IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 5451/2020

Reserved on: 23.12.2020

Decided on: 30.12.2020

Lalit Singh ...Petitioner

Versus

State of H.P. & ors. ...Respondents

Coram:

Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting? [1] **Yes.**

For the Petitioner: Mr. G. D. Verma, Senior Advocate with Mr. B. C.Verma, Advocate.

For the Respondents: Mr. Ashok Sharma, Advocate General with Mr. Vinod Thakur, Mr. Vikas Rathore, Addl. A.Gs., Ms. Seema Sharma, Mr. Bhupinder Thakur and Mr. Yudhvir Singh Thakur, Dy. A.Gs., for respondents-State.
Mr.Virender Thakur, Advocate, for the applicant in CMP No. 13510/2020.

(Through Video Conferencing)

---

[1] Whether reporters of the local papers may be allowed to see the judgment? yes

Tarlok Singh Chauhan, Judge

The petitioner is the Pradhan of Gram Panchayat, Sundha Bhonda and being aggrieved by the notification dated, 24.9.2020 (Annexure P-5) and subsequent notification dated 27.10.2020 (Annexure P-11), issued by the respondents, whereby area of Gram Panchayat Sundha Bhonda has been ordered to be included in Nagar Panchayat, Chirgaon, has filed the instant petition for grant of following substantive reliefs:-

> That the notification dated 24.9.2020 vide Annexure P-5 and subsequent notification dated 27.10.2020 vide Annexure P-11 issued by the respondents, whereby the area of G.P. Sundha Bhonda has been ordered to be included in Nagar Panchayat Chirgaon, may kindly be declared null, void and accordingly all the proceedings including proposal of creation of Nagar Panchayat Chirgaon and all the subsequent final proceedings as held in this regard being illegal and wrong may kindly be quashed and set aside and the respondents may be directed to restore the status of G.P. Sundha Bhonda in Tehsil Chirgaon, intact, so that the same may function as before so that the justice is done to all the inhabitants of G.P. Sundha Bhonda, Tehsil Chirgoan, District Shimla, H.P.

2. It is averred that in absence of any demand from the residents of Gram Panchayat, Chirgaon or residents of Gram Panchayat Sundha Bhonda for creation of Nagar Panchayat, Chirgaon, the respondents could not have, suo moto, created the Nagar Panchayat, especially when the previous efforts to create Nagar Panchayat in the year 2015 on the basis of report of Sub Divisional Officer, Rohru, have failed and the procedure, as envisaged under the Himachal Pradesh Municipal Act, 1994 (for short, "the Act"), has not been followed, rendering the entire exercise undertaken by the respondents to be null, void and illegal.

3 In addition to the aforesaid, it is claimed that area in question is backward. A lot of schemes have been extended there not only by the State, but also by the Central Government. Once the Nagar Panchayat is created, then all these benefits would be withdrawn to the residents of the area. It is claimed that exercise of power to merge the area in question has resulted in several consequences to the residents of not only Gram Panchayat Sundha Bonda, but also Gram Panchayat Chirgaon. Therefore, before

constituting Nagar Panchayat, an opportunity of being heard should have been offered to the residents of the area and only thereafter, administrative decision by the respondents-State should have been taken that too, after considering the views of the residents and denial of such opportunity is not in consonance with the constitutional scheme or rule of law governing the society, therefore, notification constituting Nagar Panchayat be declared to be invalid.

4 The respondents have contested the petition by filing reply, wherein very maintainability of this petition has been questioned. It is claimed that the petition is politically motivated as the petitioner being Pradhan of the Gram Panchayat Sundha Bhonda is now worried about his political future as most of the area of Gram Panchayat Sundha Bhonda is being merged under newly notified Nagar Panchayat, Chirgaon.

