(2016) 08 BOM CK 0156

In the Bombay High Court

Case No : Writ Petition No. 6362 of 2013

Balasaheb Sahebrao Bodkhe APPELLANT

Vs

State of Maharashtra RESPONDENT

Date of Decision : 11-08-2016

Acts Referred:

Bombay General Clauses Act, 1904 — Section 24
Constitution of India, 1950 — Article 226
Maharashtra Land Revenue Code, 1966 — Section 4(4)

Citation : (2016) 5 ALLMR 335 : (2016) 6 BCR 765

Hon'ble Judges : S.V. Gangapurwala and K.K. Sonawane, JJ.

Bench : Division Bench

Advocate : Mr. N.K. Tungar, Advocate, for the Petitioner; Mrs. A.V. Gondhalekar, AGP, for the Respondent No. 1 & 2; Mr. V.D. Salunke, Advocate, for the Petitioner; Mrs. A.V. Gondhalekar, AGP, for the Respondent No. 1 & 2

Final Decision : Disposed Off

Judgement

K.K. Sonawane, J.—Rule. Rule made returnable forthwith and heard finally with consent of learned counsel for the parties.

2. Both these petitions raise identical controversy as well as relate to similar facts and circumstances. Therefore, both these petitions were heard together and are disposed of by this common judgment. Brief facts relevant for adjudication of the matter in issue are as under :-

The Government of Maharashtra on 26-06-2012 published a draft notification under section 4 sub-section (4) of the Maharashtra Land Revenue Code, 1966 inviting objections and suggestions in regard to area of particular tahsil to constitute sub-division and its revenue headquarter. Accordingly, in the draft notification, it was proposed that area of tahsil Gavrai and Shirur Kasar District Beed will constitute subdivision, namely, Gevrai having its headquarter at Gevrai, District Beed. Similarly, it was proposed that area of Ashti and Patoda Tahsils of the District Beed will constitute sub-division as Ashti with its headquarter at

Ashti, District Beed only. There were objections raised in regard to inclusion of area of taluqa Shirur Kasar, District Beed in sub-division Gevrai. However, the Government of Maharashtra vide impugned notification dated 26-07-2013 shown area of Shirur Kasar tahsil as a part of sub-division known as "Patoda" with headquarter at Patoda, District Beed. The area of Ashti Taluka also shown include in sub-division "Patoda" having headquarter at Patoda. Being dissatisfied with the impugned notification, petitioners rushed to this Court and prayed to set aside and quash impugned notification to the extent of inclusion of area of Shirur Kasar Tahsil, District Beed in sub-division known as "Patoda" having its headquarter at Patoda as well inclusion of area of Ashti Tahsil in sub-division Patoda, District Beed instead of constituting its separate sub-division, namely, "Ashti" with headquarter at Ashti, District Beed.

It has been asserted that in view of geographical situation, population of respective tahsil areas and availability of conveyance facility, area of Shirur Kasar tahsil is required to be included in subdivision "Beed". Moreover, there must be a separate sub-division for "Ashti" tahsil area with its headquarter at "Ashti" only. The petitioners blamed that the impugned notification is politically motivated, arbitrary, unfair, irrational and not as per the provisions of law. Hence, petitioners requested to upset and quash the impugned notification by exercising jurisdiction amenable under Article 226 of the Constitution of India.

3. We have heard learned counsel for respective parties. Mr. Salunke, learned counsel for petitioner vehemently submit that impugned notification dated 26-07-2013 is arbitrary, irrational and politically motivated. He explained that in a draft notification, area of tahsil Shirur Kasar is shown as part of sub-division Gevrai with its headquarter at Gevrai District Beed. But, in the final notification dated 26-07-2013 area of tahsil Shirur Kasar is shown included in Patoda sub-division, District Beed. The respondent failed to comply with the mandatory provisions prescribed under section 4 sub-section (4) of the Maharashtra Land Revenue Code read with section 24 of the Maharashtra General Clauses Act. According to learned counsel, non compliance of these provisions invalidated the impugned notification being irrational and without giving an opportunity for objection/ suggestion to the petitioners and others. There were vital changes made in the draft notification dated 27-06-2012 and eventually, the final notification came to be published on behalf of respondent-State on 26-07-2013. The objections or suggestions were not called for the proposal of shifting the area of Shirur Kasar tahsil from Gevrai Sub-division to "Patoda" sub-division, District Beed. The petitioner suggested to include area of Shirur Kasar Tahsil in "Beed" sub-division. But, the respondents without previous notification proceeded to include area of Shirur Kasar tahsil in "Patoda" sub division. Therefore, learned counsel Mr. Salunke requested to set aside and quash the impugned notification to the extent of inclusion of area of Shirur Kasar tashil in Patoda sub-division.

