

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.3241 of 2017 (O&M)
Date of decision:02.05.2017

Anandi Devi and others

... Petitioners

Vs.

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Arun Jain, Senior Advocate with
Mr. Varun Parkash, Advocate
for the petitioners.

Mr. T.N.Sarup, Addl.A.G.Punjab.

Mr. Sandeep Khunger, Advocate
for respondent No.4.

AMIT RAWAL J.

C.M.No.6450 of 2017

The application is allowed, subject to all just exceptions.

Additional affidavit filed on behalf of respondent No.4 is taken on record.

CWP No.3241 of 2017

The petitioners seven in number who are resident of village Nada and Karoran, Tehsil and District S.A.S.Nagar, Mohali, have approached this Court with the following relief:-

“Civil Writ Petition under Articles 226/227 of the Constitution of India for the issuance of an appropriate writ in the nature of certiorari/mandamus or such other appropriate writ, order or direction declaring the impugned order dated 17.05.2016, Annexure P-13 as illegal, arbitrary, malafide and no in

consonance with the various orders passed by this Hon'ble Court and further quashing the impugned order, Annexure P-13 and further directing the State Government to include the left out areas of village Karoran and Nada in Notified Area Committee, Naya Gaon forthwith and provide all basic civic amenities and/or such other appropriate writ, order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

This case has a chequered history. It is not for the first time that the petitioners have approached this Court for vindication of their grievance. It would be apt to give preface of the matter.

The contention of petitioners as indicated from the averments is that there are about 2 lakhs inhabitants residing in villages Karoran and Nada consisting of 75000 houses and there are number of educational institutions, shops, hospitals, police stations and other commercial establishments. The revenue area of village Karoran is 3700 acres but vide notification dated 18.10.2006, the Government of Punjab, Department of Local Government (LG III Branch) while exercising the powers under Sections 4 and 5 of the Punjab Municipal Act, 1911 as amended by the Punjab Municipal (Amendment) Act No.11 of 1994 (hereinafter referred to as “1911 Act”) declared 707.70 hectares of cultivated and habitation area in Nada and Karoran within the Notified Area Committee of Naya Gaon. Though the petitioners had been representing to the authorities for bringing the “whole area” in the revenue boundaries of villages Nada and Karoran to be included in the notified area and this fact is reflected from the

communication dated 21.11.2001 written by the Deputy Commissioner, Roop Nagar to the Secretary, Local Government, Punjab Chandigarh (Annexure P-2).

The residents of the villages had been submitting perpetual representations to the authorities, much less to the then Chief Minister, Punjab. On the basis of the aforementioned representation, the then Chief Minister, Punjab on 17.04.2007 sought the legal opinion from the Advocate General, Punjab. The office of Advocate General, Punjab, gave written opinion dated 01.06.2007 to the fact that the area notified under Punjab Land Preservation Act, 1900 (hereinafter referred to as “1900 Act”) was not forest and recommended for inclusion under Notified Area Committee, Naya Gaon so as to secure its development as a traditional area under 1911 Act. Even a second opinion dated 09.10.2007 (Annexure P-3) has also been referred to.

Since the grievance was not redressed, in this regard, civil writ petition bearing No.9868 of 2008 titled as “Rajinder Pal and others vs. State of Punjab and others” was filed in this Court. However, the aforementioned writ petition after issuance of notice of motion was disposed of, vide order dated 29.05.2008 (Annexure P-4). It has been stated that the aforementioned direction of this Court was not complied with.

Mr. Arun Jain, learned Senior Counsel assisted by Mr. Varun Parkash, Advocate submits that authorities kept the matter pending owing to the pendency of Civil Appeal No.4682-83 of 2005 in the Hon'ble Supreme Court regarding the applicability of the provisions of 1900 Act and the aforementioned appeal was decided as late as on 21.05.2014 declaring that

the land notified under 1900 Act is not forest land.

