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Court : Mumbai Aurangabad

Decided On : Aug-31-2015

Judge : S.V. Gangapurwala &Amp; V.K. Jadhav

Appeal No. : Writ Petition No. 6179 of 2015 & 5961 of 2015

Appellant : Balasaheb and Another

Respondent : The State of Maharashtra, Through its Secretary, Urban Development Department and Others

Judgement :

S. V. Gangapurwala, J.

1. Rule. Rule made returnable forthwith. With the consent of the learned counsel for respective parties taken up for final hearing.

2. The writ petitions assail same notification and seek the same declaration. The challenge to the notification and declaration is based on same set of facts and law, as such to avoid rigmarole the petitions are decided together.

3. The petitioners in these writ petitions are residents within the territorial limits of Satara Deolai Municipal Council. Initially Satara and Deolai were separate Gram Panchayats. After following the procedure as enumerated in the Maharashtra

Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter referred as to the "Municipal Councils Act" for the sake of brevity) vide notification dated 28.08.2014, Satara Deolai Municipal Council was constituted including the territories as specified in the said notification. After establishment of the Satara Deolai Municipal Council, the Government appointed the Tahsildar Aurangabad as Special Administrator of the newly constituted Satara Deolai Municipal Council to exercise all the powers and duties relating to Satara Deolai Municipal Council. On or about 07.01.2015 the State Election Commission decided to form wards, provide reservation by draw system for the Satara Deolai Municipal Council. On 20.01.2015 the State Election Commission published the revised programme regarding formation of wards providing reservation and holding draws for the said Municipal Council.

4. On 03.02.2015, the General Body of the Municipal Corporation Aurangabad, passed a resolution to include the entire area of the newly constituted Satara Deolai Municipal Council within the Aurangabad Municipal Corporation and to forward recommendations to that effect for approval of the Government. Thereafter, on or about 11.02.2015 State of Maharashtra published a draft notification U/Sec. 3(3)(a) of the Maharashtra Municipal Corporations Act, 1949 (hereinafter referred as to the "Corporations Act" for the sake of brevity) for extending the area of Municipal Corporation Aurangabad, to include the total area of newly constituted Satara Deolai Municipal Council into the Municipal Corporation Aurangabad. Thereafter, on 14.05.2015 the Urban Development Department, State of Maharashtra issued a final notification altering the boundaries of Aurangabad Municipal Corporation and thereby including the area of newly constituted Satara Deolai Municipal Council into the Municipal Corporation Aurangabad. It is the said notification which is assailed in the present writ petitions. So also a declaration is sought that the Satara Deolai Municipal Council continues to be in existence.

5. Ms. Pradnya S. Talekar and Mr. S. S. Thombre, the learned counsel for respective petitioners eruditely canvassed their submissions. The contour of their submissions appears to be as under:

(A) The State has not issued any notification U/Sec. 6 of the Municipal Councils Act declaring that whole of the local area comprising municipal area shall cease to exist. In absence of such notification the Satara Deolai Municipal Council does not cease to exist, inter alia the notification issued U/Sec. 3 of the Corporations Act is bad in law. According to the learned counsel, there is no consultation as required under proviso to Sec. 6(1) of the Municipal Councils Act. The same is mandatory. The Government through Collector vide letter dated 10.02.2015 had asked the Tahsildar who was appointed as Special Administrator of the Municipal Council vide notification dated 28.12.2014 to give his report as regards the resolution of the Municipal Corporation Aurangabad dated 03.02.2015. The said letter was dispatched by the Collector at 5.00 p.m. to the Tahsildar and the Tahsildar by 6.00 p.m. within one hour of the receipt of letter submitted report to the Collector. The said consultation is not consultation in the eyes of law. The consultation cannot be an empty formality. The learned counsel rely on the judgment of the Supreme Court of U. K. in the case of **R Moseley Vs. London Borough of Haringey** reported in **(2014) UKSC 56**. The learned counsel also rely on the judgment of the Apex Court in the case of **Supreme Court Advocates-On-Record Association and others Vs. Union of India** reported in **(1993) 3 SCC 441**. The consultation has to be based on an enquiry and fact finding. The administrator has only given vague opinion. No factual details are given by the administrator.

