

LPA no. 1854 of 2016 (O&M) 1

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA no. 1854 of 2016 (O&M)

Date of Decision : 27.04.2017

Narinder Pal Singh and others

....Appellant(s)

Versus

State of Punjab and others

...Respondent(s)

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE DR. SHEKHER DHAWAN**

**Present : Mr. Aayush Gupta, Advocate for
Ms. Monika Thakur, Advocate for the appellants**

Mr. P.S.Bajwa, Addl. AG, Punjab

Mr. Raj Kumar Garg, Advocate for respondents

MAHESH GROVER, J.(ORAL)

The appellants are aggrieved of the judgment of the learned Single Judge dated 2.9.2016. The State of Punjab issued a notification (Annexure P-1) under Section 4(1) of the Punjab Municipal Act, 1911 creating Nagar Panchayat from the existing Gram Panchayat. The relevant portion of the notification is extracted herebelow:-

“10/4/2011-3SS3/981: Keeping in view the population of the area density of the population therein, the revenue generated for local administration, the percentage of employment in non-agricultural activities, the economic importance and for insuring programmed development of the area of Gram Panchayat Nadala (the detail of which is mentioned in the schedule of boundaries below) of Tehsil Bhulath, District Kapurthala,

the Governor of Punjab is pleased to declare this area as Nagar Panchayat under Section 4(1) of the Punjab Municipal Act, 1911.

If any resident had any objection in this regard then he may submit the objections in writing within 30 days from the publication of this notification to the Principal Secretary, Govt. of Punjab, Local Body Department Punjab Civil Secretariat-2, Sector 9, Chandigarh or to the Executive Officer, Nagar Council, Bhulath, District Kapurthala.”

Succeeding this declaration there was a schedule detailing boundaries which would stand altered on the creation of the Nagar Panchayat.

Learned Single Judge before whom writ proceedings were initiated questioning the notification concluded that since the affected residents of the area had not been given an opportunity of being heard, which was also intended in the notification, the whole notification (Annexure P-1) creating Nagar Panchayat would be un-sustainable.

Learned counsel for the appellants contends that in terms of Section 4 of the Punjab Municipal Act, 1911 there is absolutely no necessity of hearing objections. For the purposes of reference Section 4 is extracted herebelow:-

“4. Specification of local areas to be smaller urban areas or transitional areas and Constitution of Municipal Councils and Nagar Panchayats – (1) The State Government may, having regard to 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 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 so 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 11, of 1994 was constituted as a Municipality under this Act, shall 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 11, 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.”

Evidently the statute does not contemplate any objections to be heard before such a declaration is made but we need not dilate on this issue any further in view of the observations of the Hon'ble Supreme Court in case titled as **State of Punjab vs. Tehal Singh** reported as 2002 (2) RCR(Civil) 1.

“In the present case, the provisions of the Act do not provide for any opportunity of hearing to the residence before any area falling under a particular Gram Sabha is excluded and included in another Gram Sabha. In the absence of such a provision, the residents of that area which has been excluded and included in a different Gram Sabha cannot make a complaint regarding denial of opportunity of hearing before issue of declarations under Sections 3 and 4 of the Act respectively. However, the position would be different where a house of a particular resident of an area is sought to be excluded from the existing Gram Sabha and included it in another Gram Sabha. There the action of the Government being directed against an individual, the Government is required to observe principles of natural justice. For the aforesaid reasons, we are of the view that no opportunity of hearing was required to be given before making

declarations either under Section 3 or Section 4 of the Act
by the Government.”

The Hon'ble Supreme Court in abovesaid case as also by virtue of other pronouncements made the law amply clear that in so far as creation of a Nagar Panchayat is concerned, it would be within the domain of the State Government and not requiring any objections to be heard but if somebody's assets/property/land is affected by creation of the boundaries there would be a requirement of such persons being heard. This is precisely the import of the notification (Annexure P-1) and therefore the judgment of the learned Single Judge, negating the notification altogether, would have to be modified/clarified to mean that the notification creating Nagar Panchayat would stand, however, since a schedule of boundaries has to be altered in inclusion or exclusion of certain areas and residents affected by it, they have necessarily to be heard. It is not disputed that the residents had filed their objections even though learned counsel for the appellants would contend that a reading of such objections would not throw up any substantive issue to be determined by the competent authority, we are of the opinion that this is a decision to be taken by the authority vested with such powers and before whom objections have been filed.

In view of above, instant appeal is disposed of with the observation that notification creating Nagar Panchayat would stand but as far as it alters the boundaries as contained in the schedule (Annexure P-1) is concerned, residents of the affected area who have filed or are desirous of filing objections ought to be heard. We also make it clear that the objections which are on record may be considered and if any other person also wishes

LPA no. 1854 of 2016 (O&M) 7

may be made by the competent authority in this regard now and thereafter
objections be decided within a period of 6 weeks from their receipt.

Disposed of in above terms.

(Mahesh Grover)
Judge

27.04.2017
rekha
Whether speaking/reasoned Yes/No
Whether reportable Yes/No

(Shekher Dhawan)
Judge