

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 10175 OF 2016

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| 1. The Grampanchayat Kharghar, |) | |
| Having its office at Sector 13, |) | |
| Kharghar, Navi Mumbai. |) | |
| 2. United Kharghar Action committee |) | |
| having its office at Row House, E6, |) | |
| Sector 12, Kharghar, Navi Mumbai |) |Petitioners. |

versus

- | | | |
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| 1. The State of Maharashtra |) | |
| Through the Urban Development |) | |
| Department, Mantralaya, Mumbai. |) | |
| 2. The Hon'ble Chief Minister, |) | |
| Government of Maharashtra. |) | |
| 3. The District Collector, Raigad, |) | |
| Having its office at District Collector, |) | |
| Alibaug, Raigad. |) | |
| 4. The Divisional Commissioner, |) | |
| Konkan Division, Konkan Bhavan, |) | |
| CBD, Belapur. |) | |
| 5. CIDCO, CIDCO Bhavan, |) | |
| CBD, Belapur, Navi Mumbai. |) | |
| 6. The Panvel Municipal Council, |) | |
| Through its Chief Officer, Taluka, |) | |
| Panvel, District Raigad. |) |Respondents |

along with
CIVIL APPLICATION NO.2465 OF 2016
IN
WRIT PETITION NO.10175 OF 2016

- | | | |
|---|---|--------------------------|
| Mr. Shrinand Mukund Patwardhan |) | |
| Age – 55 years, Occ.Business |) | |
| R/o.Samrudha Mukund Apartment, |) | |
| 671/A, Shivaji Road, Panvel, |) | |
| Taluka- Panvel, District – Raigad 410206. |) |Applicant/Intervenor |

In the matter between :

- | | |
|-------------------------------------|------------------|
| The Grampanchayat Kharghar and anr. |Petitioners |
| Versus | |
| The State of Maharashtra and ors. |Respondents |

Mr. Prasad Sudhir Dani, senior counsel with Mrs. Pooja Khandeparkar i/b. Mr. Ruturaj Pradip Pawar, advocate for the petitioners.
Mr. A. Y. Sakhare, senior counsel along with Mr. A. B. Vagyani, G.P along with Mrs. M. P. Thakur, Ms. Tintina Hazarika, AGP for the State.
Mr. A. M. Kulkarni, advocate for CIDCO.
Mr. S. V. Gavand, advocate for Panvel Municipal Council.
Mr. S. B. Shetye, advocate for the State Election Commission.
Mr. Ashutosh A. Khumbhakoni, senior counsel i/b.Mr. Avinash H. Fatangare, advocate for the intervenor.

**CORAM : RANJIT MORE &
ANUJA PRABHUDESSAI, JJ.**

DATE OF RESERVING : 3rd OCTOBER, 2016.
DATE OF PRONOUNCEMENT : 27th OCTOBER, 2016.

Oral Judgment : (Per Ranjit More, J.)

Rule. Rule is made returnable forthwith and the petition is heard finally by consent.

2 By this petition filed under Article 226 of the Constitution of India, the petitioners are challenging various notifications issued under Maharashtra Municipal Corporations Act 1949 (for short “the Corporations Act”) , Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act 1965 (for short “the Nagar Panchayats Act”), Maharashtra Zilla Parishads and Panchayat Samitis Act 1961(for short “the Panchayat Samitis Act”) and Maharashtra Village Panchayats Act 1961 (for short “Village Panchayats Act”), whereunder the municipal corporation of the city of Panvel is formed from the entire Panvel Municipal Council and 29 revenue villages.

3. We have heard Mr. Dani, learned senior counsel for the petitioners, Mr. Sakhare, learned senior counsel along with Mr. Vagyani, learned Government Pleader for the State of Maharashtra. We have also heard Mr. Kumbhakoni, learned senior for the intervenor, since the petitioners have expressed no objection for intervention of the applicant in the above petition.

4. Mr. Dani, learned senior counsel for the petitioners, seeks to challenge the impugned notification forming the Panvel Municipal Corporation on the following grounds :-

1. The notification as contemplated under Article 243Q of the Constitution of India declaring the proposed area as larger urban area by taking into consideration the factors specified in sub-clause 2 of the Article 243Q is *sine qua non* for the purposes of setting up a Corporation for any area which is hitherto not an urban area.

