

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 7364 OF 2013**

Mohammedphiroz Ahmed Mulani & Ors.Petitioners.

Vs.

State of Maharashtra & Ors.Respondents.

**WITH
CIVIL APPLICATION NO. 2164 OF 2013
IN
WRIT PETITION NO. 7364 OF 2013**

Mohammedphiroz Ahmed Mulani & Ors.Petitioners.

Vs.

State of Maharashtra & Ors.Respondents.

And

Shri Ashok Babanrao Shinde & Anr.Applicants.

**WITH
WRIT PETITION NO. 7860 OF 2013**

Shri Ashok Babanrao Shinde & Anr.Petitioners.

Vs.

State of Maharashtra & Ors.Respondents.

Mr. Sarang Satish Aradhya for the Petitioners in WP No. 7364 of 2013.
Mr. Vishwanath S. Talkute for the Petitioners in WP No. 7860 of 2013
and for the Applicants in CAW No. 2164 of 2013.
Mr. C.P. Yadav, AGP for Respondent Nos. 1 to 4-State.

Mr. K.P. Wadte, Deputy Secretary, Revenue and Forest Department, Mantralaya present.

Mr. Pramod Gaikwad, Sub-Divisional Magistrate, Mangalwedha, Solapur present.

**CORAM : R.M. BORDE AND
A.S.GADKARI, JJ.
DATE : 1 MARCH 2017.**

PC.:-

Rule. Rule made returnable forthwith. By consent, heard for final disposal at the admission stage itself.

2 The Petitioners are objecting to the decision of the State Government of cancelling and/or withdrawing the final notification dated 26 July 2013, issued under Section 4 of the Maharashtra Land Revenue Code, 1966 (for short, "*the Code*"), prescribing the Revenue Sub-Division as Mangalwedha for Mangalwedha and Sangola Talukas in Solapur District. By virtue of notification dated 8 August 2013, the State Government proceeded to prescribe Pandharpur as a Sub-Division for Mangalwedha and Sangola Talukas of Solapur District in exercise of power conferred under Sub-Section (1) of Section 4 of the Code.

3 The State Government published a preliminary notification declaring its intention to prescribe Mangalwedha as the Sub-Division for Mangalwedha and Sangola Talukas in Solapur District. The draft notification was published by the State Government on 26 June 2012. Although the final notification was published in consonance with the draft notification, after considering the objections raised by the interested parties in that behalf on 26 July 2013, the State Government proceeded to issue a fresh amended notification on 8 August 2013, prescribing the change in the Sub-Division. The amended notification dated 8 August 2013, according to the Petitioners, is in breach of the provisions of Section 4 of the Code, as well as, Section 24 of the Bombay General Clauses Act, 1904 (for short, "*The Act*").

4 Section 4 of the Code, reads thus:-

"4. Constitution of revenue areas.- (1) The State Government may, by notification in the Official Gazette, specify-

- (i) the districts [(including the City of Bombay)] which constitute a division;*
- (ii) the sub-divisions which constitute a district;*

- (iii) the talukas which constitute a sub-division;*
- (iv) the villages which constitute a taluka;*
- (v) the local area which constitutes a village; and*
- (vi) alter the limits of any such revenue area so constituted by amalgamation, division or in any manner whatsoever, or abolish any such revenue area and may name and alter the name of any such revenue area; and in any case where any area is renamed, then all references in any law or instrument or other document to the area under its original name shall be deemed to be references to the area as renamed, unless expressly otherwise provided:*

Provided that, the State Government shall, as soon as possible after the commencement of this Code, constitute by like notification every wadi, and any area outside the limits of the gaathan of a village having a separate habitation (such wadi or area having a population of not less than [three hundred, as ascertained by a Revenue Officer not below the rank of a Tahsildar]) to be a village; and specify therein the limits of the village so constituted.

(2) The Collector may by an order published in the prescribed manner arrange the villages in a taluka which shall constitute a saza and the sazas in a taluka which, shall constitute a circle, and may alter the limits of, or abolish, any saza or circle, so constituted.

(3) The divisions, districts, sub-divisions, talukas, circles, sazas and villages existing at the commencement of this Code shall continue under the names they bear respectively to be the divisions, districts, sub-divisions, talukas, circles, sazas and

villages, unless otherwise altered under this Section.

(4) 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, 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.”

5 The proviso to Sub-Section (1) of Section 4 of the Code provides that *“Every notification or order made under Section 4 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 made after previous publication”*.

6 Section 24 of the Act reads thus:-

“24 - Provisions applicable to making of rules or by-laws after previous publication. *Where, by any Bombay Act [or Maharashtra Act], a power to make rules or by-laws is expressed to be given subject to the condition 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-laws 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.”

7 The Rules or the by-laws to be framed are subject to previous publication under Section 24 of the Act. It is further provided by clause (d) of Section 24 of the Act that- *“the authority has 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 other 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.”

8 It would be open for the State Government to prescribe a particular headquarter for a particular Sub-Division for different Talukas in the District, in exercise of power under Section 4 of the Code. However, as has been specified in Section 4 of the code, the procedure as contemplated under Section 24 of the Act needs to be observed. It would be necessary for the State Government to publish a draft notification, notifying the change and invite objections and suggestions. The publication of the draft notification and the final notification shall be within the contemplation of Section 24 of the Act. On receipt of the objections and suggestions, it would be open for the State Government to take a final decision and publish the final notification in the manner, as prescribed under Section 24 of the Act. In the instant matter, while issuing the amended notification, the procedure, as prescribed under Section 4 of the Code read with Section 24 of the Act, has not been adhered. The subsequent notification dated 8 August 2013, amending the final notification

issued on 26 July 2013, is bad in law and deserves to be quashed and set aside. As has been laid down by the Apex Court in the matter of **Babaji Kondaji Garad & Ors. Vs. Nasik Merchants Co-operative Bank Ltd.**¹, “when statute requires a certain thing to be done in a certain manner, it can be done in that manner alone unless a contrary indication is to be found in the statute”.

9 In the instant matter, while publishing the amended notification on 8 August 2013, the procedure, prescribed in Section 24 of the Act, has admittedly not been followed. In view of this breach, the decision taken by the Government, prescribing the Sub-Division Pandharpur for Mangalwedha and Sangola Talukas, by virtue of notification dated 8 August 2013, is bad in law and deserves to be quashed and the same is accordingly quashed and set aside. It is clarified that it would be open for the State Government to take appropriate decision, considering the administrative exigency, by observing procedure as prescribed in law.

10 Rule is accordingly made absolute. There shall be no

1 1984 (1) Bom. C.R. 399

order as to costs.

11 In view of disposal of Writ Petition No. 7364 of 2013, Writ
Petition No. 7860 of 2013 does not survive and deserves no further
consideration and also stands disposed of.

12 In view of disposal of Writ Petition No. 7364 of 2013 itself,
nothing survives in Civil Application No. 2164 of 2013 and the same is
also disposed of.

(A.S.GADKARI, J.)

(R.M. BORDE, J.)