
(2018) 10 UK CK 0068

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 3124 of 2018

Devendra Kumar

APPELLANT

Vs

State of Uttarakhand & others

RESPONDENT

Date of Decision : 26-10-2018

Acts Referred:

Uttar Pradesh Municipalities Act, 1916 — Section 3, 4
Constitution of India, 1950 — 243Q

Citation : (2018) 10 UK CK 0068

Hon'ble Judges : Sudhanshu Dhulia, J

Bench : Single Bench

Advocate : T.P.S. Takuli, S.R. Joshi, Manav Sharma

Final Decision : Allowed

Judgement

Sudhanshu Dhulia, J.

Petitioner is the Gram Pradhan of Gram Sabha Khamaria. Under the Uttar Pradesh Municipalities Act, 1916 (as applicable in the State of

Uttarakhand), the area of Bajpur Municipality was to be extended which was to be done in terms of Article 243Q of the Constitution of India read

with the provisions of Chapter II of the U.P. Municipalities Act, 1916. Under Section 3 of the U.P. Municipalities Act, 1916, a declaration of

transitional area and smaller urban area has to be made by the Governor. Section 3 of the U.P. Municipalities Act, 1916 reads as under:

â??3. Declaration etc. of transitional area and smaller urban area.â?"(1) Any area specified by the Governor in a notification under clause (2) of

Article 243-Q of the Constitution with such limits as are specified therein to be a transitional area or a smaller urban area, as the case may be.

(2) The Governor may, by a subsequent notification under clause (2) of Article

243-Q of the constitution, include or exclude any area in or from a transitional area or a smaller urban area referred to in sub-section (1), as the case may be.

(3) The notifications referred to in sub-sections (1) and (2) shall be subject to the condition of the notification being issued after the previous

publication required by Section 4 and notwithstanding anything in this section, no area which is, or is part of, a cantonment shall be declared to be a

transitional area or a smaller urban area or be included therein under this section.â??

However, before such a notification is made and rural area is included in the urban area, it is a mandatory condition under Section 4 of the U.P.

Municipalities Act, 1916 that the Governor shall publish a preliminary notification. In the present case, preliminary notification was published on

27.4.2018 whereby inter alia only partial area of village Khamaria was to be included in Bajpur Municipality. Although Khamaria has Khasra Nos. 1 to

208, but the preliminary notification clearly stated that only a partial i.e. area from Khasra Nos. 1 to 32 will be included in Bajpur Municipality.

Objections were heard and thereafter the final notification which was issued under Section 3 of the U.P. Municipalities Act, 1916. This notification,

however, included not just the area bearing Khasra No. 1 to 32, but the entire Khasra Nos. 1 to 208, in other words the entire village â??Khamariaâ??

is included in the area of Bajpur Municipality.

The contention of the petitioner is that provisions of Section 4 of the U.P. Municipalities Act, 1916 have therefore been violated in the present case

inasmuch as for the entire area which included Khasra Nos. 33-208, there has been no preliminary notification under Section 4 of the U.P.

Municipalities Act, 1916 which was mandatory.

In this case, instructions were called from the State on 25.10.2018. The admitted position is that no preliminary notification was published for including

Khasra Nos. 33 to 208 before making the final notification under Section 3 of the U.P. Municipalities Act, 1916 for those Khasra Nos.

In view thereof, there is apparent violation of Section 4 of the U.P. Municipalities Act, 1916. Consequently, the writ petition is allowed. Impugned

notification dated 28.8.2018 to the extent of inclusion of Khasra Nos. 33 to 208 of Gram Sabha Khamaria is hereby quashed and set aside. However,

since the election process of the Municipalities is presently underway, State Government shall be at liberty to issue a fresh notification for including the remaining khasras of Gram Sabha Khamaria in Bajpur Municipality in accordance with law as expeditiously as possible.