

B Mallesh Vs. The State Of Karnataka

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Court : Karnataka

Decided On : Jul-23-2021

Judge : Aravind Kumar and N S Sanjay Gowda

Appeal No. : WP 6620/2021

Appellant : B Mallesh

Respondent : The State Of Karnataka

Judgement :

1 R IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE23D DAY OF JULY, 2021 PRESENT THE HONBLE MR. JUSTICE ARAVIND KUMAR AND THE HONBLE MR. JUSTICE N.S. SANJAY GOWDA W.P. NO.6620/2021 (LB-RES) BETWEEN:

1. B. MALLESH S/O C. BASAPPA AGED ABOUT44YEARS R/A KURUGAL VILLAGE KURUGAL POST KOLAR TALUK KOLAR - 563 128.
2. SATISH V C S/O CHENNAPPA AGED ABOUT35YEARS R/A VISHWANAGARA VILLAGE KURUGAL POST KOLAR TALUK KOLAR - 563 128.
3. V. VENUGOPAL S/O MALLISHETTY AGED ABOUT50YEARS R/A HARGENAHALLI VILLAGE KURUGAL POST KOLAR TALUK KOLAR - 563 128.

4. SURENDRA GOWDA S/O KRISHNAPPA AGED ABOUT 30 YEARS R/A MADIWALA VILLAGE KURUGAL POST KOLAR TALUK KOLAR - 563 128. 2
5. K.A. MANJUNATH S/O RANGANNA AGED ABOUT 47 YEARS R/A KURUGAL VILLAGE KURUGAL POST KOLAR TALUK KOLAR - 563 128.
6. S.C. MUNIRAJA S/O CHIKKAMUNIYAPPA AGED ABOUT 45 YEARS R/A SOOLADENAHALLI VILLAGE KURUGAL POST KOLAR TALUK KOLAR - 563 128.
7. M.A. RAMESH A/O APPAJIGOWDA AGED ABOUT 51 YEARS R/A MANCHENAHALLI VILLAGE KURUGAL POST KOLAR TALUK KOLAR - 563 128.
8. C.M. MUNIRAJA S/O MUNIVENKATAPPA AGED ABOUT 31 YEARS R/A CHANDRASHEKARA VILLAGE KURUGAL POST KOLAR TALUK KOLAR - 563 128.
9. D. NARAYANA SWAMY S/O DODDAMUNIYAPPA AGED ABOUT 36 YEARS R/A MALLIYAPPANAHALLI VILALGE KURUGAL POST KOLAR TALUK KOLAR - 563 128. ...PETITIONERS (BY SRI. Y.R. SADASIVA REDDY, SR. COUNSEL FOR SRI. RAHUL S REDDY, ADVOCATE) 3 AND:
 1. THE STATE OF KARNATAKA REP BY ITS SECRETARY DEPARTMENT OF RURAL DEVELOPMENT AND PANCHAYATH RAJ VIDHANA SOUDHA BENGALURU - 560 001.
 2. UNDER SECRETARY TO GOVERNMENT URBAN DEVELOPMENT DEPARTMENT VIKASA SOUDHA BENGALURU - 560 001.
 3. OFFICE OF THE DIRECTOR MUNICIPAL ADMINISTRATION 9TH FLOOR, VISHVESHWARAIYAH TOWER, DR. AMBEDKAR VEEDHI BENGALURU - 560 001.
 4. KURUGAL GRAMA PANCHAYAT KOLAR TALUK, KOLAR - 563 128 REP BY ITS PANCHAYAT DEVELOPMENT OFFICER. RESPONDENTS (BY SRI. DHYAN CHINNAPPA, ADDL. ADVOCATE GENERAL A/W SRI. G.V. SHASHI KUMAR,

A.G.A & SMT. PRATHIMA HONNAPURA, A.G.A FOR R-1 TO R-3) THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA PRAYING TO ISSUE WRIT OF CERTIORARI BY QUASHING THE OFFICIAL KARNATAKA GAZETTE NOTIFICATION IN NO.NAE148MLR2020 DATED 05.03.2021 ISSUED BY THE 1ST AND 2ND RESPONDENT BY NOTIFYING THE GRAMA PANCHAYAT AREA OF VEMGAL AND KURGAL, I.E., 4TH RESPONDENT INCLUDING PURAHALLI VILLAGE OF SHETTYHALLY GRAMA PANCHAYAT AND KALAVA MANJALI, CHIKKAVALLABI AND BETTAHOSAPURA VILLAGES OF CHOWDENAHALLI GRAMA PANCHAYATS OF KOLAR TALUK, KOLAR DISTRICT AS A THE TRANSITIONAL AREA VIDE ANNEXURE-G. 4 THIS PETITION HAVING BEEN HEARD AND RESERVED, COMING ON FOR PRONOUNCEMENT OF

ORDER

THIS DAY ARAVIND KUMAR J, MADE THE FOLLOWING:

ORDER

The Notification bearing No.NAE148MLR2020 dated 05.03.2021 (Annexure-G) issued by first and second respondent by notifying the Gram Panchayat area of Vemagal and Kurugal, Kolar District including the Purahalli Village of Shettihalli Gram Panchayat and Kalva, Manjali, Chikkavallabhi and Bettahosapura Villages of Chowdenahalli Grama Panchayat of Kolar Taluk, Kolar District, as transitional area has been called in question.