2. Article 243Q(2) mandates the personal satisfaction of the Governor in respect of fulfillment of the factors specified in sub-clause 2 of Article 243Q.

3. The notification contemplated under Section 4(2) of the Village Panchayats Act thereby ceasing the existing villages declared under Article 243(g) of the Constitution of India and which are included in the Panvel Municipal Corporation has not been issued after effective and/or meaningful consultation with the Gram Sabha, Standing Committee and Panchayats

concerned before issuance of final notification under Section 3(2) of the Corporations Act.

4. Article 243(g) of the Constitution of India also mandates a notification to be issued by the Governor upon his personal satisfaction.

5. Mr. Dani, learned senior counsel, elaborated his submission by inviting our attention to the provisions of the Constitution of India and the relevant statutes, and submitted that the powers of the State Government to declare any area as a larger urban area are restricted to such areas which are urban areas. In other words, under Section 3(2) of the Corporations Act, the Government has power to declare a larger urban area only in respect of an already existing urban area. He relied upon the decision of a Division Bench of this Court in **Talegaon Village Panchayat versus State of Maharashtra and anr. (2009) 6 Mh.LJ. 224** and another decision of another Division Bench in the case of **Ashok Khetoliya versus the State of Rajasthan and anr. 2015 SCC Online Raj 6408**. Mr. Dani further submitted that Article 243Q(2) of the Constitution of India mandates personal satisfaction of the Governor in respect of the fulfillment of the factors specified therein. Thus, before formation of the Municipal Corporation, the notification of the Governor is a must, which is lacking in the present case. Mr. Dani, in this regard, relied upon a decision in the case of **State of Madhya Pradesh versus Abhinesh Mahore (2015) 2 MP LJ 39**. Regarding

notification under Section 4(2) of the Village Panchayats Act is concerned, he submitted that firstly the same is issued without effective and/or meaningful consultation of the Gram Sabha, Standing Committee and the Panchayat concerned and that too only after final notification under Section 3(2) of the Corporations Act. He also contended that the notification under Section 4(2) of the Village Panchayats Act is again required to be issued by the Governor upon his personal satisfaction in the light of the provisions of Article 243Q(2) of the Constitution of India.

6. Mr. Sakhare, learned senior counsel and Mr. Vagyani, learned GP vehemently opposed the petition. They submitted that on 23rd November, 2015, a study group/committee under the Chairmanship of Divisional Commissioner, Konkan Division was formed to study the feasibility of the proposed Panvel Municipal Corporation. On 6th May, 2016, a report of the said committee was received by the State Government. On 16th May, 2016, a draft notification for calling suggestions and objections within one month from the date of notification regarding Government's intention to form Panvel Municipal Corporation comprising of existing area of Panvel Municipal Council and surrounding 68 revenue villages was published. By 15th June, 2016, 3936 suggestions and objections in response to the said draft notification were received by the Collector, Raigad. The Divisional

Commissioner heard the suggestions and objections received in response to the draft notification dated 16th May, 2016 and, thereafter, sent his report to the State Government which was received by it on 29th July, 2016. Meanwhile, the State Election Commission prohibited the State Government from altering the boundaries of the existing Municipal Councils and Municipal Corporations. The intervenor, thereafter, filed writ petition No.9257 of 2016 seeking direction to the Government to take decision in respect of declaration of a larger urban area of the Municipal Corporation of the City of Panvel in pursuance of the draft notification dated 16th May, 2016. This Court, by an order dated 23rd August, 2016, directed the Government to take necessary decision as expeditiously as possible and, in any case, within a period of one week from the date of the order and complete the formalities, if any, thereafter within a period of two weeks. On 29th August, 2016, the CEO, ZP, Raigad, directed to send report regarding resolutions of Village Panchayat and Gram Sabha of the villages to be included into Panvel Municipal Corporation and Standing Committee of the Raigad Zilla Parishad regarding their inclusion in the proposed area of the Panvel Municipal Corporation. Meanwhile, between 7th September, 2016 to 15th September, 2016, 23 Gram Panchayats and Gram Sabhas, in pursuance of the notification dated 16th May, 2016, held meetings and passed resolutions between 7th September, 2016 to 15th September,