5 The respondents have sought to justify the decision of creation of new Nagar Panchayat, as per averments made in para 2 of the preliminary submissions of the reply, which read as under:-

2. That Chirgaon is located at the confluence of Pabbar River and Andhra River, at a distance of 15 KM from Rohru. The said place has not evolved into a small urban area and is presently being locally governed by two Gram Panchayats i.e. Gram Panchayat Chirgaon and Sunda Bhonda. The Block Level Headquarter of all the Departments are located there. The offices of Tehsildar Chirgaon, BDO Chhohara, SHO Chirgaon, CDPO Chirgaon, PWD Sub Division, IPH Sub Division, HPSEB Sub Division etc., all are stationed at Chirgaon. This place is the main market of Chhohara block. Every day large number of people visit this place from surrounding areas for official and marketing purpose. In view of the following problems and compelling reasons, the said area has been notified as NAC:

(i) that there is rapid expansion of settlements at Chirgaon. Widespread haphazard construction activities are going on without any proper planning. No set back is being left by people. Due to lack of proper planning, people are in continuous conflict with each other over path and boundary disputes.

(ii) that no sewerage system is in place and if proper planning is further delayed, there will be no space available for construction of a sewerage line. The septic tank system for disposal of the

sewage has almost failed and instances of sewage outflow from the tanks are very common.

(iii) that the channelization of other liquid waste such as waste form kitchens and bathrooms into the open drainage has become a usual practice in Chirgaon and the Gram Panchayats have not been able to put a check on all these activities.

(iv) that huge quantity of solid waste is generated everyday and due to lack of an appropriate mechanism for its proper disposal, this waste can be seen in open in the market and residential areas. People call the concerned Panchayat Secretaries but in vain. The problem can't be permanently resolved without sanitary staff in place and a vehicle for transportation of the garbage which is feasible only in an urban local body.

(v) that since two Gram Panchayats are presently governing this place and many of the issues remain unattended due to inter-panchayat jurisdiction disputes.

(vi)that it is the gateway to the famous tourist destination Chanshal and for promotion of tourism industry in this area; this place needs to be developed with proper planning.

6 It is further claimed that notified area fulfills the eligibility criteria, as provided under Section 3 of the Act,

because total population of the NAC is 3380 as per 2011 census, which is higher than minimum requirement of 2000 persons. Further, as reported by the Panchayat Secretaries of the concerned Gram Panchayats, total annual income from total sources is Rs. 6,50,000/-, which is also higher than the threshold of Rs. 5,00,000/-. It was further averred that due opportunity to file objections before issuing of the notification was provided to the general public of the said area and the copies of notices were affixed at conspicuous places. As many as nine objections were received and the contents whereof were almost similar and after due consideration, all those objections were rejected on merit by the authorized officer, i.e. Sub Division Officer (C), Rohru.

7 Lastly, it is claimed that there is an extreme necessity for creation of Nagar Panchayat, Chirgaon as the areas involved in said municipality i.e. Mohal Chirgaon, Sundha Bhonda and Mandli are under process of urbanization and rapid construction activities are going on without proper planning, which in all probabilities, would

result to serious issues of sanitation, easement etc. in near future.

8 We have heard learned counsel for the parties and have also gone through the material placed on record.

9 In a constitutional scheme, there is no absolute separation of power. Apart from the various governmental functions, the executive is always entrusted with several functions, which are legislative in nature. The distinction between legislative and administrative function is thin and often overlapping.

10 In **De Smith's Judicial Review of Administrative Action" (Fifth Edition)** with regard to difference between legislative and administrative acts, following observations have been made:

> "A distinction often made between legislative and administrative act is that between the general and the particular. A legislative act is the creation and promulgation of a general rule of conduct without reference to particular cases and administrative act cannot be exactly defined, but it includes the adoption of a policy, the making and issue of a specific direction, and the application of a general rule to a particular case in accordance with the requirements

> of policy of expediency or administrative practice. Legal consequences flow from this distinction."