2. This Court while ordering notice to respondents by order dated 05.04.2021 had directed the learned AGA to secure the original records and they were also directed not to take any further precipitative action pursuant to impugned notification. For vacating the said order, I.A.No.2/2021 has been filed by the respondents/State. State who is defending the impugned notification has filed its statement of 5 objections. Learned Advocates appearing for parties in chorus agreed that hearing of the interlocutory application for vacating interim order of stay is as good as hearing the writ petition on merits and as such they requested for matter being taken up for final disposal. Hence by consent of learned Advocates appearing for parties, matter is taken up for final disposal.

3. We have heard Sri.Y.R.Sadashiva Reddy, learned Senior Counsel appearing for petitioners and Sri.Dhyan Chinnapa, learned Additional Advocate General appearing on behalf of Sri.Shashikumar along with Smt. Prathima Honnur, learned Additional Government Advocates for respondents. Perused the case papers as well as original file, which has been made available by the learned Additional Advocate General.

4. Petitioners are the villagers of Kurugal Gram Panchayat and have filed this Public Interest Litigation on behalf of villagers and also on behalf of themselves calling in question the validity of the Notification dated 05.03.2021 (Annexure-G). 6

5. The sum and substance of the contentions raised by the petitioners interalia are: (i) 90% of the villagers of Kurugal Panchayat are agriculturists and having lands, dairy, silk and dependent on this for their livelihood; (ii) If Kurugal Panchayat is declared as a transitional area/pattana Panchayat along with Vemagal, people residing in Kurugal Panchayat will lose benefits they are getting hitherto; (iii) The provisions of Section 3 of Karnataka Municipalities Act, 1964 (for short Act) has not been followed; (iv) The provisions of Section 9 of the Act has not be followed.

6. Sri.Y.R.Sadashiva Reddy, learned Senior Counsel appearing for petitioners by elaborating aforesaid points has vehemently contended that fourth respondent-Panchayat consists of 9 villages and the villagers of Kurugal Gram Panchayat are all agriculturists and meager taxes is being imposed to the houses in the villages not only in Kurugal village but also other eight (8) villages coming within the jurisdiction of fourth respondent and all these villagers are getting the benefit of electricity of minimum payment and water supply is being extended by the Panchayat free of cost. He would submit that students who study upto 10th standard in Kurugal village are prosecuting their higher studies at Kolar and nearest pre-university college is in Vemagal. A degree college is not available even at Vemagal. Hence, contending that Kurugal Panchayat if declared as a Transitional Area/Pattana Panchayat along with Vemagal, the people who are residing in Kurugal Panchayat will lose all the benefits which are extended to them. He would submit that procedure as contemplated under Section 9 of the Act

has not been complied at the time of issuing impugned notification and the Director of Municipal Administration has to receive all such objections received with regard to notification issued declaring any local area of altering the limits of such area and thereafter he is required to forward every such objection to the Governor and the Governor, if in his opinion finds that such objections raised to the proposed alteration or declaration are insufficient or invalid, then notification would issue. He 8 would submit that in the instant case objections have been submitted by the petitioners to the Director of Municipal Administration, vide Annexures-C to C17 and said objections came to be forwarded to the Deputy Commissioner instead of Governor which procedure is not prescribed under the Act and based on the inputs given by the Deputy Commissioner, the Governor has given approval without even recording opinion as to whether said objections are unsustainable and impugned notification has been issued mechanically and hence, same being contrary to the rigour of provisions of the Act, it is liable to be quashed. In support of his submissions, he has relied upon the judgment of the Coordinate Bench rendered in W.P.Nos.40686-690/2017 c/w W.P.No.36540/2017 dated 20.11.2017 and prays for allowing the writ petition.

