

(1985) 09 GUJ CK 0014
In the Gujarat High Court

Bhalod Gram Panchayat and Another	Vs	APPELLANT
State of Gujarat and Others		RESPONDENT

Date of Decision : 17-09-1985

Acts Referred:

Bombay Land Revenue Code, 1879 — Section 7A, 7A
Gujarat Panchayats Act, 1961 — Section 9(2), 9(2)

Citation : (1986) 1 GLR 247

Hon'ble Judges : A.M. Ahmadi, J

Bench : Single Bench

Judgement

A.M. Ahmadi, J.—The short question which arises for consideration in this petition is, whether the State Government can exercise power conferred upon it by Section 7A of the Bombay Land Revenue Code (hereinafter referred to as the Code) to alter or to add to the limits of a village which has the effect of altering the geographical limits of a gram panchayat without following the procedure outlined in Section 9(2) of the Gujarat Panchayats Act, 1961 (hereinafter called "the Act"). The short facts leading to this petition are as under.

2. Until 1970 Bhalod, Rundh and Prankad villages formed part of one group gram panchayat. On 5th/6th August 1968 river Narbada was in spate and certain low lying areas of Bhalod and Tothidra villages were submerged necessitating the rehabilitation of 207 affected families on Survey Nos. 533, 534 and 535 of village Rundh. As Survey No. 535 was Gauchar land, it was surrendered to Government to enable its merger in the village site of Rundh. Subsequently in February 1970 the Collector of Broach allotted plots admeasuring 183 square yards to 101 affected families on their surrendering their right, title and interest in their previous holdings. On the trifurcation of the group gram panchayat in 1970, three separate gram panchayats for villages Bhalod, Rundh and Prankad came into existence. Once again in 1970 Bhalod faced floods rendering several families homeless. Under the rehabilitation, programme undertaken by the authorities on this occasion, the flood affected families were settled, on Survey Nos. 539, 540, 546 to 551 and 316. of Rundh village which were acquired by the Government

for rehabilitating these families. The petitioners aver that the names of these rehabilitated, persons were included in the voters list prepared for village Rundh under the Representation of the People Act and they voted as such at the election of Rundh Gram Panchayat and one of them Shri Ratnabhai came to be elected as a member of the Rudh Gram Panchayat. Thus according to the petitioners, the persons rehabilitated in Rundh village became residents and voters of the village and exercised their franchise accordingly. The Rundh Gram Panchayat also passed a Resolution at its special meeting held on 16th May 1971 that these rehabilitated persons should be subject to the jurisdiction of the Rundh Gram Panchayat. However, by a subsequent resolution passed by the Rundh Gram Panchayat on 4th October 1975, it expressed the view that the flood affected people of Bhalod village rehabilitated on Rundh village site should be included in the Rundh Gram Panchayat on condition that a proportionate revenue grant in respect of the rehabilitated people is allocated to it. Thereupon the Bhalod Gram Panchayat passed a resolution by majority dated 3rd October 1975 that the flood affected persons rehabilitated in Rundh village in 1970 should be included within the Bhalod Gram Panchayat. Four members of the panchayat were, however, of the view that a back reference ought to be made to the Taluka Panchayat for seeking explanation of certain matters before taking a final decision. However, the Executive Committee of the Broach District Panchayat at its meeting held on 27th October 1975 resolved that the families rehabilitated in Rundh village in 1968 and 1970 should be treated as part of Rundh Gram Panchayat and a recommendation to that effect be made to the Government. Pursuant to the said resolution the Mamlatdar Jhagadia, passed an ordgr dated 14th June 1976 including the rehabilitated persons in the voters list of Rundh village for all purposes including that of election. Accordingly the members of these flood affected families rehabilitated in the local area of Rundh village voted in the Taluka Panchayat elections. Legislative Assembly elections and Parliament elections as belonging to Rundh village. It will seen from the above facts that for all practical purposes, the rehabilitated families fomed part of the Rundh village populace.

