

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

Writ Petition No. 11468 of 2016

District : Dhule

Sumit s/o. Namdeorao Patil,
Age : 37 years,
Occupation : Service,
R/o. 33, Vikasnagar, Sakri,
Taluka Sakri, Dist. Dhule.

.. Petitioner.

versus

1. The State of Maharashtra,
Through Secretary,
Urban Development Department,
Maharashtra State,
Mantralaya, Mumbai - 32.
2. The District Collector,
Dhule.
3. The Tahsildar,
Sakri, Taluka Sakri,
District Dhule.
4. The Sakri Nagar Panchayat,
Sakri, Taluka Sakri,
Dist. Dhule,
Through its Chief Officer.
5. Sakri Grampanchayat, Sakri,
Taluka Sakri,
District Dhule,
through its Gramsevak.

.. Respondents.

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Mr. N.V. Gaware, Advocate, for the petitioner.

*Mr. P.S. Patil, Asst. Government Pleader, for
respondent nos.01 to 03.*

Mr. D.S. Bagul, Advocate, for respondent no.04.

Respondent no.05 served (Absent).

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**CORAM : S.V. GANGAPURWALA &
SMT. VIBHA KANKANWADI, JJ.**

DATE : 02ND NOVEMBER 2017

JUDGMENT *(Per Smt. Vibha Kankanwadi, J.) :*

01. The petitioner has challenged the notification dated 23.02.2015 published by respondent no.01 - State for conversion of Village Panchayat, Sakri, into Nagar Panchayat, Sakri, District Dhule, and prayed that the said notification be declared as illegal, arbitrary, violative of Articles 14 & 243-Q of the Constitution of India and also under Section 341-A of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 [**For short, hereinafter referred to as "Act of 1965"**].

02. The factual matrix leading to the petition are that the petitioner is the resident of ward no.05 of village Sakri. Earlier there was Village Panchayat for the said village. However, respondent no.01 - State has taken conscious decision to convert the same into Nagar Panchayat. He states that for conversion of Village Panchayats into transitional area, mandatory procedure as contemplated under Section 341A of the Act of 1965 has to be scrupulously followed. The power in that regard flows from Article 243Q of the Constitution of India. A meeting of the *Gram Sabha* was convened on

01.05.2014 to discuss the subject of conversion of Village Panchayat into Nagar Panchayat. Copies of proclamation in Marathi were not published in local newspaper and, therefore, the objections could not be raised before the competent authority i.e. the Collector. Consequent to that, Collector had not forwarded those objections to the State Government and, therefore, the State Government had no opportunity to apply its mind. Under such circumstances, the villagers of Sakri have been put to great hardship and jeopardy.

03. It is further contention of the petitioner, that a draft notification disclosing intention of the State to convert the Village Panchayat into Nagar Panchayat in respect of Sakri village was published on 01-03-2014. However, pursuant to Section 341A of the Act of 1965, said draft notification ought to have been published in one of the newspapers having wide circulation in the area to be specified in the final notification and further inviting objections within a period of 30 days from the date of such notification. The said rule is mandatory. This rule has not been followed. Therefore, the said notification is illegal. Hence, the writ petition.

04. Respondent nos.01, 02 and 04 have filed affidavits in reply. It can be said briefly that all these authorities in their affidavits in reply have stated that the draft notification was published in the official gazette. Objections from two villagers

were raised. They were forwarded to the State Government. The said draft notification was, in fact, made available at the conspicuous place, such as, Gram Panchayat. At the relevant time, due to election in Dhule District, Government was unable to publish proclamation but the news regarding conversion of the Village Panchayat into Nagar Panchayat was well known to the villagers. Now, Sakri Nagar Panchayat is formed. The elections have already been conducted and from last three years, employees and councillors are working. Even after conversion into Nagar Panchayat, being institution of self-government, the Nagar Panchayat has also exercised its powers as enshrined by the Constitution of India and further imposed taxes, started collecting funds. The State Government has also provided funds and infrastructure to the citizens. As regards petitioner is concerned, it has been contended that the petitioner is actively involved in the politics. The present petition is the outcome of political rivalry. He being inhabitant of Sakri, was well aware about the decision being taken for the conversion. However, he did not raise any objection. He has taken part in the election process and, therefore, the writ petition at a belated stage is not maintainable.

