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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 11273 OF 2015

Babanrao Rajaram Shelke

..Petitioner.

Versus

State of Maharashtra and anr

..Respondents.

Mr. U. P. Warunjikar, for the Petitioner.

Mr. Vikas Mali, AGP for the Respondent State.

Mr. S.B. Shetye, for respondent No.4.

**Coram : RANJIT MORE &
DR. SHALINI PHANSALKAR JOSHI, JJ.**

Date : 9th MARCH, 2016.

P. C. :

1. Heard Mr. Warunjikar, learned counsel for the petitioner, learned AGP for the State and Mr. Shetye, learned counsel for the respondent No.4.

2. By this petition under Article 226 of the Constitution of India, the petitioner is challenging the Government Resolution dated 26.10.2015 and consequential notification whereby the Government in exercise of powers conferred under Section 341A of the Maharashtra Municipal Councils Nagar Panchayat and Industrial Township Act, 1965 (for short called as "Nagar Panchayat Act"), specified the local area of Village Panchayat Lonand to be transitional area for which Nagar Panchayat was constituted by name, "Lonand Nagar Panchayat".

3. Mr. Warunjikar, learned counsel objected to this Notification

on the following three grounds :

i) While constituting the said transitional area, the Government did not take into consideration the provisions of Article 243Q of the Constitution of India especially factors mentioned under Clause 2 thereof and provisions of Section 341A of the Nagar Panchayat Act.

ii) Though the proposal was submitted in the year 2010, the present Notification under Section 341A of Nagar Panchayat Act is issued in October, 2015 i.e. after the period of five years and the Government in this regard ought to have obtained fresh inputs in order to consider the said factors.

lii) In October, 2012, General Election of the Village Panchayat, Lonand was held. The Government should have waited till expiry of the Village Panchayat period i.e. upto 2017.

4. In reply Shivaji B. Talpe, Tahsildar, Khandala, District Satara has filed an affidavit dated 4th February 2016. It is stated in the affidavit that the proposal was received by the Government in Urban Development, in the month of May, 2012 and immediately thereafter, Notification was issued in August, 2012 inviting objections from the general public. Meanwhile there was incident of fire in the Mantralaya and because of this incident, there was some delay in taking the decision. It is also stated in the affidavit that while issuing impugned Notification, several factors were taken into consideration and after satisfying that it would be

expedient to convert Lonand Gram Panchayat into Lonand Nagar Panchayat, impugned Notification is issued. Mr. Mali, learned AGP relied upon the said affidavit and submitted that Notification impugned in the petition is issued after considering the relevant provisions of the Constitution and Municipal Law and therefore, no fault can be found therein.

5. Having considered rival submissions of respective parties and having gone through the petition and reply filed by the Government, we do not find merit in the petition.

The resolution was passed by Lonand Gram Panchayat 2.10.2011, requesting the Government to convert Lonand Gram Panchayat into Nagar Panchayat. The said resolution was forwarded to the Collector, Panchayat Samiti, Tahasil Office, Sub Divisional Officer and various other departments including Zilla Parishad on 8.12.2011. The Collector forwarded the proposal to the Government of Maharashtra in Urban Development Department and thereafter the State of Maharashtra issued Notification dated 1.8.2012, inviting objections from the general public. Though this Notification was published in daily newspaper having wide circulation in local area, not a single objection was received. The Collector thereafter on 5.9.2012, recommended conversion of Lonand Gram Panchayat into Lonand Nagar Panchayat, to the Urban Development Department, of the State.

6. The petitioner has annexed entire documents obtained

under the Right to Information Act in regard to the subject Notification of conversion of Lonand Gram Panchayat into Lonand Nagar Panchayat. Mr. Warunjikar, strenuously argued that the documents do not disclose that the State Government has considered relevant factors under Article 243Q of the Constitution of India and Section 341 of the Nagar Panchayat Act.

7. The perusal of Gram Panchayat Resolutions, proposal of the Collector to the Government as well as impugned Notification makes it abundantly clear that the factors mentioned under Section 341A of the Nagar Panchayat Act and clause No.2 of Article 243Q of the Constitution of India, are considered and thereafter decision is taken to convert Lonand Gram Panchayat into Nagar Panchayat.

8. Mr. Warunjikar also submitted that after general election to Gram Panchayat, Lonand in the year 2012, fresh resolution was passed by the Gram Panchayat, thereby requesting the Government to wait to convert Lonand Gram Panchayat into Nagar Panchayat till 2017 i.e. till expiry of period of elected members. He also submitted that a positive response was given by the law department in this regard and therefore, the Government ought to have waited upto 2017 to convert Lonand Gram Panchayat into Nagar Panchayat. Thus, in principle the petitioner is not against the conversion of Lonand Gram Panchayat into Nagar Panchayat. Merely because fresh election was held and the term of elected members

is not expired, that would be no ground on which the impugned Notification can be assailed.

9. In pursuant of the impugned Notification, the Village Panchayat is dissolved and the Administrator is appointed. The Election Commissioner has initiated the election process to hold the election of Nagar Panchayat. The formation of Wards has already been done and Voter's Lists would be finalized shortly. The petitioners are always at liberty to contest the election of Nagar Panchayat, if they want. Delay in issuing notification, simpliciter cannot be a ground to challenge the Notification. In any case this delay is explained by the State by filing affidavit. We are, therefore, not inclined to accept the submission of Mr. Warunjikar in this regard.

10. Taking totality of the facts and circumstances of the case, we do not find any merit in the petition and the same is dismissed.

[DR. SHALINI PHANSALKAR JOSHI, J.] [RANJIT MORE, J.]