3. In connection with the Resolution passed by the Bhalod village panchayat on 3rd October 1975, the Collector of Broach addressed a letter dated 30th August 1977 to the Sarpanch of Bhalod gram panchayat that the said resolution was ambiguous and called upon the panchayat to pass another resolution for the inclusion of areas of Rundh on which the flood affected families were rehabilitated into the local area of Bhalod. The Bhalod Gram Panchayat considered the letter at its meeting of 20th September 1977, but it did not favour the merger of the revenue area of Rundh on which the flood affected families were settled into the local area of Bhalod. One member of the Bhalod Gram Panchayat preferred a appeal against the said resolution to the District Panchayat Broach which by its order dated 22nd September 1977, stayed the operation of the said resolution. The appeal was ultimately dismissed and the resolution passed by the Bhalod Gram Panchayat was confirmed. On the other

hand the Rundh Gram Panchayat had at its meeting of 7th April 1976, resolved that the revenue survey numbers on which the flood affected families were settled should be excluded from the local area of Rundh and be merged with the local area of Bhalod. It is evident from the above resolution that while the Rundh Gram Panchayat was desirous of parting with the local area on which the flood victims were settled the Bhalod Gram Panchayat was not willing to the merger of that area into the local area of Bhdod. The State Government ultimately passed the impugned order of 1st December 1977 u/s 7A of the Code merging the survey numbers on which the flood affected families were settled in 1968 and 1970 into the local area of village Bhalod. The petitioners contend that this order was passed by the Government ignoring the resolution passed by the Bhalod Gram panchayat on 20th September 1977 presumably because the same was stayed by the Broach District Panchayat in appeal.

4. The petitioners contend that the power conferred upon the State Government u/s 7A of the Code is superseded or stands suitably amended modified, by virtue of the provisions contained in Section 9 of the Act. Which inter alia confers power on the State Government to include within, and exclude from any gram, any local area or otherwise alter the limits of any gram or declare that any local area shall cease to be a gram only after consultation with the concerned taluka district and nagar panchayats. They contend that since no notification has been issued under Sub-section (2) of Section 9 of the Act after effective consultation with the concerned panchayats, the power exercised in isolation u/s 7A Of the Code is of no avail and cannot have the effect of including the said survey numbers within the local area of Bhalod Gram Panchayat. The petitioner contend that the survey numbers of Rundh village on which the 1968 and 1970 flood victims have been settled are not contiguous with the local area of Bhalod and there merger with Bhalod Gram Panchayat would leave intervening pockets belonging to Rundh Gram Panchayat which would only add to administrative problems and render the collection of octroi, etc. difficult and would throw an excessive burden on the Bhalod Gram Panchayat to provide services to the said area. The petitioners, therefore, contend that the exclusion of these areas from Rundh Gram Panchayat and their inclusion in the Bhalod Gram Panchayat is mala fide and based on extraneous considerations. The petitioners, therefore, contend that the impugned resolution. Annexure "N" dated 1st December 1977, is unenforceable since no notification as required by Section 9(2) of the Act has been issued after effective consultation with the concerned, panchayats.

5. On behalf of the State Government the In-charge Collector of Broach Shri C.K. Desai has filed an affidavit stating that the State Government has exercised power u/s 7A of the Code after consultation with the District Panchayat keeping in view the administrative conveniences, public interest and geographical reason for the merger of the said Rundh area into Bhalod area. On the question of consultation with the concerned panchayats, the said officer has deposed that it is not necessary to consult the various panchayats and hence the question of effective consultation does not arise as the resolution is passed u/s 7A of

the Code and not u/s 9 of the Act. He has denied the allegation that the view of the Bhalod Gram Panchayat were not considered. He states that the rehabilitated persons of Bhalod village being socially related to the people of that village, it was thought necessary to include the area occupied by them in Rundh village into Bhalod village and accordingly the Rundh Gram Panchayat had by its resolution dated 7th April 1976 agreed to the transfer of the said area in Bhalod Gram Panchayat. He further states that the Bhalod Gram Panchayat had also passed a resolution on 3rd October 1975 by majority to that effect but when a clarification was sought by the Collector's letter of 30th August 1977, it resolved on 20th September 1977 against the inclusion of the Rundh area occupied by the flood victims in the local area of Bhalod Gram Panchayat. It is further stated that the taluka panchayat and the district panchayat have by their Resolution No. 5 dated 25th February 1976 and resolution No. 105 dated 5th May 1976 respectively agree to the transfer of the said area to Bhalod Gram Panchayat. He, therefore, states that after proper consultation with the concerned panchayats, the State Government passed the impugned resolution in exercise of power conferred upon it by Section 7A of the Code. He however, concedes that no notification has been issued u/s 9 of the Act.