11 In **Jayanti Lal Amrit Lal Sodhan vs. F. M. Rana, AIR 1964 SC 648**, the Hon'ble Supreme Court laid down that executive, apart from purely administrative function, is also entrusted under various Statutes functions, which are legislative and judicial in character. It shall be apposite to reproduce relevant observations as contained in para 11, which read as under:-

> "It cannot however be assumed that the legislative functions are exclusively performed by the legislative executive functions by the executive and judicial functions by the judiciary alone. The Constitution has not made an absolute or rigid division of functions between the three agencies of the State. To the executive, exercise of functions legislative and Judicial are often entrusted. For instance power to frame rules, regulations and notifications which are essentially legislative in character is frequently entrusted to the executive. Similarly judicial authority is also entrusted by legislation to the executive authority : Harinagar Sugar Mills Ltd. v. Shyamsundar, (1962) 2 SCR 339 : AIR 1961 SC 1669. In the performance of the executive functions, public authorities issue orders which are not far removed from legislation and make

> decisions affecting the persona] and proprietary rights of individuals which are quasi-Judicial in character. In addition to these quasi-judicial, and quasi-legislative functions, the executive has also been empowered by statute to exercise functions which are legislative and judicial in character, and in certain instances, powers are exercised which appear to partake at the same moment of legislative, executive and judicial characteristics. In the complexity of problems which are modern Government have to face and the plethora of Parliamentary business to which it inevitably leads, it becomes necessary that the executive should often exercise powers of subordinate legislation ; Halsbury's Laws of England Vol. 7, Article 409. It is indeed possible to characterise with precision that an agency of the State is executive, legislative or judicial, but it cannot be predicated that a particular function exercised by any individual agency is necessarily of the character which the agency bears."

12 In **Tulsipur Sugar Company Limited v. Notified Area Committee, Tulsipur, AIR 1980 SC 882**, the Hon'ble Supreme Court, while dealing with Section 3 of U. P. Town Area Act, 1914, held, after considering the nature and the power exercised by the State Government under Section 3, that the said power was legislative in character.

13 The constitution of Municipalities is provided under Article 243Q of the Constitution of India. which reads as under:-

> "243Q. Constitution of Municipalities.- (1) There shall be constituted in every State,-
> (a) a Nagar Panchayat (by whatever name called) for a transitional area, that is to say, an area in transition from a rural area to an urban area
> (b) a Municipal Council for a smaller urban area; and
> (c) a Municipal Corporation for a larger urban area, in accordance with the provisions of this Part:
> Provided that a Municipality under this clause may not be constituted in such urban area or part thereof as the Governor may, having regard to the size of tile area and the municipal services being provided or proposed to be provided by an industrial establishment in that area and such other factors as he may deem fit, by public notification, specify to be an industrial township
> (2) In this article, a transitional area, a smaller urban area or a larger urban area means such area as the Governor may, having regard to the 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 he may deem fit, specify by public notification for the purposes of this Part.

14 The Legislative Assembly, Himachal Pradesh has enacted the Act called the Himachal Pradesh Municipal Act, 1994. Section 3 of the Act provides that the State shall constitute three classes of municipalities in accordance with provisions of this Section i.e. Nagar Panchayat, Municipal Council and Municipal Corporation. The Nagar Panchayat is provided for a transitional area with population exceeding 2000 and generating annual revenue exceeding Rs. 5 lacs for the local administration. According to the proviso, the municipality under this Section, may not be constituted in such urban areas or part thereof, as the State Government may, having regard to the size of the area and the 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. According to the explanation, the transitional area, a smaller urban area, or a larger urban area, has been defined as such area as the State Government may, having regard to the population of the area, the density of the population therein, the revenue generated for the local

administration, the percentage of employment in non-agricultural activities, the economic importance or such other factors, as the State Government may deem fit, specify in notification for the purpose of this section.

