

(1994) 03 SC CK 0074
In the Supreme Court Of India
Case No : Civil Appeal No. 2262 Of 1994

Ravinder Kumar

APPELLANT

Vs

State of Punjab and Another

RESPONDENT

Date of Decision : 31-03-1994

Acts Referred:

Citation : (1995) 1 SCC 547 Supp

Hon'ble Judges : N. Venkatachala, J; K. Ramaswamy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. SPECIAL leave granted.

2. WE have heard learned counsel on both sides. The Municipal Committee, Nurmahal, District Jullundur in the State of Punjab, by a resolution dated 24/12/1984, decided to extend the outer limits of its jurisdiction and a resolution (No. 6 to that effect was passed on that day. The appellant had submitted his objections to the Committee. After considering the objections and having overruled the same, the Committee recommended to the government for issuance of a notification extending the outer limit in the municipal area in resolution No. 39. The government published a notification under Section 5(1 of the Punjab Municipal Act, 1911 (for short "the Act") in the State Gazette on 16/2/1987. Thereafter, the Municipal Committee, by beat of drum, published a notification in the municipal area and the extension has become effective under Section 5 thereof. Calling in question the legality thereof, the appellant filed Writ Petition No. 3310 of 1987 in the High court. The Punjab and Haryana High court by its order dated 19-9-1988 dismissed the writ petition with the following finding:

"The respondents have denied in the written statement that no general notification was given. It is stated therein that the publication by beat of drum was got done by the Municipal Committee in order to give opportunity to the

general public to file objections before the Deputy Commissioner in order to enable him to forward the same to the government. No such objections were filed by the petitioner." In view of that finding, as stated earlier, the writ petition was dismissed.

3. SHRI V.C. Mahajan, the learned Senior Counsel for the appellant, placing reliance on the decision of another division bench of that High court reported in *Municipal Committee, Dhariwal v. Gram Sabha, Village Rania* contended that unless the State government prescribes another mode of publication as indicated under Section 5 of the Act, the provisions of Section 5 shall not be put into operation and that, therefore, the division bench was wrong in accepting the contention of the respondents that publication by beat of drum done by the municipal area (sic) was valid in law. He also further contended that no such publication, as a fact, was effected. Section 5(1 of the Act reads thus:

"5. (1 The State government may by notification published in the Official Gazette and in such other manner as it may determine, declare its intention to include within a municipality any local area in the vicinity of the same and defined in the notification whether such area is a municipality or a notified area under this Act or not."

Its close reading indicates that the first requirement, namely, publication in the Official Gazette is mandatory. The second requirement is publication in the local area in the manner as may be determined by the government is also one of the requirements under the Act. Admittedly, the government did not determine any manner in which the local publication needed to be made. In its absence, it cannot be said that any other mode of publication carried out by the municipality is illegal, It is indeed rightly contended by the appellant that if there is any mode prescribed by the government under Ss. (1 of Section 5 of the Act, it is mandatory that the publication should be made in the manner prescribed and in no other manner. In its absence, it cannot be held that the provisions of Section 5 cannot be put in operation so long as there is no manner of the publication determined by the State government. It is found as a fact that notification by beat of drum was adopted as a manner of publication bringing to the notice of the people in the locality of the proposed extension. Therefore, the mode of publication by beat of drum is a requirement complying with the second limb of Section 5(1 of the Act. As a fact, it is found by the High court that such a mode, namely, the publication by beat of drum was effected as contended by the respondents in their counter-affidavit. Though the learned counsel disputed this fact, it being a finding of fact, we cannot go into that question. The division bench judgment has been brought to our notice. We find that the ratio therein is not correctly laid down.

4. The REFORE, the decision -in *Municipal Committee, Dhariwal* is accordingly overruled. The appeal is accordingly dismissed. No costs.