

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
Writ Petition (C) No. 6872 of 2010

1. Jugga Devi aged about 70 years, Ex-Block Development Council Member, W/o Mahant Ram, R/o village & P.O. Premnagar, Tehsil Premnagar, District Sarguja Chhattisgarh.
2. Ghasi Ram, President Gram Sabha Parishad, S/o Bodhan Ram, aged about 75 years, R/o village & P.O. Premnagar, Tehsil Premnagar, District Sarguja Chhattisgarh.
3. Dhuj Ram Ex-Panch, Village Premnagar, S/o Nandlal, aged about 32 years, R/o village & P.O. Premnagar, Tehsil Premnagar, District Sarguja, Chhattisgarh.

---- Petitioners

Versus

1. State of Chhattisgarh, Through Secretary, Department of Urban Administration & Development, Mantralaya, DKS Bhawan, Raipur, Chhattisgarh.
2. Secretary, Department of Pachayat & Rural Development, Mantralaya, DKS Bhawan, Raipur Chhattisgarh.
3. Secretary, Department of Tribal Welfare, Mantralaya, DKS Bhawan, Raipur, Chhattisgarh.
4. Collector, Sarguja, Ambikapur, District Sarguja, Chhattisgarh.
5. Sunil Sinha, Ex-Secretary, Gram Panchayat, Premnagar, R/o Village & P.O. Premnagar, Tehsil Premnagar, District Sarguja Chhattisgarh.
6. Smt. Dular Bai, presently nominated as President, Nagar Panchayat, Premnagar, Tehsil Premnagar, District Sarguja Chhattisgarh.

---- Respondents

For Petitioners	:	Ms. Sudha Bhardwaj, Advocate
For Respondent/State	:	Shri J.K. Gilda, Advocate General

Hon'ble The Acting Chief Justice
Hon'ble Shri Justice P. Sam Koshy

Order On Board

Per Navin Sinha, Acting Chief Justice

24/03/2015

1. We have heard Learned Counsel for the Petitioner and Learned Advocate General on behalf of the Respondents.

2. This writ application was filed on 19.11.2010 challenging the preliminary notification dated 30.7.2009 issued by the Secretary, Urban Administration and Development, declaring the intention of constituting village Premnagar into a Nagar Panchayat under Section 5(1)(b) of the Chhattisgarh Municipalities Act (hereinafter referred to as 'the Act'). Challenge was also laid out to the notification dated 13.7.2009 by the Collector, Surguja dis-establishing village Premnagar in violation of the Panchayat (Extension to Scheduled Areas) Act, 1996.

3. The preliminary notification dated 30.7.2009 stated that it was proposed to convert Gram Panchayat Premnagar into Nagar Panchayat along with details of the boundaries. The notification further provided that those desiring to object may file their objections within 30 days from the date of publication in the gazette. The final publication after the prescribed period was made in the gazette on 22.12.2009. The writ petition was filed on 19.11.2010 after final publication, yet there was no challenge to the latter. The writ application thereafter was listed for admission on eight occasions and was admitted for hearing on 8.12.2011. Thereafter, it has been listed on twenty occasions after which an amendment application was filed on 30.7.2014 seeking to challenge the final publication dated 22.12.2009.

4. Learned Counsel for the Petitioners submits that they were never made aware of either the preliminary notification or the final notification.

The Petitioners were first made aware in March, 2010 that a new body of the Nagar Panchayat had been nominated. They then made applications under the Right to Information Act on 10.5.2010 and after collecting further and necessary information, filed the writ application. It was further submitted that after having filed the writ application, several efforts were made to have the interim application heard. The State authorities including the Collector and office of the Governor did not furnish them necessary information on queries being made. The writ petition raises important Constitutional issues with regard to Articles 243 Q and Article 243 ZC. The Petitioners were villagers and had limited sources of information. It shall be doing gross injustice to them, to the tribal way of life, if on technicalities the writ application is dismissed merely because the final notification has been challenged belatedly. No prejudice shall be caused to the State as the amendment in any event has been filed during the pendency of the writ petition and before final adjudication.

5. Learned Advocate General opposing the amendment application submitted that whether to allow an amendment or not is a discretionary jurisdiction. The discretion is to be exercised on the facts of each case judiciously and not mechanically. Reliance was placed on AIR 1974 SC 1126 (Smt. Ganga Bai v. Vijay Kumar) and (2009) 17 SCC 685 (Godavari Sugar Mills Limited v. Union of India) to submit that amendments are not to be lightly allowed especially when third party rights have accrued and the belated amendment would bring administrative chaos, unbudgeted expenditure and other administrative problems. The writ petition was filed after publication of not only the preliminary notification but also the final notification in the gazette. Publication in the gazette was notice to all concerned and no person can claim that publication in the gazette does not amount to notice to

all concerned. It is not the case of the Petitioners that they had filed any objections within the prescribed time after publication of the preliminary notification. There had to be some explanation in the amendment application why the final notification was not challenged when the writ petition was filed. The plea that the Petitioners were not aware of the publication is frivolous and unacceptable in view of the fact that gazette publication is not denied. Reliance was placed on (1976) 1 SCC 803 (Reserve Bank of India v. Ramkrishna Govind Morey) in support of the submission.