7. Sri. Dhyan Chinnappa, learned Additional Advocate General appearing for the respondents/State would defend the impugned notification by contending under preliminary notification or proclamation dated 02.12.2020 (Annexure-B) issued for altering village 9 panchayat areas, objections were called for by following the procedure prescribed under Section 9 and there is no infirmity, whatsoever, in this regard. He would also submit that said notification has been issued considering the population of the area, density of population and percentage of population involved in non agricultural activities, which is not less than 50% and said notification was issued on the basis of report of the Deputy Commissioner clarifying the population of such area and the report of Deputy Commissioner also specify the percentage of employment in non agricultural activities which is not less than 50% of the total employment and by relying upon the report of the Deputy Commissioner forwarded by the Director of Municipal Administration dated 27.10.2020 and 03.11.2020 (Annexures-R1 and R2) respectively, impugned notification came to be issued. He defends the impugned notification. He would submit that objections from various persons had been received by the Deputy

Commissioner and also Director of Municipal Administration including the objections filed by the 10 petitioners and sum and substance of the said objections was to the effect that petitioners would be deprived of opportunity of working under MGNREGA Scheme of which they are dependent and they would be deprived of rural weightage, which has been given to the said Villages. He would further elaborate his submission by contending that objections raised by the petitioners came to be considered by the Deputy Commissioner and reports dated 04.02.2021 and 18.02.2021 (Annexures-R3 and R4) respectively forwarded to Director of Municipal Administration would clearly indicate there has been consideration of objections raised by the petitioners and clarification issued in submission note as to how the upgradation of the Panchayat limits of the transitional area will benefit the local people including the petitioners as a result of it, are enumerated which includes benefit of Government schemes and Government work would also increase in the transitional area and the amount to be paid to the workers would also correspondingly increase in such local bodies works, which would definitely be more than 11 what was being paid under the MGNREGA Scheme. He would also submit objections raised by the petitioners in the writ petitions are untenable and it would not stand in the way for upgradation of any area into smaller urban area or transitional area and such upgradation is a policy decision of the State.

8. Sri. Dhyan Chinnappa, learned Additional Advocate General has further contended that in the instant case records would disclose that approval had been granted on 27.11.2020 by the State Cabinet, based upon which, submission note had been placed before the Governor and on perusal of said submission note, the Governor had accorded approval for issuance of notification on 27.11.2020 and as such it has to be necessarily inferred that there is subjective satisfaction recorded by the Governor as contemplated under Section 9 of the Act. By relying upon the judgments of Coordinate Bench in the matter of M.KEMPANNA AND OTHERS v. STATE OF KARNATAKA AND OTHERS reported in (1999) 4 KLJ539 AMALPUR GRAM PANCHAYAT v. STATE OF KARNATAKA AND OTHERS¹² reported in ILR 1997 KAR2078 and in the case of SHAMSHER SINGH & ANR v. STATE OF PUNJAB reported in AIR 1974 SC2192 in support of his submissions. Hence, he has prayed for dismissal of the writ petition. FINDINGS ON AFORESAID

CONTENTIONS:

9. Respondent Nos.1 and 2 issued a notification bearing No.UDD148 MLR2020dated 02.12.2020 in exercise of the powers confirmed by Section 3 read with Sections 9, 349, 351 and 355B of the Karnataka Municipalities Act, 1964, whereunder the Grama Panchayat area of Vemgal and Kurugal including Purahalli Village of Shettyhalli Grama Panchayat and Kalava, Majali, Chikkavallabhi and Bettahosapura Villages of Chowdenahalli Grama Panchayat of Kolar Taluk, Kolar District mentioned in the Schedule A thereunder along with boundaries mentioned in Schedule B were proposed to be declared as transitional area of Vemgal and Kurugal and further specified as town panchayat area of Vemgal and Kurugal of Kolar Taluk, Kolar District. 13

10. Section 349 of the Act prescribe that Governor may, having regard to the factors mentioned in Clauses (a) to (f) of sub-section (1) of Section 3 and subject to the provisions of Section 9 specify, by notification any area to be a transitional area. Proviso thereto would indicate that no such area shall be so specified as a transitional area unless: (1) Such area contains a population of not less than ten thousand but less than twenty thousand; (2) The density of population in such area is not less than four hundred inhabitants to one square kilometer of area; (3) The percentage of employment in non- agricultural activities is not less than fifty percent of the total employment. Second proviso provides that if a Taluk Head Quarters is situated in such area, the Governor may, specify, such area to be a transitional area even though it contains population of less than ten thousand. 14

10.1. Section 3 of the Act reads:

"[3. Specification of smaller urban area.-(1) The Governor may subject to the provisions of Section 9 and having regard to,- (a) the population of any area; (b) the density of population of such area; (c) the revenue generated for the local administration of such area; (d) the percentage of employment in non-agricultural activities in such area; (e) the economic importance of such area; and (f) such other factors as may be prescribed, specify, by notification, such area to be a smaller urban area and such smaller urban area shall be deemed to be a municipal area: Provided that no such area shall be so specified as a smaller

urban area unless,- (i) the population of such area is not less than twenty thousand and not more than three lakhs; (ii) the density of population in such area is not less than one thousand 15 five hundred inhabitants to one square kilometer of area; (iii) the revenue generated for local administration from such area from tax and non-tax sources in the year of the last preceding census is not less than rupees nine lakhs per annum or a sum calculated at the rate of rupees forty-five per capita per annum, whichever is higher; (iv) the percentage of employment in non-agricultural activities is not less than fifty per cent of the total employment: [*****]." Any area can be specified to be a smaller urban area which shall be deemed to be a municipal area by specifying so in the notification having regard to factors enumerated in Clause (a) to (f) Section 3 and subject to the provision of Section 9.