2016. On 16th September, 2016, the Block Development Officer, Panchayat Samiti, Panvel, submitted report regarding the resolutions of these Gram Panchayats and Gram Sabhas to the CEO, Zilla Parishad, Raigad. The meeting of the Standing Committee of the Zilla Parishad, Raigad was scheduled on 23rd September, 2016 to discuss the proposal of formation of Panvel Municipal Corporation. However, for want of quorum, it was adjourned to 27th September, 2016 and rescheduled on 28th September, 2016. On 28th September, 2016, the Standing Committee of the Zilla Parishad, Raigad, passed a resolution and submitted a report to the State Government on the same day. The Government considered this report and thereafter, took a decision to include 29 villages in the proposed area of Panvel Municipal Corporation and, accordingly, notification to that effect was issued under Section 3(2) of the Corporations Act and Section 6(1)(a) of the Nagar Panchayats Act. Mr. Sakhare, learned senior counsel and Mr. Vagyani, learned GP further submitted that the decision to form Panvel Municipal Corporation by issuing the impugned notification is taken after complying with the provisions of the relevant statutes. They submitted that though the notification under Section 3(2) of the Corporations Act was issued on 26th September, 2016, the same was to take effect from 1st October, 2016, and prior to that, a notification dated 29th September, 2016 under Section 4(2) of the Village Panchayats Act was issued. They submitted

that before issuance of the notification under Section 4(2) of the Village Panchayats Act, the Gram Sabha, Standing Committee and Panchayats of the concerned villages were consulted. Lastly, they submitted that the decision of the Government to form Panvel Municipal Corporation is a conscious decision which does not warrant interference of this Court.

7. Mr. Kumbhakoni, learned senior counsel for the intervenor, also opposed the petition. He took us through various provisions of the Constitution of India and relevant statutes and submitted that the proposition of the petitioners that only Governor can constitute a larger urban area is thoroughly misplaced. He submitted that there is no necessity to issue notification by the Governor under Section 4(2) of the Village Panchayats Act and, it would suffice, if the same is issued in the name of the Governor. Regarding contention of the petitioners that only an urban area can be converted into a larger urban area, Mr. Kumbhakoni submitted that there is no bar for issuing notification for converting any area into a larger urban area. Mr. Kumbhakoni, in support of his submission, heavily relied upon a decision of the Apex Court in the State of ***Uttar Pradesh vs. Pradhan Sangh Shetre Samiti***, ***AIR 1955 SC 1512*** and a decision of this Court in ***Ashok Ganpat Jadhav and anr. vs. State Election Commission, Mumbai, 2000 (4) Mah.LJ.150***.

8. In order to appreciate the controversy raised in the petition, it is necessary to make reference to the provisions of the Schedule VII, List II, Entry 5 of the Constitution of India which reads thus:

“5. Local Government, that is to say, the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlement authorities and other local authorities for the purpose of local self-Government or village administration.”

In terms of this Entry, the legislative competence for making law relating to constitution of Local Self-Government like municipal corporations is of the State Legislature. Constitutionally, it is not permissible for the Parliament to enact law that regulates in any manner the constitution of the municipal corporations. By 73rd amendment to the Constitution of India, the Parliament inserted Part IX and IXA in the Constitution which deals with the Panchayats and Municipalities respectively. However, insertion of these parts in the Constitution was carried out without amending the aforesaid List II of the 7th Schedule and taking away the powers of the State Legislature to enact law in regard to constitution of the Municipal Corporations. This amendment in the Constitution is aimed to provide guidelines for enacting law relating to Local Self-Government. Consequently, despite insertion of Part IX and IXA in the Constitution, it is the State Legislature,

which has the sole legislative competence, to the exclusion of the Parliament to make laws in that regard.

