



Wadhwa

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 3290 OF 2023

SATISH SAHEBRAO MORE,
Age- 44 years, Occ: Agriculture/Social
Work, R/o:- Old Agra Road, Raju Anna
More Nagar, Pimpalgaon (Baswant), Taluka
Nihad, Dist. Nashik

... PETITIONER

~ VERSUS ~

- 1. THE DISTRICT COLLECTOR,**
Nashik.
- 2. THE GOVERNMENT OF**
MAHARASHTRA,
to be served through AGP High Court
of Judicature at Bombay.
- 3. THE SECRETARY,**
Village Panchayat, Pimpalgaon (B),
Taluka Niphad, Dist. Nashik.

... RESPONDENTS

APPEARANCES

FOR THE PETITIONER **Mr Rameshwar N Gite, with Rohit**
Gorade & Sushant Tare.

FOR RESPONDENTS **Mr SR Crasto, AGP.**
NOS. 1 & 2-STATE

FOR RESPONDENT NO. 3 **Ms Smita Qaidhani.**

**CORAM : M.S. Sonak &
Kamal Khata, JJ.**

DATED : 12th June 2024

ORAL JUDGMENT (Per MS Sonak, J):-

1. Heard learned counsel for the parties.
2. Rule. The rule is made returnable forthwith at the request and the consent of the learned counsel for the parties.
3. The Petitioner seeks the following substantive reliefs by instituting this Petition;

“(a) That this Hon’ble Court be pleased to issue a writ of Mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction thereby directing Respondents to take final decision expeditiously on the said Proclamation dated 22nd March 2007 bearing no. GEN-2003/CR- 8/UD- 16 issued for conversion of Pimpalgaon Baswant Gram Panchayat into Municipal Council duly published in Official Gazette dated 5th April 2007’

(b) That this Hon’ble Court be pleased to issue a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction thereby directing Respondents to take steps expeditiously on the letter dated 15th June 2016 bearing ref no. 2016/CR 559/ NAVI- 17 addressed in respect of the same conversion of

Gram Panchayat of Pimpalgaon Baswant Village Dist
Nashik to Nagar Palika.”

4. The record bears that the said Government vide Notification dated 22nd March 2007 issued under the provisions of Maharashtra Municipal Councils, Nagar Panchayat and Industrial Townships Act, 1965 (“**said Act**”) announced its intention to issue a Notification under sub-section (2) and (3) of the said Act to the effect that the local area, i.e., the entire revenue village of Pimpalgaon Baswant shall be specified as an area in transition from a rural area to urban area, having the boundaries mentioned in the Schedule B for which there shall be constituted a Municipal Council by name Pimpalgaon Baswant Municipal Council.

5. The notification invited objections from all persons to the said proposal. Such objections, along with the reasons for them, were required to be furnished to the Collector of Nashik within 30 days from the publication of the notification/proclamation in the Official Gazette.

6. The Petitioner has pleaded that the objections that were received in pursuance of the above notification dated 22nd March 2007 have already been forwarded by the Collector to the said Government. This position is accepted by Ms Crasto, the learned AGP appearing for the State.

7. Section 3 of the said Act reads as follows;

“3. Specification of areas as smaller urban areas

(1) A council for every municipal area existing on the date of coming into force of the Maharashtra Municipal Corporations and Municipal Councils (Amendment) Act, 1994, Mah. XLI of 1994, specified as a smaller urban area in a notification issued under clause (2) of Article 243-Q of the Constitution of India in respect thereof, shall be deemed to be a duly constituted Municipal Council known by the name Municipal Council.

(2) Save as provided in sub-section (1), the State Government may, having regard to the factors mentioned in clause (2) of Article 243-Q of the Constitution of India, specify, by notification in the *Official Gazette*, any local area as a smaller urban area:

Provided that no such area shall be so specified as a smaller urban area unless the State Government, after making such inquiry as it may deem fit is satisfied that, —

(a) the population of such area is not less than 25,000; and

(b) the percentage of employment in non-agricultural activities in such area is not less than thirty-five per cent.

(2A) For every smaller urban area so specified by the State Government under sub-section (2), there shall be constituted a Municipal Council known by the nameMunicipal

Council.

(3) Before the publication of a notification under sub-section (2), the State Government shall cause to be published in the *Official Gazette*, and also in at least one newspaper circulating in the area to be specified in the notification, a proclamation announcing the intention of Government to issue such notification, and inviting all persons who entertain any objection to the said proposal to submit the same in writing with the reasons therefor, to the Collector of the District within not less than thirty days from the date of the publication of the proclamation in the *Official Gazette*.

Copies of the proclamation in Marathi shall also be posted in conspicuous places in the area proposed to be declared as a municipal area.

(4) The Collector shall, with all reasonable despatch, forward any objection so submitted to the State Government.

(5) No such notification as aforesaid shall be issued by the State Government unless the objections, if any, so submitted are in its opinion insufficient or invalid.”

8. Thus, it is clear that the processes contemplated in sub-sections (3) and (4) of Section 3 of the said Act have been substantially completed. In terms of sub-section (5) of Section 3, the Government is obliged to consider the objections, if any, that may have been received. Though the said Government cannot be

compelled to issue the final notification, sub-section (5) of Section 3 provides that no such notification under sub-section (2) of Section 3 of the said Act (final notification) shall be issued by the said Government *unless the objections, if any, so submitted are in its opinion insufficient or invalid.*

9. The above again suggests that the Government, having initiated the process by issuing a Notification under sub-section (3) of section 3, must consider the objections to form an opinion on whether the objections received are insufficient or invalid. If the objections are not insufficient or invalid, the Government can proceed to issue the final notification without any difficulty. However, if the Government finds that the objections are valid and sufficient, there can be no compulsion to issue the final notification. Therefore, no mandamus could be issued to compel the Government to issue the final notification; a limited mandamus can be issued to direct the Government to consider the objections already received and decide whether or not to issue the final notification.

10. The Petitioner has, therefore, justifiably prayed that the direction be issued to the said Government to reach a final decision by considering the objections received in pursuance of the Notification dated 22nd March 2007. The relief is not that this Court must issue a mandamus directing the Government to issue the final notification. The relief is for a direction to the Government to make a final decision expeditiously, one way or the other, by considering the objections already received.

11. Accordingly, we direct the Government to consider the objections already received and to decide whether a final notification in terms of Section 3 of the said Act needs to be issued in pursuance to the notification dated 22nd March 2007. This exercise must be completed as expeditiously as possible and, in any event, within three months, i.e., on or before 11th September 2024.

12. The Government must also communicate its decision to the Petitioner on or before 11th September 2024.

13. The rule is made absolute in the above terms. There will be no order for costs.

14. All concerned to act on an authenticated copy of this order.

(Kamal Khata, J)

(M.S. Sonak, J)