6. In the affidavit-in-rejoinder filed by the Sarpanch of Bhalod Gram Panchayat, it is reiterated that there was no effective consultation with the concerned panchayats before the impugned resolution was passed by the State Government u/s 7A of the Code. Pointing out several administrative difficulties likely to be caused on the inclusion of the said village within the local area of Bhalod Gram Panchayat, the Sarpanch states that in the absence of a notification u/s 9 of the Act, the area cannot be included within the Bhalod Gram Panchayat.

7. The Collector of Broach filed an additional affidavit reiterating the fact that the concerned panchayats were consulted before the impugned resolution was passed u/s 7A of the Code. It is, however, conceded that no notification has been issued u/s 9 of the Act.

8. In the background of the above facts we are required to consider whether the impugned notification can be legally sustained. Section 7A of the Code reads as under:

7A. The State Government may from time to time by a duly published order alter or add to the limits of any village or amalgamate two or more villages or constitute a new village.

By the impugned order Annexure "N", dated 1st December 1977, the State Government carved out the Survey Numbers on which the flood victims were settled from the area of Rundh village and added them to the limits of Bhalod village. It is clear on a plain reading of Section 7A of the Code that the State Government is empowered to alter or add to the limits of any village without the need to consult the residents of the concerned areas. However, after the coming into force of the Act, a three tier panchayati raj system was introduced in the

State. In each district, a gram/nagar panchayat, a taluka panchayat and a district panchayat came to be established. By Section 9(1) a local area comprising revenue village or a group of revenue villages or hamlets forming part of a revenue village, or such other administrative unit or part thereof could be declared to be a nagar or a gram depending on the population of such local area. Section 9(2) with which we are presently concerned, provides as under:

9. (2) After consultation with the taluka panchayat, the district panchayat and the nagar or gram panchayat concerned (if already constituted) the State Government may, by like notification, at any time-

(a) include within or exclude from, any nagar or gram, any local area or otherwise alter the limits of any nagar or gram; or

(b) declare that any local area shall cease to be nagar or gram; or

(c) having regard to Clauses (a) and (b) of Sub-section (1) declare the whole area comprised in a gram or the part thereof to be a nagar or two or more grams or the whole area comprised in a nagar to be a gram or split up the area comprised in the nagar into a nagar and a gram or into two or more grams;

and thereupon the local area shall be so included or excluded, or the limits of the nagar or gram so altered or, the local area shall cease to be a nagar or gram or, as the case may be, the area declared to be a nagar or gram shall be a nagar, or gram as the case may be.

It is clear on a plain reading of this Sub-section before the State Government exercises power under this provision, it must consult the taluka panchayat, the district panchayat and the gram panchayat concerned. Failure to do so would render the exercise of power ineffective. Only after the concerned panchayats have been consulted that the State Government can exercise power by issuing a notification in the Official Gazette. Admittedly in the present case no notification has been issued under this sub-section. The question then is whether the State Government can in exercise of power u/s 7A of the Code and without resort to Section 9(2) of the Act alter the limits of a village which has the effect of altering the local areas of two gram panchayats? In the present case certain survey numbers belonging to Rundh village were excluded from that village and were included in Bhalod village by the impugned order u/s 7A of the Code which has the effect of enlarging the local area of Bhalod Gram panchayat. Can this be done without following the procedure outlined in Section 9 of the Act?

9. Section 7A of the Code empowers the State Government to alter or add to the limits of any village or amalgamate two or more villages or constitute a new village. The impugned order Annexure "N" was indisputably passed under this provision. It is also clear from the affidavit-in-reply filed on behalf of the State Government that no notification u/s 9 of the Act was issued. In the first affidavit-in-reply filed on 25th October 1980 the deponent while emphasising that the impugned order was issued u/s 7A of the Code (vide paragraphs 17 and 23), has

further averred in paragraph 2 that the District Panchayat was consulted before exercise of the said power. At the same time, which dealing with the averment in the petition that there was no effective consultation with the concerned panchayats, the deponent proceeds to state in paragraph 18 of the affidavit, as under:

It is not necessary to consult various panchayats as stated by the petitioner. Hence there is no question of effective consultation at all. I submit that consultation is required under Panchayats Act and no resolution has been issued under the said act.

