



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

31 WRIT PETITION NO. 2696 OF 2024

VIJAYSINH SHRIRANGRAO VIDHATE
AND OTHERS

.. PETITIONERS

VERSUS

THE STATE OF MAHARASHTRA
THROUGH SECRETARY AND OTHERS

.. RESPONDENTS

Mr.S.S. Gangakhedkar h/f. Mr. N.B. Khandare, Advocate for the
petitioners.

Mr.Ruchir Wani, AGP for the respondent/State.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
KISHORE C. SANT, J.**

DATE : AUGUST 26, 2024

ORAL JUDGMENT [PER : CHIEF JUSTICE] :-

01. Heard the learned Counsel representing the petitioners
and learned AGP representing the respondent-State.

02. Rule.

03. With the consent of learned Counsel for the parties, Rule is made returnable forthwith and the Court proceeds to decide the petition finally.

04. By instituting this petition under Article 226 of the Constitution of India, certain residents of village Kari, which presently lies within the bounds of Taluka – Osmanabad, District – Osmanabad, have challenged initiation of the process of reverting the said village back to the territorial limits of Taluka – Barshi, District – Solapur. It has been argued by learned Counsel for the petitioners that it was only on 27.05.2019 that a notification was issued under section 4 of the Maharashtra Land Revenue Code, whereby the village in question was included within Taluka – Osmanabad, District – Osmanabad taking it out of Taluka – Barshi, District – Solapur and hardly 4 years have lapsed that the process by the Administration has again been started, that too at the instance of certain political interests and on political considerations. Making the aforesaid submission, our attention has been drawn to

minutes of meeting dated 15.03.2023, which are available at page 83 of the writ petition, which was attended by the Hon'ble Member of the Legislative Assembly, Barshi and various other Government officials, wherein a decision was taken to take appropriate steps for including village Kari in Taluka – Barshi, District – Solapur. The said meeting is said to have taken place on 15.03.2023, i.e. immediately after completion of four years from the date of issuance of earlier notification dated 27.05.2019.

05. Having considered the submissions made by learned Counsel for the petitioners, what we find is the petition is apparently pre-mature for the reason that the meeting held on 15.03.2023 though passed certain resolution, however, process for inclusion of any village in a particular revenue area of Taluka or District has to be in terms of the requirements of the provisions contained in Section 4 of the Maharashtra Land Revenue Code, 1966.

06. Section 4 of the Code empowers the State Government

to specify different revenue areas such as districts, sub-divisions, talukas, villages or a local area which constitutes a village. Section 4(1)(vi) of the Act also permits and empowers the State Government to alter the limits of any such revenue area by amalgamation or division. It also permits abolition of any such revenue area. However, section 4 (4) of the Act provides that every notification to be published under section 4 has to be subject to the condition of previous publication. It further provides that Section 24 of the Bombay General Clauses Act, 1904 shall also apply in relation to such notification. Section 4 of the Maharashtra Land Revenue Code is extracted hereinbelow :-

S. 4. Constitution of revenue areas :-

(1) The State Government may, by notification in the Official Gazette, specify-

(I) the districts 1[(including the City of Bombay)] which constitute a division ;

(ii) the sub-divisions which constitute a district ;

(iii) the talukas which constitute a sub-division ;

(iv) the villages which constitute a *taluka*;

(v) the local area which constitutes a village ; and

(vi) alter the limits of any such revenue area so constituted by amalgamation, division or in any manner whatsoever, or abolish any such revenue area and may name and alter after the name of any such revenue area ; and in any case where any area is renamed, then all references in any law or instrument or other documents to the area under its original name shall be deemed to be references to the area as renamed, unless expressly otherwise provided :

Provided that, the State Government shall, as soon as possible after the commencement of this Code, constitute by like notification every *wadi*, and any area outside the limits of the *gaathan* of a village having a separate habitation (such *wadi* or area having a population of not less than 2[three hundred, as ascertained by a revenue officer not below the rank of a Tahsildar] to be a village ; and specify therein the limits of the village so constituted.

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

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

(4) Every notification or order made under this section shall be subject to the condition of previous publication ; and the provisions of section 24 of the Bombay General Clauses Act, 1904, shall, so far as may be, apply in relation to such notification or order, as they apply in relation to rules to be made after previous publication.

