

WRIT PETITION NO. 7739 OF 2021

.. Petitioner

Versus

1. State of Maharashtra.
(Summons to be served on the Learned Government Pleader appearing for State of Maharashtra under Order XXVII, Rule 4, of the Code of Civil Procedure, 1908).
 2. The Secretary
Urban Development Department
Government of Maharashtra,
Mantralaya, Mumbai 400032.
 3. The District Collector, Pune.
 4. The Sub-Divisional Officer,
Division, Baramati.
 5. State Election Commission, Maharashtra
First Floor, New Administration Building,
Hutatma Rajguri Chowk,
Madam Cama Road, Mumbai - 40032. .. Respondents
-
- Mr. Anil V. Anturkar, Senior Advocate a/w Mr. Preet S. Phanse i/by Mr. Shubham Misar for the Petitioner
 - Mr. P.P. Kakade, Government Pleader and Ms. M. P. Thakur, AGP for the Respondent - State
 - Mr. Sachindra B. Shetye for the Respondent No.5 - State Election Commission

.....
**CORAM : S.J. KATHAWALLA &
 MILIND N. JADHAV, JJ.**

Reserved on : MARCH 15, 2022.
Pronounced on : MARCH 16, 2022

JUDGMENT: (PER : S. J. KATHAWALLA & MILIND N. JADHAV, JJ.)

. By the present petition, the Petitioner has prayed for the following reliefs:

"[A] That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction or order under Article 226 of the Constitution of India, 1950, quashing and setting aside Government Resolution bearing No. MUM-2020/Pra.Kra.414/Navi-18 dated 30th March 2021 issued by the Urban Development Department of the Government of Maharashtra and also the order bearing No. Pasan/kavi/Karya/1/615/2021 dated 31st Marsh 2021 issued by Dr. Rajesh Deshmukh, District Collector, Pune.

[B] That pending final disposal of this Writ Petition as and by way of interim relief stay may be given to the effect and operation of both the impugned order refer to in Prayer Clause [A] above viz. MUM-2020 /Pra.Kra.414/Navi-18 dated 30th March 2021 issued by the Urban Development Department of the Government of Maharashtra and also the order bearing No. Pasan /kavi/Karya/1/615/2021 dated 31st Marsh 2021 issued by Dr. Rajesh Deshmukh District Collector, Pune.

[C] Ad interim relief in terms of prayer Clause (B) be awarded in favour of the Petitioner.

D] That the costs of this Writ petition be awarded in favour of Petitioner against Respondent, by this Honourable Court.

[E] For such other orders as justice and convenience may demand from time to time be passed in favor of the Petitioner by this Honourable Court."

2. Petitioner is challenging the notification dated **30.03.2021** (for short: "**impugned notification**") issued by Respondent No. 2 – Secretary, Urban Development Department, Government of Maharashtra – under the provisions of sub-sections (1), (1B) and (2) of Section 341A read with Section 3 (3) of the Maharashtra Municipal

Council, Nagar Panchayats and Industrial Townships Act, 1965 (for short: **“the said Act”**). By the impugned notification, the local area under Malegaon (Budruk) Gram Panchayat has been declared as a ‘transitional area,’ for which a Nagar Panchayat shall be subsequently constituted as provided under Section 341A (2) of the said Act. In short, the challenge is to the conversion of Malegaon (Budruk) Gram Panchayat to Malegaon (Budruk) Nagar Panchayat on the grounds stated in the Petition.

3. Before we refer to the facts relevant to the case and the submissions made by the respective parties, it will be expedient to highlight the provisions of law applicable in the present case.

3.1. Article 243Q of the Constitution of India provides for the constitution of a Nagar Panchayat for a transitional area, which is an area transitioning from a rural to an urban area, on the basis of the parameters set out therein. Article 243Q is reproduced below:

“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 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 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."

3.2. It is seen that an area can be declared as a transitional area on the basis of broad and subjective parameters such as 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 the Governor of the State Government may deem fit and which are published for the purposes of Part IXA of the Constitution of India. Once an area has been declared as transitional on the basis of the said parameters, a Nagar Panchayat / Council / Corporation, as the case may be, can be constituted therefor.

3.3. Section 341A of the said Act is another relevant provision that is important in adjudicating the present case. Section 341A of the said act reads thus:

“341A. (1) The State Government may, having regard to the factors mentioned in clause (2) of article 243-Q 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 :

Provided that, no such area shall be so specified as a

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.

(1A) Notwithstanding anything contained in the proviso to subsection (1), the State Government may, by notification in the Official Gazette, declare an area which is a District Headquarter or a Taluka Headquarter to be a transitional area.

(1B) 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.

(2) For every transitional area so specified under subsection (1), there shall be constituted a Nagar Panchayat as provided in section 341B which shall be known by the name of Nagar Panchayat. Every such Nagar Panchayat shall be a body corporate and shall have perpetual succession and a common seal with power to acquire, hold and dispose of property and to enter into contract and may by the said name sue and be sued.”

