STATE OF KARNATAKA TR.SEC. HSG. & URB. & ANR. A

v

VASAVADATTA CEMENT & ANR.

(Civil Appeal No. 1918 of 2015) B

FEBRUARY 16, 2015

[SUDHANSU JYOTI MUKHOPADHAYA AND VIKRAMAJIT SEN, JJ.] C

Karnataka Municipalities Act, 1961 – ss.9, 3 – Procedure for Constitution, abolition, etc. of smaller urban areas – Compliance of – Notification issued D *altering the existing limits of town municipality Council, Sedam for inclusion of a Survey within the municipal limits of town municipality, Sedam – Challenge to, by 1st respondent on the ground that the notice should have* E *been posted in the area of the 1st respondent factory which has mini township – Writ petition allowed by the High Court holding that there was no proper compliance of posting the Notification at the requisite places – On appeal, held: All the persons, said to be affected by the* F *notification were informed sufficiently by notice posted at the conspicuous places – Apart from the land of 1st respondent, land belonging to others were also shown in the said notification – As regards two notifications of the* G *same date, in the first notification it was directed to be posted at four places, and in the other notification it was to be posted at nine places which was prepared*

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A *subsequently – State neither created any document nor filed the same before the High Court or this Court – If any document is created by any officer to keep it on record so as to produce it before the Court, it is a serious matter to* B *be inquired into by the concerned authority – Thus, the State Government directed to inquire into the matter – Constitution of India, 1950 – Art. 243Q*

Allowing the appeal, the Court

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HELD: 1.1 Under Section 9 of the Karnataka Municipalities Act, 1961 the posting of the notice in conspicuous/convenient places is mandatory. The Office of the Collector, Panchayat Office, Office of D **Tehsildar, Office of municipality, railway station and bus stand, etc. of the local area are public places; which are expected to be visited by general public for one or the other reason. Those places can be safely** E **expected to be conspicuous/convenient places for posting a notice about declaration of local area to be smaller urban area or altering the limit of any such smaller urban area. [Para 13, 14] [410-C,E-F]**

F **1.2 The stand of the 1st respondent that the notice should have been posted within the township of 1st respondent, would frustrate the objective of Section 9 as other affected persons whose land would also** G **come under the purview of the said notification might not have any access to such notice posted within the boundaries of the 1st respondent's factory, being not a public place. In such case, every individual/affected persons would claim posting of such notice at their**

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land which will amount to giving individual notice to all affected persons. [Para 15] [410-G-H; 411-A] A

1.3 All the persons, who are said to be affected by the notification, were informed sufficiently by notice dated 3rd October, 1995 posted at the conspicuous places. The submission that only the factory and residential area of the 1st respondent was added by notification dated 28th November, 1995 cannot be accepted in view of the fact that apart from the land of 1st respondent, land belonging to others were also shown in the said notification dated 28th November, 1995. [Para 17, 18] [412-D-F] B C

1.4 There are two notifications both dated 3rd October, 1995 having same number. Per se, both notifications dated 3rd October, 1995 are same but there is a substantial difference in the last paragraph which mentions the places where copies of the notification were to be posted. In the 1st notification which appears to be original, it has been shown that the notice to be posted at four places, panchayat office, railway station, bus stand and notice board of town municipal council. The other notification shows that direction has been issued to post the said notification at nine places, i.e. five more places apart from the four places mentioned in the first notification. The additional five places include the premises of the first respondent. Prima facie it appears that the notification dated 3rd October, 1995 containing nine conspicuous places wherein it was to be notified, signed in green ink by some officer was prepared subsequently.[Para 19] [412-G-H; 413-A;C-E] D E F G

1.5 The State has neither created any document H

nor filed the same before the High Court or this Court. If any document is created by any officer to keep it on record so as to produce it before the Court, it is a serious matter which requires to be inquired into by the concerned authority. The Chief Secretary, State of Karnataka is directed to hold an inquiry with regard to notification dated 3rd October, 1995 issued from the office TMC, Sedam, signed by Chief Officer, Sedam in green ink wherein nine places have been shown for posting the notifications. [Para 21] [413-G-H; 414-A, C-D]

Collector (District Magistrate) Allahabad & Anr. vs. Raja Ram Jaiswal **1985 (3) SCR 995 :(1985) 3 SCC 1;** *Syed Hasan Rasul Numa & Ors. vs. Union of India & Ors.* **1990 (3) Suppl. SCR 165: (1991)1 SCC 401;** *J&K Housing Board and Anr. vs. Kunwar Sanjay Krishan Kaul & Ors.* **2011 (14) SCR 976: (2011) 10 SCC 714;** *Klsum R. Nadiadwala vs. State of Maharashtra & Ors.* **(2012) 6 SCC 348 – referred to.**

Case Law Reference

1985 (3) SCR 995	**referred to.**	**Para 9**
1990 (3) Suppl. SCR 165	**referred to**	**Para 9**
2011 (14) SCR 976	**referred to**	**Para 9**
(2012) 6 SCC 348	**referred to**	**Para 9**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1918 of 2015

From the Judgment and Order dated 23.06.2010 of High Court of Karnataka, Circuit Bench at Gulbarga, in \ppeal No. 2999/2004 (LB-RES).