(B) While issuing final notification U/Sec. 3 of the Corporations Act, the objections raised are not considered, they are not decided. Only farce is made of objections being decided.

(C) Unless there is a holistic demarcation on formation of wards and reservation of modified (increased) area of Aurangabad Municipal Corporation the area of Satara Deolai Municipal Council cannot be included in the Municipal Corporation Aurangabad.

(D) The State did not conduct the elections within six months of the newly constituted Municipal Council as per Sec. 41A of the Municipal Councils Act. The same is violative of Article 240-U of the Constitution of India. There was no reason to prolong the elections, once the wards were formed. The Apex Court in a case of

State of Maharashtra and others Vs. Jalgaon Municipal Council and others reported in **(2003) 9 SCC 731** though held that, there is no hiatus between dissolution of Gram Panchayat and creation of Municipal Council. However, in the present case, there is prolonged period of hiatus. The same is unconstitutional and against the goal of democratic self governance.

(E) Article 243-Q of the Constitution of India deals with constitution of municipalities and mandates certain factors to be considered before specifying an area as smaller urban area or transitional area or larger urban area as the case may be. They include the population of area, density of population, revenue generated for local administration, the percentage of employment and economic importance. None of these factors were considered by the State Government while issuing the notification dated 14.05.2015 and including the area of Satara Deolai Municipal Council in the Aurangabad Municipal Corporation.

(F) The draft notification dated 11.02.2014 issued U/Sec. 3 of the Corporations Act was challenged in the High Court in Writ Petition No. 2994 of 2015. The Court in its order dated 18.03.2015 in the said writ petition has observed that, State Election Commission on 24.02.2015 directed the State Government not to change the existing boundaries of the Aurangabad Municipal Corporation taking into consideration the mandate of Article 243(z)(a) of the Constitution of India as well as Sec. 14 of the Corporations Act. Pursuant to the order of State Election Commission, the State of Maharashtra has also issued an order on 24.02.2015 thereby suspending the process of inclusion of Satara Deolai Municipal Council area into Aurangabad Municipal Corporation. In view of that, the petition was disposed of. However, without issuing any fresh draft notification, final notification is issued on the basis of same draft notification. The final notification dated 14.05.2015 is void ab-initio.

(G) The objections are not considered. Three different objections were raised and none has received any consideration at all. The objections were connived at rather ignored and were not decided.

(H) The Executive cannot change its stand without cogent reasons. The government had decided to create Municipal council for the area of Satara Deolai

after many requests and agitations by the public and resolutions of the Gram Panchayats, final notification was issued to constitute the Municipal Council on 28.08.2014. Even administrator was appointed. The wards were demarcated. The reservation was also declared for each ward. The post of President was reserved for S.C. category and all of a sudden notification is issued to include the area of Satara Deolai Municipal Council into the Aurangabad Municipal Corporation. Within a short span of time the decision cannot be changed. The learned counsel for petitioners also rely on the judgment of a Division Bench of this Court in the case of **Jaishri Vilasrao Khobe Vs. State of Maharashtra** reported in **2014 (3) Bom.C.R. 362**.

6. Mr. Thigle, the learned Additional Government Pleader in lucid manner canvassed following propositions.

(a) The consultation has been properly undertaken. The State Government had called for the report from the Collector and the Municipal Commissioner Aurangabad, upon the resolution passed by the Aurangabad Municipal Corporation to include the area of Satara Deolai Municipal Council in the Aurangabad Municipal Corporation. The Collector and the Municipal Commissioner Aurangabad have submitted their detailed report to the State Government on 10.02.2015. The Collector Aurangabad and the Municipal Commissioner Aurangabad have strongly recommended the inclusion of Satara Deolai Municipal Council area in Aurangabad Municipal Corporation. On the basis of these recommendations the draft notification is published on 11.02.2015 as required by Sub Sec. (3) of Sec. 3 of the Corporations Act. In response to the draft notification, objections were called. The suggestions and objections from two organizations were received. The said draft notification was suspended for some time, as it was decided to wait till the elections of Aurangabad Municipal Corporation are held, as the election process was in force. The Divisional Commissioner Aurangabad conducted the enquiry into the suggestions and objections received in response to the draft notification dated 11.02.2015. The Divisional Commissioner, Aurangabad conducted the enquiry on 02.05.2015 and submitted his report to the Government on 12.05.2015. The Commissioner upon enquiry recommended to the Government that there is no specific point raised in