4. Mr. Tungar, learned counsel for petitioner in writ petition No. 6362 of 2013

stepped into the shoe of learned counsel Mr. Salunke in regard to legal objections and non issuance of previous notification prior to publication of final notification under section 4 of the Maharashtra Land Revenue Code. Mr. Tungar, learned counsel submit that draft notification dated 26-06-2012 indicate area of Ashti and Patoda taluqa in Ashti sub-division with its headquarter at Ashti District Beed. But, in the final notification dated 26-07-2013 area of Ashti taluqa is shown as part of "Patoda" sub-division having headquarter at "Patoda" district Beed. The area of Shirur Kasar is also shown in the sub-division "Patoda." There was no previous notification calling objections, opinions in regard to sub-division "Patoda" instead of "Ashti" and inclusion of area of Shirur Kasar Tahsil in Patoda subdivision. There was violation of principles of natural justice. According to learned counsel Mr. Tungar, in view of geographical situation, population of Ashti tahsil area and availability of conveyance facility, it would be justifiable to notify the area of Ashti taluqa as separate subdivision "Ashti" having its headquarter at Ashti only. But, respondent - State did not take into consideration all these factual aspect and unilaterally published the impugned notification which is arbitrary and bad in eye of law. At last, both learned counsel strenuously urged to set aside and quash the impugned notification. Learned counsel for petitioner placed reliance on the judgment of Division Bench of this court in Public Interest Litigation No. 72 of 2013 Dr. Avinash Ramkrishna Kashiwar and others v. State of Maharashtra as well as Prashant Babusaheb Ghiramkar v. The State of Maharashtra and others reported in 2013(6) Mh.L.J. 703.

5. The learned Assistant Government Pleader Mrs. Gondhalekar vociferously opposed the contentions put forth on behalf of petitioners and submit that the authorities of respondent - State has considered the geographical conditions, population of the particular tahsil area, conveyance facility etc. prior to final publication of notification dated 26-07-2013. All procedural formalities are complied with, after taking into consideration the objections and suggestions raised prior to final notification. It is also contend that the establishment of revenue sub-division is legislative function of the Government and the rules of natural justice has no application to the present case. It is the discretion of legislative authority to appreciate suggestions and objections and the decision taken by the respondent cannot be agitated by invoking remedy under writ jurisdiction. Hence, learned Assistant Government Pleader requested not to nod in favour of petitioners and to dismiss the petitions.

6. Intense scrutiny of the relevant documents produced on record in the light of argument advanced on behalf of both sides, reveals that the entire edifice of the matter in issue rests on the legal facet in regard to compliance of provisions of section 4 sub-section (4) of the Maharashtra Land Revenue Code read with section 24 of the Maharashtra General Clauses Act.

7. The provisions of section 3 of the Maharashtra Land Revenue Code contemplates divisions of the State into different revenue areas consisting of one or more districts (including the City of Bombay) and each district may consist of

one or more sub-divisions and each subdivision may consist of one or more talukas and each taluka may consist of certain villages. Section 4 of Maharashtra Land Revenue Code provides powers to the State Government to constitute revenue area by publication of notification in the official gazette. However, it is stipulated that State Government shall hear objection and suggestions from the public at large before any final notification constituting revenue sub-divisions. It would be advantageous to refer to section 4 of the Maharashtra Land Revenue Code which reads as under :-