9. In view of the provisions of Article 243N in Part IX and Article 243ZF in Part IXA, the State Laws were required to be amended so as to bring the Local Laws in conformity with the constitutional provisions that were newly added. Accordingly, every State Legislature has amended its own State Laws dealing with the said subject. It is pertinent to note that neither the Parent Statutes nor the subsequent amendments made therein by every State Legislature are similar, much less identical, to each other. More particularly, the amendments carried out by the respective State Legislature of different States in the country, to bring their respective State Laws dealing with the said subject in tune with the provisions of the said two parts of the Constitution, are distinctly different from each other.

10. In the light of the discussion made herein above, we have to consider the petitioners' submission that the notification declaring a larger urban area must be issued by the Governor himself under Article 243-Q of the Constitution of India after taking into consideration the factors mentioned in sub-clause (2) thereof. In order to deal with the submission, it would be appropriate to quote the provisions of Article

243-Q of Part IX-A of the Constitution of India and Section 3 of the Corporations Act.

Article 243-Q of the Constitution of India reads as under :

“ 243-Q. Constitution of Municipalities- (1) There shall be constituted in every State,—

(a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area;

(b) a Municipal Council for a smaller urban area; and

(c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part:

Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of the area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township.

(2) In this article, “a transitional area”, “a smaller urban area” or “a larger urban area” means such area as the Governor may, having regard to the population of the area, the density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors as he may deem fit, specify by public notification for the purposes of this Part.”

Thus, Article 243-Q contemplates existence of two kinds of area viz. a rural area and an urban area. Urban area is further classified into a smaller urban area and a larger urban area. The 3rd category is also contemplated viz. a transitional area. Article 243-Q gives power to the Governor to declare any area as a transitional area, a smaller urban area or a larger urban area. The factors to be taken into consideration by the Governor are also provided in the said Article.

Section 3 of the Corporations Act reads as under :

“[3. Specification of larger urban areas and constitution of corporations]

(1) The Corporation for every City constituted under this Act existing on the date of coming into force of the Maharashtra Municipal Corporations and Municipal Councils (Amendment) Act, 1994, specified as a larger urban area in the notification issued in respect thereof under clause (1) of Article 243-Q of the Constitution of India, shall be deemed to be a duly constituted Municipal Corporation for the larger urban area so specified forming a City, known by the name “ The Municipal Corporation of the City of ”.

(1A) The Corporation of the City of Nagpur incorporated under the City of Nagpur Corporation Act, 1948 for the larger urban area specified in the Notification issued in this respect under clause (2) of article 243-Q of the

Constitution of India shall, on and from the date of coming into force of the Bombay Provincial Municipal Corporations (Amendment) and the City of Nagpur Corporation (Repeal) Act, 2011, be deemed to have been constituted under this Act and accordingly the provisions of this Act shall apply to the area of the City of Nagpur.

(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 urban area with a population of not less than three lakhs as a larger urban area.

(2A) Every larger urban area so specified by the State Government under sub-section (2), shall form a City and there shall be a Municipal Corporation for such larger urban area known by the name of the “
Municipal Corporation of the City of”.]

(3) [(a) [Subject to the provision of sub-section (2), the State Government] may also from time to time after consultation with the Corporation by notification in the Official Gazette, alter the limits specified for any larger urban area under sub-section (1) or sub-section (2) so as to include therein, or to exclude therefrom, such area as is specified in the notification.]

[(b) Where any area is included within the limits of the [larger urban area] under clause (a), any appointments, notifications, notices, taxes, orders, schemes, licences, permissions, rules, by-laws or forms made, issued, imposed or granted under this Act or any other law,

which are for the time being in force in the larger urban area shall, notwithstanding anything contained in any other law for the time being in force but save as otherwise provided in section 129A or any other provision of this Act, apply to and be in force in the additional area also from the date that area is included in the City].

(4) The power to issue a notification under this section shall be subject to the conditions of previous publication.

[Provided that, where the population of any urban area, in respect of which a Council has been constituted under the provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, as per the latest census figures has exceeded three lakhs, the State Government may, for the purpose of constituting a Corporation under this Act for such urban area, with the same boundaries, dispense with the condition of previous publication of the notification under this section.]”