support of argument that Satara Deolai Municipal Council area should not be merged with the Aurangabad Municipal Corporation. In fact, it is in the interest of people of the Satara Deolai Municipal Council that the area of said Municipal Council should be merged with Aurangabad Municipal Corporation, so that the people of said area will get all basic amenities. The State Government has taken decision to merge the entire area of Satara Deolai Municipal Council into Aurangabad Municipal Corporation as it is adjacent to Aurangabad Municipal Corporation. It is possible to develop entire area in an integrated manner and provide all basic amenities to newly added area which is available to the citizens of Aurangabad Municipal Corporation.

(b) The learned Additional Government Pleader submits that, once notification U/Sec. 3 of the Corporations Act is issued, then there is no necessity to issue separate resolution under the Municipal Councils Act. The learned Additional Government Pleader relies on Sec. 3(3)(b) of the Corporations Act and states that, where any area is included within the limits of larger urban area under clause (a), then any appointments, notifications, notices, taxes, orders, schemes, licenses, permissions, rules, byelaws or forms made, issued, imposed or granted under this Act or any other law, which are for the time being in force in the larger urban area shall, notwithstanding anything contained in any other law for time being in force, but save as otherwise provided in Sec. 129A or any other provisions of this Act apply to and be in force in the additional area also from the date that area is included in the city. According to the learned Addl. G. P. in view of the same, there is no need to have a separate notification U/Sec. 6 of the Municipal Councils Act. The learned Addl. G. P. relies on the judgment of the Apex Court in the case of **Solapur MIDC Industries Association and others Vs. State of Maharashtra and others** reported in **(1996) 9 SCC 621**. The learned Additional Government Pleader submits that, while considering the objections, it is not necessary to give personal hearing. The principles of natural justice are excluded from this process. He relies on the judgment of the Apex Court in the case of **Sundarjas Kanyalal Bhatija and others Vs. Collector, Thane, Maharashtra and others** reported in **(1989) 3 SCC 396**. According to the learned Additional Government Pleader there is no hiatus in constitution of Municipal Corporation of an area of a Municipal Council and dissolution of Municipal Council.

7. We have considered the submissions canvassed by the learned counsel for respective parties. Before we advert to the submissions canvassed by the learned counsel, it would be appropriate to refer to the relevant provisions.

THE MAHARASHTRA MUNICIPAL CORPORATIONS ACT, 1949

1. .....

[3. Specification of larger urban areas and constitution of corporations.]

[(1) The Corporation for every City constituted under this Act existing on the date of coming into force of the Maharashtra Municipal Corporations and Municipal Councils (Amendment) Act, 1994, specified as a larger urban area in the notification issued in respect thereof under clause (2) of Article 243-Q of the Constitution of India, shall be deemed to be a duly constituted Municipal Corporation for the larger urban area so specified forming a City, known by the name "The Municipal Corporation of the City of....";

[(1A) The Corporation of the City of Nagpur incorporated under the City of Nagpur Corporation Act, 1948 for the larger urban area specified in the Notification issued in this respect under clause (2) of article 243-Q of the Constitution of India shall, on and from the date of coming into force of the Bombay Provincial Municipal Corporations (Amendment) and the City of Nagpur Corporation (Repeal) Act, 2011, be deemed to have been constituted under this Act and accordingly the provisions of this Act shall apply to the area of the City of Nagpur.]

(2) Save as provided in sub-section (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 notifications in the Official Gazette, any urban area with a population of not less than three laks as a larger urban area;

(2A) Every larger urban area so specified by the State Government under sub-section (2) shall form a City and there shall be a Municipal Corporation for such larger urban area known by the name of the Municipal Corporation of the City of...;]

(3) [(a) [Subject to the provisions of the sub-section (2), the State government] may also from time to time after consultation with the Corporation by notification in the Official Gazette, alter the limits specified for any [larger urban area] under sub-section (1) or sub-section (2) so as to include therein, or to exclude therefrom, such area as is specified in the notification.]

