

(2014) 09 J&K CK 0019

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 1611 Of 2013, CMP Nos. 2646, 2645 Of 2013 and 1594/2014

Suheel Ahmad Khan and Others

APPELLANT

Vs

State of JandK and Others

RESPONDENT

Date of Decision : 01-09-2014

Acts Referred:

Citation : (2015) 1 JKJ 457

Hon'ble Judges : Ali Mohd. Magrey, J.

Bench : Single Bench

Advocate : Jehangir Iqbal Ganai, Advocate, for the Appellant; M.I. Qadri, Learned Advocate General and Suja-ul-Haq Tantrey, G.A., for the Respondent

Final Decision : Disposed off

Judgement

Ali Mohd. Magrey, J.â?"This petition filed by the petitioners in representative capacity for and on behalf of the inhabitants of village Seer Hamdan

of District Anantnag, seeks a prohibition/restraint against the respondents not to abolish the Municipal Committee constituted for the village Seer

Hamdan and challenges the vires of Section 9(1) of the Jammu and Kashmir Municipal Act, 2000 insofar as, according to the petitioners, it gives

unbridled and uncontrolled powers to the Government to abolish a duly constituted municipal committee. The short controversy involved in this

petition concerns the process that is stated to have been initiated by Deputy Commissioner, Anantnag, to abolish the municipal committee of the

petitioners' village, Seer Hamdan, on the representation of some of the villagers who, according to the petitioners, evade payment of municipal

taxes and want to raise constructions in the locality without obtaining proper building permissions from the municipal Committee.

2. The case of the petitioners is that in order to declare any local area as a municipal area, recourse has to be taken to the procedure prescribed

under Section 4 of the Jammu and Kashmir Municipal Act, 2000 (for short, the Act), which, inter alia, provides for issuance of notification by the

concerned Deputy Commissioner inviting objections to the proposal. The objections are considered by the Government and, thereafter, a local

area is declared as a municipal area for the purpose of the Act.

3. In the instant case, the documents placed on record of the writ petition as annexures thereto reveal that the proposal regarding declaration of

Seer Hamdan as a municipal committee was taken up with the Administrative Department, respondent No. 2, by the Director, Urban Local

Bodies, Kashmir, respondent No. 4, vide his office letter No. DULB/G/1098/8483 dated 09.12.2003. The Administrative Department, vide their

communication dated 02.08.2004 sought re-examination of the proposal in light of the criteria fixed vide Government order No. 204-HUD of

2004 dated 27.07.2004. On re-examination, the proposal was found to be fulfilling the requirements and criteria fixed for the same. This was

communicated to the respondent No. 2 by respondent No. 4 vide communication dated 10.12.2004. In-between, the Deputy Commissioner,

Anantnag, respondent No. 3 herein, also addressed communication dated 19.11.2004 to respondent No. 2, mentioning therein as under:

The proposal for declaration of Seer Hamdan District Anantnag is under the consideration of the Government since long time. All the

information/documents already stand submitted to the Administrative Department. Moreover, Director Urban Local Bodies Kashmir vide his letter

No. DULB/G/1098/8483 Dated 9/12/2003 has also approached the Administrative Department for early Notification under the provisions of

Jammu & Kashmir Municipal Act 2000. In this connection it is pertinent to mention that the Hon'ble Chief Minister during the course of his recent

visit has also committed for declaring Seer Hamdan as Municipal Committee. It is, therefore, requested that early Notification/Orders in the matter

may kindly be issued.

4. Ultimately, respondent No. 2 issued notification SRO 219 dated 4.07.2006 declaring the local areas of Seer Hamdan District Anantnag, as

detailed in annexure thereto, as Municipal Area to constitute the Municipality.

Consequent thereto, respondent No. 3 issued notification dated 29.03.2008 declaring delimitation of Wards of Municipal Committee, Seer Hamdan. Thereafter, the various works, as detailed in annexure to communication dated 08.08.2011, were undertaken in the area.

5. However, on 30.04.2012, the Deputy Commissioner, Anantnag, respondent No. 3, addressed a communication to respondent No. 2 stating

therein that Seer Hamdan having 13 Wards was notified as Municipal Committee vide notification dated 04.07.2006 and the people at that time

had not protested or submitted any objection, but for last few months the people have been representing for de-notifying the same for the reasons

mentioned in the said communication. Respondent No. 3 vide the aforesaid communication put the demand before the Government for its

examination and appropriate decision. Against the aforesaid move, some villagers of the area have also filed a representation addressed to the

Chief Minister, with copies endorsed, among others, to respondents 3 and 4 herein.

6. Respondents in paragraph 3 of their objections/reply under the caption preliminary objection, have stated that if an authority has power to do an

act, then he has also power undo or amend, alter the same in terms of Section 21 of the General Clauses Act. It is further stated therein that even if

Section 9 would not have been there in the Act, it is implied that the procedure followed for establishment of Municipal Committee in terms of

Section 4 of the Act, would be required to be followed for abolishing of the said municipal area in terms of Section 9 of the Act, and that the

Government has so far followed the same procedure when it has abolished Municipal Committees of Ashmuji and Shangus.

