
(1973) 03 AHC CK 0021

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 7470 of 1972

Gaon Sabha, Jhinhak

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 05-03-1973

Acts Referred:

Uttar Pradesh Panchayat Raj Act, 1947 — Section 8
Uttar Pradesh Town Areas Act, 1914 — Section 3

Citation : AIR 1973 All 403 : (1973) 43 AWR 398

Hon'ble Judges : R.L. Gulati, J

Bench : Single Bench

Advocate : S.K. Dongre, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Gulati, J.—This is a petition under Article 226 of the Constitution by the Gaon Sabha Jhinhak through its pradhan Shri Asharfi Lal.

2. Jhinhak is a town area, which was created by a Notification No. 60/XI-235-E, dated January 11, 1916 u/s 3 of the U.P. Town Areas Act. On November 17, 1972, the Governor of Uttar Pradesh issued another notification amending the schedule to the aforesaid Notification extending the territorial jurisdiction of the town area. This Notification of November 17, 1972 has been challenged in this petition.

3. It is argued on behalf of the petitioner that the additional area, sought to be included in the limits of the town area, vested in the petitioner-Gaon Sabha and that area could not be taken away under the U.P. Town Areas Act without abolishing the Gaon Sabha. There is no force in this contention. A Gaon Sabha is a creature of the U.P. Panchayat Raj Act. Section 8 of that Act specifically provides that

"if the whole of the area of Gaon Sabha is included in a municipality, cantonment, notified area or town area, the Gaon Sabha shall cease and its

assets and liabilities shall be disposed of in the manner prescribed. If a part of such area is so included, its jurisdiction shall be reduced by that part."

Thus on the issue of the impugned notification the petitioner Gaon Sabha ceased to exist if the entire area vested in it has been included in the jurisdiction of the town area. In case a part of such area only has been included in the town area, then the jurisdiction of the Gaon Sabha over the area so included in the town area would cease. That result follows automatically on the issue of the notification.

4. The second question raised is that u/s 3 of the U.P. Town Areas Act, a town area can be formed only in respect of an inhabited place. It is contended that the area sought to be included by the impugned notification is agricultural in nature and is not inhabited area. This averment has been denied in the counter-affidavit filed on behalf of the Town Area Committee as well as by the State of Uttar Pradesh. It appears that before issuing the notification the State Government called for a report from the District Magistrate. The District Magistrate reported that the population of the Town Area had grown in its size and it being a commercial centre, its requirements had increased and, therefore, it was necessary to include in its jurisdiction a wider area. It has further been stated in the counter-affidavit that the Gaon Sabha itself passed a resolution demanding the area covered by the Notification to be included in the town area. The learned counsel for the petitioner says that that resolution was an unauthorised one. Be that as it may, it is not necessary to resolve that controversy, because the decision of the State Government on this point is final, Sub-section (2) of Section 3 of the U.P. Town Areas Act provides:--

"The decision of the State Government that any inhabited area is not an agricultural village within the meaning of the provisions to Sub-section (1) of this section shall be final and conclusive and the publication in the Official Gazette of a Notification declaring such area to be a town area or within the limits of a town area shall be conclusive proof of such decision."

Thus the impugned notification is a conclusive proof of the fact that the area sought to be included within the limits of the Town Area is an inhabited area and not an agricultural area. This point is no longer justiciable.

5. The petition fails and is dismissed but there will be no order as to costs.