3.4. It is seen that there are **three basic conditions** required to be fulfilled before an area can be declared as a transitional area, and a Nagar Panchayat can be constituted therefor. These conditions are:

- i. The population of the area; the same must be between ten thousand and twenty-five thousand;
- ii. The distance between the area and the territorial limits of any Municipal Corporation or an 'A' Class Council must be less than

twenty kilometers if the percentage of employment in non-agricultural activities in the area is not less than twenty-five percent;

- iii. In respect of the sources of revenue that is generated for the local administration, the percentage of employment in non-agricultural activities in the area must be more than twenty-five percent.

3.5. Section 2 (33) of the said Act defines "population" and is also relevant to the present case and reads thus:

"2. In this Act, unless the context otherwise requires,-

(33) "population" means the population as ascertained at the last preceding census of which the relevant figures have been published];

Explanation.— For the purposes of this clause, the expression "published" means the latest published relevant census figures; whether provisional or final, and in the absence of the latest relevant census figures, the relevant figures of the census immediately preceding the latest census, final figures of which have been published;"

4. Before we advert to the submissions made by the respective advocates, it will be apposite to refer to the relevant facts briefly.

4.1. By proclamation dated 24.12.2020, the Government of Maharashtra, through the Deputy Secretary in the Urban Development Department (for short: **"the Deputy Secretary"**), announced its intention to issue a notification specifying the local area under the

Malegaon (Budruk) Gram Panchayat in Pune District as an area in transition from a rural to an urban area and to constitute a Nagar Panchayat by the name of “The Malegaon (Budruk) Nagar Panchayat,” in exercise of powers conferred upon it under sub-sections (1), (1A) and (2) of Section 341A of the said Act. A draft notification was issued along with the said proclamation, and objections to the same were invited for a period of 30 days i.e., till 24.01.2021.

4.2. By the impugned notification dated 30.03.2021, the Government of Maharashtra, through the Deputy Secretary, specified the Malegaon (Budruk) Area to be a ‘transitional area’ within the meaning of Section 341A of the said Act read with Article 243Q of the Constitution of India. A Nagar Panchayat by the name of “The Malegaon (Budruk) Nagar Panchayat” was to be constituted as provided for under Section 341A (2) of the said Act. The impugned notification is published in exercise of the powers conferred by sub-sections (1), (1B) and (2) of Section 341A of the said Act. All factors stated in clause (2) of Article 243Q of the Constitution of India, as well as all objections received pursuant to the proclamation dated 24.12.2020, are duly considered before the impugned notification is published.

4.3. Meanwhile, the election for the Malegaon (Budruk) Gram

Panchayat was conducted. By letter dated 29.12.2020, the Government of Maharashtra requested the Secretary of the Maharashtra State Election Commission to postpone the election. However, his request was not accepted by the State Election Commission and the election was conducted. Only one member was elected unopposed to the Malegaon Gram Panchayat.

4.4. On 05.01.2021 / 07.01.2021, in view of the proclamation dated 24.12.2020, the Rural Development Department of the Government of Maharashtra addressed a letter to the Chief Executive Officer of Zilla Parishad, Pune, *inter alia*, calling for all details pertaining to the Malegaon (Budruk) Gram Panchayat, namely its boundaries, names and details of its members, the resolutions passed by it and other such details.

4.5. On 28.01.2021, the Sub-Divisional Officer, Baramati, issued a notice to: (i) the Block Development Officer, Panchayat Samiti, Baramati; (ii) the Gram Sevak, Malegaon (Budruk); and (iii) the Administrator, Malegaon (Budruk) Gram Panchayat, directing them to hear the objections pertaining to the above proclamation and draft notification dated 24.12.2020. The hearing was to be held on 05.02.2021.

4.6. On 05.02.2021, the Petitioner, along with five others, attended the hearing before the Sub-Divisional Officer, Baramati, and submitted an application seeking fifteen days' time to submit detailed objections along with documentary evidence. This application was made even though the period for submitting objections had expired on 24.01.2021. Despite the fact that the period for submitting objections had expired, the Sub-Divisional Officer, Baramati, at 11:35 AM on 05.02.2021, passed an order giving the Petitioner and the five others time till 5:00 PM on the same date to submit their objections, say, and documentary evidence. At 5:00 PM, the Sub-Divisional Officer, Baramati, closed the hearing for orders as the Petitioner was unable to submit his say and documentary evidence.

5. Heard Mr. Shubham Misar, learned counsel for the Petitioner. His submissions in support of the Petitioner's challenge to the impugned notification declaring the area under Malegaon (Budruk) Gram Panchayat as a 'transitional area' and its subsequent conversion to Malegaon (Budruk) Nagar Panchayat are as under:

5.1. He submits that in the hearing on 05.02.2021, the Petitioner pointed out that the consent for conversion of Malegaon (Budruk) Gram Panchayat to Malegaon (Budruk) Nagar Panchayat was given by the Administrator and not by the Gram Panchayat and therefore the

conversion is in violation of the provisions of the Constitution of India as the consent of the democratically elected representative was not given or sought for.

