

(1960) 01 AHC CK 0001
In the Allahabad High Court
Case No : Sp. A. No. 15 of 1960

Municipal Board

APPELLANT

Vs

Shree Hanuman Oil Mills

RESPONDENT

Date of Decision : 13-01-1960

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Municipalities Act, 1916 — Section 3, 3(1)(d), 4

Citation : (1960) 30 AWR 274

Hon'ble Judges : R.A. Misra, J;R. Dayal, J

Bench : Division Bench

Advocate : Jagdish Swrup, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

R. Dayal, J.—This is a special appeal by the Municipal Board, Gaura Barhaj, District Deoria, against the judgment of Mr. Justice Mathur allowing the writ petition filed by Respondent No. 1 Under Article 226 of the Constitution and quashing the notifications dated 14-11-56 and 25-3-57.

2. The State Government in the exercise of their power Under Clause (d) of Sub-section (1) of Section 3 of the UP Municipalities Act (hereinafter called the Act) intended to declare a certain area to be included within the municipality of Gaura Barhaj and in view of Sub-section (1) of Section 4 of the Act published a draft notification on 14-11-56. The notification u/s 3(1)(d) of the Act was issued on the 25-3-1957.

3. The Respondent No. 1 prayed for the quashing of these notifications on several grounds, including the one that there had been no proper publication of the draft notification in accordance with the provisions of Sub-section (1) of Section 4 of the Act. The learned Judge found that a copy of the draft notification was not affixed at the office of the District Magistrate as required by Sub-section (1) of Section 4 and held that the notification u/s 3(1)(d) of the Act dated

25-3-57 was unenforceable He accordingly allowed the writ petition and quashed both the notifications.

4. The learned Counsel for the Appellant has contended that the provisions of Sub-section (1) of Section 4 of the Act were merely directory, their object being that the residents of the area to be affected by the proposed notification u/s 3(1)(d) of the Act should know of the proposal and that if such a knowledge has been conveyed to them by any other means, the non-compliance with any of the provisions of Sub-section (1) of Section 4 of the Act will not invalidate the notification issued u/s 3(1)(d) of the Act.

5. We do not agree with this contention. Sections 3 and 4 of the Act are:

3. Declaration and definition of municipalities and cities--(1) The State Government may by notification--

(a) declare any local area to be a municipality;

(b) declare any municipality having a population of less than 100,000 inhabitants to be a City;

(c) define the limits of any municipality;

(d) include or exclude any area in or from any municipality; and

(e) cancel any notification under any of the preceding Clauses.

(2) The power to issue a notification u/s Sub-section (1) 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 municipality or be included in a municipality under this Section 4. Procedure preliminary to notification (1) Before the issue of a notification u/s 3 the State Government shall publish in the official Gazette and cause to be affixed at the office of the District Magistrate and at one or more conspicuous places within or adjacent to the local area concerned, a draft in Hindi of the proposed notification along with a notice stating that the draft will be taken into consideration on the expiry of the period as may be stated in the notice.

(2) The State Government shall, before issuing the notification, consider any objection or suggestion in writing which it receives from any person, in respect of the draft, within the period stated.

6. It is true that the object behind the provisions of Sub-section (1) of Section 4 of the Act must have been to convey information of the intention of the State Government to the residents of the area to be affected in order that they may object to the proposed inclusion of that area within the Municipality, but it is also clear that the Legislature thought fit to consider what modes should be considered necessary to achieve this object and therefore, laid down those modes in Sub-section (1) of Section 4. Not only that the Legislature provides the

manner of the publication of the draft notification, but it also provides that such publication shall be not less than two months before the issue of the notification u/s 3, that the State Government shall consider any objection or suggestion received within the period of two months and that the power to issue the notification under Sub-section (1) of Section 3 shall be subject to the condition of its being issued after the previous publication required by Section 4. It is clear, therefore, that the provisions of Sub-section (1) of Section 4 of the Act are mandatory and that the State Government has no jurisdiction to issue a notification u/s 3 without fully complying with the provisions of Sub-section (1) of Section 4 of the Act.

7. We are, therefore, of opinion, with respect, that the order of the learned Judge is perfectly correct. We accordingly dismiss this appeal.