'a Shenoy for the Appellants.

Jayant Bhushan, Brijesh Kalappa, Divya Nair, N. Ganpathy, Ajay Bhargava, Vanita Bhargava, Arvind Ray, Khaitan & Co. for the Respondents.

The Judgment of the Court was delivered by

SUDHANSU JYOTI MUKHOPADHAYA,J. 1. Delay condoned. Leave granted.

2. This appeal has been preferred by the appellant-State of Karnataka against the judgment dated 23rd June, 2010 passed by the High Court of Karnataka, Circuit Bench at Gulbarga in Writ Appeal No.2999 of 2004 (LB-RES). By the impugned judgment, the Division Bench of the High Court while allowing the writ appeal observed as follows:

> *"On a thorough consideration of the provision of Section 9 and the notification produced before court which is extracted above, it discloses that there is no proper compliance of posting the notification at the requisite places as stated in Section 9."*

3. The factual matrix of the case is as follows:

The Government of Karnataka initially by draft Notification No. HUD 14 TML 84 dated 19th June/22nd July, 1986 proposed to alter the existing limits of Town Municipal Council (hereinafter referred to as the 'Council' for short) Sedam for inclusion of Survey No. 630-642 within the municipal limits of town municipality (hereinafter referred to as the 'municipality'), Sedam inviting objections and suggestions to the proposal from persons likely to be affected therein. It was followed by Notification No.HUD 14 TMT 84 dated 15th April/20th May, 1987, issued by Governor of Karnataka published in Karnataka Gazette

A dated 25th May, 1987 exercising the power conferred by sub-Section (1) of Section 4 of Karnataka Municipalities Act, 1961 (hereinafter referred to as the 'Act') altering the existing limits of the Council, Sedam as detailed therein. A writ petition No. 10187 of 1987 was filed against the
B aforesaid notification by 1st respondent which was permitted to be withdrawn in view of subsequent notification issued by State Government on 28th November, 1995.

By the said notification dated 28th November, 1995, it
C was notified that having received no objection to the proposal within a said period of 30 days from the date of publication of notification dated 26th September, 1995 inviting objections from persons likely to be affected thereby in exercise of power conferred by Section 3 read with
D Section 9 of the Act, the Governor of Karnataka specified the smaller urban area in Schedule 'A and the limits of which are specified in Schedule 'B' and further specified it to be called 'Town Municipal Council Area of Sedam having regard to:

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1) the population of the area specified in Schedule-A being not less than twenty thousand but less than fifty thousand.

F 2) the density of population in such area being not less than one thousand five hundred inhabitants to one square kilometer of area:

3) the revenue generated for local administration from such area from tax and non-tax sources in
G the year of the last preceding census being not less than Rs.9,00,000/- per annum;

4) Apart from the percentage of employment in non-agricultural activities is not less than 15% of

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the total employment. A

4. The first respondent filed another Writ Petition No. 14554/96 before the High Court of Karnataka, Bangalore challenging the said notification and the same was summarily dismissed on 19th August, 1997 observing that B the matter is covered by the decision rendered in another case. A Civil Petition No.1233/2000 in WP No. 14554/ 1996 was filed by respondent to rectify the order passed by the learned Single Judge. While reviewing the said order, the petition was allowed on 20th August, 2001 and C the order dated 19th August, 1997 passed in the writ petition No. 14554/1996 was set aside and the said writ petition was restored. However, after hearing the parties, the learned Single Judge on 24th May, 2004 dismissed the writ petition on the ground that the action of inclusion of an D area to the limits of an existing Town Municipal Limits is essentially a conditional legislation and hence judicial intervention is not warranted.

5. Against the said order, the respondent preferred the E writ appeal No. 2999/2004 which was allowed by the Division Bench by impugned judgment dated 23rd June, 2010.

6. Learned counsel appearing on behalf of the appellant F while assailing the impugned judgment, submitted that the procedure prescribed under Section 9 of the Act is substantially followed and complied with in this case. The third appellant under the directions of the first appellant had posted the notices announcing the inclusion of the G local area within the existing municipal limits in all the conspicuous places, calling for objection from the public within 90 days but no objections were received within the time stipulated.