5.2. He submits that there is non-compliance with the contents of the letter dated 05.01.2021 whereby the Urban Development Department of Government of Maharashtra sought the resolutions of the original Gram Sabha and the resolutions passed in the monthly meetings of the Malegaon (Budruk) Gram Panchayat.

5.3. He submits that the three basic conditions for the declaration of the area as 'transitional', and for the constitution of a Nagar Panchayat, as prescribed in Section 341A of the said Act and described hereinabove, are not satisfied in the present case:

- i. The population of the area presently is 28,356, which is more than the twenty-five thousand limit prescribed in Section 341A of the said Act;
- ii. The distance between the area under the Malegaon (Budruk) Gram Panchayat and the 'A' Class Nagar Parishad, Baramati, being more than twenty kilometers, is in contravention to Section 341A (1) (b) of the said Act;
- iii. More than ninety percent of the land under the Malegaon (Budruk) Gram Panchayat is under sugarcane cultivation and

hence the non-agricultural income and activity of the area cannot be certified to be more than twenty-five percent, as required under Section 341A of the said Act. At this stage, it would be opportune to point out that no substantive evidence has been produced in relation to this averment.

5.4. He submits that the Petitioner's objections, which demonstrate that the impugned notification is contrary to the provisions of Article 243Q of the Constitution of India read with 341A of the said Act, have not been considered. Hence the present petition.

6. The Respondents in their reply have vehemently objected to the granting of reliefs claimed by the Petitioner. Mr. P.P. Kakade, learned Government Pleader a/w Ms. M. P. Thakur, AGP for the Respondent- State and Mr. Sachindra B. Shetye, Advocate for the Respondent No.5, submits as under:

6.1. Mr. P.P. Kakade on behalf of the Respondent submits that the Respondent-State has scrupulously followed the due process of law as contemplated under the provisions of Section 341A and Section 2 (33) of the said Act read with Article 243Q of the Constitution of India. He outlines the sequence of events as thus:

6.2. He submits that the proposal for the declaration of the area under the Malegaon (Budruk) Gram Panchayat as a transitional area and for the conversion of the Malegaon (Budruk) Gram Panchayat into a Nagar Panchayat was initiated pursuant to a resolution passed by the Zilla Parishad, Pune, in its General Body Meeting held on 05.11.2020. By the resolution, it was recommended for the proposal to be placed before the State Government.

6.3. By letter dated 04.12.2020, the Administrator of the Malegaon (Budruk) Gram Panchayat submitted a proposal to the State Government for the conversion of the Malegaon (Budruk) Gram Panchayat into a Nagar Panchayat. A meeting was also conducted on 07.12.2020, wherein the conversion of the Malegaon (Budruk) Gram Panchayat to the Malegaon (Budruk) Nagar Panchayat was approved.

6.4. By letter dated 14.12.2020, the District Collector, Pune recommended and placed the above proposal for consideration by the State Government, in consonance with the provisions of Section 341A of the said Act. Thereafter, the proclamation and draft notification dated 24.12.2020 was published.

6.5. Written objections to the proclamation and the draft notification were invited in accordance with law for a period of thirty

days. Even though the objections from the Petitioner and five other objectors were received beyond this period of thirty days, still the said objections were duly considered by the Sub-Divisional Officer, Baramati.

6.6. A report considering each objection was duly prepared by the Sub-Divisional Officer and was thereafter submitted to the District Collector, Pune. The District Collector thereafter submitted his detailed report on the said objections and placed the same before the State Government for consideration.

6.7. Even though the provisions of Section 341A of the said Act do not contemplate a personal hearing to be given to the objectors, still a personal hearing was given to the Petitioner and the five other objectors, and their objections were duly considered.

6.8. He points out that according to the statutory provisions, namely Section 341A (1B) read with Section 3 (5) of the said Act, it is for the State Government to consider the sufficiency and validity of the objections raised by the objectors.

6.9. He submits that the three basic conditions for the declaration of the area as 'transitional', and for the constitution of a

Nagar Panchayat, as prescribed in Section 341A of the said Act and described hereinabove, were satisfied in the present case:

- i. The population of the area under the Malegaon (Budruk) Gram Panchayat was considered to be 21,284. (i.e., less than the figure of twenty-five thousand prescribed in Section 341A of the said Act). This figure is based on the Census of 2011 and does not reflect the present population of the area.
- ii. The distance between the area under the Malegaon (Budruk) Gram Panchayat and the 'A' Class Nagar Parishad, Baramati, was within twenty kilometers as prescribed under Section 341A of the said Act.
- iii. The denomination of non-agricultural employment in the area was considered to be thirty percent, which is within the range (above twenty-five percent) laid down in Section 341A of the said Act. To substantiate this, he has produced two certificates dated 07.12.2020 and 18.12.2020 issued by the Tahsildar, Baramati, *inter alia* stating that the non-agricultural employment in the area under the Malegaon (Budruk) Gram Panchayat is more than twenty-five percent and is around thirty percent. The same has been certified on the basis of local investigations. The certificates have been annexed at page nos. 57 and 58 in the Affidavit-in-Reply dated 18.05.2021 filed by the Deputy Secretary.