Resultantly, certain residents of the village Karoran aggrieved against the non-inclusion of the “left out area” of villages Karoran and Nada in the Notified Area Committee, Naya Gaon, filed Contempt Petition bearing No.1808 of 2015 and in response thereto, the Executive Officer, Naya Gaon filed reply acknowledging that owing to judgment of the Hon'ble Supreme Court, status of the forest area has been changed in villages Nada and Karoran. A proposal for inclusion of the aforementioned area, i.e., “left out area” had been sent to the Local Government.

Reference to various orders, i.e, 7.10.2015 and 11.12.2015 passed from time to time has been made, which have been challenged in the Contempt Appeal bearing No.9 of 2015 and Contempt Appeal No.5 of 2016, whereas Contempt Appeal No.9 of 2015 was dismissed as withdrawn and Contempt Appeal No.5 of 2016 was dismissed, vide order dated 11.02.2016 [Annexure P9 (Collectively)].

Reference to the affidavit filed on behalf of the then Secretary to Government Punjab, Local Government Department in third Contempt Appeal bearing No.15 of 2016 has also been referred to. Contents of which have also been extracted in paragraph 17 of the writ petition, wherein, it has been stated that it has “no objection” for “inclusion” of the area of aforementioned villages within the Nagar Panchayat, Naya Gaon. The entire copy of affidavit dated 29.04.2016 is annexed with writ petition as Annexure P-11.

It has been submitted that even resolution No.75 dated 17.02.2016 had been passed by Nagar Panchayat, Naya Gaon resolving

therein “no objection” for inclusion of the “left out area” of villages Karora and Nada in the Notified Area Committee, for, certain part of the area comprising in the aforementioned villages and complete village of Kansal was already ordered to be included in the Notified Area committee and final master plan for its development was also notified on 02.01.2009.

It has also been submitted that in view of the affidavit, contempt petition was also disposed of on the premise that the State Government will take action. However, despite being given an assurance, vide impugned order dated 17.05.2016 (Annexure P-13), the request for inclusion of entire revenue estate of villages Nada and Karoran in the Nagar Panchayat, Naya Gaon has erroneously been rejected on various grounds.

The petitioners stated to have made a representation dated 21.07.2016 (Annexure P-14) to the Additional Chief Secretary and the Director, Department of Local Bodies, Punjab Civil Secretariat, Chandigarh by pointing out that rejection has erroneously been done as it was not in accordance with undertaking given to the Court in the shape of affidavit and the matter in controversy is only with regard to two villages and not other villages which was not the scope of writ petition yet the Secretary included the other villages.

Reference has also been made to the photographs [Annexure P-15 (collectively)] to show the haphazard construction being made and the area is situated within the close/vicinity of Chandigarh and there is every likelihood of spreading diseases during peak summer hours and other areas are vulnerable for breeding of the mosquitoes.

It has also been submitted that the department has also not

looked into the communication dated 22.04.2016 of the Executive Officer, Nagar Panchayat, Naya Gaon addressed to the Deputy Commissioner, Mohali with regard to passing of the resolution, much less, reference to census population of 2011. By including the aforementioned, the population shall be 55000 which is increasing and shall be 75000 till the time Government takes decision.

Mr. Arun Jain, has brought to the notice of this Court a letter dated 28.04.2016 of the Deputy Director, Local Government addressed to the Secretary, Punjab Government, i.e., before passing of the impugned order to contend that left out area of villages Nada and Karoran has been proposed to be included but has not been taken into consideration.

It has also been pointed out that after passing of the order, representation was made which was placed before the Legal Officer regarding the implication of the order passed in the writ petition and as well as in the contempt petition. On consideration of the matter, legal cell noticed that the “bonafide of the State” for inclusion of the “left out area of villages Nada and Karoran in the Notified Area committee” (emphasis added) basically had been done on the basis of incorrect facts and figures, much less against the spirit and light of the order passed by this Court on 06.05.2016. There are every chances of revival of COCP No. 1808 of 2015 and recalling of the order dated 06.05.2016 passed in COCP No.1808 of 2015 and suggested the Government for reconsideration of the matter at its own level. The aforementioned matter was being placed before the Additional Secretary, Local Government on 18.11.2016 suggesting for issuance of preliminary notification for including the left out area of the

aforementioned villages.

