(2023) 02 BOM CK 0012

In the Bombay High Court

Case No : Writ Petition No. 11923 Of 2018

Masudeo APPELLANT

Vs

State Of Maharashtra And Others RESPONDENT

Date of Decision : 06-02-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Maharashtra Land Revenue Code, 1966 — Section 4, 4(1), 4(4)
Bombay General Clauses Act, 1904 — Section 24
Maharashtra General Clauses Act, 1904 — Section 24
General Clauses Act, 1897 — Section 24

Citation : (2023) 02 BOM CK 0012

Hon'ble Judges : Mangesh S. Patil, J;S.G. Chapalgaonkar, J

Bench : Division Bench

Advocate : ??Rahul A. Tambe, M.A. Deshpande, G.D. Jain

Final Decision : Dismissed

Judgement

S.G. Chapalgaonkar, J

1. By way of present writ petition under Article 226 of the Constitution of India, the petitioner is seeking declaration that the impugned notification dated 07-11-2017 issued by the respondent No. 4 i.e. the Additional Collector, Ahmednagar, Dist. Ahmednagar is bad in law and contrary to the provisions of Section 4 of the Maharashtra Land Revenue Code, 1966 (hereinafter referred to as "the Code" for the sake brevity) and Section 24 of the Bombay General Clauses Act.

2. The petitioner is also seeking declaration that the impugned order dated 23-08-2018 passed by the respondent No. 4 i.e. Additional Collector, Ahmednagar in file No. Rev/Office/Land-1B/OA/ Maha./Village/158/2018 and the notification dated 31-08-2018 in file No. Rev/Office/Land-1B/1627/2018 issued by the respondent No. 4 is contrary to the provisions of law.

3. The petitioner further seeks issuance of writ of certiorari to quash and set

aside the impugned notification dated 07-11-2017 as well as the impugned order dated 23-08-2018 and draft notification dated 31-08-2018.

4. The case of the petitioner is that the Government of Maharashtra vide order dated 31-12-1989 allotted the land from Gut No. 52/1 for rehabilitation of 179 persons belonging to backward class. The plot area admeasuring around 1 Are was allotted to each of the beneficiaries subject to certain terms and conditions. The land is a part of revenue village, Limpangion and known as Joshi Vasti.

5. The respondent No. 8 moved an application dated 30-01-2015, to carve out Joshi Vasti having population of about 2000 to 2500 including 500 to 600 voters from village Limpangaon and create separate revenue village and Gram Panchayat. In pursuance of the application, the Collector, Ahmednagar/ Respondent No. 3 issued instructions for conducting the enquiry and to submit a report. The Circle Officer, Kasti, Tal. Shrigonda submitted his report dated 16.05.2016 to Tahsildar along with a resolution of village panchayat, Limpangaon for formation of Joshi Vasti as a separate Gram Panchayat and revenue village. The respondent No. 6/Tahsildar, Shrigonda forwarded the said report to the Sub Divisional Officer/respondent No.5.

6. The respondent No. 4 issued a notification dated 07-11-2017 in tune with section 4(1) of the Code thereby calling upon objections in requisite format from general public till 23-11-2017. The notification was published on notice board of Tahsil office at Shrigonda as well as the office of village panchayat at Limpangaon. However, the controversy arose in respect of the manner of publication of the notification dated 07-11-2017. The objection was raised that no such publication was made till 06-12-2017. The report submitted by Talathi regarding compliance of directions regarding publication of notice was disputed. In view of various objections received from the villagers as well as the Shrigonda Sugar Factory, the respondent No.3/Collector directed to cause the enquiry regarding the objections in the office of respondent No.4. The hearing of all stakeholders was conducted. During such hearing, the written objections submitted by the stakeholders were discussed. After deliberations respondent No.5 / Sub Divisional Officer forwarded his recommendations for formation of Joshi Vasti as a separate revenue village. Based on the enquiry report submitted by respondent No 5, Additional Collector, Ahmednagar rejected objections vide order dated 23-08-2018. Consequently, final notification dated 31-08-2018 under section 4(4) of the Code was issued thereby creating Joshi Vasti as a separate revenue village.

7. The petitioner raises challenge to the draft notification dated 07-11-2017 issued in tune with section 4(1) of the Code by the Additional Collector, Ahmednagar as well as the final notification dated 31-08-2018 issued under section 4 (4) of the Code thereby carving out Joshi Vasti as a separate Gram Panchayat and the revenue village. It is the contention of the petitioner that the impugned notifications are bad in law and contrary to the procedure prescribed under section 4 of the Code read with section

24 of Maharashtra General Clauses Act.