6.10. In view of the submissions made above, he submits that there is no merit in the Petitioner's case and prays for the same to be dismissed with costs.

7. We have perused the pleadings as well as the evidence and material on record, and considered the submissions made by the respective counsel across the bar. We may state our observations and findings as under:

7.1. We shall first consider the rival submissions made by the respective parties in relation to whether the three basic conditions prescribed under Section 341A of the said Act have been fulfilled. These conditions are required to be satisfied in order to declare the area under the Malegaon (Budruk) Gram Panchayat as a 'transitional area' and to constitute a Nagar Panchayat therefor.

7.2. In relation to the condition of the population of the area, we find that:

- i. the Petitioner relies on the population figure being 28,356 to contend that this condition is not satisfied. The said figure is derived from a letter issued by the Tahsildar, Baramati, placed at page no. 55 of the Petition. It is pertinent to note that the

- letter clearly states that the said figure is only an approximate;
- ii. Furthermore, the determination of the figure of population that the Petitioner relies upon has not been made by any statutory body competent to certify the population of the area under the Malegaon (Budruk) Gram Panchayat. In this regard, it is pertinent to highlight the Respondents' submission that the figure of the population can be determined officially only by the Census Commission of India and there is no other authority that can do so;
 - iii. the definition of 'population', as laid down in Section 2 (33) of the said Act and as alluded to hereinabove, states that the figure of population that has to be considered for the purposes of the said Act have to be those that are ascertained in the latest preceding census, of which the relevant figures have been published. That apart, even Clause (g) of Article 243P in Part IXA of the Constitution of India defines 'population' to mean the population as ascertained at the last preceding census, of which the relevant figures have been published. For the sake of convenience, the same is reproduced below:

PART IXA

"243P. Definitions.—In this Part, unless the context otherwise requires,—

- (a) ...
- (b) ...
- (c) ...
- (d) ...

(e) ...

(f) ...

(g)“population” means the population as ascertained at the last preceding census of which the relevant figures have been published.”

iv. the population of the area under Malegaon (Budruk) Gram Panchayat being considered as 21,284 as per the census of 2011 is therefore in consonance with the definition of ‘population’ as prescribed by the said Act, as well as by Part IXA of the Constitution of India. Thus, the objection of the Petitioner in relation to the population of the area under the Malegaon (Budruk) Gram Panchayat is therefore unsustainable and stands rejected.

7.3. In relation to the condition of the distance between the area under the Malegaon (Budruk) Gram Panchayat and the A Class Nagar Parishad / Municipal Council, Baramati, we find that the area under Malegaon (Budruk) Gram Panchayat is less than twenty kilometers in distance from the 'A' Class Municipal Council in Baramati. In fact, to put the record straight, the area under the Malegaon (Budruk) Gram Panchayat is at a distance of 9.2 kilometers from the Baramati Municipal Council by road. That being the case, the objection of the Petitioner regarding the distance between the area under the Malegaon (Budruk) Gram Panchayat and an 'A' Class Nagar Parishad is unsustainable.

7.4. In relation to the condition of the percentage of employment in non-agricultural activities being not less than 25%, Respondents have pleaded that income from non-agricultural activities in the area is approximately 30%. Mr. Kakade, learned Government Pleader has submitted that as per the Revenue Records, there are 5927 farmers in Malegaon (Budruk) Gram Panchayat. He submitted that in addition to the agricultural activities, the non-agricultural activities broadly comprise of labourers, industrial workers, business employment, service sectors etc. He submitted that within the jurisdiction of Malegaon (Budruk) Gram Panchayat, there are several establishments offering employment viz; sugar factory, distillery of sugar factory, Cojen project, Nandan Dairy, Engineering College, ITI and other educational institutions. He submitted that there is an established MIDC and Trade Floor in Baramati which is in close proximity to Malegaon (Budruk) Gram Panchayat; the distance between Malegaon (Budruk) and Baramati town is a mere 8 kilometers and thus, a substantial population living in Malegaon (Budruk) Gram Panchayat jurisdiction travels to Baramati town and its vicinity for employment, jobs, business and labour activities.

7.5. Mr. Kakade in support of his aforesaid submissions, on a query put by the Court to substantiate the submissions, has filed a detailed affidavit in sur-rejoinder dated 26.02.2022 along with

supporting annexures. Paragraph Nos. 2 to 14 of the said affidavit-in-rejoinder are relevant and are reproduced here under:-

"2. I say that, Nagarpanchayat Budruk includes Malegaon Budruk and Yelewasti revenue villages. The population of Malegaon Budruk Grampanchayat was 21,284 according to cenuse of 2011.