This Court while considering the aforementioned aspect had issued a notice to the State vide order dated 20.02.2017 by raising the following points which read as under:-

“The contention of the learned Senior Counsel is that the petitioners are residents of Villages Karoran and Nada and basically are aggrieved of the non-inclusion of the said villages within the limits of Notified Area Committee of Naya Gaon on the following grounds:-

- a) There is no sanctioned plan of raising of constructions of the houses;*
- b) No sewerage plant has yet been installed;*
- c) The factum of hazard constructions is reflected from the photographs (Annexure P-15);*
- d) There is no provision of the roads;*
- e) Villages Nada and Karoran are situated in the close vicinity of Chandigarh and necessary amenities, i.e., collection of the waste etc.have not been provided; and*
- f) No steps have been taken for prevention of the diseases, i.e., Malaria, Dengue and Chicken Guyana, which spread during the breeding season of mosquitoes.*

Mr.Jain has also drawn the attention of this Court to the legal opinion obtained after passing of the impugned order (Annexure P-13)

regarding the intention of the Government for issuance of the

preliminary notification for inviting the objections for inclusion, so that the villages of Punjab situated around Chandigarh are developed in a phased and proper manner to avoid multifarious problems, which arise at a later point of time.

Notice of motion for 10.3.2017.

On the asking of Court, Mr.Yatinder Sharma, learned Additional Advocate General, Punjab accepts notice on behalf of the respondents. He is directed to file a short affidavit before the adjourned date with an advance copy to the counsel opposite, to the effect that there is a checkered history of this Court as number of writ petitions and contempt petitions have been filed and this Court was made to understand to take decision. The impugned order, Annexure P-13, as per Mr.Jain, is also without application of mind.”

In response to aforementioned notice of motion order, the Executive Officer, Municipal Council, Naya Gaon, Tehsil Kharar, filed reply dated 14.03.2017 indicating therein that as per the provisions of Sections 4 and 5 of 1911 Act, a draft notification was issued by the Local Government and after inviting the objections from the General Public, the proposal to include more villages has been rejected by the competent authority, vide order dated 16/17.05.2016 (Annexure P-13).

The stand of the Government is also on the similar lines. However, an additional affidavit dated 24.04.2017 of Additional Secretary to Govt. of Punjab, Department of Local Government has been filed

indicating therein that no such draft notification (emphasis added) was issued and therefore, there was no question for inviting the objection and the factum of reference of issuance of draft notification was incorrectly referred to as it was only draft but never promulgated. On similar lines, the Executive Officer, vide application bearing No.6450 of 2017 also reiterated the aforementioned fact.

In view of the aforementioned stand, counsel for the State and Executive Officer submitted that since no such draft notification was ever issued, therefore, the impugned order was based upon the incorrect/wrong presumption and they would not have any difficulty, in case, any appropriate direction is issued for fresh notification by taking into consideration the opinion of the Additional Secretary to Local Government and as well as the provisions of Sections 4 and 5 of 1911 Act.

I have heard the learned counsel for the parties and appraised the paper book.

Against the aforementioned order, contemner had preferred a contempt appeal bearing No.5 of 2016 as indicated above which disposed of by giving liberty to move an application for modification/clarification of the order. The operative part of the order dated 11.02.2016 passed in contempt appeal reads as under:-

“We have heard counsel for the parties and while we desist from making a detailed reference whether to the facts or the merits of the impugned order, are of the opinion that as a similar appeal challenging the correctness of these common orders impugned herein was filed and dismissed as withdrawn,

“at this stage”, and no further orders or directions having been passed or issued, the mere fact that the contempt proceedings may have been adjourned for further proceedings or that these orders are detrimental to the appellants, cannot be a ground to allow the appellants to agitate the matter once again. The appellants, in our considered opinion, would be required to await any further consequential orders and or the conclusion of proceedings. As regards the submission that appeal was not filed in the present contempt petition, suffice it to state that the contempt petition is being taken up together with COCP-831-2015 and common orders are being passed.

