

(1985) 01 RAJ CK 0035

In the Rajasthan High Court

Case No : Civil Writ Petition No. 180 of 1974

Gram Panchayat Baral-II

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 07-01-1985

Acts Referred:

Rajasthan Municipalities Act, 1959 — Section 4(c), 6
Rajasthan Panchayat Act, 1953 — Section 86

Citation : (1985) 1 WLN 335

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Judgement

Guman Mal Lodha, J.—Gram Panchayat Baral-II, the petitioner, has filed this writ petition challenging the constitution of Bijainagar Municipality by a notification published on 17th May, 1973 u/s 6 of the Rajasthan Municipalities Act, 1959 (for brevity, Municipalities Act), whereby lands forming 550 Khasra Nos. bearing Nos. 637 to 1186 were sought to be excluded from the limits of proposed Municipal Board Bijainagar.

2. The principal ground of challenge is that in addition to the above, the above Khasra numbers also included 192 Bighas of land covered by khasra nos. 735, 758, 785, 870, 885 and 999, which was entered in the Revenue record as charagah of village Baral.

3. It would be pertinent to notice in this respect that the petitioner in para 8 of the writ petition submitted as under:

(5) that the State of Rajasthan at the instance and on the suggestion of certain inhabitants of the Town of Bijainagar thought it necessary to re-convert the then existing Panchayat at Bijainagar into a Municipal Board, and with this end in view, published a draft notification u/s 6 of the Rajasthan Municipalities Act (Act No. 18 of 1959), constituting the Municipal Board at Bijainagar in the Rajasthan Rajpatra Extra ordinary dated 17-5-1975 (copy Annexure 2) and invited objections in respect to the said draft notification. In this draft notification the

boundaries of the proposed Municipal Board, Bijainagar also included the following agricultural fields bearing Nos. 637 to 1186 (in all 550 Khasra numbers). These Khasra Nos. included Khasra. Nos. 735,750,785, 870, 885 and 999-Measuring 192 bighas which are entered in the Revenue records as "charagah" of village Baral. All these fields including the "charagaha" had formed part and parcel of village boundaries of Baral Panchayat as the boundaries were notified in the Gazette Extra ordinary dated 1-10-1964 - a copy of which (Anx. 1) is referred to above.

The reply to the above para 8 of the writ petition on behalf of the non-petitioners No. 1 to 3 is in the following terms:

8. That para No. 8 of the writ petition is admitted to the extent that the State Government issued a notification dated 27-5-1973 inviting objections. The khasra mentioned in this para as Charagah have been so recorded in newly prepared record of settlement operations, which are still going on and have as yet not been declared closed by the State Government by any notification.

4. By the crucial notification of 17th May, 1973, u/s 6 of the Municipalities Act, the Bijai Nagar Panchayat is sought to be converted into Municipal Board, and while doing so, the land comprising of 550 khasra Nos. of Gram Panchayat Baral are sought to be taken in the Municipality of Bijai Nagar.

5. The contention of the petitioner is that the provisions of Section 86 of the Rajasthan Panchayat Act, 1953 (for short, Panchayat Act), have not been complied with so also the provisions contained In Rules 342 and 345 made thereunder, at all so as to exclude the area of 550 khasra numbers from the boundaries and jurisdiction of Gram Panchayat Baral. This position is not in dispute as would be obvious from the averments made in para 11 of the reply to the writ petition filed on behalf of the non-petitioners Nos. 1 to 3 which is reproduced hereunder:

11. That para No. 11 of the writ petition, as stated by the petitioner is not admitted. As submitted in para No. 10 of the reply to the writ petition, in view of the proviso to Section 4(c) of the Rajasthan Municipalities Act; there is no necessity of observing the procedure as laid down in Section 86(1) of the Rajasthan Panchayat Act.

6. The respondents have got two fold contentions in reply to this writ petition. Firstly, it was contended that the entire area which is now sought to be taken was already taken in Bijainagar vide Annexure 1, dated the 1st October, 1964, and therefore, there was no fresh inclusion. Secondly, it was pointed out that in view of the amended Section 4(c) of the Municipalities Act which was added by the Rajasthan Ordinance No. 7 of 1974 w.e.f. 11th May, 1974 the compliance of Section 86 of the Rajasthan Panchayat Act is not necessary.

7. I have carefully considered the rival contentions of the learned Counsel for the parties. It must be noticed that the Rajasthan Ordinance No. 7 of 1974 adding

proviso to Section 4(c) of the Municipalities Act has become effective from 11th May, 1974. But, this amendment cannot mandate the notification under challenge u/s 6 of the Municipalities Act as it was issued on 17th May, 1973. Obviously the proviso to Section 4(c) is not retrospective and, therefore, it cannot validate the notification in challenge dated the 17th May, 1973.

8. I have taken this view in Gram Panchayat Sallawas Khurd v. State of Rajasthan (S.B. Civil Writ Petition No. 1252/75 decided on 1st August, 1978).

9. So far as the factual aspect is concerned, Annexure 1 dated the 1st October, 1964 includes only Khasra Nos. 642, 864, 865, 870, 893 & 901 of Gram Panchayat Baral, and to that extent the present inclusion in the Municipality of Bijainagar cannot be challenged.

10. However, so far as other khasra numbers mentioned above are concerned, excluding 642, 864, 865, 870, 893 and 901, they have been included in the Municipal Board, Bijainagar for the first time without following the procedure laid down in No. 86 of the Panchayat Act. Consequently, the writ petition deserves to be partially accepted to the limited extent that so far as khasra numbers 637 to 1146 excluding khasra numbers 642, 864, 865, 870, 893 and 901 are concerned, they have not been validly excluded Gram Panchayat Baral and included in the Municipal Board area of Bijainagar and the notification of 17th May, 1973 including them cannot be sustained.

11. In view of the above, it is not necessary to discuss the second point raised by Shri Maloo, the learned Counsel for the petitioner with regard to the defects and infirmities in publication.

12. The result is, that this writ petition is partially accepted to the limited extent that the respondents are restrained from functioning as Municipal Board Bijainagar in the above khasra numbers, till they are included by valid notification under the law afresh. These khasra numbers should be created as khasra numbers included in the Gram Panchayat Baral till a fresh notification is issued under the law for their inclusion in the Municipal Board, Bijainagar after following the procedure as per existing law today..

13. The parties would bear their own costs.