3. I say that, number of farmers according to the revenue record in Malegaon Budruk, Nagarpanchayat are 5,927. This figure includes all the names mentioned on Village Form 8-A. This figure includes all the names in single account, joint account. The Petitioner namely Jaydeep Vilas Taware has attached 7/12 of land owned by him measuring area 0.20 H.R. of Gat No. 569/2 to the affidavit filed by him. Further, the Petitioner is also engaged in non-agricultural activity by running business of Stone Crusher at Malegaon Budruk. Thus, the Petitioner himself is engaged in non agricultural activity as well as has created non agricultural employment to the labourers working on his stone crusher. I say that, out of 5,927 farmers, some farmers are also engaged in services, business and labourers. Besides this, those people who does not have any agricultural land, are engaged in non-agricultural activities for their survival.

4. I say that, the Petitioner has submitted in his affidavit vide Exhibit-B annexed to the affidavit filed by the Petitioner that in all Departments of Malegaon Sugar Factory, 765 persons are working out of which 150 are from Malegaon Budruk. I say that, a letter vide outward no. 6638/2021-2022, dated - 16th February, 2022 received from the Malegaon Sugar Factory, Malegaon Budruk, Baramati, District Pune, stated therein that in factory establishment, permanent 473 workers, temporary 292 workers and 270 contract workers are working. Thus, the sugar factory, which is located in the area of Malegaon Budruk Nagarpanchayat, provides non agricultural employment to the 1,035 workers Hereto 'annexed and marked as Exhibit 'I' is a copy of the letter dated 16th February, 2022.

5. I say that, letter vide outward no 845/2022 dated 16th February, 2022, received from Secretary, Shivnagar Vidya Prasarak Mandal, Malegaon Budruk, mentioning that there are 467 teaching and non teaching staff is working. The above Institution is located, in area of Malegaon Budruk Nagarpanchayat. Hereto annexed and marked as Exhibit-'2' is a copy of letter dated 16th February, 2022.

6. I say that, letter dated 16th February, 2022 received from Director, Nandan Dairy Malegaon budruk, mentioning that in Nandan Dairy 93 permanent workers and 117 contract workers are working. Thus, the Nandan Dairy which is located in area of Malegaon Budruk Nagarpanchayat provides non agriculture employment to the 210 workers. Hereto annexed and marked as Exhibit - '3' is a copy of letter dated 16th February, 2022.

7. I say that letter vide outward No 1590 dated 16th February,

2022 Received from Assistant Registrar, Co-operative Societies Baramati, mentioning that there are 10 registered labour Co-operative Societies having total 232 members. The criteria for membership of Labour Co-operative Society is that the member should be resident in the jurisdiction of that particular society and member should be labour by occupation. I further say that, there are 15 Rural Non-agricultural Co-operative Credit Societies located in the area of Nagarpanchayat Malegaon Budruk. In these Non Agricultural Co-operative Societies, 96 staff is working. These Societies have 11,946 members from Malegaon Budruk and 1038 members are from Yelewasti. Thus, total 12,984 members are from Malegaon Budruk Nagarpanchayat. These Societies gives the loan to the members for business, industry, trade growth, home loan, house repair etc. In the financial year 2020-21, these societies provides loan amount of Rs. 33.58 crores to the 1608 members. From the above information, it is clear that the large amount of loan has been distributed to the members for non-agricultural purpose, which will ultimately helps to increase the employment in non agricultural sector in the area of Nagarpanchayat Malegaon Budruk. Hereto annexed and marked as Exhibit -'4' is a copy of - the letter dated 16th February, 2022.

8. I say that certificate vide outward no 618/2022 dated 16th February, 2022 received from Chief Officer Malegaon Budruk mentioning that there are total 53 staff working in Nagarpanchayat. Hereto annexed and marked as Exhibit – “5' is copy of the letter dated 16th February, 2022

9. I say that, letter vide outward No 27, dated 16th February, 2022 received from Assistant Labour Commissioner Pune, mentioning that there are 40 Construction labours which are enrolled on portal of labour Department. Hereto annexed and marked as Exhibit –'6' is a copy of the letter dated 16th February, 2012.

10. I say that, copy of report of no.14, Report on Verification of job cards, received from MGNREGA Portal, mentioning that no. of job cards issued to the labours are 708. Hereto annexed and marked as Exhibit-“7” is a copy of online Report.

11. I say that, copy of letter vide outward No. 153/2022 dated 16" February, 2022 received from Block Development Officer, Baramati, mentioning that there are 128 registered Women Self Help Group having total 1,227 members. These groups are formed by the members for doing business to increase their income. These groups performing non agriculture activities on smaller scale, such as making crafts, food items etc. Out of these 128 Groups, 94 Groups are doing business at present. Hereto annexed and marked as Exhibit-'8' is a copy of letter dated 16th February, 2022

12. I say that copy of letter vide outward no 618/2022. dated 16th February, 2022 received from Chief officer, Malegaon Budruk Establishment / Properties / Activities Nagarpanchayat, mentioning that there are 1,053 commercial establishments such as shops, hotels, saloon, Grocery Shop, Footware, Medicals, Xerox Centers, mess,

Mobiles Shops, Hardware Store, Gas Agencies, Fruit Stall, Vegetable Shops, Bakery, Sweet Mart, Photography Shops, Mangal karyalay, Mutton Chicken Shops, Cloth Stores, Pantapari, Stationery Shops, Beauty Parlours, Hospitals, Dispensaries, Welding Shops, Drycleaners, Motor Garage, Petrol pump, ATM, Gift Shoppee, Ladies Shoppee etc located in area of Malegaon Budruk Nagarpanchayat in which 2719 owners / workers are working. Hereto annexed and marked as Exhibit-'9' is a copy of letter dated 18th February, 2022.