Consequently, without expressing any opinion on the merits and dismissing the appeal, at this stage, we grant liberty to the parties to file an application for modification/clarification of any order passed in contempt proceedings but are constrained to observe that the situation obtaining in the contempt petition is of the making of the appellants and the State of Punjab as it is for them to ensure clarity in the matter and that the development aspirations of residents of the area, are addressed without resort to dilatory tactics.”

The relevant portion of the affidavit/reply filed on behalf of the Secretary, Local Government in COCP No.9868 of 2015.

“7. That now since the status of forest area has changed in village Nada and Karoran, as is indicated from Government

(emphasis added) notification No.39/578/2005-Ft-6085 dated 13.08.2010 and notification No. 39/578/2005-Ft-6087 dated 13.08.2010, therefore, the Deputy Commissioner Sahibzada Ajit Singh Nagar has been requested vide letter No.5/26/2015-2lg3/1333-35 dated 8.9.2015 (Annexure R2/2) with copies to Regional Deputy Director of Local Government Patiala as well as to the Executive Officer of Nagar Panchayat, Naya Gaon, to send the proposal for inclusion of area of village Karoran and Nada in Nagar Panchayat, Naya Gaon keeping in view the latest status regarding forests.”

The order dated 06.05.2016 passed in COCP No.1808 of 2015 reads as under:-

“Petitioners in Contempt Appeal No.15 of 2016, in fact informed the Court on 04.05.2016 that they had proposed to withdraw the present petition itself in the light of paragraph Nos.9 and 10 of the affidavit filed by Sh. Vikas Partap, IAS, Secretary to Government of Punjab, Department of Local Government on 29.04.2016. Therefore, we directed the Registry to list the above COCP for final disposal. As per our direction, the above COCP has been listed today, of course, with the permission of the Hon'ble the Acting Chief Justice.

Learned Senior counsel appearing for the petitioners submitted that in the light of paragraph Nos.9 and 10 of the affidavit filed by Sh. Vikas Partap, IAS, Secretary to Government of Punjab, Department of Local Government on 29.04.2016 in CACP

No.15 of 2016, without doubting the bona fides of the State, permission may be granted to withdraw the present contempt petition.

Permission is granted.

Contempt petition stands dismissed as withdrawn.”

However, the entire genesis of the impugned order is based upon the fact that the objection had been invited, whereas, no such notification was promulgated for including the remaining area of the aforementioned villages as contemplated under Sections 4 and 5 of 1911 Act.

Before I could comment on the act of the State, it would be apt to reproduce the relevant portion of the certain orders and as well as the observations of the Legal Officer and Additional Secretary, after passing of the impugned order which came to be passed in view of the filling of the writ petition and contempt petitions.

The order dated 29.05.2008 passed in CWP No.9868 of 2008 reads as under:-

“Counsel for the petitioners has contended that respondents are not including the entire area falling within the revenue boundaries of the villages Nada and village Karoran, District Mohali in the notified Area Committee, Naya Gaon (emphasis added) and in this regard, representations (Annexures P-3 to P-5) have been given to the respondents, which are still pending.

Notice of motion.

Mr. Amol Rattan Singh, Addl. A.G. Punjab accepts notice on behalf of the respondents.

We dispose of this writ petition with a direction to the respondents to dispose the representation of the petitioners (Annexure P-3 to P-5) within a period of eight weeks.”

The operative part of the orders dated 11.12.2015 passed in COCP Nos.831, 1808 of 2015 and 2103 of 2013, 06.10.2016 and as well as the stand taken in the additional affidavit and reads as under:-

11.12.2015

“The Court has spent sufficient time on the issue and finds a deep reluctance on the part of the respondents no.1 to 4 to adhere to the orders of the Writ Court. Except for filing one affidavit after the other which Court perceives to be attempts to make the Court stray from the main issues, the respondents no.1 to 4 have shown little inclination to display their bonafide in implementing the orders of the Writ Court in earnestness and in letter and spirit. The earlier orders and the affidavits filed by the respondents would indicate that respondents have pleaded attempts at compliance. The orders passed in CWP no. 22756 of 2013 were in March 2014. Affidavits were filed later. At no point of time were orders in CWP-22756-2013 brought to the notice of the Court. Rather each time an assurance was given to comply with the orders of the Division Bench, the non

compliance of which has been alleged by the petitioner mandating the respondents to verify forest land only in terms of Government records as existing on 26.02.1980.