15 The State Government under sub-section (2) of Section 3 has been empowered to issue notification to constitute the municipalities and specify the class to which a municipality shall belong in accordance with the provisions after observing the procedure as laid down in Section 4. The detailed procedure for declaring municipalities has been enumerated under Section 4 of the Act. According to sub-section (1) of Section 4, the State Government may, by notification, propose any local area to be municipal area under the Act and sub-section (2) of Section 4 provides that every such notification under sub-section (1) shall define the limits of the local area to which it relates. Sub-section (3) of Section 4 of the Act provides that the copy of every notification under this section, with a translation thereof, in such language as the State Government may direct shall be affixed at some conspicuous place in the office of Deputy

Commissioner, within whose jurisdiction the local area to which the notification relates lies, and at one or more conspicuous places in that local area. Sub-section (4) of Section 4 provides that the Deputy Commissioner shall certify to the State Government the date of which the copy and translation work so affixed and the date so certified shall be deemed to be the date of publication of the notification. Sub-section (5) of Section 4 stipulates that if any inhabitants desires to object to a notification issued under sub-section (1), he may within six weeks from the date of the publication, submit his objections in writing through the Deputy Commissioner to the State Government and the State Government shall take his objections into consideration. Sub-section (6) of Section 4 provides that when six weeks from the date of publication have expired, and the State Government has considered and passed orders on such objections, as may have been submitted to it, the State Government may, by notification, declare the local area for the purposes of this Act, to be a municipal area.

16 Section 4 of the Act provides for procedure for declaring municipal area and reads as under:-

> 4. Procedure for declaring municipal area.- (1) The State Government may, by notification, propose any local area to be a municipal area under this Act.
>
> (2) Every such notification under sub-section (1) shall define the limits of the local area to which it relates.
>
> (3) A copy of every notification under this section, with a translation thereof in such language as the State Government may direct shall be affixed at some conspicuous place in the office of the Deputy Commissioner, within whose jurisdiction the local area to which the notification relates lies, and at one or more conspicuous places in that local area.
>
> (4) The Deputy Commissioner shall certify to the State Government the date on which the copy and translation were so affixed and the date so certified shall be deemed to be the date of publication of the notification.
>
> (5) If any inhabitant desires to object to a notification issued under sub-section (1), he may, within six weeks from the date of its publication submit his objection in writing through the Deputy Commissioner to the State Government and the State Government shall take his objection into consideration.
>
> (6) When six weeks from the date of publication have expired, and the State Government has considered and passed orders on such objections as may have

been submitted to it, the State Government may, by notification, declare the local area for the purposes of this Act, to be a municipal area.

(7) The State Government may, by notification, direct that all or any of the rules which are in force in any municipal area shall, with such exceptions and adaptations as may be considered necessary, apply to the local area declared to be a municipal area under this section, and such rules shall forthwith apply to such municipal area without further publication.

(8) When a local area, the whole or part of which was a notified area under the Himachal Pradesh Municipal Act, 1968 (19 of 1968) or a Nagar Panchayat under this Act, is declared to be Municipal Council under this section, the Municipal Council shall be deemed to be a perpetual successor of such notified area committee or of Nagar Panchayat, as the case may be, and in respect of all its rules, bye-laws, taxes, and all other matters, whatsoever and the Nagar Panchayat shall continue in office and shall notwithstanding anything contained in this Act be deemed to be the Municipal Council until the appointment and election of members is notified by the State Government under section 27.

(9) A municipality shall come into existence on such day as the State Government may, by notification, appoint in this behalf.

17 Now, the moot question is whether the exercise of power under Section 4 of the Act is administrative or legislative in character because scope of judicial review in both cases would be entirely different.