This provision makes it clear that sub-section (1) of Section 3 of the Corporations Act deals with a situation where the Governor has issued an appropriate notification under Article 243-Q(2) of the Constitution of India and declares a larger urban area covered by such notification, if any, as a “deemed to be duly constituted municipal corporation”. From the language of this Section, it is clear that for such “a deemed” constitution of a municipal corporation, the State

Government is not required to take any steps towards its constitution unlike the rest of the provisions of Section 3.

Sub-section (2) of Section 3 starts with the words "Save as provided in sub-section (1)". These words indicate that the said provision is a distinct and independent provision from the sub-section (1) which enables the constitution of a corporation. The reading of this sub-section makes it unequivocally clear that the same empowers the State Government and not the Governor to constitute a corporation. While exercising this power, no doubt, the State Government must have regard to all the factors mentioned in clause (2) of Article 243-Q, which the Governor is required to take into consideration, while issuing a notification under the said constitutional provisions which results in constituting "a deemed" municipal corporation" under sub-section 1 of Section 3 of the Corporations Act.

Similarly, the language of sub-section 2A and other sub-sections of Section 3 makes it abundantly clear that the State Government has the statutory power, authority and jurisdiction to constitute a corporation, independent of and apart from the constitutional power, authority and jurisdiction of the Governor, to issue a notification which results in the constitution of "a deemed" municipal corporation".

Section 2(30A) of Corporations Act defines “a larger urban area” as the area specified as larger urban area in the notification issued under sub-clause (2) of Article 243-Q of the Constitution of India or under “the Act”. This definition of the term “larger urban area” also lends support to the proposition that such an area can be constituted by the Governor under Article 243-Q as well as the State Government under the local law.

It is thus clear that without there being any notification under Article 243Q(2) by the Governor, it is open in law for the State Government to constitute a municipal corporation. In that view of the matter, the contention of the petitioners to the effect that only the Governor can constitute a larger urban area is misplaced and liable to be rejected.

11. Mr. Dani, learned senior counsel submitted that the power of the State Government to declare any area as a larger urban area is restricted to such areas which is an urban area, though attractive, on deep scrutiny of the provisions of Sections 3(2), 3(2A) and (3) of the Corporations Act, is liable to be rejected. The Village Panchayats Act or the relevant laws that deal with municipal councils or municipal corporations do not define rural area or urban area. In the absence of such definition, there is no statutory bar or prohibition on the State

Government from issuing notification from converting any local area of the Panchayat into a Corporation provided it has the minimum required population i.e. population not less than 3 lacs. That apart, the sub-section (2) of Section 3 of the Corporations Act deals with the powers of the State Government to constitute a larger urban area. Sub-section (3) deals with the powers of the State Government to alter the limits of the larger urban area constituted under sub-section (1) or sub-section (2) so as to include therein, or to exclude therefrom such area as is specified in the notification. Under sub-section (3), the limits of the larger urban area can be altered by including any area or excluding any area from larger urban area as specified in the notification. Thus, this sub-section does not put an embargo on the power of the State Government to include only an urban area in a larger urban area. In other words, in exercise of powers under sub-section 3(a), the State Government can alter the limits of a larger urban area by including any local area. Therefore, after constitution of a larger urban area or corporation, if local area of panchayat can be included so as to alter the limits of such larger urban area or corporation, there is no reason why such area cannot be included in larger urban area at the time of its formation under sub-section 2 of Section 3 of the Corporations Act. We, therefore, do not find any merit in the submission of Mr. Dani, learned senior counsel in this regard.

12. The decision of the Division Bench of this Court in **Talegaon Village Panchayat (supra)** and the decision of Rajasthan High Court in **Ashok Khetoliya (supra)** relied upon by Mr. Dani, will not come to the petitioners' rescue.

In the former case, Talegaon Village Panchayat was included in the Igatpuri Municipal Council by the notification issued in the year 1998. The notice inviting objections under Section 3(3) of the Nagar Panchayats Act was issued in the year 1991. The objections were considered and, thereafter, impugned notification including Talegaon Village Panchayat in Igatpuri Municipal Council was issued in 1998. The submission of the petitioner therein was that no proclamation of the Governor as required under Article 243-Q was issued and, therefore, the impugned notification was bad. The Division Bench of this Court held that Article 243-Q would apply only when new municipal corporation, municipal council or nagar panchayat is to be established.