13. I say that, I deny the inference drawn by Petitioner in point No 16 of affidavit filed by him dated 06th February, 2022, in which he mentioned that, thus the total percentage is 81.61 % of the purpose of Agriculture, and the remaining is for the purpose of non agriculture. The total Bagayat Sheti is 1944 (1450 + 494) and the total area is 2382 (1854 + 528) Hectare out of which 1944 viz. 81.61 %. is the agricultural land. This also supports my contention that there is non-agricultural population there. But I say that the land which is available is unevenly distributed among the farmers.. I say that, letters vide outward No. 6639 / 2021-2022 dated 16th February, 2022 received from Malegaon Sugar factory, mentioning that there is area of 1371.35 Hector has registered for Sugarcane cultivation and the number of members. Cultivating this much area are 1901. It shows that from 5,927 farmers the cash crop cultivators are 1901. It shows that from 5,927 farmers, 1901 farmers holds 1371.35 Hector land out of total 1944 Hector land. Hereho annexed and marked as Exhibit-10 is a copy of letter dated 18th February, 2022.

14. I say that, I deny the contents in Point No. 7 of affidavit filed by Petitioner dated 6" February, 2022, in which he mentioned that the most of the persons who are working is local business units, are actually Agriculturist only and some of the family members are working as a second source of income, in the local non-agricultural unit such as Nandan Dairy, Sugar factory that cannot be described therefore, as the exclusive non agriculturist population. On the contrary, I say that according to the I Section 341A(1)(b), the percentage of employment in non-agricultural activities in such area is not less than twenty five percent is the pre-requisite to form a Nagarpanchayat. The act never asks for exclusive non-agriculturist population."

7.6. It is the contention of the Respondents that the percentage of employment in non-agricultural activities in the proposed area of Malegaon Budruk Nagarpanchayat is more than 25% on the basis of the aforementioned statistics and the same are outlined as under:- (i) the Respondents have certified that there are 5927 farmers registered in Malegaon (Budruk) Gram Panchayat area according to the Revenue

records; some of these farmers are engaged in non-agricultural activities, however, the exact figure is not ascertainable; (ii) the Malegaon Sakhar Karkhana Ltd has certified that it employs 473 permanent, 292 temporary and 270 contractual employees. The Petitioner has confirmed that 150 employees out of the permanent and temporary employees hail from Malegaon (Budruk) Gram Panchayat area; (iii) the Director, Nandan Dairy situated at Malegaon (Budruk) has certified that the dairy employs 93 permanent workers and 173 contractual workers from Malegaon (Budruk) Gram Panchayat area; (iv) the Assistant Registrar, Co-operative Societies has certified that there are 10 registered labour co-operative societies having 232 members and 15 rural non-agricultural co-operative credit societies having 12984 members from Malegaon Budruk Gram Panchayat area; the criteria for membership of the labour co-operative societies being that the member should be a resident in the jurisdiction of that particular society and should be a labourer by occupation whereas the rural non-agricultural co-operative credit societies disburse loan to their members for doing business, industry, trade growth, home loan, house repairs etc. It is submitted before us that these societies have provided loan amount of Rs. 33.58 crore to 1608 members for non-agricultural purposes leading to increase in employment in the non-agricultural sector of Malegaon (Budruk) Gram Panchayat area. Though it is argued that providing housing

loan to the members of the non-agricultural co-operative credit societies will not strictly be covered by the non-agricultural employment ratio which is one of the conditions to be fulfilled on a comprehensive analysis of the statement placed on record by the Assistant Registrar, Co-operative Societies, Baramati, Dist. Pune, it is seen that loan has been disbursed to 1608 members between 01.04.2020 and 31.03.2021 with the specific condition that the member should be residing or carrying on his business within the jurisdiction of the society. It is seen that substantial amount of loan has been disbursed to the members of these societies; (v) that information received from the Assistant Labour Commissioner, Pune, certifies that as on 16.02.2022 there are 40 construction labourers enrolled on the portal of the Labour Department in Malegaon (Budruk); (vi) the Chief Officer, Malegaon (Budruk) has certified that the total staff strength working in the Nagarpanchayat office is 53; (vii) the report on verification of job cards received from the MGNREGA portal shows that job cards have been issued to 708 labourers in Malegaon (Budruk); (viii) the Block Development Officer, Baramati has certified that there are 128 registered women self-help groups having a total membership of 1227 members; these groups are formed by the members for non-agricultural activities like handicrafts, food items etc and 94 such groups are presently doing business in the Malegaon (Budruk) area; (ix) there are 1053 commercial

establishments employing approximately 2719 persons at present in various businesses, the list of which is provided by the Chief Officer of Malegaon (Budruk).