18 Such distinction has been meticulously culled out by the Hon'ble Supreme Court in **Bombay Dyeing & MFG. Co. Ltd. (3) vs. Bombay Environmental Action Group & ors., (2006) 3 SCC 434**, wherein it was observed as under:-

> 197. A matter involving environmental challenges may have to be considered by a superior court depending upon the fact as to whether the impugned action is a legislative action or an executive action. In case of an executive action, the court can look into and consider several factors, namely,
>
> (i) Whether the discretion conferred upon the statutory authority had been property exercised;
>
> (ii) Whether exercise of such discretion is in consonance with the provisions of the Act;
>
> (iii) Whether while taking such action, the executive government had taken into consideration the purport and object of the Act;
>
> (iv) Whether the same subserved other relevant factors which would affect the public in large;

(v) Whether the principles of sustainable development which have become part of our constitutional law have been taken into consideration; and

(vi) Whether in arriving at such a decision, both substantive due process and procedural due process had been complied with.

198. It would, however, unless an appropriate case is made out, be difficult to apply the aforementioned principles in the case of a legislative act. It is no doubt true that Articles 14, 21, 48-A of the Constitution of India must be applied both in relation to an executive action as also in relation to a legislation, however, although the facet of reasonableness is a constitutional principle and adherence thereto being a constitutional duty may apply, the degree and the extent to which such application would be made indisputably would be different. Judicial review of administrative action and judicial review of legislation stand on a different footing. What is permissible for the court in case of judicial review of administrative action may not be permissible while exercising the power of judicial review of legislation. It may, however, be a different thing to contend that the legislation had been enacted without constitutional principles in mind. The real question is whether the constitutional mandates had been complied with in making such legislation.

19 Judicial review of administrative action and judicial review of legislation stand on a different footing. What is permissible for the Court in case of judicial review of administrative action may not be permissible while exercising the power of judicial review of legislation.

20 Insofar as this Court is concerned, it is no longer *res integra* and rather has been authoritatively laid down by this Court that declaration of Municipalities is a legislative function, which is undertaken by the Government in a larger public interest and ordinarily Courts are loath to interfere with such decision(s); until and unless judicial conscious of the Court is satisfied that the decision so taken is not in public interest, but has been taken with ulterior or oblique motive at the behest of some interested person or persons who personally stand to gain by the declaration of such Municipality.

21 Reference in this regard can conveniently be made to a division bench's judgment of this Court in **Gram Panchayat, Nangal Kalan vs. State of H.P. & ors., ILR 2015 (IV) HP 1582.**

22 Similar reiteration of law can be found in another judgment of division bench of this Court in **Yudh Chand Saklani vs. State of Himachal Pradesh & ors., ILR 2016 (VI) HP 1733**, in which one of us (Tarlok Singh Chauhan, J) was also a member, wherein it was clearly held that function of the Government while establishing a Municipality is neither executive nor administrative, but it is a legislative process. It shall be apt to refer to the necessary observations as contained in paras 35 to 42 of the judgment, which read as under:-

> 35. Even otherwise, declaration of Municipalities is a legislative function, which is undertaken by the Government in larger public interest and ordinarily Courts are not to interfere in the decisions so undertaken by the State Government until and unless the judicial conscious of the Court is satisfied that the decision so taken is not in public interest, but has been taken with ulterior motive at the behest of some interested person or persons who personally stand to gain by the declaration of such Municipality. In this case, the petitioner has not been able to demonstrate or prove the same. Petitioner has not been able to demonstrate or prove that the declaration of area subject matter of the writ petition into a Nagar Parishad is either not in public interest or this

decision has not been taken by the Government in larger interest of inhabitants of the area, but the same has been taken by the State Government to help a few individuals or the declaration was not done by following statutory requirements of the Himachal Pradesh Municipal Act, 1994.

36. It is settled law that function of the Government while establishing a Municipality is neither executive nor administrative, but it is a legislative process.

37. In Tulsipur Sugar Co. Ltd. Vs. The Notified Area Committee, Tulsipur, (1980) 2 SCC 295, the Hon'ble Supreme Court while dealing with U.P. Town Areas Act, 1914 has held that power of the State Government to make a declaration under the same is legislative in character.