In the latter case, the challenge was to the notification issued by the State, whereby Gram Panchayat Roopbas, District Bharatpur was converted into Municipal Board. The Division Bench found that no public notification as contemplated under Article 243-Q of the Constitution of India was issued specifying Gram Panchayat Roopbas as "a transitional area". This decision was taken in the light of the provisions of Section 2(lxv) of the Rajasthan Municipalities Act, 2009,

which defines “a transitional area”, “a smaller urban area” or “a larger urban area” to mean an area specified under Article 243Q of the Constitution of India. This judgment has no application to the facts and circumstances of the present case in the light of the provisions of Section 2(30A) of the Corporations Act, whereunder the term “a larger urban area” is defined as the area specified as larger urban area under Article 243-(Q)(2) of the Constitution of India or under “the Act”.

13. This takes us to next submission of Mr. Dani that the impugned notification under Section 4(2) of the Village Panchayats Act is required to be issued in the like manner as contemplated under Section 4 (1) of the Village Panchayats Act and Article 243(g) of the Constitution of India and, therefore, the State Government has no power to issue such notification and it is required to be issued by the Governor under Article 243 (g) of the Constitution of India. Mr. Dani, in support of this proposition, strongly relied upon the decision of the Madhya Pradesh High Court in **the State of Madhya Pradesh v. Abhinesh Mahore** *(supra)*. Section 4 of the Village Panchayats Act deals with declaration of village, which reads as under :

“S.4. Declaration of village.-

(1) Every village specified in the notification issued under clause (g) of Article 243 of the Constitution of India shall

be known by the name of that village specified in that notification.

Provided that, where a group of revenue villages or hamlets or other such administrative unit or part thereof is (specified in that notification) to be a village, the village shall be known by the name of the revenue village, hamlet or as the case may be, administrative unit or part thereof, having the largest population.

(2) Where the circumstances so require to include or exclude any local area from the local area of a village to or alter the limits of a village or that a local area shall cease to be a village, then the notification issued in the like manner after consultation with the Standing Committee and the Gram Sabha and the Panchayat concerned, at any time, may provide to --

(a) include within, or exclude from any village, any local area or otherwise alter the limits of any village, or

(b) declare that any local area shall cease to be a village; and thereupon the local area shall be so included or excluded, or the limits of the village so altered, or, as the case may be, the local area shall cease to be a village."

Under Article 243(g) of the Constitution of India, "village" means a village specified by the Governor by public notification to be a village for the purposes of this Part and includes a group of villages so specified. Under sub-section (1) of Section 4 of the Village Panchayats Act, every village specified in the notification issued under Article 243(g)

of the Constitution of India shall be known by the name of that village specified in that notification. Sub-section (2) of Section 4 deals with inclusion or exclusion of any local area from the local area of a village or to alter the local limits of a village or cessation of any local area to be a village. In terms of these sub-sections, inclusion or exclusion of any local area from a village or cessation of any local area to be a village can be effected by issuing notification in the like manner after consultation with the Standing Committee, Gram Sabha and the Panchayat concerned.

It is true that in view of the provisions of Section 4(2) of the Village Panchayats Act, a notification of cessation of a village is required to be issued “in the like manner”, meaning thereby, in the manner in which a notification is required to be issued under sub-section (1) of Section (4) i.e. under clause (g) of the Article 243 of the Constitution of India. Nevertheless, it does not mean that such notification either under sub-section (1) or sub-section (2) is required to be issued by the Governor himself, merely because Article 243(g) of the Constitution uses the phrase “specified by the Governor by public notification”. This proposition is supported by the decision of Apex Court in **State of Uttar Pradesh vs. Pradhan Sangh Shetre Samiti(supra)**. In this case, one of the question which fell for consideration before the Apex Court was the constitutional validity of Section 2(t) of the U.P. Panchayat Raj