8. The Petitioner has countered the above submissions pertaining to non-agricultural employment ratio by stating that out of 2382 Hectares of land in Malegaon (Budruk) jurisdiction, 1944 Hectares is agricultural land, thus 81.61% of the land being agricultural, the non-employment ratio cannot exceed beyond 25%. This argument of the Petitioner is incorrect and cannot be countenanced as the number of persons engaged in non-agricultural employment cannot be equated with the agricultural land holding in Malegaon (Budruk) area; further the submissions made on behalf of the Respondents have credibly and effectively established that the percentage of employment in non-agricultural activities in various segments as explained with supporting documents of Malegaon (Budruk) area is substantial.

9. We state that the total number of employees engaged in non-agricultural activities, employment in respect of the various activities, institutions, establishments, labour co-operative societies, women self-help groups, MGNREGA, industries etc. placed on record by the Tahsildar, Baramati in his affidavit dated 26.02.2022 inspires

confidence of this Court and deserves to be accepted as such area can be so declared as a transitional area on the basis of broad and subjective parameters as envisaged in Article 243Q of the Constitution of India. Hence the aforementioned condition pertaining to percentage of employment in non-agricultural activities being not less than 25% stands duly satisfied with respect to the population of the area.

10. In relation to the condition of the percentage of non-agricultural employment in the area, we find that:

- i. the presumption of the Petitioner that because ninety percent of the area under the Malegaon (Budruk) Gram Panchayat is under sugarcane cultivation, it would necessarily mean that the extent of non-agricultural activity and employment in the area is less than the statutorily mandated twenty-five percent cannot be accepted at face value. The Petitioner has not furnished any data to substantiate his submission;
- ii. the Petitioner has not challenged the two certificates dated 07.12.2020 and 18.12.2020 issued by the Tahsildar, Baramati, which certify that the non-agricultural employment in the area under the Malegaon (Budruk) Gram Panchayat is thirty percent, which is within the range prescribed under Section 341A of the said Act;

- iii. therefore, the objection of the Petitioner with respect to the levels of non-agricultural employment in the area under the Malegaon (Budruk) Gram Panchayat cannot be sustained.

11. At this juncture, we may usefully quote the significance of the underlying effect of Part IXA of the Constitution of India and Article 243Q thereunder, as observed by the Hon'ble Supreme Court of India in *Kishansing Tomar vs. Municipal Corporation of Ahmedabad & Ors.*¹ Paragraph 12 of the judgment is relevant and reads thus:

"12. It may be noted that Part IX-A was inserted in the Constitution by virtue of the Constitution (Seventy-fourth) Amendment Act, 1992. The object of introducing these provisions was that in many States the local bodies were not working properly and the timely elections were not being held and the nominated bodies were continuing for long periods. Elections had been irregular and many times unnecessarily delayed or postponed and the elected bodies had been superseded or suspended without adequate justification at the whims and fancies of the State authorities. These views were expressed by the then Minister of State for Urban Development while introducing the Constitution Amendment Bill before Parliament and thus the new provisions were added in the Constitution with a view to restore the rightful place in political governance for local bodies. It was considered necessary to provide a constitutional status to such bodies and to ensure regular and fair conduct of elections. In the Statement of Objects and Reasons in the Constitution Amendment Bill relating to urban local bodies, it was stated:

"In many States, local bodies have become weak and ineffective on account of a variety of reasons, including the failure to hold regular elections, prolonged supersessions and inadequate devolution of powers and functions. As a result, urban local bodies are not able to perform effectively as vibrant democratic units of self-government.

Having regard to these inadequacies, it is

1 (2006) 8 SCC 352

considered necessary that provisions relating to urban local bodies are incorporated in the Constitution, particularly for:

(i) putting on a firmer footing the relationship between the State Government and the urban local bodies with respect to:

(a) the functions and taxation powers, and

(b) arrangements for revenue sharing.

(ii) ensuring regular conduct of elections,

(iii) ensuring timely elections in the case of supersession; and

(iv) providing adequate representation for the weaker sections like the Scheduled Castes, Scheduled Tribes and women.

Accordingly, it has been proposed to add a new part relating to the urban local bodies in the Constitution to provide for—

(f) fixed tenure of 5 years for the municipality and re-election within a period of six months of its dissolution.””

11.1. The effect of Article 243Q is that while Panchayats are the institutions of self-governance in rural areas, as specified in the notifications issued by the Governors of the State, the Municipalities under Part IXA of the Constitution of India are the institutions of self-governance in the urban area. A municipality or a municipal council may be constituted for a municipal area by the Governor of a State while taking into consideration its size and the municipal services provided or proposed to be provided in that area. It envisages that such areas will be divided again while having regard to their

population, revenue generated for local administration, the percentage of employment in non-agricultural activities, and the like. The areas can be categorized into three categories, namely: (i) a 'transitional area,' that is an area in transition from a rural area to an urban area; (ii) a smaller urban area; and, (iii) a larger urban area. A striking feature of Part XIA of the Constitution of India is that the various articles therein are in the nature of basic provisions which are to be supplemented by laws made by the respective state legislatures which will define the details as to the powers and functions of the various organs of the State.