05. Learned Advocate appearing for the petitioner has submitted that the respondents are, in fact, admitting the fact that the draft notification was never published in a newspaper having wide

circulation over the area to be notified. The said condition is mandatory as it has been held in Writ Petition No. 07061 of 2015 (*Rajesh Sharad Mapara & others Vs. The State of Maharashtra & others*) decided by this Court on 14-03-2016. Further, he has relied on decision of the Hon'ble Apex Court in the case of *State of Jammu and Kashmir Vs. R.K. Zalpuri & others* [2016 AIR (SC) 3006] wherein it has been that the question of delay and laches in all kinds of cases would not curb or curtail the power of writ court to exercise the discretion. He submits that merely because there is delay, the respondents cannot take advantage of non-publication of the draft notification in the newspaper. When the mandatory provision has not been adhered to, there is no bar for this court to exercise its writ jurisdiction and quash the said notification.

06. Per contra, it has been argued on behalf of the respondents, that the petitioner being inhabitant of Sakri, was well aware about the decision for conversion. The election for the Nagar Panchayat took place. There are about 17 councillors. The petitioner had cast vote in the election process. The draft notification was published in the official gazette on 01st March 2014 and the petition has been filed on 27th June 2016. Therefore, it suffers from delay. There is absolutely no need to set the clock in anti-clockwise position.

07. Respondent no.01 issued draft notification in exercise of powers conferred by Sub-Sections 1, 1A

and 2 of Section 341A of the Act of 1965, with a view to specify the local area of Village Panchayat, Sakri in Dhule District, being an area in transition from rural area to an urban area and a Taluka headquarter to be a transitional area and to constitute a Nagar Panchayat by the name of Sakri Nagar Panchayat for the said local area on 01.03.2014. In affidavit in reply by the respondents and the documents appended to the same, it has been noticed that the said draft notification was never published in newspaper having wide circulation in the local area. Now, the petitioner prays for quashing of said notification. However, it is to be noticed that as it has been pointed out by the respondents, the elections have been held and the petitioner does not dispute that he had cast vote in the said election. That means, he has participated in the proceedings. Under such circumstances, the petition suffers from delay and laches. In other words, it is to be noted that the petitioner, though aware about the draft notification, that was published in official gazette on 01.03.2014, had not challenged the same before appropriate authorities including this Court before 27.06.2016. In fact, in the petition itself, he has stated that after conversion of the Village Panchayat into Nagar Panchayat, Tahsildar was appointed to look after affairs of the newly constituted Nagar Panchayat. The elections were held and the newly elected body is managing the affairs of the Nagar Panchayat.

08. There is absolutely no justification for the delay that has been caused while approaching this Court in the petition. No doubt, in the aforesaid judgment, this Court has taken a view that the issuance of such notification in local newspaper is a mandatory condition. However, in order to quash the notification, the distinguishing feature is that in the said Writ Petition, a swift action was taken immediately by the petitiners. However, here, present petitioner approached late and even after participating in the election process. The ratio laid down in the case of *Jammu and Kashmir Vs. R.K. Zalpuri & others (supra)* will not come to the help of the petitioner because in the said decision itself, the Hon'ble Apex Court has observed that the writ court while deciding writ petition is required to remain alive to the nature of the claim and the unexplained delay on the part of the writ petitioner. In the said judgment, the Hon'ble Apex Court has referred the judgment in the case of *Tukaram Kana Joshi & others Vs. Maharashtra Industrial Development Corporation & others [(2013) 1 SCC 353]*, wherein it has been held thus :

" Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if the whole thing shocks the judicial conscience, then the Court

should exercise the discretion more so, when no third-party interest is involved. "

09. At the cost of repetition, therefore, it is to be stated that here, third party interest have been created when the elections have been held. Presently, 17 councillors are managing the affairs of the Nagar Panchayat. All the facilities, which a Nagar Panchayat will receive, have been accorded to Sakri Nagar Panchayat. Under such circumstance, the discretion to exercise power under Article 226 in favour of the petitioner does not arise.

10. The petition is devoid of merits and the same is dismissed. No costs.

(Smt. Vibha Kankanwadi)

JUDGE

(S.V. Gangapurwala)

JUDGE

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