Act. This section defines “village” to mean any local area recorded as village in the Revenue Record of the district in which it is situate and includes any area which the State Government may, by general or special order, declare to be a village for the purpose of the Act. The constitutional validity of this section was challenged on the ground that same is unconstitutional or contrary to Article 243(g) of the Constitution of India. The Apex Court, in paragraph 9, held that the functions under Article 243(g) are to be exercised by the Governor on the aid and advise of his Council of Ministers. The Apex Court also held that the Governor does not exercise executive functions individually or personally and the executive action taken in the name of the Governor is the executive action of the State and, therefore, function under Article 243(g) is to be exercised by the Governor on the aid and advise of his Council of Ministers. This decision of the Apex Court is followed by the Division Bench of this Court in **Ashok Ganpat Jadhav (supra)**.

14. In the present case, admittedly, the notification of cessation of village which have been included in the newly constituted Corporation has been issued in “the name of the Governor”, though not by the Governor himself and, therefore, in our considered view, it fully complies with the statutory requirement, bringing to an end the existence of all the villages covered under the newly formed Panvel Municipal Corporation.

15. A reference must be made to the decision of the Madhya Pradesh High Court in the case of **the State of Madhya Pradesh vs. Abhinesh Mahore (supra)**.. We have gone through the said decision. In our opinion, this decision has no application to the facts and circumstances of the present case. In this case, the Division Bench held that the exercise of powers or discharge of function by the Governor in the context of Article 243-Q which has been introduced by way of (Seventy – Fourth Amendment) Act, 1992, is the function or discretion to be exercised by the Governor falling under the second part of clause (1) of Article 163 of the Constitution of India. This decision, in our considered opinion, has no application to the facts and circumstances of the present case, in the light of provisions of sub-section 2 of Section 5-A of the M.P.Municipal Corporation Act, 1961. The question which came for consideration before the Division Bench was whether the powers of the Governor to consider the objections to be taken by interested persons can be delegated to the Collector. The Division Bench noted the provisions of sub-section 2 of Section 5-A of M.P. Municipal Corporation Act, under which, the Collector after receiving the objections in writing with regard to the intention to include or exclude certain areas from the limits of Municipal areas, must place the same before the Governor, who in turn, is expected to consider those objections before taking any final decision as stated above. The

provisions of Section 4(2) of the Maharashtra Village Panchayats Act and the provisions of Section 5-A of the M.P. Municipal Corporation Act are not similar and there is substantial difference between them and, therefore, this decision is not applicable to the facts and circumstances of the present case.

16. Let us consider the next challenge of Mr. Dani that the notification to constitute a larger urban area is issued without effective consultation of the Standing Committee, Gram Sabha and the Panchayat. In our considered view, this submission is also liable to be rejected.

The draft notification inviting objections for formation of a larger urban area was issued on 16th May, 2016, and thereafter from 7th September, 2016 to 15th September, 2016, several Gram Panchayats and Gram Sabha held meetings and passed resolutions and submitted the report to the Zilla Parishad through Panchayat Samiti. The Standing Committee of Zilla Parishad thereafter convened meeting to discuss the said subject on 16th September, 2016. However, this meeting was adjourned for want of quorum initially to 27th September, 2016 and rescheduled on 28th September, 2016. On that day, the Standing Committee passed a resolution and sent the same to the Government on 28th September, 2016. The Government considered this resolution

and took a decision to issue cessation notification under Section 4(2) of the Village Panchayats Act in respect of 29 villages on 29th September, 2016. It is true that prior to this, notification under Section 3(2) of the Corporations Act declaring a larger urban area of Panvel Municipal Corporation was issued on 26th September, 2016. However, the same was to take effect only on 1st October, 2016 and prior to this, on 29th September, 2016, a notification under Section 4(2) of the Village Panchayats Act came to be issued. At this stage, a reference must be made to the decision of the Apex Court in ***Uttar Pradesh vs. Pradhan Sangh Shetre Samiti(supra)***. In this decision, it is recognised that in urgent matter, even a post decisional hearing is sufficient compliance of the principle of natural justice viz. *audi alteram partem*. In the present case, the notification dated 26th September, 2016 under Section 3(2) of the Corporation Act was issued in view of urgency as the High Court by passing the order dated 23rd August, 2016, in writ petition No.9257 of 2016, directed the Government to take decision expeditiously.

