

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

WRIT PETITION NO.8646 OF 2016

- 1 Mitharam S/o Rupchand Rathod
Aged: 64 years, occu: Agriculture
And Social Work
R/o Rupchandnagar,
Tq. Renapur, Dist. Latur
- 2 Pradeep S/o Mitharam Rathod
Aged: 37 years, occu: social work
& elected Member of Panchayat
Samiti, Renapur
R/o Rupchandnagar,
Tq. Renapur, Dist. Latur
- 3 Pradip S/o Sudhakar Kale,
Aged: 26 years, occu: Agriculture
R/o Kalwadi, tq. Renapur
Dist. Latur
- 4 Vijay S/o Motiram Rathod
Aged: 28 years, opccu: service
as Teacher in Private School
R/o Nehru Nagar, Tq. Renapur
Dist. Latur.
- 5 Shankar S/o Dhawaji Aade,
Aged: 58 years, Occu: Agriculture,
R/o Hanumantwadi, Tq. Renapur
Dist. Latur

Petitioners

VERSUS

- 1 The State of Maharashtra,
Through Principal Secretary to the
Government of Maharashtra,
in Urban Development Department,
Mantralaya, Mumbai – 32
- 2 The Secretary to the Government
of Maharashtra in Rural
Development & Water

Conservation Department,
Mantralaya, Mumbai – 32

3 The Collector, Latur

4 The Tahsildar, Renapur
Dist. Latur

5 The Chief Executive Officer,
Zilla Parishad, Latur

Respondents

6 Gajendra S/o Manohar Chavan
Age: 32 years, occu: Agril
R/o Renapur, Tq. Renapur
Dist. Latur

7 Shyamsudar S/o Gangadhar Chakre
Age: 36 years, occu: nil
R/o Renapur, tq. Renapur,
Dist. Latur

8 Vitthal S/o Maroti Katke
Age: 62 years, occu: Agril
R/o Renapur, Tq. Renapur
Dist. Latur

(Respondents No.6 to 8
Intervenors)

Mr.A. B. Jagtap h/f Mr. V. D. Sapkar advocate for petitioners

Mr. A.B. Girase, Government Pleader for respondent Nos.1 to 4

Mr. D.S. Mali advocate for respondent No.5

Mr. B.B. Dahiphale advocate for intervenors

**CORAM : R.M. BORDE &
K.L. WADNE, JJ.**

(DATE : 13TH OCTOBER, 2017)

JUDGMENT

(Per: R.M. Borde, J)

1 Heard.

2 Rule. With the consent of the parties, Petition is taken-up for final disposal at admission stage.

3 The petitioners herein, are praying for issuance of writ, direction or order in the nature of a writ for quashing the Notification dated 13.7.2016 issued by the State Government, constituting Nagar Panchayat for the village Renapur in Latur district. The Notification has been issued in exercise of powers conferred under section 341-C, subsection 1, (1-A) and 2 of the Maharashtra Municipal Councils, Nagar Panchayats & Industrial Townships Act, 1965 (herein after referred to as the Maharashtra Municipalities Act for the sake of brevity). The State Government, by issuing the Notification as referred to above, directed conversion of Renapur Village Panchayat into a transitional area for the constitution of Nagar Panchayat Renapur. The petitioners are also praying for restoring the status of Grampanchayat Renapur. In the companion Writ Petition No.9591/2017 which is being disposed of along with the instant petition.