6. There shall be a presumption under Section 114 (e) of the Indian Evidence Act that publication of the preliminary and final notification was done in the manner prescribed under the Act. The onus is on the Petitioners to rebut that presumption. There is no assertion or denial by the Petitioners that the notification was not published in the mode method and manner required by the Statute. The contention is that they were not aware or not made aware on basis of vague and generalized statements. Section 6 of the Act requires publication in the gazette and in one Hindi newspaper having circulation in the area concerned and pasting a copy of the notification at a conspicuous place in the office of the Collector, at a conspicuous place in the office of the Municipality and in a conspicuous place of the locality as determined by the Collector. The preliminary notification was published in the gazette on 30.7.2009. No objection was filed on behalf of the Petitioners within the stipulated thirty days period. The final notification was thereafter published in the gazette on 22.12.2009. A publication in the gazette in accordance with the statutory requirement is notice to all concerned. It is not open to a person to deny knowledge even while not disputing publication in the gazette. The meaning and effect of a gazette publication was explained in (1996) 6 SCC 634 (I.T.C.

Bhadrachalam Paperboards v. Mandal Revenue Officer)

as follows :-

“13....The object of publication in the Gazette is not merely to give information to public. Official Gazette, as the very name indicates, is an official document. It is published under the authority of the Government. Publication of an order or rule in the Gazette is the official confirmation of the making of such an order or rule. The version as printed in the Gazette is final....”

7. It is difficult to believe that despite more than one mode of publication done under the Act, the Petitioners still remained blissfully unaware of the final notification. The writ application was filed nearly one year after the publication of the final notification on 19.11.2010 and yet only the preliminary notification was challenged. A period of one year was more than sufficient for a vigilant person to become aware of the publication of the final notification in the gazette and by the other prescribed modes. Once the statutory requirement for publication in the gazette and other modes prescribed is complied with, the authorities are not required to do anything further for publication. If that were not enough even the amendment application was filed nearly one year after the respondents brought on record the final notification.

8. The amendment application after narrating the knowledge by them in March, 2010 followed by the application under the RTI Act states that the Collector never informed them of publication of the final notification. The State filed an application on 25.7.2013 in the present proceedings placing on record as Annexure R/2, the final notification dated 22.12.2009. Yet the Petitioners were not vigilant and filed the amendment application one year later on 30.7.2014. Our attention has

also been invited by Learned Advocate General to paragraph 8.19 of the writ petition that the Petitioners were not innocent and gullible villagers as claimed but had advice and services of an Advocate as named therein.

9. The proviso to Order VI Rule 17 of the Code of Civil Procedure provides that no application for amendment shall be allowed after trial has commenced (read the writ petition admitted for hearing) unless the Court comes to the conclusion that inspite of due diligence the party could not have raised the matter earlier.

10. At this stage, we may appropriately refer to Ramkrishna Govind Morey (supra) relied upon by the Advocate General observing as follows:

“2....If the applications for amendment made by the plaintiff contained allegations in line with what was stated in the original plaint, the amendments would be redundant; if they were different, no valid reason is given why the plaintiff should be permitted to improve on the case as originally made. The plaintiff's case did not depend on what the defendant might say in the written statement and if what he proposed to introduce in the plaint by way of amendment was relevant to his case, there is no apparent reason why this was left out when the plaint was filed....”

11. Similarly, in Smt. Ganga Bai (supra) relied upon by the Advocate General it was observed as follows:

“22....The power to allow an amendment is undoubtedly wide and may at any stage be appropriately exercised in the interest of justice, the law of limitation notwithstanding. But the exercise of such far-reaching discretionary powers is governed

by judicial considerations and wider the discretion, greater ought to be the care and circumspection on the part of the Court...”

12. The amendment application is highly belated with no explanation worth consideration why the Petitioners did not challenge the final notification at the time of institution of the writ application or within reasonable time thereafter. If this writ petition were to be entertained today to re-examine constitution of the Nagar Panchayat done on 22.12.2009, nearly 5 years later the observations in Godavari Sugar Mills Limited (supra) are apposite quoting the following extract from Judicial Remedies in Public Law by Clive Lewis as follows:

“....The courts now recognise that the impact on the administration is relevant in the exercise of their remedial jurisdiction. Quashing decisions may impose heavy administrative burdens on the administration, divert resources towards reopening decision, and lead to increased and unbudgeted expenditure. Earlier cases took the robust line that the law had to be observed, and the decision invalidated whatever the administrative inconvenience caused. The courts nowadays recognise that such an approach is not always appropriate and may not be in the wider public interest. The effect on the administrative process is relevant to the courts' remedial discretion and may prove decisive...”

13. The aforesaid discussion leads us to the conclusion that the Petitioners were grossly negligent and have displayed complete lack of vigilance for protection of their own rights when they filed the writ application after the final notification but without challenging it. If that was not sufficient, the amendment application has also been filed one year after the State had brought the final notification on record.

14. We cannot be oblivious of the fact regarding the nature of administrative and social turmoil that would follow if the matter were heard today to consider whether the Nagar Panchayat ought to be reverted into a Gram Panchayat. The march from Gram Panchayat to Nagar Panchayat is a march-forward reflecting development and growth. Reversion to Gram Panchayat would be an antithesis in the facts of the present case. We are not inclined to allow I.A. No. 9 of 2014 seeking leave to amend the writ application and challenge the final notification.

15. In absence of any challenge to the final notification, the writ petition becomes infructuous. It is dismissed.

(Navin Sinha)

ACTING CHIEF JUSTICE

(P.Sam Koshy)

JUDGE