8. It is the contention of the petitioner that the notification dated 07-11-2017 issued under Section 4 of the Code was not given publicity in accordance with the law. The manipulated resolution of Gram Panchayat and the reports regarding publication of the notification are relied upon by the respondent authority. Similarly, the Shrigonda Sugar Factory had also raised the objection for proposed action of carving out Joshi Vasti as separate revenue village. The Joshi Vasti is forming part and parcel of Gut No. 52/1 which was declared as a forest area. The communication issued by the Dy. Conservator of Forests, Ahmednagar dated 17-06-2015 would show that 428 acres and 5 gunthas of the land is forming part of the forest vide notification issued in the year 1992. The land to the extent of 82 acres has been allotted to Shrigonda Sugar Factory and de-forestation is done on 40 acres of land. The rest of the land forms a part of the forest. The provisions of Forest Act, 1980 are applicable to the land. In absence of no objection from the Central Government, the action proposed in terms of section 4(1) of the Code for carving out separate land revenue area could not have been undertaken.

9. The respondent Nos. 1 to 4 have filed affidavit-in-reply. It is the contention of the respondents that the proposal for consideration of new revenue village i.e. Joshi Vasti out of village Limpangaon was received on 30-01-2015 along with the details of the plots allotted to the people from Nomadic Tribes and the facilities available to that area. The respondent No. 3 had issued the instructions to cause enquiry in pursuance of the application. The report along with the resolution of the Gram Panchayat, Limpangaon for forming new revenue village was received. The Tahsildar, Shrigonda submitted the report of compliance for creation of new revenue village.

10. It is also contention of the respondents that in view of the circular dated 08-08-1969, the powers which vest with the State Government under Section 4(1) of the Code are delegated to the Collector. Further, Government circulars dated 18-05-1985 and 08-08-1985, are issued to create new revenue village where population is more than 300. It is further contention of the respondents that the respondent No. 4 after taking into consideration the relevant material, issued provisional notification dated 07-11-2017 for carving out Joshi Vasti as a new revenue village. The objections were called from the public at large upto 28-11-2017. The notification is also published in the government gazette, notice board of Tashil office, Shrigonda, Talathi office, Limpangaon, etc.

11. It is further contention of the respondents that objections were received in response to provisional notification dated 07-11-2017. The respondent No.4 had directed respondent No.5 to cause enquiry in pursuance of the objections. The respondent No. 5 offered the opportunity of group hearing to stake holders and submitted his report in favour of formation of new revenue village i.e. Joshi Vasti. It is also contention of respondents that report from the District Superintendent of Land Record, Ahmednagar was called. The report positively opined for creation

of the separate revenue village. The Additional Collector / respondent No.4 has passed the order dated 23-08-2018 thereby rejecting the objections and issued final notification dated 31-08-2018. According to the respondents, the procedure contemplated under Section 4 (1) and 4(4) of the Code read with Section 24 of the General Clauses Act has been duly complied with.

12. Mr Rahul Tambe, the learned advocate appearing for the petitioner would contend that Section 4 of the Code provides for creating/carving out the separate revenue village subject to compliance of procedures mandated under section 4 of the Code. He would submit that mandate of previous publications of draft notification in terms of section 24 of the Maharashtra General Clauses Act, 1904 would apply to the notification u/s 4 of Code. In the present case, publication of the notification is not valid. The various objections were raised by the public at large, Sugar Factory as well as the village panchayat to create Joshi Vasti as separate revenue village. However, those objections are not considered. The action on the part of the respondents is arbitrary and illegal. He placed reliance on the Division Bench Judgments of this Court in the matter of Prashant Bhausaheb Ghiramkar Vs. State of Maharashtra reported in 2013 (6) Mh.L.J. 703 and Dr Avinash Ramkrishna Kashiwar and others Vs. State of Maharashtra and others reported in 2015 (5) Mh.L.J. 830.

13. Mrs M.A. Deshpande, learned AGP appearing for respondent Nos. 1 to 7 would submit that the notification dated 31-08-2018 is preceded by the draft notification dated 07-11-2017. The objections were received. Those were duly considered. The group hearing is also given to stake holders. The reports were called from revenue officers. The final decision is taken in tune with the mandate under provisions of Section 4(4) of the Code.

14. Section 4 of the Code states 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 or 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, district, 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, districts 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...."

15. The aforesaid provision demonstrates that every notification or order made under section 4 of the Code shall be subject to the previous publication of draft notification. The previous publication must be in accordance with section 24 of the Maharashtra General Clauses Act. It prescribes that the draft of the proposed notification shall be published for information of the persons likely to be affected. The publication shall be in the manner as that authority deems to be sufficient. The notification shall specify the date on or after which the draft will be taken into consideration.