4 Renapur Village Panchayat was a group Grampanchayat consisting of seven villages by name Renapur, Kalewadi,

Hanmantwadi, Nehrunagar-Hake Tanda, Rejewadi, Sevadasnagar and Rupchandnagar. There was already a proposal moved for division of Village Panchayat Renapur and necessary steps were also taken by the Commissioner for dividing Renapur Group Panchayat into two separate village Panchayats. The Government of Maharashtra issued a Notification on 1.3.2014 within contemplation of section 341-A (1B) of the Maharashtra Municipalities Act. The Notification was issued in the Government Gazette, calling upon the concerned to lodge objections to the Notification, seeking conversion of local area of Renapur Group Grampanchayat into smaller urban area, Renapur Nagar Panchayat. It is the contention of the petitioners that, while issuing Notification under section 341(A) read with section 3(3) of the Act of 1965, neither the name of the local news paper was mentioned in the Notification on 1.3.2014 nor the said Notification is published in the local news paper, circulating in the area in Marathi language. It is further contended that, the copies of the proclamation in Marathi were not posted in conspicuous places like Panchayat Samiti, Grampanchayat etc. According to the petitioners, the Chief Executive Officer, Zilha Parishad, Latur had earlier moved a proposal to the State Government on 1.5.2015, pointing out the necessity of Nagar panchayat of Renapur, Rajewadi, Sevadasnagar area. The petitioners raised an objection to the Notification, contending that the geographical situation of the village is not

congenial for constituting one Nagar Panchayat. The State Government, however, according to the petitioners, without considering the relevant factors, as mentioned in section 341(1-b) of the Act, published final Notification on 13.7.2016, specifying whole area of Renapur Group Grampanchayat as transitional area, constituting Nagar Panchayat by name Renapur Nagar panchayat. A further Notification has been issued in exercise of powers conferred under section 256(1)(b) read with section 5 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, declaring the whole area of Grampanchayat Renapur as excluded from the Renapur Block of Latur District. A Notification has also been published under section 4(2)(b) of the Maharashtra Village Panchayats Act, where-under the State declared that, the group of revenue villages mentioned in the Notification shall cease to be the villages for the purpose of Part-IX of the Constitution of India. As a consequence of constitution of Renapur Nagar Panchayat, the petitioner No.2 Pradeep Rathod has been removed as a Member of Panchayat Samiti, Renapur. The petitioners contend that the Notification issued by the State Government, constituting smaller urban area, on abolition of Renapur revenue villages, is illegal and bad in law and as such, the Notification deserves to be quashed.

5 Section 341-A of the Maharashtra Municipal Councils, Nagar Panchayats & Industrial Townships Act, 1965 relates to Specification

of a transitional area and incorporation of a Nagar Panchayat. It is provided under subsection 1 that, the State Government may, having regard to the factors mentioned in clause (2) of Article 243Q of the Constitution of India specify, by notification in the Official Gazette, an area in transition from a rural to an urban area to be a transitional area. It is further provided that no such area shall be specified as transitional area unless:-

- (a) such area has a population of not less than ten thousand and not more than twenty-five thousand; and
- (b) such area is not more than twenty kilometers away from the territorial limits of any Municipal Corporation or a "A" Class Council and the percentage of employment in non-agricultural activities in such area is not less than twenty-five per cent; or
- (c) such area is more than twenty kilometers away from the territorial limits of any Municipal Corporation or a 'A' Class Council but the percentage of employment in non-agricultural activities in such area is not less than fifty per cent.

Subsection (1B) of Section 341-A provides that, prior to the publication of a notification under subsection (1) or (1A), the procedure prescribed in subsections (3), (4) and (5) of section 3 shall *mutatis mutandis* be followed.

6 It is the contention of the petitioners that, it was not open for the State government to notify Renapur village as a transitional area since the percentage of employment of the population in the village in non-agricultural activities is less than 25%. According to the petitioners, 90% population of village Renapur is engaged in agricultural activities and as such, it was not open for the State to direct the conversion of predominantly rural agricultural area into a smaller urban area. Apart from this, petitioners contend that the procedure prescribed under subsection 3, 4 and 5 of Section 3 of the Act of 1965 has not been adhered to. The petitioners contend that a preliminary Notification, inviting objections, has not been published in the local language, nor in a news paper, having wide circulation in the area. It is further contended that, the name of the news paper in which Notification was being published, has not been indicated in the Gazette, as required under subsection 3 of section 3 of the Act of 1965.