[(b) Where any area is included within the limits of the [larger urban area] under clause (a), any appointments, notifications, notices, taxes, orders, schemes, licenses, permissions, rules, bye-laws or forms made, issued, imposed or granted under this Act or any other law, which are for the time being in force in the [larger urban area] shall, notwithstanding anything contained in any other law for time being in force, but save as otherwise provided in section 1`29A or any other provisions of this Act, apply to and be in force in the additional area also fromt he date that area is included in the City.]

(4) The power to issue a notification under this section shall be subject to the condition of previous publication:

[Provided that, where the population of any urban area, in respect of which a Council has been constituted under the provisions of the Maharashtra Municipal Councils, Nagar Panhayats and Industrial Townships Act, 1965, as per the latest census figures has exceeded three lakhs, the State Government may, for the purpose of constituting a Corporation under this Act for such urban area, with the same boundaries, dispense with the condition of previous publication of the notification under this section.]

THE MAHARASHTRA MUNICIPAL COUNCILS, NAGAR PANCHAYATS AND INDUSTRIAL TOWNSHIPS ACT, 1965

1. ....

3 **[Specification of areas as smaller urban areas]**

[(1) A council for every municipal area existing on the date of coming into force of the Maharashtra Municipal Corporations and Municipal Councils (Amendment) Act, 1994, Mah. XLI of 1994, specified as a smaller urban area in a notification

issued under clause (2) of Article 243-Q of the Constitution of India in respect thereof, shall be deemed to be a duly constituted Municipal Council known by the name .....Municipal Council.

(2) Save as provided in sub-section (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, any local area as a smaller urban area:

Provided that no such area shall be so specified as a smaller urban area unless the State Government, after making such inquiry as it may deem fit is satisfied that, -

(a) the population of such area is not less than 25,000; and

(b) the percentage of employment in non-agricultural activities in such area is not less than thirty-five per cent.

(2A) For every smaller urban area so specified by the State Government under sub-section (2), there shall be constituted a Municipal Council known by the name .....Municipal Council.]

(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 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.

6. Alteration of the limits of a municipal area “

(1) [Subject to the provisions of sub-section (2) of Section 3, the State] Government may by notification in the Official Gazette, -

(a) alter the limits of a municipal area so as to include therein or to exclude therefrom such local area as may be specified in the notification;

(b) amalgamate two or more municipal areas so as to form one municipal area;

(c) split up any municipal area into two or more municipal areas;

(d) declare that the whole of any local area comprising a municipal area shall, cease to be a municipal area:

Provided that, no such notification shall be issued by the State Government under any of the clauses of this sub-section without consulting the Municipal Council or Councils and other local authorities concerned.

(2) Prior to the publication of a notification under sub-section (1), the procedure prescribed in sub-sections (3), (4) and (5) of section 3 shall mutatis mutandis be followed.

[Provided that, the State Government may dispense with the provisions of sub-sections (3), (4) and (5) of Section 3 regarding proclamation and of the proviso to sub-section (1) of this Section regarding consultation, in respect of the municipal area, where the population, as per the latest census figures has exceeded three lakhs; and a Corporation under the provisions of the Bombay Provincial Municipal Corporation Act, 1949, is being constituted for such area, with the same boundaries.]

341. Abolition of municipalities

When the whole of the local area comprising a municipal area ceases to be a municipal area, with effect from the day on which such local area ceases to be a municipal area “

(i) the council constituted for such municipal area shall cease to exist or function;

(ii) the Councillors of the Council [* * *]

shall vacate office;

(iii) the Director may, notwithstanding anything contained in this Act or any other law for the time being in force, by any order published in the Official Gazette provide in respect of such area for all or any of the matters specified in paragraphs (vi) to (xii) (both inclusive) of sub-section (2) of section 340 and the provision of sub-section (3) of that section shall apply to such order.