4. Constitution of revenue areas:

(1) The State Government may, by notification in the Official Gazette specify-

(i) the districts[(including the City of Bombay)] which constitute a division;

(ii) the sub-divisions which constitute a district;

(iii) the village which constitute a sub-division;

(iv) the village which constitutes a taluka;

(v) the local area which constitutes a village; and

(vi) after the limits of any such revenue area so constituted by amalgamation, division or in any manner whatsoever, or abolish any such revenue area and may name and after the name of any such revenue area; and in any case where any area is renamed, then all references in any law or instrument or other documents to the area under its original name shall be deemed to be references to the area as renamed, unless expressly otherwise provided:

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 gaothan 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 limits of the village so constituted.

(2) The Collector may by an order publish in the prescribed manner arrange the villages in a taluka which shall constitute a saza; and the sazas in a taluka which shall constitute a circle, and may alter the limits of, or abolish any saza or circle, constituted.

(3) The divisions, districts, sub-divisions, talukas, circles, sazas and villages existing at the commencement of this Code shall continue under the names they bear respectively to be the divisions, district,s sub-divisions, talukas, circles, sazas and villages, unless otherwise altered under this section.

(4) Every notification or order made under this section shall be subject to the condition of previous publication; and the provisions of Section 24 of the Bombay General Clauses Act, 1904, shall, so far as may be apply in relation to such notification or order, as they apply in relation to rules to be made after previous

publication.

8. Aforesaid provisions of sub-section (4) of section 4 of Maharashtra Land Revenue Code manifestly demonstrate that every notification or order made under section 4 of Maharashtra Land Revenue Code shall be subject to previous publication. It has also stipulated that the previous publication must be in consonance with the section 24 of the General Clauses Act. The provisions of section 24 of the Maharashtra General Clauses Act is made applicable to such previous publication. It would be necessary to reproduce section 24 of the Maharashtra General Clauses Act :-

"24. Where, by any Bombay Act [or Maharashtra Act] a power to make rules or by laws is expressed to be given subject to the condition of the rules or by-laws being made after previous publication, then the following provisions shall apply, namely:-

(a) the authority having power to make the rules or by-laws shall, before making them, publish a draft of the proposed rules or bylaws for the information of persons likely to be affect;

(b) the publication shall be made in such manner as that authority deems to be sufficient or, if the condition with respect to previous publication so requires, in such manner as the [Central Government, or as the case may be, the [State] Government] prescribes;

(c) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(d) the authority having power to make the rules or by-laws, and, where the rules or by-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or by-laws from any person with respect to the draft before the date so specified;

(e) the publication in the [Official Gazette] of a rule or by-law purporting to have been made in exercise of a power to make rules or by-laws after previous publication shall be conclusive proof that the rule or by-law have been duly made."

9. The conjoint reading of the provisions of section 4 sub-section (4) of Maharashtra Land Revenue Code and Section 24 of the Maharashtra General Clauses Act categorically reflects that the legislature has provided power to the State Government for constitution of revenue area subject to previous notification. It has been stipulated that prior to such making rules or bye-laws there should be publication of the draft of proposed rules or bye-laws for information of the persons likely to be affect thereby. It makes clear that legislature itself mandate for prior publication and notice of the proposed rules or bye-laws to call for objections and suggestions to consider it by the State Government before exercising its power of making rule or bye-laws, if any.

10. Admittedly, in both these petitions, we are dealing with the legislative function of the State Government. The procedure as envisaged under section 4 sub-section (4) of Maharashtra Land Revenue Code read with section 24 of the Maharashtra General Clauses Act appear mandatory in nature. It contemplates effective and substantial compliance of the requirements before making any rules or bye-laws by the State Government. It is not put into controversy that the State Government is empowered to notify area of the revenue subdivision by discharging the legislative functions under section 4 of the Maharashtra Land Revenue Code. It has been argued that it is the discretion of the State Government to notify revenue sub-divisions as well as its headquarter after considering the objections and suggestions and the validity of such notification cannot be agitated by resorting to writ jurisdiction under Article 226 of the Constitution of India. The rule of natural justice is not required to be observed before publication of such final notification in the petitions.