It is reiterated in paragraph 19 that no notification had been issued u/s 9 of the Act. The Sarpanch of Bhalod Gram Panchayat then filed an affidavit-in-rejoinder and in paragraph 8 thereof he reiterated the fact that there was no effective consultation with the Gram, Taluka and District Panchayats in this behalf. In answer to the said affidavit, the Collector of Bharuch filed a further affidavit denying the allegation that there was no effective consultation and added in paragraph 4 as under:

The impugned order was passed after going through all the formalities contemplated under, Section 9 of the Gujarat Panchayats Act.

10. What is the picture that emerges from the averments made by two different officers of the State Government? One thing that clearly emerges is that the order was issued in exercise of power conferred by Section 7A of the Code and not u/s 9 of the Act. Yet it is tried to be made out that there was prior consultation with the concerned panchayats in this behalf. In the last affidavit filed by the Collector we are told that even though the power was being exercised u/s 7A of the Code, the procedure contemplated by Section 9 of the Act was followed. In other words, power was purported to be exercised under one statute while the procedure set out in another statute was followed. In order to satisfy myself if by way of caution consultation with the concerned panchayats had preceded the exercise of power, may be u/s 7A of the Code, I called upon the State Government to produce the relevant files evidencing such consultation before this Court. Even though time was granted more than once to produce the relevant files, the learned Government Pleader finally informed this Court that he was not in a position to produce the file as it could not be traced. This raises a serious doubt regarding the factum of consultation with the concerned panchayats. Ordinarily it is difficult to believe that when the Government did not contemplate resorting to Section 9 of the Act it would follow the procedure outlined by that provision for the exercise of power under an altogether different statute, namely Section 7A. of the Code. With the supporting evidence in the form of nothings and correspondence not forthcoming, it is difficult to accept the bald statement of the Collector made in November 1984 in regard to events that took place in 1977 and before. I am, therefore, of the view, that there was no effective consultation before the impugned order was issued.

But apart from the question of consultation, it is crystal clear that the power is exercised u/s 7A of the Code and not u/s 9(2) of the Act. Admittedly no notification is issued under the latter provision. If the Government was aware that prior consultation with the concerned panchayats was a "must" before altering the local limits of any Gram Panchayat and the process of consultation as contemplated by Section 9(2) of the Act had been gone through, it is difficult to understand what prevented the State Government from issuing the notification under that provision. In that case there was no charm in issuing the order u/s 7A of the Code and not u/s 9(2) of the Act. These circumstances also negative the theory of prior consultation having taken place.

11. The (next) question (then) is whether it was open to the State Government to exercise power u/s 7A of the Code without reporting to Section 9(2) of the Act. No doubt Section 7A of the Code empowers the Government to alter or add to the limits of any village but if that village happens to comprise the local area of any Gram Panchayat there can be no doubt that the alteration or addition to the limits of the village will directly affect the limits of the local areas of the concerned panchayats. After the enactment of the Act, inclusion within or exclusion from any gram any local area or the alteration of its limit must be made after proper consultation as provided by Section 9(2) of the Act. To hold otherwise would be to render the salutary provision of consultation nugatory. Alteration of the limits of any local area of a gram or nagar has several far reaching consequences, e.g. it affects the delimitation of wards, the constitution of existing committees, the revenue and financial assistance, etc., and hence it is only just and fair to consult the concerned panchayats before any such change is effected. If Section 9(2) of the Act can be bypassed by resorting to Section 7A of the Code, the very object and purpose of providing for prior consultation would be defeated, I am, therefore, of the opinion that where the purported exercise of power u/s 7A of the Code is likely to affect the limits of the local area of any panchayat or panchayats, the power cannot be exercised de hors Section 9(2) of the Act but can only be exercised conjointly with the latter provision. I may hasten to clarify that this observation should not be read as laying down that whenever power is exercised u/s 9(2) of the Act, it must be exercised along with Section 7A of the Code. All that I am saying is that when the Government desires to exercise power u/s 7A of the Code, if the exercise of power affects the local limits of any panchayat or panchayats, it must simultaneously resort to Section 9(2) of the Act also. If it fails to do so, its action would have to be struck down, as in this case.

As I am disposing of this petition on the aforesaid limited ground, it is not necessary for me to examine the other contentions raised in the petition. For the above reasons the impugned order issued u/s 7A of the Code is quashed and set aside. The rule is made absolute accordingly with no order as to costs.