8. The function of the Government in establishing a Corporation is a legislative process. The Apex Court in the case of **Sundarjas Kanyalal Bhatija and others Vs. Collector, Thane, Maharashtra and others** referred to supra has observed that, the function of the Government in establishing a Corporation under the Act is neither executive, nor administrative, it is a legislative process. The only question that can be examined is whether the statutory provisions have been complied with. The Apex Court has further observed that, the Court cannot sit in judgment over such decision of establishing of Corporation U/Sec. 3 of the Corporations Act. It cannot lay down norms for the exercise of that power. It cannot constitute even "its juster will for theirs".

9. The draft notification U/Sec. 3 of the Corporations Act was published. The previous publication was made. The consultation as required under Sub Section (3) of Sec. 3 of the Corporation Act is consultation with the corporation. Here the resolution itself was passed by the Aurangabad Municipal Corporation. The requirement of Sub Sec. (3)(a) of Sec. 3 of the Corporations Act as such will be deemed to have been complied with. It is pursuant to the request of the Municipal Corporation for extending the area of Auragabad Municipal Corporation and including the area of Satara Deolai Municipal Council, the State Government had

issued the notification. While issuing the final notification U/Sec. 3 of the Corporations Act, consultation with Corporation only appears to be contemplated and with no other body. As stated earlier the Corporation itself has passed the resolution. Subsequently, even the report from the Municipal Commissioner and the Collector was called by the State Government before issuance of final notification, itself would suggest that the consultation as required U/Sec. 3(3)(a) of the Corporations Act has been substantially adhered to.

10. Both the parties have relied upon the judgment of the Apex Court in the case of **State of Maharashtra and others Vs. Jalgaon Municipal Council and others** referred to supra. In that case as the population of the Jalgaon Municipal Council had increased beyond three lakhs, the Jalgaon Municipal Council was constituted as Municipal Corporation. It was held by the Apex Court in the said case that, occurrence of hiatus in the process of conversion of an area from Municipal Council to Municipal Corporation is inevitable. Article 243-U of the Constitution of India cannot be applied to a case where the area of one description is converted into an area of another description and one description of Municipality is ceased by constituting another Municipality of a better description.

11. It is an admitted position on record that, though notification U/Sec. 3 Sub-section (3) of the Corporations Act is published thereby extending its area and including the area of Satara Deolai Municipal Council within its realm, the State has not published any notification under the provisions of the Maharashtra Municipal Councils Act declaring that the whole of the local area comprising Satara Deolai Municipal Council shall cease to be Municipal Council area. In the case of **State of Maharashtra and others Vs. Jalgaon Municipal Council and others** referred to supra, only area of Municipal Council was being converted into a Municipal Corporation, the State had issued two draft notifications. One was under the provisions of the Corporations Act (the then Bombay Provincial Municipal Corporations Act) and another under the provisions of the Municipal Councils Act. Thereafter after inviting and considering the objections two final notifications were issued. One under the Bombay Provincial Municipal Corporations Act and another under the Municipal Councils Act. In the present case, no notification has been issued under the provisions of the Municipal

Councils Act. The Apex Court in the said case had observed as under:

"Jalgaon Municipal Council was already in existence, Jalgaon being a smaller urban area. It was proposed to be converted into a larger urban area. This process would involve abolition of "municipal area" as defined within the clause (24) of Section 2 of MR Municipal Council Act. Any of the events provided by clauses (a), (b), (c) and (d) of sub-Section (1) of Section 6 must satisfy the requirement of consulting the Municipal Council provided for by provisio to sub-Section (1) before issuing the notification and before that, notification should also follow the procedure prescribed by Section 3 mutatis mutandis. Section 6(1)(d) covers within its scope any event, the declaration whereof has the effect of the whole of any area comprising a municipal area ceasing to be a municipal area. Thus conversion of Jalgaon Municipal Council to Municipal Corporation involves not only specification of large urban area and constitution of Municipal Corporation of the city of Jalgaon, it also involves the whole of the local area comprising the Municipal Area of Jalgaon ceasing to be a municipal area with effect from the date of change. Therefore consulting the Municipal Council is mandatory."