Arguments of the respondents now that the matter has been given a quietus by a Division Bench by accepting the report of the Committee based on the satellite imagery is incorrect. The order of the Writ Court gives liberty to the petitioner to challenge such a report.

This would mean no conclusive or final comment by the writ Court on the veracity or correctness of the committee report. The question has been left open. Besides, it does not wash off the effect of the orders passed by a Division Bench from where the instant petition has arisen as the Division Bench in CWP No. 22756 of 2013 never even referred to these orders. The arguments of the respondents and the affidavits are thus rejected. The Court thus noticing the extreme reluctance of the respondents in implementing the orders also notices with great deal of regret that the respondents are causing obstruction to the course of justice and thus compelling the court to veer around to the view that the respondents need to be proceeded against under the Contempt of Courts Act by holding them guilty of it.

At this stage, Mr. M.C.Berry, Addl. A. G. Punjab for respondents no.1 to 4 prays for one weeks' time to seek instructions regarding compliance of the orders of the writ

Court and what has been observed by this Court in the earlier part of this order as also the orders passed on 07.10.2015, 04.11.2015 and 28.11.2015.

Learned counsel for respondent no.5 has filed an affidavit indicating initiation of development work which is taken on record.

Adjourned to 21.12.2015 for further proceedings.

A copy of this order be placed on the files of connected cases numbered above and be also served on the Chief Secretary of Punjab as even though he is a party to the proceedings, it would be appropriate for him to have an account of the proceedings independent of the information he might be receiving in due course.”

06.10.2016

“Department of Local Government filed in CACP No.15 of 2016 and the COCP No.1808 itself was withdrawn without doubting the bonafide of the State thus the decision rejecting the inclusion of left out area of village Karoran and Nada in the Notified Area Committee having been done clearly on the basis of incorrect facts and figures as would be clear from a bare perusal of para no.11 of the order dated 17.05.2016 rejecting the demand for inclusion of left out area of village Karoran and Nada in N.A.C. Naya Gaon and the same being totally against the spirit and in the light of the orders, passed by the Hon'ble Court on 06.05.2016. Besides this, the inclusion

of village Parchh and Seonk is not as per the order of the Hon'ble Court as these villages were never a part of the writ petition filed in this regard. The rejection of the case of residents of village Nada and Karoran with regard to non inclusion of the left out area of their villages in the NAC Naya Gaon would lead to revival of the COCP No.1808 of 2015 and recalling of orders dated 06.05.2016 passed in CACP No.15 of 2016 and taking into consideration the area facts and the affidavits filed in the COCP No.1808 and CA No.15 of 2016 of Secretary, Department of Local Govt. Punjab and of Vikas Partap Singh, IAS, Secretary, Department of Local Government Punjab with regard to the stand of State for the inclusion of left out area. The legal cell strongly feels that the matter requires reconsideration at the Govt. level for the inclusion of left out area of village Nada and Karoran in the Nagar Panchayat, Naya Gaon. There seems to be no legal impediments if the remaining left out area is considered to be included in the existing Nagar Panchayat, Naya Gaon.”

Stand taken in the affidavit of present writ petition

“That the above writ petition came up for hearing before the Hon'ble High Court on 06.04.2017. During the hearing before this Hon'ble Court it came to the notice of the deponent that in Para No.2 of the Preliminary Objections of affidavit dated 21.03.2017 it has been mentioned that as per the provisions contained in Section 4 & 5, a draft Notification was issued by

the Local Government and after inviting objections from the general public, the proposal to include more villages has been rejected by the Local Government vide order dated 16.05.2016 (Annexure P-13). Similar averments have been made in Para No.21 of the reply on merits. The said averments are not according to the record because from the perusal of the record it has transpired that the order dated 16.05.2016 (Annexure P-13) has been passed by the Secretary Local Government Sh. Vikas Partap, I.A.S., on the representation filed by Sh. Raman Walia, Advocate on 1.7.2015. Therefore, before passing the order dated 16.5.2016, no draft Notification was issued and accordingly no objections were invited from the general public.