7 The objections raised by the petitioners in the petition have been controverted on behalf of the State, by presenting an Affidavit in reply. It is denied that, certain area of village Renapur are at a distance of 5 to 13 Kms from Taluka Head quarters. It is contended that, all the hamlets which were previously included in village Renapur are within the territory of 3 to 4 Kms from the Head Quarter i.e. Renapur periphery. It is contended that, MIDC area of

Latur is just within periphery of 10 – 15 Kms from the smaller urban area. It is denied that, agriculture is the sole source of income and livelihood of the population. As per the census report and the evaluation on the assessment date, it is observed that more than 25% of the population is engaged in non-agricultural activities. It is denied on behalf of the State that, there is violation of the provisions contained in section 341(1)(b) of the Act of 1965. The objection in respect of publication of Notification in the local news paper is also denied by the respondents. It is pointed out that the Preliminary Notification has been published in the local news paper Uva Chhatrapati. The publication is in English as well as Marathi languages. The news paper is having adequate circulation in the local area. It is true that Gazette Notification does not disclose the name of the local news paper in which Notification was to be published. Sub-section 3 of Section 3 provides that the State Government shall cause to be published in the official gazette and also in at least one news paper circulating in the area to be specified in the notification, a proclamation announcing the intension of Government to issue such notification, and inviting all persons who entertain any objection to the said proposal to submit the same writing with the reasons therefor, to the Collector of the District within not less than thirty days from the date of the publication of the proclamation in the official gazette.

8 It does appear that the name of the newspaper Yuva Chhatrapati has not been specified in the Notification published in the official gazette. On that count, admittedly, there is an infraction of sub-section 3 of section 3 of the Act of 1965. However, at the same time, it must be noted that the Nagar Panchayat has been constituted on 13.7.2016 and almost one and half year has passed after constitution of the smaller urban area. It is reported that the elections to the smaller urban area were also conducted after its formation. At this late stage of the proceedings, it would be imprudent to interfere with the decision taken by the State Government, on account of non-observance of technicalities provided in sub-section 3 of Section 3 of the Act of 1965.

9 The petitioners placed reliance on the Judgment in the matter of **State of Orisa versus Sridhar Kumar Malik reported in AIR 1985 SC 1411** to contend that, the breach of the provisions, mandating publication of Notification in the local language, would result in invalidation of such decision.

In the instant matter, as has been observed, there is a due compliance of provisions of section 3 in relation to publication of Notification in the local language.

Reliance is also placed on the Judgment in the matter of **Baldev Singh and others versus State of H.P. & others reported in AIR 1987 SC 1239** to contend that inclusion of purely

agricultural villages in the urban area, without extending proper opportunity to the residents involves civil consequences and leads to invalidation of such decision. It is contended on behalf of the State that, considering the nearness of the small urban area to MIDC Latur, a large percentage of population of Taluka Renapur is engaged in non-agricultural activities. The contention raised by the petitioners which require investigation in to factual aspect has been denied by the State. It would not be appropriate to deal with the fact finding enquiry in exercise of extraordinary jurisdiction under article 226 of the Constitution of India. There is also no reason to disbelieve the contention raised by the respondent State which is based on census data that a large chunk of population of Taluka Renapur is engaged in non-agricultural activities.

Similarly, reliance is placed on the Judgment in the matter of **Shri Ashok Ganpat Jadhav & others versus State Election Commission & others reported in 2000 (Supp.) Bom. C.R. 337** to highlight the contention that, observance of principles of natural justice is mandatory. There cannot be a dual opinion as regards the preposition. It is contended on behalf of the respondents that a proper opportunity has been given and the objections raised were also dealt with.

10 For the reasons recorded above, we do not find any substance in the contentions raised by the petitioners. No interference is

called for at this stage of the proceedings, after lapse of more than 1 ½ years of the constitution of Nagar Panchayat Renapur. The writ petition as such, stands dismissed.

11 Rule is discharged.

12 There shall be no order as to costs.

(K.L. WADNE, J)

(R.M. BORDE, J)

vbd