

**IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.629 OF 2015

- 1) Bharat s/o Prabhakarrao Sabade
and another - PETITIONERS

VERSUS

- 1) The State of Maharashtra and
others - RESPONDENTS

Mr.V.D.Hon, Senior Counsel, i/by Mr. Ashwin V.Hon,
Advocate for Petitioner/s

Mr.S.K.Kadam, AGP for Respondents.

**CORAM : R.M.BORDE &
P.R.BORA, JJ.**

DATE : 22nd January, 2015.

PER COURT:

- 1) The petitioners are praying for issuance of writ of certiorari to quash and set aside the Schedule annexed to the Notification dated 2nd of January, 2015 published by the Government, pronouncing the intention to set up revenue divisional headquarter at Nanded. The petitioners also pray for issuance of a writ of mandamus, directing the respondent/authorities of

the State Government to modify the Schedule to the Notification dated 2nd January, 2015, inviting claims and objections for setting up headquarter of the bifurcated revenue division by including Latur as headquarter of the bifurcated revenue division. The petitioners, in short, support setting up of revenue headquarter of bifurcated revenue division of Aurangabad region at Latur.

2) On earlier occasion also, one Shri R.D.Deshmukh had presented a writ petition, bearing Writ Petition No.6025/2006 in this Court seeking a directions to the State Government to prescribe Parbhani as headquarter of new revenue division of the bifurcated revenue division of Aurangabad. The writ petition came to be dismissed by this court by order dated 10.11.2006.

3) Another group of petitions came up for consideration before this court being Writ Petition No. 149 of 2009 and other companion matters, questioning decision taken in the

cabinet meeting by the State Government on 5.1.2009 to bifurcate Aurangabad Revenue division and to create a separate revenue division for Nanded, Latur, Parbhani and Hingoli districts having its headquarter at Nanded. During the course of hearing of aforesaid group of petitions, Advocate General caused appearance on behalf of the State on 15.1.2009 and made a statement that the procedure prescribed in law would be followed. The Division bench of this Court has observed in para 6 of the judgment, as under, -

"6. We have perused the provisions of Section 4 of the 1966 Code. Section 4 deals with the constitution of Revenue areas. Sub-Section (4) thereof stipulates that every notification or order made under Section 4 is subject to condition of previous publication and for that purpose Section 24 of 1904 Act has been made applicable. The power has been given to State Government. Clause (d) of Section 24 of 1904 Act requires the authority

having power to create such Revenue Division, to consider any objection or suggestion, which may be received by it from any person, after the publication of such notification or proposal. It is, therefore, apparent that this statutory procedure cannot be done away and even if any One Man Committee is appointed or its report is accepted that acceptance cannot defeat the requirements of Section 4(4) of 1966 Code."

4) The Division Bench has further observed that the impugned decision taken in the Cabinet meeting dated 5.1.2009 does not by itself violate provisions of Section 4(4) of Maharashtra Land Revenue code, 1966. However, its implementation appears to be faulty. The Division Bench, as such, granted liberty to the State Government to proceed further in the matter, in accordance with provisions of Section 4(4) of 1966 Code. The Court expected respondents to take appropriate steps within a period of three months from the

date of order, i.e. September 23, 2013.

5) The State Government, it appears, in furtherance of the Cabinet decision taken earlier, proceeded to issue notification, as contemplated by Section 4 of the code of 1966. The petitioners submit that the action taken by the State Government is tainted with malafide and that the directives issued by the Division Bench by order dated 23rd September, 2013, have not been adhered. It is also contended that the decision appears to be pre-determined, since it is declared that 23rd February, 2015 would be the date on which separate revenue division will come into existence. The petitioners apprehend that the claims and objections raised by the petitioners and others would not be considered by the State Government since there is no date prescribed under the notification for consideration of the claims and objections to the preliminary notification issued on 2nd January, 2015.

6) Section 4 of the Maharashtra Land Revenue Code, 1966 authorizes the State Government, by notification in the official gazette, to specify, the districts (including the City of Bombay) which constitute a division. Sub-section (4) of Section 4 provides that every notification or order made under this section shall be subject to the condition of previous publication; and the provisions of section 24 of the Bombay General Clauses Act, 1904, shall, so far as may be, apply in relation to such notification or order, as they apply in relation to rules to be made after previous publication.

7) Section 24 of the Bombay General Clauses Act, 1904 provides, where by any Bombay Act (or Maharashtra Act) a power to make Rules or by-laws is expressed to be given subject to the conditions of the Rules or by-laws being made after previous publication, then, the following provisions shall apply, namely :-

(a) the authority having power to make the rules or by-laws shall, before making them, publish a draft of the proposed rules or by-laws

for the information of persons likely to be affected thereby;

(b) the publication shall be made in such manner as that authority deems to be sufficient or, if the condition with respect to previous publication so requires, in such manner as the (Central Government, or as the case may be, the (State) Government) prescribes;

(c) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;

(d) the authority having power to make the rules or by-laws, and where, the rules or by-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or by-laws from any person with respect to the draft before the date so specified;

(e) the publication in the Official gazette of a rule or by-law purporting to have been made in exercise of a power to make rules or by-laws after previous publication shall be conclusive proof that the rule or by-law has been duly made.

8) In the instant matter, it does appear that the State Government has notified 2nd February, 2015 as a date for receiving claims and objections to the preliminary notification published on 2.1.2015. It is further provided that the claims and objections received within the time limit, prescribed under the notification, would be considered before taking any decision. It thus appears that the preliminary notification is in conformity with the provisions of Section 24 of the Maharashtra General Clauses Act. Therefore, the apprehension expressed by the petitioners that the claims and objections those would be raised by the petitioners and others would not be considered by the State Government, is without any basis or substance.

9) The bifurcation of existing revenue division and prescription of a headquarter for the newly created revenue division, is purely an administrative function to be performed by the

State Government in adherence to the provisions of the Maharashtra Land Revenue Code, 1966. At this stage, the challenge to the proposed administrative decision of the State, does not deserve consideration. The writ petition is devoid of substance and stands dismissed.

10) It would be open for the petitioners to raise appropriate objections before the State Government and it would be open for State Government to consider such objections in accordance with provisions of Code of 1966 and to take appropriate final decision. The State Government, while taking decision, shall not influence by any of the observations made by this court in the instant petition.

(P.R.BORA)
JUDGE

(R.M.BORDE)
JUDGE

bdv/