June, 2020 passed by learned Collector, Sindhudurg (Respondent No.2) thereby cancelling the draft notification No.REV-3601/1/2012 dated 11th September, 2019.

3. The brief facts of the case are as under:

Village Kudase, Taluka -Dodamarg, District Sindhudurg is a large village comprised of 7 wadis viz. Gaothanwadi, Harijanwadi, Bharpalwadi, Raulwadi, Vanoshiwadi, Dhanagarwadi and Deomalwadi. The said village is geographically divided into two parts by river - Tilari. The villages viz. Gaonthanwadi, Harijanwadi, Bharpalwadi and Raulwadi are situated on the northern side of the river -Tilari and villages viz.Vanoshiwadi, Dhanagarwadi and Deomalwadi are situated on the southern bank of the said river. The approximate population of the villagers who are residing within northern side of hamlets/wadi is 669. While,

the population of the hamlets/wadis situated on the southern bank of the river is 851.

4. It was the grievance of the residents of Vanoshiwadi, Dhanagarwadi and Deomalawadi that they have no proper representation in the Grampanchayat of Village Kudase. As a result, the overall growth and development of the area situated on the southern bank of the river is hampered. For these and various other reasons, it was a long standing demand of the residents from the wadis of southern side to divide village Kudase into two parts and thereby to form a separate revenue village for the above mentioned area. The applications were submitted to respondent Nos.2 and 4 seeking division of village Kudase and formation of two separate revenue villages.

5. A draft notification bearing No. REV6301/1/2012 dated 11 th September, 2019 was issued by respondent No.2, whereby it was notified about the formation of two separate revenue villages as Kudase and Vanoshi. The said formation was opposed by the members of the village panchayat – Kudase. Accordingly, on the objection, an inquiry was conducted by respondent No.4 post a personal visit to village Kudase and a report was submitted to respondent No.3. On the basis of the said report, respondent No.2 declared that the draft notification dated 11th September, 2019 stands cancelled. The petitioner filed a review petition before respondent No.2 against the said cancellation of the draft notification but it was rejected. This writ petition has been brought in consequence of the said rejection.

6. It is the contention of the learned counsel for the petitioner that Village – Kudase is a large village. The villages on the southern side of the river Tilari are not developed. If a separate revenue village is created, the villagers will get better educational opportunities as well as proper medical facilities. The collector had issued notification for formation of a separate village as the population of these villages is more than 300. Accordingly, notification was issued for formation of a separate village but it was cancelled without any reasonable ground and without giving an opportunity to the villagers to be heard, which is bad in law. Hence, it is requested to allow this petition.

7. It is the contention of learned AGP that though earlier notification was published for formation of separate revenue villages, but there was an opposition from the side of the villagers. An inquiry was conducted whether formation of a separate village is suitable or not and report was submitted. According to that report, the formation of a separate revenue village was not suitable. Hence, the said notification was cancelled.

8. We have heard the arguments canvassed by both the learned counsel. Admittedly, respondent No.2-Collector, Sindhudurg, had issued notification for formation of separate villages. As per Section 4 of the Maharashtra Land Revenue Code, 1966 (for short "MLRC, 1966"), the Government may form a separate revenue village by a notification in the Official Gazette. Section 4 of the MLRC, 1966 reads thus:

"The State Government may, by notification in the Official Gazette, specify-

(I)...

(ii)....

(iii)....

(iv)....

(v) The local area which constitute a village; and (vi)....

Provided that, the State Government shall, as soon as possible after the commencement of this Code, constitute by like notification every wadi, and any area outside the limits of the gaathan(the land included within the village site) of a village having a separate habitation (such wadi or area having a population of not less than three hundred, as ascertained by a revenue officer not below the rank of a Tahsildar) to be a village; and specify therein the limits of the village so constituted.

(2).....

(3).....

(4).....

This section provides that the State Government has power to alter the limits of the village, consequent to the constitution of any wadi, where the population of the said wadi is more than 300. Section 2, Sub-Section (43) of the MLRC defines the term "Wadi" any area which is outside of the limits of gavthan of a village where the population is not less than 300 is known as Wadi. The Village – Kudase is comprised of 7 wadis. The population of northern side of wadis is 669, while the population of southern side of wadis is 851. The grievance of the residence of Vanoshiwadi, Dhanagarwadi and Deomalawadi is that they have no proper representation in the Grampanchayat of Village – Kudase, as a result, overall growth and development of the area situated on the southern bank of the river is hampered. It was the further grievance that various government schemes could not be successfully implemented on the southern side of the river due to lack of proper representation in the Grampanchayat. The villagers residing on the southern bank of the river Tilari have to travel a distance of 15-16 kms. to reach the office of the Grampanchayat and, on that basis, representations were filed before respondent No.-2 for formation of a revenue village.

9. It appears from record that considering the request of villagers, respondent No.2 vide letter dated 21st May, 2018, directed respondent No.4 to submit his detail report. Respondent No.4 submitted his report to respondent No.3. On the basis of that report, respondent No.3 submitted his report to respondent No.2 dated 23rd October, 2018. In the said report, respondent No.3 strongly recommended for formation of separate revenue village.

Accordingly, respondent No.2 published a draft notification in respect of

formation of a separate revenue village but when it was objected by some villagers, it was cancelled.

10. We have perused the record and also the impugned order thereby cancelling the notification. Neither any opportunity of hearing was granted to the petitioner nor to the other Villagers of Vanoshiwadi, Dhanagarwadi and Deomalawadi to canvass the need of formation of a new revenue village. The respondent No.2 did not verify the fact that the reports submitted by the respondent Nos.3 and 4 were contrary to their own reports submitted earlier. The respondent No.2 only considered the reports submitted by the respondent Nos. 3 and 4 cancelling the draft notification dated 11th September 2019. The entire order is thus passed in gross violation of principles of natural justice and without making any proper enquiry. The impugned notification is without any basis and arbitrary.

11. We accordingly pass the following order :-

(i) Writ petition is allowed in terms of prayer clauses (a) and (b).

(ii) The respondent No.2 Collector is directed to grant group hearing to the petitioner as well as the villagers of Vanoshiwadi, Dhanagarwadi and Deomalawadi before taking any decision in respect of the Draft Notification No.REV-3601/1/2012 dated 11th September 2019.

(iii) Fresh decision shall be taken in accordance with law without being influenced by the observations made and conclusions drawn in the impugned order dated 4th June 2020.

(iv) Rule is made absolute in aforesaid terms. No order as to costs.

(v) Parties to act on the authenticated copy of this order.