11. Taking into consideration nature of the allegation nurtured on behalf of petitioners, it is imperative to appreciate the scope of judicial review in the matter of exercise of legislative power by the State Government and thereby application of principles of natural justice. The Division bench of this court, bench at Nagpur had dealt with the similar issue in Public Interest Litigation No. 72 of 2013 Dr. Avinash Ramkrishna Kashiwar and others v. State of Maharashtra and observed in paragraphs No. 12 and 13 as under :

"12. The Apex Court in the case of State of Punjab v. Tehal Singh and ors. reported in AIR 2002 Supreme Court 533 has observed thus:

"It is almost settled law that an act legislative in character primary or subordinate, is not subject 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 provided for observance of principle of natural justice or provided 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 have been provided for before any area is excluded from 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."

13. It could thus be seen that the Apex Court has clearly held that an act legislative in character primary or subordinate, is not subject to rule of natural justice. It has, however, held that in case of subordinate legislation, the legislature may provided for observance of principle of natural justice or provided for hearing to the residents 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. The Apex Court has further held that 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."

12. In view of judgment of the Apex Court mentioned above, we are in respectful agreement with observations of the Division Bench of this Court delivered at Nagpur as referred supra. It is lucid that powers conferred to make sub-ordinate legislature must be exercised in conformity with express or implied limitations contained empowering the State. Therefore, exercise of the legislative power derived from statute would be assailed on the ground that it is in conflict with governing statute or that there has been non-consideration of essential facts and that it is manifestly arbitrary. It would be reiterated that provision of section 4(4) of Maharashtra Land Revenue Code itself provides legislative power to the State Government for constitution of revenue area. However, limitations are imposed on it by previous publication of draft notification for information to the persons likely to be affect by the same to facilitate them to ventilate their grievances for rederessal or put suggestions for constitution of revenue sub-division.

13. In the case of State of Orissa v. Sridhar Kumar Mallik and others reported in (1985) 3 Supreme Court cases 697, the Apex Court while considering the scope of section 417-A(1-A) of the Orissa Municipal Act, 1950 for constitution of Municipalities held that the proposed proclamation should be precise,clear and should indicate with sufficient accuracy the area intended to be notified. It has also been observed that the legislature attaches serious importance to eliciting the opinion of the resident of the area who will be affect by its constitution as notified under section 417-A(1-A) of the Orissa Municipal Act, 1950. The Apex Court further enunciated that unless these requisites are complied with it will not be possible for the residents to properly avail of the rights conferred upon them by statute to make their objections to the proposal of the State Government. In short, if statute provides remedy to the people of the area likely to be affect by notification to avail right for opinion, it is obligatory on the part of the State Government to comply with all these requisites scrupulously prior to finality of the proclamation.

14. Moreover, provision of section 24 of the Maharashtra General Clauses Act prescribes about opportunity to the persons likely to be affect by proposed rules or bye-laws, prior to its finality. The Apex Court in the case of Municipal Corporation Bhopal, M.P. v. Misbahul Hasan and others reported in (1972) 1 Supreme Court Cases, 696 has appreciated the scope of provisions of section 24 of the M.P. General Clauses Act 1957, which is pari materia with section 24 of the Maharashtra General Clauses Act. It have been enunciated in paragraphs No. 13 of the Judgment that :

"13. The legislative procedure envisaged by Section 24, set out above, is in consonance with notions of justice and fair-play as it would enable persons likely to be affect to be informed so that they may take such steps as may be open to them to have the wisdom of a proposal duly debated and considered before it becomes law. This mandatory procedure was not shown to have been complied with here."

15. It is evident from the aforesaid settled rule of law that legislative function of constitution of revenue area by the State Government should be in consonance with principles of justice and fair play. It is also stipulated that constitution of revenue sub-division should be subject to previous publication of draft notification to enable the persons likely to be affect by the notification to take steps as may be open to them. These requirements are not an empty formalities, but it should be scrupulously complied with, and failure to which, entire legislative act would run nugatory and invalid one.

