

No	Date	Office Notes, reports, orders or proceedings or directions and Registrar's order with Signatures	COURT'S OR JUDGES'S ORDERS
			WPMS No.234 of 2015 <u>Hon'ble Manoj Kumar Tiwari, J.</u> Mr. Ravi Babulkar and Mr. Ravi Bisht, Advocates for the petitioner. Mr. Pradeep Hairiya, Standing Counsel for the State of Uttarakhand. Mr. S.K. Jain, Senior Advocate assisted by Ms. Sunayna Kohli Kothari, Advocate for the applicant in intervention application (I.A. No. 13988 of 2021). 2. Perused the intervention application (I.A. No. 13988 of 2021) and the affidavit filed in support thereof. I do not find any good ground to allow the application. Accordingly, the intervention application is dismissed. 3. This writ petition was filed in the year 2015, challenging a notification issued by the State Government on 31.07.2002. By the impugned notification, Village Chaukori has been declared to be a Gram Panchayat. For ready reference, reliefs sought in the writ petition, are extracted below:- “(I) Issue a writ, rule order or direction in the nature of certiorari calling for the record and quashing the entry 23 of the notification dated 31- 7-2002 vide which Chaukori has been declared as Panchayat Area. (II) Issue a writ, rule, order ore direction in the nature of mandamus commanding and directing the respondent no.2 & 3 not to interfere in the peaceful possession of the petitioner of his area of land in Tea Estate Chaukori by providing establishments/amenities to the illegal occupants of the concerned area under the garb of impugned notification dated 31-7-2002. (III) Issue a writ, rule, order or direction in the nature of mandamus commanding and directing

		the respondent no.2 & 3 to stop forthwith the grant provided to the Tea Estate Chaukori for development of residential area under the garb of impugned notification dated 31-7-2002.” 4. The sole contention raised on behalf of petitioner is that Chaukori was a Tea Estate, and members of petitioner’s family are having <i>bhumidhari</i> right over the land of Chaukori village, therefore, State Government cannot establish a Gram Panchayat over the said land, without acquiring the same and transferring it to the Gaon Sabha. Petitioner, however, admits that substantial part of the land, which was part of Tea Estate, has been transferred and transferees have raised construction thereupon, which has resulted in development of abadi area. 5. In the counter affidavit filed on behalf of the State Government, it is stated that, in the year 2002, Chaukori had a population of 304 and it was earlier part of Gaon Sabha Udiyari. Paragraph nos. 10, 15 & 16 of the said counter affidavit are reproduced below:- “10. That the contents of para 2 of the writ petition are wrong hence denied. It is submitted that the notification dated 31.07.2002 is for the constitution of the Gram Panchayat Chaukori. It is stated here that before this the Revenue Village Chaukori was in the territory of Gram Sabha Udiyari. Rest of the contents made paragraph under reply are already replied in the preceding paragraphs of this counter affidavit. 15. That the contents of para 10 of the writ petition are wrong hence denied. It is submitted that the Government Order dated 19/6/2002 was issued for the reorganization of the Gram Panchayat, Three Tier Panchayats and delimitation of Three Tier Panchayats, thereafter a letter dated 21/6/2002 was issued by the Director, Panchayat Raj, Uttarakhand, Dehradun in pursuance of the same on 4/7/2002 a meeting for reorganization of the Gram Panchayat and delimitation of the Three Tier Panchayat was held. In the paragraph no. 14 of the minutes of meeting, the directions were issued for the publication regarding the
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			reorganization of the Village Panchayat and delimitation of the Three Tier Panchayat. It was further directed that the information regarding the same will be fixed on the notice board of the Panchayat Bhawan of Village Panchayat, Development Office, office of Tehsil, office of the Chief Development Officer, office of District Panchayat Raj Officer and office of the District Magistrate vide letter dated 24/7/2002 of the District Development Officer, Pithoragarh, the dates for the decision on the objections /suggestions regarding the constitution of the Village Panchayat were fixed on 28/7/2002 and 29/7/2002 after adopting due process of law a notification dated 31/7/2002 was issued. 16. That the contents of para 11 of the writ petition are wrong hence denied. It is submitted that as per the Government Order dated 19/6/2002 an amendment was made in the U.P. Panchayat Raj Act and Section 11(F) was partly amended and for the constitution of Gram Panchayat the population was fixed as 300. In pursuance of the same the process for delimitation was completed and the Village Panchayat Chaukori was constituted. It is relevant to mention here that after creation of the Gram Panchayat Chaukori no rights of anyone are affected i.e. Hak hakook or other rights of the villagers are as it is." 6. Article 243B of the Constitution provides for Constitution of Panchayats, which reads as under: "243B. Constitution of Panchayats-(1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part. (2) Notwithstanding anything in clause (1), Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs." 7. The impugned notification was issued under Section 11-F of U.P. Panchayat Raj Act, 1947, as applicable in the State of Uttarakhand, which reads as under:- "11-F Declaration of Panchayat area – (1) The State Government may, by notification, declare any area comprising a village or group of villages, having, so far as practicable, a population of one thousand, to be a Panchayat area for the purposes