38. The Hon'ble Supreme Court in Baldev Singh and Ors. Vs. State of Himachal Pradesh, (1987) 2 SCC 510, has held that affording of hearing to affected persons is essential prerequisite for constituting notified area, however, hearing contemplated is not required to be oral and can be by inviting objections and disposing them of in a fair way.

39. The Hon'ble Supreme Court in Sundarjas Kanyalal Bhathiaja and ors. Vs. The Collector, Thane, Maharashtra and ors., AIR 1990 SC 261,has also held that rules of natural justice are not applicable to legislative action plenary or subordinate. The Hon'ble Supreme Court in para-23 of the judgment has held:

—23. Reverting to the case, we find that the conclusion of the High Court as to the need to reconsider the proposal to form the Corporation has neither the attraction of logic nor the support of law. It must be noted that the function of the Government in establishing a Corporation under the Act is neither executive nor administrative. Counsel for the appellants was right in his submission that it is legislative process indeed. No judicial duty is laid on the Government in discharge of the statutory duties. The only question to be examined is whether the statutory provisions have been complied with. If they are complied with,, then, the Court could say no more. In the present case the Government did publish the proposal by a draft notification and also considered the representations received. It was only thereafter, a decision was taken to exclude Ulhasnagar for the time being. That decision became final when it was notified under Section 3(2). The Court cannot sit in judgment over such decision. It cannot lay down norms for the exercise of that power. It cannot substitute even "its juster will for theirs."

40. In Karnail Singh and another Vs. Darshan Singh and Ors., 1995 Supp.(1) SCC 760, the Hon'ble Supreme Court has held that amalgamation of two gram sabhas into one is an administrative decision taken by the authorities in public interest and the Court would not interfere unless the same is vitiated with malafides.

41. The Hon'ble Supreme Court in Solapur Midc Industries Association and ors. Vs. State of Maharashtra and ors., reported in (1996) 9 SCC 621,has held: —3. It is not disputed that since the State Government has not yet withdrawn the industrial estate/industrial area concerned from the hold of the Corporation, the provisions of the 1961 Act continue to apply. The Preamble thereof is suggestive of its objects sought to be achieved namely the orderly establishment in industrial areas and industrial estates of industries, and to assist generally in the organisation thereof, and for that purpose to establish the Industrial Development Corporation and for purposes connected with the matters therewith. The purpose of the 1949 Act on the other hand, as is suggestive from its Preamble, is to provide for the establishment of Municipal Corporations with a view to ensure a better municipal government of the cities in which municipal corporations are set up. These being the basic differences as to the ambit of the two statutes, the High Court, in our view, rightly arrived at the conclusion that there was inter se no conflict between the two. There may be certain areas such as provision for civil amenities in which there is identity of purpose but these are ancillary and incidental to the main purpose of the respective two statutes. The suggestion drawn from the Assembly debates, to which our attention has been drawn, while passing the 1961 Act, suggestive of the fact that the industrial

> estates or industrial areas on ripening were meant to be kept under the purview of the 1961 Act until some civic administration in the form of a Panchayat or Municipality could take over is not supported by any statutory provision available in the respective two Acts. As said before the topics of legislation being different, there was no question of their rubbing against each other because being enacted under two different legislative fields.
>
> 42. The Hon'ble Supreme Court in Nagar Panchayat Kurwai and another v. Mahesh Kumar Singhal and ors., reported in (2013) 12 SCC 342, has held that Nagar Panchayat, is a unit of self-government, which is a sovereign body having both constitutional and statutory status and considerable powers are conferred on it to carry out various schemes for economic development and social justice at the local level.

23 Apart from above, similar reiteration of law can also be found in a very recent judgment rendered by this Court in **CWP No. 3895/2020, titled as Vijay Kumar & ors. vs. State of H.P. & ors., along with connected matters, dated 23.12.2020**.

24 A bare perusal of the writ petition, more particularly, grounds raised therein, would go to indicate that

entire petition proceeds on the premise as if the impugned act of notifying the Nagar Panchayat in question by the State Government was an administrative act and not a legislative act. Therefore, in this background, scope of interference, in exercise of power of judicial review, by this Court, is extremely limited.