. Section 24 of the Maharashtra General Clauses Act is also extracted hereinbelow :-

24. Where, by any Bombay Act 1[or Maharashtra Act] a power to make rules or bylaws is expressed to be given subject to the condition of the rules or by-laws being made after previous publication, then the following provisions shall apply, namely;—

(a) the authority having power to make the rules or by-laws shall, before making them, publish a draft of the proposed rules or by-laws for the information of persons likely to be affected thereby ;

(b) the publication shall be made in such manner as that authority deems to be sufficient or, if the condition with respect to previous publication so requires, in such manner as the [Central Government, or as the case may be, the [State] Government] prescribes ;

(c) there shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration ;

(d) the authority having power to make the rules or by-laws, and, where the rules or by-laws are to be made with the sanction, approval or concurrence of another authority, that authority also, shall consider any objection or suggestion which may be received by the authority having power to make the rules or by-laws from any person with respect to the draft before the date so specified;

(e) the publication in the [Official Gazette] of a rule or by-law purporting to have been made in exercise of a power to make rules or by-laws after previous publication shall be conclusive proof that the rule or by-law has been duly made.

07. Perusal of the afore-quoted provision contained in the Maharashtra General Clauses Act reveals that the said provisions provides that where any Maharashtra Act empowers an authority to make rules or by-laws after previous publication, the said authority, before making such rule, has to publish a draft, for information of

persons likely to be affected thereby. It also prescribes that previous publication shall be made in such a manner as the authority concerned deems it to be sufficient. It also provides that with the draft, a notice specifying a date on or after which the draft will be taken into consideration, will also be published. The said provision also provides that the authority concerned shall also consider any objection or suggestion which may be received with respect to the draft before the date of its finalization.

08. Accordingly, if the State respondents intend to include village Kari in Taluka Barshi, District Solapur, they, mandatorily, have to take recourse to the procedure as prescribed under section 4 of the Code, in absence of which such a notification would have no legal value/force. As already observed above, since section 4(4) of the Code prescribes that a notification under section 4 is subject to condition of previous publication, therefore, section 24 of the Maharashtra General Clauses Act will have full force which requires publication of draft notification and inviting the objections and suggestions from the general public to such draft notification.

Section 24 also mandates that before finalizing the notification, the suggestions/objections which may be received from general public also needs to be considered by the authority concerned.

09. Nothing has been brought on record to show that the State authorities have issued any such draft notification as per the requirement of section 4 (4) read with section 24 of the Maharashtra General Clauses Act. Accordingly, we find that the petition has been filed at a pre-matured stage.

10. We, however, need to address the apprehension of the petitioners. The learned Counsel for the petitioners has stated that because of the political reasons and considerations, the objections against inclusion of village Kari in Taluka Barshi, District – Solapur, may not be considered appropriately. He also apprehends that even the objections of the Grampanchayat concerned will also not be considered.

11. We do not see any reason why the authority concerned

will not consider the objections which may be preferred by the petitioners in case any such draft notification is issued under section 4 of the Code read with section 24 of the Maharashtra General Clauses Act. We also do not find any reason to believe that if any such a notification is issued and Grampanchayat concerned files any objections and suggestion, the same will not be considered.

12. Thus, having regard to overall facts and circumstances of the case, we dispose of this writ petition with a direction that in case any draft notification is issued for the purpose as aforesaid, the petitioners as also the Grampanchayat concerned shall be at liberty to make their suggestions or file their objections to such a draft notification. In case of issuance of draft notification, if the petitioners or any other member of the Grampanchayat or the Grampanchayat itself submits any suggestion/objection, the same shall be considered by the authority concerned in terms of the requirement of Section 4 (4) of the Code read with section 24 of the Maharashtra General Clauses Act. The authority concerned

shall give due weightage to the objections/suggestions which may be put-forth by the petitioners or the Grampanchayat concerned and will also have due regard to the fact that it was only on 27.05.2019 that the village Kari was included within the territorial limits of Taluka Osmanabad, District Osmanabad.

13. Rule is made absolute in the aforesaid terms.

14. Civil Application, if any, stands disposed of.

15. There will be no order as to costs.

[KISHORE C. SANT, J.]

[CHIEF JUSTICE]