12. Section 2(24) of the Municipal Councils Act lays down that municipal area means the territorial area of a Municipal Council or a Nagar Panchayat. Sec. 8 of the Municipal Councils Act states that, a Municipal Council constituted or deemed to be constituted for every smaller urban area U/Sec. 3 shall be a body corporate by the name of Municipal Council and shall have perpetual succession and a common seal and shall have the power to acquire, hold and dispose of property and to enter into contracts and may by the said name sue or be sued through its Chief Officer. Thus, it is clear that, once the Municipal Council is constituted, it has a status of body corporate and has a perpetual succession and a common seal. For a body corporate to be abolished the procedure as is required in the statute will have to be followed. Sec. 6 of the Municipal Councils Act lays down the manner in which any local area comprising Municipal Council shall cease to be a Municipal area. Sec. 6(1) of the Municipal Councils Act lays down subject to the provisions of sub-section (2) of Section 3, the State Government may by notification in the Official Gazette (declare whole of any local area comprising a municipal area shall, cease to be a municipal area). Section 3 of the Municipal

Councils Act lays down the procedure of specifying area as smaller urban area which requires publication of notification in the Official Gazette and also in atleast one news paper circulated in the area to be specified in the notification a proclamation announcing the intention of Government to issue such notification and inviting all persons to submit the objections to the said proposal and thereafter final notification to be published only, if, it is of the opinion that the objections are insufficient or invalid. So also while issuing notification in the Official Gazette declaring a particular Municipal area to cease to be a Municipal area the procedure as required under Sub-Sec. (3), (4) and (5) of Section 3 has to be mutatis mutandis followed. In the present case, no such procedure is followed. In fact, no publication is made in the Official Gazette as required in Sec. 6 read with Sec. 3 of the Municipal Councils Act declaring the area of Satara Deolai Municipal council to cease to be an area of the said Municipal Council. Even Sec. 341 of the Municipal Councils Act deals with abolition of Municipal Council and its consequences. It lays down that whole of a local area comprising a Municipal Council ceases to be Municipal area from the day such local area ceases to be a Municipal area. The day on which such local area shall cease to be a Municipal area will have to be notified as required U/Sec. 6(1)(d) of the Municipal Councils Act.

13. The reliance placed by respondents in the case of **Solapur MIDC Industries Association and others Vs. State of Maharashtra and others** referred to supra would be of no avail. In the said case before the Apex Court, the limits of the corporation area were extended to the industrial area by notification U/Sec. 3(3) of the Corporations Act. However, no notification was issued under the Industrial Development Corporation Act. The Apex Court upheld the said notification, though the State Government had not yet withdrawn the Industrial estate/industrial area concerned on the ground that both the enactments i. e. the Bombay Provincial Municipal Corporation Act and the Industrial Development Corporation Act operate in different sphere both can co-exist and the provisions of the Industrial Development Corporation Act would still apply. In the present case, spheres of operations of two enactments would have an overlapping area of operation. It may purport to operate on certain occasions on an overlapping area. Such an occasion or event conceive a situation that both enactments would be operable

simultaneously. Such a situation is incompatible and not palatable. Under the legislative enactments this does not appear to be the intention of legislature. The Municipal Councils Act deals with a smaller urban area, whereas Corporations Act concerns with larger urban area. In fact, both the acts cannot operate for one area simultaneously.

14. Much emphasis is placed by the learned Additional Government Pleader on Sec. 3(3)(b) of the Corporations Act stating that once an area is included within larger urban area, all the provisions of the Corporations Act shall axiomatically apply to the said additional area also from the date, the area is included in the city and as such it is not necessary to issue separate notification under the Municipal Councils Act. In our considered view said provision cannot be read in isolation de-hors the provisions of the Municipal Councils Act. As discussed, once Municipal Council is constituted, it has a status of body corporate and has perpetual succession and a common seal. Sec. 5 of the Municipal Councils Act also lays down that, once the area is classified as municipal area, all the relevant provisions of the Municipal Councils Act shall apply to the said reclassified municipal area. Whereas Sec. 6(1)(d) requires a declaration to be made by notification in Official Gazette that any local area comprising municipal area shall cease to be a municipal area. Proviso to Sec. 6(1) of the Municipal Councils Act further lays down that no such notification shall be issued by the State Government under any of the clauses of this sub-section without consulting the Municipal Council or councils or other local authorities concerned. Sub Section (2) of Section 6 of the Municipal Councils Act further provides prior to the publication of notification under sub-section (1), the procedure prescribed in sub-section (3), (4) and (5) of Section 3 shall mutatis mutandis be followed. Under second proviso to Section 6 of the Municipal Councils Act an exception is made available dispensing with the provisions of Sec. (3), (4) and (5) of Sec. 3 regarding proclamation and of consultation as required in proviso to sub-section (1) only in respect of such municipal area, where the population as per the latest census figures has exceeded three lakh and a Corporation under the provisions of the Bombay Provincial Municipal Corporations Act, 1949 is being constituted for such area, with the same boundaries. In the present case, facts are not such. The population of the local area constituting Satara Deolai Municipal Council is only about 52000