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A 7. According to the learned counsel for the 1st respondent, the notice has to be posted in area sought to be added or deleted in smaller urban areas. In the present case the proclamation has been neither posted in the area of the 1st respondent factory which is a large area of around 1235.03 acres which has mini townships nor has been posted in any other area sought to be included in the existing smaller urban area. The only places where it has allegedly been posted are four namely;

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(1) Panchayat Office, Old Bazar, Sedam

(2) Railway Statio, Sedam

(3) Bus Stand, Sedam and

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(4) Notice Board of Town Municipal Council, Sedam;

which were existed in one area and none of them are in area sought to be included in smaller urban area.

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8. Further, according to the learned counsel for the 1st respondent, the second part of Section 9 states that whenever it is proposed to add to or to exclude from a smaller urban area any inhabited area, it shall be the duty of the F municipal council also to post a copy of the proclamation in a conspicuous place, meaning thereby in the inhabited area sought to be included or excluded from the smaller urban area. The case of the 1st respondent is that it has a township G which is an inhabited area with housing for workmen, management, etc. and thus it was mandatory for the municipal council to post the proclamation in conspicuous places in the said inhabited area which was sought to be included.

H 9. Learned counsel relied upon the following judgments

for the proposition that the proclamation has to be posted in the affected area or concerned locality and the objective of the proclamation is that the affected persons could come to know about the proposed change and that such a posting is mandatory and not merely directory.

(a) (1985) 3 SCC 1, Collector (District Magistrate) Allahabad & Anr. vs. Raja Ram Jaiswal.

(b) (1991)1 SCC 401, Syed Hasan Rasul Numa & Ors. vs. Union of India & Ors.

(c) (2011) 10 SCC 714, J&K Housing Board and Anr. v s . Kunwar Sanjay Krishan Kaul & Ors.

(d) (2012) 6 SCC 348, Klsum R.Nadiadwala vs. State of Maharashtra & Ors.

10. We have heard the rival contentions raised by the parties and perused the records.

11. For convenient reference, Section 9 of Karnataka Municipalities Act is quoted below:

"9. Procedure for Constitution, abolition, etc. of smaller urban areas:

Not less than thirty days before the publication of any notification declaring any local area to be smaller urban area, or altering the limits of any such smaller urban area or declaring that the local area shall cease to be smaller urban area, the Governor shall cause to be published in the official gazette in English and Kannada, and to be posted up in conspicuous placed in the said local area in Kannada a proclamation announcing that it is proposed to constitute the local area to be smaller

A *urban area or to alter the limits of the smaller urban area in a certain manner or to declare that the local area shall cease to be a smaller urban area, as the case may be, and requiring all persons who entertain any objection to the*
B *said proposal to submit the same, with the reasons therefore, in writing to the Director of Municipal Administration within thirty days from the date of the said proclamation, and whenever it is proposed to add or exclude from a smaller*
C *urban area any inhabited area, it shall be the duty of the municipal council also to cause a copy of such area. The Director of Municipal Administration shall, with all reasonable dispatch forward every objection so submitted to the*
D *Governor.*

No such notification as aforesaid shall be issued by the Governor unless the objection, if any, so submitted are in its opinion insufficient or invalid."

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Section 9 prescribes a mandate which is to be followed by the Governor before publication of notification declaring any local area to be smaller urban area; or altering the limits of any such small urban area; or declaring that the
F local area shall cease to be a smaller urban area. Firstly, a proclamation announcing the object/proposal of such notification should be published in the Official Gazette in both English and Kannada language. Secondly, such proclamation should be posted in conspicuous places in the
G said local area 'in Kannada'. Thirdly, such proclamation shall require all persons who has any objection to the said proposal to submit the same stating reasons within thirty days from the date of such proclamation.

H Section 9 further stipulates that whenever it is

proposed to add or exclude from a smaller urban area any inhabited area, it shall be the duty of the municipal council to cause a copy of such proclamation to be posted up in conspicuous places in such area. The phrase "such area" used herein means the inhabited area which is proposed to be added or excluded from the smaller urban area.

12. Section 9 of the Act has to be read in the light of Article 243Q of the Constitution of India which is 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 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 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

A therein, the revenue general for local economic importance or such other factors as may be deem fit, specify by public notification or the purposes of this Part."

B 13. The Provision of Section 9 is somewhat similar to Section 4 of the Land Acquisition Act, 1894 whereunder the posting of the notice in conspicuous/convenient places is mandatory.

C If the argument advanced by the learned senior counsel for the first respondent is accepted, in that case every affected person whose land is sought to be included for the purpose of alteration of the limits of the smaller urban area would claim that D such notice must be posted in his land.