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			of this Act by such name as may be specified; Provided that for the purposes of declaration of a Panchayat area no revenue village or any hamlet thereof shall be divided; [Provided further that in the hill districts of Nainital, Almora, Pithoragarh, Tehri, Pauri, Dehradun, Chamoli or Uttarkashi, the State Government may declare the area of a Gram Sabha established under Section 3 of this Act as it stood before the commencement of the Uttar Pradesh Panchayat Land (Amendment) Act, 1994, to be a Panchayat area through such area may have a population of less than one thousand.] (2) The State Government may, on the request of the Gram Panchayat concerned or otherwise, and after previous publication of the proposal, by notification at any time – (a) modify the area of any Panchayat area by including therein or excluding therefrom any area of a village or group of villages; (b) alter the name of the Panchayat area; or (c) declare that any area shall cease to be a Panchayat area. UTTARAKHAND AMENDMENT [11-F. Declaration of Panchayat area. – (1) For the purposes of this Act the State Government may by notification declare any area comprising a village or group of villages, having, so far as practicable, a population of 300 in hill area and 1000 in plane area to be a Panchayat area for the purpose of this Act by such name as may be specified : Provided that the population shall not exceed 1000 in hill area and 5000 in plane area of the state as far as practicable : Further provided that for the purpose of declaration of a Panchayat area no revenue village or any hamlet thereof shall be divided : Also provided that if it is not practically possible to follow the above provisions then the State Government may relax the aforesaid restrictions by order in specific and unavoidable circumstances. (2) The State Government may, on the request of the Gram Panchayat concerned or otherwise, and
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		after previous publication of the proposal, by notification at any time – (a) modify the area of any Panchayat area by including therein or excluding therefrom any area of a village or group of villages; (b) alter the name of the Panchayat area; or (c) declare that any area shall cease to be a Panchayat area”.]” 8. Article 243B of the Constitution enjoins the State Government to constitute Panchayats, including Village Panchayats. Section 11-F of U.P. Panchayat Raj Act, 1947 enables the State Government to declare any area comprising a village or group of villages to be a Panchayat area. 9. From averments in paragraph 10 of the counter affidavit filed on behalf of respondent no. 1, it is revealed that Chaukori was a revenue village, which was earlier part of Gaon Sabha Udiyari. Since it had population of more than 300, therefore, the State Government decided to establish a separate Gram Panchayat for Village Chaukori. 10. Petitioner has raised a question of ownership over the land of Village Chaukori for challenging the notification dated 31.07.2002. 11. In my humble opinion, the question of title over the land would not be germane for questioning the validity of the impugned notification. 12. From the counter affidavit, it is revealed that before declaring Chaukori as Gram Panchayat, objections were invited. Thus, petitioner had opportunity to file his objection, but he failed to file any. Now, he cannot challenge the notification issued on 31.07.2002 by filing a writ petition, in
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			the year 2015. 13. Learned counsel for petitioner has relied upon provision contained in Section 6(2) of U.P. Imposition of Ceiling on Land Holdings Act, 1960 for contending that the land of Village Chaukori was illegally transferred by his co-sharers, without prior permission of the State Government, therefore, the transferees, who have raised construction over the said land, are unauthorised occupants. 14. This Court does not find any force in the said submission. Whether transferees, who are residents of Village Chaukori, have valid title over the land or not, cannot be examined by this Court in collateral proceedings. Moreover, the question of title is not relevant for declaring an area as Gram Panchayat. Since Village Chaukori has sizable population, which is sufficient for its declaration as Gram Panchayat, therefore, exercise of power under Panchayat Raj Act by the State Government cannot be faulted. 15. Thus, this Court does not find any reason to interfere with the impugned notification at the instance of petitioner. 16. Accordingly, the writ petition fails and is dismissed. There will be no order as to costs. (Manoj Kumar Tiwari, J.) 19.07.2023 Arpan
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