and the same area is not being constituted as a Corporation. The said area is sought to be merged with Aurangabad Municipal Corporation. Having regard to aforesaid, it cannot be said that requirement of Sub-Sec. (3), (4) and (5) of Sec. 3 of Municipal Councils Act can be dispensed with. Those in the circumstances of present case would require scrupulous adherence under the legislative mandate appearing in the section. In the light of that, adherence to the provisions of Sub Sections (3), (4) and (5) of Sec. 3 of the Municipal Councils Act are not dispensed with.

15. An interpretation leading to functional disjunction shall have to be avoided. That being absolutely not intended under the two legislation competently enacted. Even, if, there are two provisions having the force of law and regulating the same subject, those should as far as possible have to be construed so as to be consistent with each other. The said provisions will have to be reconciled. The head on collision between the two provisions of the Statutes will have to be avoided. A provisions in one statute cannot be read in a manner that it would render the provision of another statute inoperative and a dead letter. While interpreting a statute the Court always presumes that the legislature inserted every part thereof with a purpose and the legislative intention is that every part of the statute should have effect. A statute has to be construed in a manner that no part of it shall be superfluous or nugatory. Full effect will have to be given to the statutory provisions. If the course is open by which the provisions of two statutes can be construed harmoniously and the provisions can be interpreted in a manner it would not be rendered superfluous, then the said course is required to be adopted. It is the cardinal rule of law that in construing an Act a provisions should not be regarded as superfluous and full effect should be given to it. It is also trite that when legislature require certain formalities to be adhered and complied, then the said mandate will have to be respected. The repeal by implication cannot be admitted, if the two Acts can be reconciled and can stand together.

16. Considering the above, the publication of notification in Official Gazette as required U/Sec. 6(1)(d) of the Municipal Councils Act and adherence to procedure as laid down in Sub Section (3), (4) and (5) of Sec. 3 of the Municipal Councils Act will have to be given effect to before a particular Municipal area is said to have

ceased to exists. Sec. 3(3)(b) of the Corporations Act and Sec. 6(1)(d) and 6(2) of the Municipal Councils Act will have to be read harmoniously and coherently so as to avoid repugnancy and to render one provisions being superfluous or otiose.

17. It thus should be appreciated that, the notification U/Sec. 3 of the Corporations Act and Sec. 6 read with Sec. 3 of the Municipal Councils Act ought to be a simultaneous process and their consequences shall operate and work in tandem.

18. Though the notification U/Sec. 3 of the Corporations Act does not suffer from any defect, however, the same cannot be given effect to unless and until a notification U/Sec. 6 of the Municipal Councils Act as required under the Municipal Councils Act declaring a particular municipal area to cease to be a municipal area is published in accordance with the law and the rules as is required U/Sec. 6 read with Sec. 3 of the Maharashtra Municipal Councils Act.

19. In the result, the prayer seeking setting aside of notification dated 14.05.2015 issued U/Sec. 3 of the Maharashtra Municipal Corporations Act, 1949 is rejected. However, it is declared that the said notification will not have effect till notification U/Sec. 6 read with Sec. 3 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 is issued as per procedure laid down thereunder declaring the area comprising of Satara Deolai Municipal Council to cease to exists. The writ petitions are partly allowed. Rule accordingly is made absolute in above terms. No costs.

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