16. In the instant petitions, there was publication of draft notification, in which area of Shirur Kasar tahsil was shown in the subdivision "Gevrai" with its headquarter at Gevrai only. Moreover, area of tahsil Ashti was shown as part of sub-division "Ashti" with its headquarter at Ashti. But, later on, in the notification dated 26-07-2013 the State Government has declared the area of Shirur Kasar tahsil as part of "Patoda" sub-division with headquarter at Patoda as well as area of Ashti tahsil is shown in the "Patoda" sub-division having headquarter at Patoda. Obviously, it seems that there was no opportunity to the persons of the area of Shirur Kasar to ventilate their grievances or to give suggestion in regard to inclusion of area of Shirur Kasar tahsil in Patoda sub-division. Similarly, residents of Ashti tahsil also did not get any opportunity to raise objections/ suggestion for decision of inclusion of Ashti area in "Patoda" sub-division. Admittedly, pursuant to the draft notification published on 26-06-2012, objections/suggestions were invited for proposals to include Shirur Kasar area in Gevrai Sub-division and not in Patoda sub-divisions as well as objections/ suggestions were called for declaration of Ashti tahsil area being part of Ashti sub-division itself. Therefore, the resident of Shirur Kasar tashil or Ashti tahsil could not exercise their right in proper manner as conferred upon them by the statute.

17. It would be reiterated that provisions of previous publication/draft notification would not be an empty formalities. But, opportunity is required to be given to the persons affect by such notification to ventilate their grievances or to give suggestion for redressal. Therefore, the impugned notification dated 26-07-2013 to the extent of inclusion of Shirur Kasar tahsil and Ashti tahsil in Patoda sub-division with its headquarter at Patoda appears to be unilateral, arbitrary and against purports of the Act. Non-compliance of statutory provisions definitely render the notification invalid. We are of the considered opinion that the impugned notification is inconsistent with the provisions of section 4(4) of the Maharashtra Land Revenue Code read with section 24 of the Maharashtra General Clauses Act. There was no compliance of the provisions mandatory in

nature and violation of the same would render notification invalid, unsustainable and not within the purview of law.

18. The learned Assistant Government Pleader harped on the circumstances that the powers of State Government to constitute revenue sub-divisions and its headquarter are legislative powers. It is a policy decision and the same cannot be interfered by exercising discretion under Article 226 of the Constitution of India. The factual score do not permit to digest the contention put forth on behalf of learned Assistant Government Pleader, which does not appear to be attractive and sustainable one. We have already mentioned that any breach of statute or non compliance of statutory provision render the decision invalided. It is the rule of law that while exercising the powers in the nature of sub-ordinate legislature, it must be in consonance with the provisions laid down under statute and any sort of departure would nullify the entire sub-ordinate legislation. Therefore, mandate of law is required to be followed scrupulously.

19. In the matter in hand, statute contemplates publication of draft notification to facilitate the persons of the area likely to be affect by notification to enable them to avail the rights as conferred upon them by the statute. But no such opportunity has been provided to the residents of Shirur Kasar and Ashti tahsils area for redressal. But instead, the State Government proceeded to include these tahsil areas in the Patoda sub-division unilaterally, which is the subject alien to the draft notification. Obviously, departure from statutory provisions rendered the notifications nugatory and invalid one. In regard to other claim on factual aspects, there would not be any propriety to go deep to examine other ramification of factual score. Admittedly, while exercising powers of judicial review under Article 226 of the Constitution of India, we cannot sit in appeal over the decision taken by the State Government.

20. In the result, we arrived at the conclusion that impugned notification dated 26-07-2013 suffers from legal infirmities. It is unsustainable, arbitrary and not within purview of law to the extent of inclusion of area of tahsils of Shirur Kasar and Ashti in sub-division Patoda with its headquarter at Patoda.

21. Therefore, the impugned notification is hereby upset, quashed and struck-down to the extent of inclusion of area of tahsils of Shirur Kasar and Ashti in sub-division Patoda with its headquarter at Patoda. The rule is made absolute in above terms. There shall be no order as to costs.