16. We have taken into consideration the aforesaid provisions and perused the documentary evidence tendered into service by the parties before us. The draft notification dated 07-11-2017 has been published in terms of section 4(4) of the Code. It stipulates that the objections shall be submitted by 28-11-2017. The notification declares that the Government is intending to form a separate revenue area namely, Joshi Vasti to be carved out from Limpangaon revenue village. It prescribes that the area forming part of Gut No. 51 and Gut No. 52 with four boundaries is proposed to form separate village namely, Joshi Vasthi. The contents of the notification prescribe required details for information of the general public. The communication dated 06-12-2017 issued by Tahsildar, Shrigonda addressed to the District Collector, Ahmednagar shows that the notification was published on the notice board of Tahsil office at Shrigonda as well as Talathi office at Limpangaon. It shows that Talathi, Limpangaon has reported about the publication of the notice.

17. It appears that subsequently, various objections were received from the

Gram Panchayat at Limpangaon as well as Shrigonda Sugar Factory against creation of separate revenue village. Considering the said objections, the respondent No. 4 had issued directions to respondent No.5/Sub Divisional Officer, Shrigonda to cause enquiry into the matter. The stakeholders were granted opportunity of being heard. The group hearing was given at the office of Respondent No.4 and the report dated 12-04-2018 had been submitted by the Sub Divisional Officer, Shrigonda, to the District Collector, Ahmednagar (Revenue Division). The report rejects all the objection to the formation of separate revenue village.

18. After taking into consideration the rival submissions, we find that the basic object behind requirement of publication of draft notification is to provide opportunity to the affected persons from the revenue area proposed to be sub divided into separate revenue village. The authority who is vested with the power is required to make publication of intention of the Government and offer the opportunity to the stakeholders to put up their stand. In the facts of the present case, we find that the publication of draft notification required under section 4 of the Code has been made in accordance with law. We find that the draft notification had reached to the public at large and the objections to intended action under such notification were raised and considered. We cannot sit in the appeal and appreciate the minor procedural lapses caused during the process undertaken by competent authority towards creating separate revenue village. We are concerned with substantive compliance of the provisions keeping in mind object sought to be achieved. We are satisfied that there is compliance of requirements indicated under section 4 of the Code.

19. We are not oblivious of the fact that in case of a subordinate legislation, the legislature may provide for observance of the principles of natural justice like providing for hearing to the residents of area before making any declaration of split in regard to the territorial area or before establishing a Gram Sabha for that area. The Section 4(4) of the Code is meant for achieving aforesaid object. We find that in the present case, such object has been fulfilled and the compliance is made. We have considered judgments of this court relied by petitioner in case of Prashant Bhausaheb Ghiramkar Vs. State of Maharashtra reported in 2013 (6) Mh.L.J. 703 and Dr Avinash Ramkrishna Kashiwar and others Vs. State of Maharashtra and others reported in 2015 (5) Mh.L.J. 830.

There cannot be quarrel about principles of law laid in the aforesaid judgments, However in the backdrop of facts of this case petitioners cannot derive any advantage from it. In the matter of Prashant Bhausaheb Ghiramkar (supra), the draft notification was issued showing headquarters of newly formed revenue area different than the final notification. Such is not the case before us. Similarly, in the matter of Dr Avinash Ramkrishna Kashiwar and others (supra), also the headquarter of Sub-division was shown different in draft notification than final notification. In this background, this Court had quashed final notification. As such, both the aforesaid Judgments relied upon by the petitioner are distinguishable on facts.

20. Another contention advanced on behalf of the petitioner is that separate revenue village sought to be created under the impugned notification is the part of the forest land and in absence of no objection from the Forest Department under the provisions of the Forest Act, 1980, the notification creating separate revenue area could not have been issued.

21. However, the communication dated 17-06-2016 issued by the Dy. Conservator of Forest depicts that the land under Gut No. 52 covers the forest area as well as de-forested area. The Shrigonda Sugar Factory is situated on 82 acres of the land allotted to them. Similarly, there is de-forestration on 40 acres of the land. Further, the area covered under the proposed Joshi Vasti is already part and parcel of the village panchayat, Limpangaon and used as Gavthan after rehabilitation of backward class persons. No other material is brought to our notice to indicate that the action taken by the respondent under impugned notification has been impeded by any provisions of the Forest Act or the Rules. Therefore, we are not inclined to accept the contentions of the petitioner in this regard.

22. The upshot of aforesaid discussions leads us to conclude that there is no merit in the writ petition.

23. Hence, the writ petition is dismissed with no order as to costs.