17. Before parting with the judgment, we must deal with the grievance of Mr. Shetye, learned counsel for the State Election Commission that the State Government must take decision regarding formation of a smaller urban area or a larger urban area, change of

boundaries, expansion of the areas of the corporation/council and local bodies in advance i.e. before six months prior to the expiry of the term of the said bodies. Mr. Shetye submitted that the term of the Panvel Municipal Council was due to expire on 22nd December, 2016, and therefore, in anticipation, the State Election Commission started process of election of the new body of the said council in June-2016 and formation of wards is already complete. He also submitted that the election to the Panchayat Samitis and Zilla Parishad are to be held in February, 2017 and, therefore, process in this regard was also started on 18th August, 2016.

18. We find much substance in the grievance of Mr. Shetye, learned counsel for the State Election Commission. Part IX and IX A was inserted in the constitution by virtue of (Seventy – Fourth) Amendment Act, 1992. The object of introducing these provisions was that, in many States, the local bodies were not working properly and timely elections were not being held and the nominated bodies were continuing for long periods. Elections had been irregular and many times unnecessarily delayed or postponed and the elected bodies were superseded or suspended without adequate justification at the whims and fancies of the State authorities.

19. Under Articles 243-K and 243-ZA of the Constitution of India, which pertains to the elections of the panchayats and municipalities respectively, the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of all elections is vested in a State Election Commission. Articles 243-E and 243-U mandates that the duration of every panchayat or, as the case may, the municipality shall be for a period of 5 years from the date appointed for its first meeting and no longer unless dissolved under any law for the time being in force. Similar provisions are to be found in the relevant statutes viz. Maharashtra Municipal Corporations Act 1949, Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act 1965, Maharashtra Zilla Parishads and Panchayat Samitis Act 1961 and Maharashtra Village Panchayats Act 1961. Thus the duration of the panchayat or municipality is fixed for five years from the date of its first meeting and no longer. It is incumbent upon the Election Commission and other authorities to carry out the mandate of the Constitution and to see that a new panchayat or municipality is constituted in time and elections to the panchayats or municipalities are conducted before the expiry of its duration of five years as specified under Articles 243-E and 243-U of the Constitution of India. The Apex Court in **Kishansing Tomar versus the Municipal Corporation of the City of Ahmedabad and ors.(2006) 8 SCC 352** has held that the powers

of the State Election Commission in respect of conduct of elections is no less than that of the Election Commission of India in their respective domains. It was also held that the State Election Commission are to function independently of the State Governments concerned in the matter of their powers of superintendence, direction and control of all elections and preparation of electoral rolls for, and the conduct of, all elections to the panchayats and municipalities.

20. So far as Panvel Municipal Council is concerned, taking the constitutional mandate into consideration, the State Election Commission started the process of election of new body in June, 2016, as much as the term of that council was to come to an end on 22nd December, 2016. The State Election Commission accordingly informed the Government by various letters between January to August that the decision regarding formation of a smaller urban area or a larger urban area, change of boundaries, expansion of the areas of the corporation council and local bodies should be taken in advance. Despite this, the notification to form a larger urban area of the Panvel Municipal Corporation was taken by the notifications dated 26th September, 2016 and 29th September, 2016, under which the said Corporation was to come into existence w.e.f. 1st December, 2016. We have already upheld the said notifications. However, we must note that

the exercise undertaken by the State Election Commission for formation of the wards for Panvel Municipal Council has rendered futile. In our considered opinion, the Government must take decision regarding the formation of a smaller urban area or a larger urban area, change of boundaries, expansion of the areas of the corporation/council and local bodies well in advance ie. at least six months prior to the expiry of the term of such council/corporation, so as to avoid unnecessary exercise and save public time and money. We hope and trust that, in future, the Government will consider the above aspect and take appropriate decision well in time.

21. In the light of the above discussion, we find that the petition is devoid of any merits and the same is dismissed. Rule is discharged.

22. Civil Application No.2465 of 2016 accordingly stands disposed.

(ANUJA PRABHUDESSAI, J.)

[RANJIT MORE, J.]