25 Additionally, it would be noticed that on earlier occasion, vide resolution dated 27.8.2020, residents of Gram Panchayat Sundha Bhonda had no objection for creation of Nagar Panchayat, provided name of newly created Nagar Panchayat was Sundha Bhonda. Thus, it stands established that it is only an ego problem that has driven the petitioner to file the instant petition.

26 Importantly, the instant petition has been filed only by the Pradhan of Gram Panchayat Sundha Bhonda, though it is claimed that the same has been filed on behalf of residents of the area, but there is no such resolution attached by the petitioner in support his contention.

27 This Court in **CWP No. 4118/2020, titled as Bihari Lal vs. State of H.P. & ors., decided on 16.12.2020**,

while dealing with a question regarding bifurcation of Panchayat(s), has categorically held that in case the respondents have not given effect to the resolutions, as passed by the Gram Panchayat, then the aggrieved, if any, shall only be the Gram Panchayat and not any individual and like in that case, here also, the petitioner in absence of any resolution authorizing him to file a petition, has no locus standi to file the instant petition. It shall be apposite to refer to para 16 of the judgment, which reads as under:-

> 16. The instant petition, no doubt, makes reference to certain resolutions of the Gram Panchayat recommending therein its bifurcation. In case the respondents have not given effect to upon the resolutions, then the aggrieved, if any, shall only be the Gram Panchayat and not any individual, thus the petitioner has no *locus standi* to file the instant petition.

28 It would be noticed that the residents of Gram Panchayat Sundha Bhonda were duly afforded opportunity to file objections and some of them indeed filed the same, which came to be rejected on merits by the competent authority.

29 To be fair to the learned counsel for the petitioner, he has placed strong reliance on **Baldev Singh's** case (supra) to contend that the residents of the area should have been afforded an opportunity of hearing.

30 We find no merit in this contention as the Hon'ble Supreme Court in **Baldev Singh's** case (supra) has held that affording of hearing to affected persons is essential prerequisite for constituting notified area, however, hearing contemplated is not required to be oral and can be by inviting objections and disposing them of in a fair way as is the fact situation obtaining in the instant case.

31 In addition to aforesaid, declaration of municipal area, in terms of Section 4 of the Act, is essentially a policy matter, which is within the exclusive discretion, domain and jurisdiction of the State and the Courts are loath to interfere in such policy decision of the Government which is taken on consideration of myriads of inputs and merely because the petitioner may lose his clout, he cannot invite the Court to interfere in such matters; except on limited ground if the decision is found to be against the statute(s) or constitution.

32 As a last effort, learned counsel for the petitioner would vehemently contend that elected body of Gram Sabha Sundha Bhonda is legally entitled to function till 20.1.2021 and its tenure of 5 years cannot, under any circumstances, be curtailed, more particularly, by creating Nagar Panchayat.

29 Even this submission is without merit as this Court in **Gram Panchayat, Nangal Kalan's case (supra),** more particularly para 36 of the judgment, has categorically held that the moment Nagar Panchayat is constituted, Gram Panchayat would cease to function and the office bearers of the Gram Panchayat would have to vacate the office.

30 The petitioner has not been able to demonstrate or prove that declaration of area, subject matter of the writ petition, into a Nagar Panchayat is either not in public interest or this decision has not been taken by the Government in larger interest of inhabitants of the area, but the same has been taken by the State Government to help a few individuals or the declaration has not been done in accordance with constitutional requirement coupled with statutory requirements of the Act.

31 In view of aforesaid discussions, we find no merit in the instant petition and the same is accordingly dismissed, so also the pending application(s), if any, leaving the parties to bear their own costs.

(Tarlok Singh Chauhan)
Judge

(Jyotsna Rewal Dua)
Judge

30.12.2020
(pankaj