7. In paragraph 1 of the factual background, respondents have, inter alia, stated that Seer Hamdan was constituted/notified as Municipal

Committee pursuant to the request of residents of the area after following due procedure and fulfilling the criteria fixed vide Government order No.

204-HUD of 2004 dated 27.07.2004. The Deputy Commissioner, Anantnag vide his letter dated 16.09.2005 had intimated the Government that

there was no objection from all quarters as no objection had been received. The said municipal area was constituted of villages, namely, Seer

Hamda, Hussainabad, Hardu-Akad, Manigam and Mulsoo. Immediately,

thereafter, the residents of Manigam sought deletion of their village from the municipal area and after following due procedure of seeking objections etc. village Manigam was excluded from the Municipal area of Seer Hamdan. Similar request was later on received from village Akad and Malsoo, which, after following due procedure, culminated into issuance of SRO 141 excluding villages Hardu, Akad and Malsu from the Municipal Area of Seer Hamdan, leaving only the two villages Seer Hamdan and Hussainabad as the two villages of the Municipal area. Finally, it is stated, that residents of village Seer Hamdan approached the Deputy Commissioner, Anantnag, for exclusion of their village from the Municipal area and the Deputy Commissioner has submitted the report to the Government alongwith CD and photographs showing the intention of the locals. It is stated that some of the residents conveyed their resentment to the deletion of their village from the Municipal area, but on 26.05.2012 the residents of the village again approached for de-notifying the municipal area as they wanted to get rid of the burden of taxes and other charges and to reap the benefits available under various schemes under the Panchayat Raj.

8. It is further stated that, in this connection, objections were called by the Deputy Commissioner concerned from the residents. In this background, even the Director, Rural Development Department was also called to submit a report who on 20.05.2013 informed in favour of abolition of Municipal Committee Seer Hamdan, consequent upon which the Government initiated the process for disclosing its intention to public for abolishing the Municipal Committee, and when notification in this regard was about to be issued, the present writ petition was filed.

9. It is also stated that ever since the creation of Municipal Committee Seer Hamdan, a section of population has been representing for de-notifying the same and a committee of officers was constituted by Director, Rural Development vide order No. 300-DRDK of 2012 dated 01.04.2013 with the direction to submit a factual report after making spot verification/assessment. The Committee, after spot verification and taking into consideration the aspirations of the inhabitants, submitted its report on 16.05.2014 recommending abolition/de-notification of the Municipal Committee Seer Hamdan. It is stated that the committee of officers has found

majority of inhabitants in favour of abolition/de-notification of the Municipal Committee. IN this connection, the Deputy Commissioner, Anantnag was also requested to submit a factual detailed report, who vide his letter dated 30.04.2012 stated that after making spot visit a large number of people have come out in support of abolition of the Municipal Committee. The Deputy Commissioner had tried his best to convince the inhabitants/public that having a municipal committee was good for the area as well as for the people, but the inhabitants were adamant on their demand to abolish and de-notify the Municipal Committee, Seer Hamdan.

10. I have heard learned counsel for the parties, and considered the matter.

11. It may be worthwhile to mention here that the respondents have placed on record a copy of order dated 08.02.2013 passed by a Coordinate

Bench of this Court in Residents of Seer Hamdan Anantnag v. State & Ors. The copy of the order does not indicate the writ petition number, but it

mentions CMP No. 194/2013. From a perusal of the order, it appears that the claim of the petitioners therein was that some people having vested

interests were pressing for de-notifying the Seer Hamdan as Municipal Area. The Court observed that it was for the respondents in the first

instance to consider and take decision in the matter in accordance with the law as and when any application is made for de-notifying Seer Hamdan

as Municipal area. While disposing of the petition, the Court provided that if any application for de-notifying Seer Hamdan as Municipal area is

filed before the respondents, the petitioner shall be granted an opportunity of hearing to all concerned and pass reasoned orders in accordance

with law.

12. The petitioners, as said above, have filed this writ petition primarily on the ground that once the village was notified as a municipal committee in

accordance with the procedure prescribed under Section 4 of the Act, the Government cannot de-notify it unless resort is had to the very same

procedure as provided in Section 4 of the Act, and that the power conferred on the Government under Section 9 to abolish a municipal area

declared under Section 4, is unbridled, therefore, unconstitutional. Fundamentally, therefore, the case of the petitioners is that before de-notifying

Seer Hamdan, their objections should be considered. Though, the respondents in their reply have stated that objections were duly invited and that

majority of the inhabitants have voiced in favour of de-notifying and abolishing the municipal committee, yet there is nothing on record to show that

the representation made by some of the villagers of the Municipal Committee, a copy whereof has been appended as annexure 'H' to the petition,

was considered and disposed of either way.

13. Ld. Advocate General while strengthening his argument with reference to seeking dismissal of writ petition, submits that respondents have

followed the same procedure which was followed at the time of issuance of the notification declaring the area as Municipal area.

14. Given the limited grievance of the petitioners, this petition is disposed of in the following terms:

that the Government, before taking any decision on the recommendation made by the concerned respondents, shall consider the representation,

annexure 'H' appended with the petition, afford an opportunity of hearing to the petitioners and pass reasoned orders thereon.

This also disposes of the connected CMPs.