14. The Office of the Collector, Panchayat Office, Office of Tehsildar, Office of municipality, railway station and bus stand, etc. of the local area are E public places; which are expected to be visited by general public for one or the other reason. Those places can be safely expected to be conspicuous/ convenient places for posting a notice about declaration of local area to be smaller urban area or F altering the limit of any such smaller urban area as is done in the case of land acquisition.

15. If the stand of the 1st respondent is accepted that the notice should have been posted within the G township of 1st respondent, then it would frustrate the objective of Section 9 of the Act as other affected persons whose land would also come under the purview of the said notification might not have any access to such notice posted within the H boundaries of the 1st respondent's factory, being not

a public place. In such case, every individual/affected persons will claim posting of such notice at their land which will amount to giving individual notice to all affected persons.

16. Notification dated 3rd October, 1995 was posted at four conspicuous places, the English version of which reads as follows:

"No.TMC;95-96 Office of the TMC

Sedam, dated 3.10.1995

NOTIFICATION

Sub.: Publication of Govt. Circular

Ref.: Govt. Circular, bearing No.:NE:407:MLR:95, Bangalore, Dated 26.09.1995

With reference to the above subject, the public of the Town Municipal area are informed that vide Circular stated in the reference, the boundaries of Sedam Town Municipalities is proposed to be altered to extend the municipal area. Any person having objections to the said proposal can file their written objections within 30 days. The public area hereby informed of the same by this notification.

Sd.,

Chief Officer

SEDAM"

It is directed that the copy of the Notification should be posted at the following places:

A i) Panchayat Office, Old Bazar, Sedam

ii) Railway Station, Sedam

iii)Bus Stand, Sedam

B iv) Notice Board of Town Municipal Council, Sedam."

17. Learned counsel for the 1st respondent accepted that the Panchayat Office of the 1st C respondent is at Old Bazar, Sedam, nearest railway station is at Sedam and the bus stand for the employees of the 1st respondent is at Sedam. This indicates that all the persons, who are said to be affected by the notification, were informed sufficiently D by notice dated 3rd October, 1995 posted at the above said conspicuous places.

18. Learned senior counsel for the 1st respondent next contended that only the factory and residential E area of the 1st respondent was added by notification dated 28th November, 1995 but such submission cannot be accepted in view of the fact that apart from the land of 1st respondent, land belonging to others were also shown in the said notification dated 28th F November, 1995.

19. However, on perusal of the original record, we find two notifications both dated 3rd October, 1995 having same number are on record. Per se, both G notifications dated 3rd October, 1995 are same but there is a substantial difference in the last paragraph which mentions the places where copies of the notification were to be posted. In the 1st notification dated 3rd October, 1995, which appears to be original,

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it has been shown that the notice to be posted at four places namely, (i) Panchayat Office, Old Bazar, Sedam; (ii) Railway Station, Sedam; (iii)Bus Stand, Sedam and (iv) Notice Board of Town Municipal Council, Sedam. It is an old paper, laminated to ensure that it should not be damaged and in the back of it apart from thumb impressions, signatures also have been obtained from different individuals to show that the notification was posted in presence of those witnesses.

The other notification dated 3rd October, 1995 shows that direction has been issued to post the said notification at nine places, i.e. five more places apart from the aforesaid four places mentioned in the first notification. The additional five places include the premises of the first respondent. The second notification is signed in green ink by some other officer. Prima facie it appears that the notification dated 3rd October, 1995 containing nine conspicuous places wherein it was to be notified, signed in green ink by some officer has been prepared subsequently.

20. Learned counsel appearing on behalf of the 1st respondent requested the Court to initiate contempt proceedings against the concerned official and to dismiss the appeal as the document has been created to mislead the Court.

21. The appeal has been preferred by the State of Karnataka. The State has neither created any document nor filed the same before the High Court or this Court. If any document is created by any officer to keep it on record so as to produce it before the Court, it is a serious matter which requires to be

A inquired into by the concerned authority. In view of the fact that a detailed inquiry is required, we find it more feasible to direct the State Government to inquire into the matter and, if so necessary, file an FIR against the alleged officers who might have created the document
B containing the name of nine conspicuous places in the so called notification dated 3rd October, 1995, signed by the Chief Officer, Sedam in green ink.

The Chief Secretary, State of Karnataka is directed
C to hold an inquiry with regard to notification No. TMC:SEDAM:95-96 dated 3rd October, 1995 issued from the office TMC, Sedam, signed by Chief Officer, Sedam in green ink wherein nine places have been shown for posting the notifications. If it is found to be a document
D created subsequently, an FIR to this effect be lodged against the concerned officials for forging documents. Departmental proceedings be also initiated and an appropriate action be taken.

E 22. The appeal is allowed with the aforesaid observations and directions.

Nidhi Jain Appeals allowed.

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