

(1994) 12 AHC CK 0058

In the Allahabad High Court

Case No : Civil Miscellaneous W. C. P. No. 2296 of 1992

Rama Shankar Singh and Others

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 05-12-1994

Acts Referred:

Uttar Pradesh Town Areas Act, 1914 — Section 3

Citation : (1994) 12 AHC CK 0058

Hon'ble Judges : R.A.Sharma, J and M.Katju, J

Final Decision : Dismissed

Judgement

R. A. Sharma, J.—By notification dated 691978 Goan Sabha Gahmar, district Ghazipur was declared as town area by the Government under Section 3 of the U. P. Town Areas Act, 1914 (hereinafter referred to as the Act).

It appears that there was agitation against conversion of the Goan Sabha into town area. The Government of U. P. by notification dated 911987 cancelled the above notification in exercise of its powers under clause (d) subsection (1) of Section 3 of the Act. Being aggrieved by the later notification dated 911987, petitioners, who claim to be the residents of the said town area, have filed this writ petition.

2. The sole question raised by the learned counsel for the petitioners in support of the writ petition is that the petitioners were not given any opportunity of hearing before issuing the notification dated 911987.

3. Supreme Court in the Tulsipur Sugar Co. Ltd. v. The Notified Area Committee, AIR 1980 SC 882, has held that the Act does not provide for giving of opportunity of being heard before issuing a notification under Section 3 of the Act. It was further held that the power of the Government under Section 3 of the Act is legislative in character , therefore, it is not necessary to give any opportunity of hearing to any person before issuing the notification. Relevant extracts from the said decision of the Supreme Court are reproduced herein

below :

"The power of the State Government to make a declaration under Section 3 of the Act is legislative in character, because the application of the rest of the provisions of the Act to the geographical area which is declared as a town area is dependent upon such declaration. Section 3 of the Act is in the nature of a conditional legislation.

* * *

We are, therefore, of the view that the maxim audi alteram partem does not become applicable to the case by necessary implication." Controversy involved in this writ petition is thus squarely covered by the aforesaid decision of the Supreme Court.

4. Learned counsel for the petitioners has however, placed reliance on the following cases in support of his contention *Baldeo Singh v. State of Himachal Pradesh*, AIR 1987 SC 1239 ; *J. E. News Papers v. Union of India*, AIR 1986 SC 515 ; *S. C. Weaker Section Welfare Association v. State of Karnataka*, AIR 1991 SC 1117 ; *Delhi Transport Corporation v. D. T. C. Mazdoor Congress*, 1991 Supp (1) SCC 600, *Rudra Prasad Bajpai v. Commissioner, Alld.*, 1988 ALJ 599. None of the above cases are of any help to the petitioners. In all those cases the impugned actions taken by the appropriate authority were held to be the administrative decision, which could be taken only in accordance with the principles of natural justice. In none of those cases the action was declared to be of legislative in nature. In *Baldeo Singh v. State of Himachal Pradesh*, (supra) Supreme Court held that the decision to declare any area as a notified area under Himachal Pradesh Municipal Act is administrative Act, which has to be taken in accordance with the principles of natural justice. In *J. E. News Papers v. Union of India*, (supra) Supreme Court has laid down that a piece of subordinate legislation can also be challenged before the courts on the ground of its being unreasonable arbitrary. It was not laid down in this case that the legislative Act should be passed in accordance with the principles of natural justice. In fact Paragraph 76 of the judgment, it was specifically laid down: "That subordinate legislation cannot be questioned on the ground of violation of principles of natural justice on which administrative action may be questioned, has been held in the *Tulsipur Sugar Co. Ltd. v. The Notified Area Committee*, (1980) 2 SCR 1111 : AIR 1980 SC 882". Similarly actions of the authorities in *S. C. Weaker Sections Welfare Association v. State of Karnataka*, (supra) the power of declaring certain area as slum area was held to be administrative nature, which could be exercised only after giving reasonable opportunity of being heard to the persons, who are likely to be affected. In the case of *Delhi Transport Corporation v. D. T. C. Mazdoor Congress*, (supra) what the Supreme Court has laid down is the applicability of principles of natural justice fair play to the administrative action. The decision of Division Bench of this Court in the case of *Rudra Prasad Bajpai v. Commissioner, Allahabad* (supra) also rest on the ground that the power of declaring an area as a slum area is administrative act , therefore, has to be

exercised in accordance with the principles of natural justice.

5. Supreme Court has made a distinction between the legislative the administrative function has accordingly laid down that principles of natural justice are not required to be followed when action is legislative in nature, although the administrative act cannot be performed without giving opportunity of being heard to the persons, who are likely to be affected. Supreme Court in the case of the Tulsipur Sugar Co. Ltd. v. The Notified Area Committee, (supra) has laid down that there is no provision in the Act providing for giving an opportunity of hearing to any person further that the power under Section 3 of the Act is of legislative in character therefore, it is not required to be exercised in consonance with the principles of natural justice. This is the decision on the very same section under which the impugned notification has been issued. It is, as such, binding on this Court.

6. This writ petition lacks merit is accordingly dismissed. In view of the facts circumstances of the case, there shall be no order as to costs.