That the said mistake has occurred in filing the reply due to the bonafide reasons because in the file a draft Notification u/s 5 (2) of the Act is available at page No.341. However, the said Notification remained only as a rough draft which was never approved by the Competent Authority and accordingly was never issued. It has transpired that the said draft Notification was placed before the Competent Authority for approval but the draft notification was never approved.”

Sections 4 and 5 of 1911 Act authorizes the State Government for including the area and after consultation with the concerned Municipality by notification in the official gazette, alter the limits specified for any municipal area so as to include therein or to exclude therefrom such

area as may be specified in the notification.

The provisions of Section 4 and 5 of 1911 Act read as under:-

“4. Specification of local areas to be smaller Urban Areas or Transitional Areas and Constitution of Municipal Councils and Nagar Panchayats.- *The State Government may, having regard to population of the area the density 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 it may deem fit, specify, by notification in the Official Gazette, any area to be a transitional area or a smaller urban area for the purposes of this Act:*

Provided that no military cantonment or any part thereof shall be included in such transitional area or a smaller urban area:

Provided further that such an urban area or part thereof, as the State Government may, having regard to the size of the area and municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as it may deem fit, by notification, specify to be an industrial township shall not form part of a transitional area or a smaller urban area.

(2) Where an area is specified as a transitional area or as a smaller urban area under sub-section (1), the State Government may, by notification in the Official Gazette,

constitute for the transitional area so specified a Nagar Panchayat and for the smaller urban area so specified a Municipal Council of the first class, second class or third class:

Provided that the State Government may, after consulting the Municipal Council by notification change its classification from one class to another.

(3) where any area which is within the jurisdiction of any other local authority, is constituted as or included in a transitional area or smaller urban area, the State Government may pass such orders as it may deem fit as to the transfer of such area to the Nagar Panchayat of such transitional area or disposal otherwise, of the assets or institutions of such local authority and as to the discharge of the liabilities, if any, of such local authority, relating to such assets or institutions.

(4) Where any area is excluded from a transitional area or a smaller urban area and included in the area of any other local authority, the State Government may pass such orders as it may deem fit as to the transfer to such local authority or disposal otherwise of, the assets or institution, of such local authority in that area or as to the discharge of the liabilities, if any, of such local authority, relating to such assets and institutions.

(5) Every area, which immediately before the commencement of the Punjab Municipal (Amendment) Act of 1994 was

constituted as a Municipality under this Act, shall be deemed to have been constituted as smaller urban area under sub-section (1) and Municipality existing for that area before such commencement and specified in schedule II shall be deemed to have been constituted under this Act for that area.

(6) Every area, which immediately before the commencement of Punjab Municipal (Amendment) Act of 1994, was constituted as a Notified Area under Section 241 of this Act, shall be deemed to have been specified as a transitional area or a smaller urban area under sub-section (1), and a Municipality of the category as indicated in schedule III shall be deemed to have been constituted under this Act for that area.

5 Alteration of limits of Municipality. - *“The State Government may, from time to time, keeping in view the provisions of sub-section (1) of section 4 and after consultation with the concerned Municipality, by notification in the Official Gazette alter the limits specified for any municipal area so as to include therein or to exclude therefrom such area as may be specified in the notification.*

(2) The power to issue a notification under sub-section (1) shall be subject to the condition of previous publication.”

I am astounded to notice that the officers should have pondered upon the question including the remaining area to prevent the haphazard construction and spread of various diseases and the factor of haphazard construction reflected from the photographs (Annexure P-15). Naya Gaon is

on the circumference of Chandigarh and owing to increase in population and the people who cannot afford to shell out more money in buying the property/land in the vicinity of Chandigarh are purchasing the land in and around the villages and area situated around the city and are raising the construction of the houses without getting the sanction plan, much less provision of sewerage or drinking water. Such plight of the aforementioned residents should not have escaped the notice of the authorities rather should have been circumspect in undertaking a regular inspection of the area, much less, in order to prevent the mushroom growth of unorganized construction at a stage which becomes irreversible, in essence, may not be possible for them to carve out a master plan owing to the aforementioned un-authorised construction.