12. Before we state our findings on the Petitioner's objection in relation to the consent of the Malegaon (Budruk) Gram Panchayat not having been taken before the declaration of the area under it as a 'transitional area', it would be pertinent to consider the procedure for such a declaration to be made. Section 341A (1B) of the said Act provides that the procedure laid down in sub-sections 3, 4 and 5 of Section 3 of the said Act has to *mutatis mutandis* be followed. Sub-sections 3,4 and 5 of Section 3 of the said Act read thus:

"3.

(1) ...

(2)...

(2A) ...

(3) Before the publication of a notification under sub-section (2), the State Government shall cause to be published in the Official Gazette, and also in at least one

newspaper circulating in the area to be specified in the notification, a proclamation announcing the intention of Government to issue such notification, and inviting all persons who entertain any objection to the said proposal to submit the same in 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. Copies of the proclamation in Marathi shall also be posted in conspicuous places in the area proposed to be declared as a municipal area.

(4) The Collector shall, with all reasonable despatch, forward any objection so submitted to the State Government.

(5) No such notification as aforesaid shall be issued by the State Government unless the objections, if any, so submitted are in its opinion insufficient or invalid."

13. The Petitioner has argued before us that the consent of the Malegaon (Budruk) Gram Panchayat is required to be obtained as a *sine qua non* in a democratically elected society for declaring the area under the Malegaon (Budruk) Gram Panchayat as a transitional area and constituting a Nagar Panchayat therefor. However, a bare reading of the provisions of Section 341 (1B) read with sub-sections 3, 4, and 5 of Section 3 shows that no such requirement is stipulated therein. It is clear that no consent of a Gram Panchayat is required to be obtained before the State Government issues a notification declaring the area under the Gram Panchayat as a 'transitional area'.

14. We also find that the procedure required to be followed for the declaration of the area under the Malegaon (Budruk) Gram Panchayat as a 'transitional area' and the constitution of a Nagar

Panchayat therefor have been duly followed in the present case.

15. The proclamation along with the draft notification was issued by the State Government on 24.12.2020. The proclamation was preceded by the following four events:

- i. Resolution dated 05.11.2020 passed by the Zilla Parishad, Pune, recommending a proposal for the declaration of the area under Malegaon (Budruk) Gram Panchayat as a transitional area and the conversion of the Gram Panchayat into a Nagar Panchayat.
- ii. Letter dated 04.12.2020 issued by the Administrator of the Malegaon (Budruk) Gram Panchayat recommending the same proposal to the State Government.
- iii. Letter dated 07.12.2020 issued by the Panchayat Samiti, Baramati, recommending the same proposal.
- iv. Proposal dated 14.12.2020 submitted to the State Government by the District Collector, Pune, for the declaration of the area under Malegaon (Budruk) Gram Panchayat as a transitional area and the conversion of the Gram Panchayat into a Nagar Panchayat.

15.1. Pursuant to the proclamation, six objectors, including the Petitioner, filed their objections. On 27.01.2021, the District Collector, Pune, directed the Sub-Divisional Officer, Baramati, to hear the objectors and conduct a hearing on the objections received. On

05.02.2021, the said hearing was duly conducted. Thereafter, on 11.02.2021, the Sub-Divisional Officer prepared a detailed report *qua* each objection raised by the objectors and submitted the same to the District Collector, Pune. On 12.02.2021, the District Collector, Pune, submitted six objections along with his reply on each of the said objections to the State Government. This position is not in dispute.

16. We have also considered the manner in which the Sub-Divisional Officer, Baramati, and the District Collector, Pune, dealt with the objections in their reports. These two reports are annexed at page nos. 97 to 110 as Exhibit R3 and R4 to the Affidavit-in-Reply dated 18.05.2021 filed by Dr. Rajesh Deshmukh, District Collector, Pune. We find that the objections have been duly considered and dealt with properly.

17. Having complied with the procedural requirements prescribed under Section 341A (1B) read with sub-sections 3, 4 and 5 of Section 3 of the said Act, and having considered the objections for their sufficiency and validity, the impugned notification dated 30.03.2021, in our opinion, has been correctly issued. Thus, the impugned notification dated 30.03.2021 need not be interfered with.

18 . In view of the aforementioned findings and discussion, the
Writ Petition stands dismissed with no order as to costs.

[MILIND N. JADHAV, J.]

[S.J. KATHAWALLA, J.]

RAVINDRA
MOHAN
AMBERKAR
Digitally
signed by
RAVINDRA
MOHAN
AMBERKAR
Date:
2022.03.16
17:03:51
+0530