It is in this backdrop of the matter, the part of the area as indicated above has already been included within the Nagar Panchayat so that whosoever wants to raise construction and enjoy the amenities and facilities of electricity, sewerage and water connection can undertake the construction after obtaining the sanction.

The villagers of aforementioned villages have thus, knocked the door of this Court for providing succour but act of the State is absolutely remorseful. They have tried to justify the stand in taking the plea of having not calling for objections, particularly when Naya Gaon, Gram Panchayat, vide resolution No.75 dated 17.02.2016, for, had already given 'No Objection' for inclusion of the area within their vicinity.

The order is bereft of the aforementioned reasoning, much less actual aspect of the life which the people are/would be facing. If the

unauthorized and un-organization construction is allowed to continue with impunity, without facility of sewerage, the net result would be that it will spread many diseases which have been often been seen during the peak summer season and monsoons.

Article 21 of the Constitution of India has been extensively dealt in extenso, wherein, the Hon'ble Supreme Court in **Tirpur Dyeing Factory Owners Association vs. Noyyal River Ayacutdars Protection Association and others 2010 AIR (SC) 3645** has held that right to information and community participation for protection of environment and human health is also a right which flows from Article 21.

The preamble of the Constitution cannot be lost site of the fact. The act of the Local Government in performing its basic statutory function is a direct violation of social justice mandate “We the people of India” having solemnly resolved to constitute India into sovereign socialist secure democratic republic and to secure to all its citizen: justice, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and of opportunity; and to promote among them all fraternity assuring the dignity of the individual and the unity and integrity of the Nation; in our Constitution on 26th day of November, 1949 do hereby adopt, enact and give to ourselves this Constitution (emphasis added).

In my view, the approach of the authorities had not been coherent and consistent. They should be alive or perceived the situation and take precautionary/preventive measures in advance owing to phenomenal increase in the population failing which the urbanization of agricultural or vacant land would be occupied and utilized in most planned and organized

manner. Even Article 51-A of the Constitution of India inspires to all of us to strive towards excellence.

Though at one point of time I had thought of taking suo moto cognizance of contempt for not honouring the commitment and undertaking given to the Court, particularly when there had been misrepresentation in the written statement, which though, was rectified by filing an additional affidavit, the idea was dropped but the fact of the matter is that authorities should be sensitive to such situation and introspect while taking decision apply logic instead of passing an order as an eyewash sufficing the compliance of the directions which from the cumulative reading of the affidavits and various orders was not the intention behind. The providing of amenities like sanitation, sewerage, drinking water, consumer electricity, clean environment free from health hazards is the most important aspect particularly when all the citizens are now contributing 0.05% tax to Swach Bharat, in the absence of such facilities, likelihood of littering in open area is inevitable.

In view of what has been noticed above, the impugned order is hereby set aside and the writ petition is disposed of with the following directions:-

Vide notification dated 18.10.2006 (Annexure P-1), the Department of Local Government has already included part of the area of aforementioned villages within the ambit of Nagar Panchayat/Municipal Committee, Naya Gaon. The rest of the area of villages Nada and Karoran should also be included in the Nagar Committee/Nagar Panchayat and also provide basic amenities. The order of the Additional Secretary to Local

Government had already given a fact that the land for setting up sewerage treatment plant has already been notified under Section 12 of the New Act. Let the necessary steps be taken for issuance of declaration and the sewerage treatment plant should be finalized by inviting the tenders including the setting up the work of STV. The development plan/master plan should also be published for the purpose of for bringing, the aforementioned villages within the Nagar Panchayat.

Let the exercise be done within a period of six months from the date of receipt of certified copy of this order.

Accordingly, the writ petition stands disposed of.

(AMIT RAWAL)
JUDGE

May 02, 2017
savita

Whether Speaking/Reasoned	Yes/No
Whether Reportable	Yes/No