11. Section 9 of the Act prescribes the procedure for constitution, abolition, etc., of smaller urban areas and it reads:

"9. Procedure for constitution, abolition, etc., of [smaller urban areas]..-- Not less than [thirty days]. before the publication of any notification declaring 16 any local area to be a [smaller urban area]., or altering the limits of any such [smaller urban area]. or declaring that any 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 places in the said local area in Kannada, a proclamation announcing that it is proposed to constitute the local area to be [smaller 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 said proposal to submit the same, with the reasons therefor, 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 to or exclude from a [smaller urban area]. any inhabited area, it shall be duty of the municipal council also to cause a copy of such proclamation to be posted up in conspicuous places in such area. The [Director of Municipal Administration]. shall, with all reasonable despatch, forward every objection so submitted to the [Governor].. No such notification as aforesaid shall be issued by the [Governor]. unless the

objections, if any, so submitted are in [his]. opinion insufficient or invalid.

12. A plain reading of Section 9 of the Act would clearly indicate that before publication of any notification declaring any local area to be smaller urban 17 area or altering limits of any such smaller urban area, the Governor should cause publication of a proclamation in the official Gazette in English and Kannada requiring all persons who entertain any objection to the said proposal to submit the same to the Director of Municipal Administration within thirty days from the date of such proclamation. The objections, so submitted in writing is required to be forwarded to the Governor within reasonable time by the Director of Municipal Administration. No such notification would be issued by the Governor unless the objections, if any, so submitted are in his opinion insufficient or invalid.

13. The expression Director of Municipal Administration and Governor as found in Section 9 came to be substituted by Act 31 of 2003 and Act 36 of 1994 respectively for the words and expression Commissioner and Government. Thus, it would emerge from Section 9 that objections for the proposal received on publication of proclamation, would be received by the Director of Municipal Administration and he in-turn would forward with all reasonable despatch, 18 every objections so submitted to the Governor. The Governor would not issue notification under Section 3 unless the objections, if any, so submitted are in his opinion insufficient or invalid. Thus, at the first instance it requires to be noticed that it is the Director of Municipal Administration alone, who is empowered to receive the objections and on receipt of such objections, he would with all reasonable despatch, forward every objection so received by him to the Governor. No such notification as indicated in Section 3 of the Act would be issued by the Governor unless the objections, if any, so submitted or in his opinion insufficient or invalid.

14. It is no doubt true in the instant case prior to issuance of impugned notification a proclamation came to be issued on 02.12.2020 (Annexure-B) as contemplated under Section 9 and draft of said proclamation had been approved by the State Cabinet on 27.11.2020 followed by placing a submission note to the Governor on 27.11.2020 and it was approved by the Governor on same day i.e., 27.11.2020. 19

15. Petitioners and similarly placed persons have filed their objections vide Annexures-C to C17 to said proclamation contending interalia that they have been registered under the MGNREGA Scheme and carrying on unskilled coolie work and are opposed upgrading fourth respondent as town Panchayat along with other villages. Said objections have been filed before the Director of Municipal Administration - third respondent herein and he in turn has forwarded the said objections to the Deputy Commissioner vide communication dated 31.12.2020 (Annexure-E) whereunder he has sought for opinion of the Deputy Commissioner. The Deputy Commissioner, Kolar, in turn has forwarded a report on 04.02.2021 (Annexure-F) to the Director, Municipal Administration assigning the reasons for issuance of notification. It would be relevant to note at this juncture itself that Section 9 of the Act does not contemplate any such procedure. To put it differently, the Director of Municipal Administration on receipt of said objections, was required to despatch with all reasonable time every such objection received to the Governor for his 20 consideration. However, this course of action was not undertaken by the Director, Municipal Administration.

16. It is trite law that consideration of objections is to be on the basis of objective assessment and subjective satisfaction. It need not be stated in the order of approval granted by the Honble Governor that each and every such objection has been examined or considered. Even if the submission note prepared by the Director of Municipal Administration forwarding every such objection along with objections so received and placed before the Governor would disclose that same has been considered, it would suffice. However, the objections so received by the Director of Municipal Administration for the proclamation has to be forwarded to the Governor and there is no intermediary role required to be played by the Deputy Commissioner.

17. In the instant case, a submission note was put up by the Principal Secretary to the Governor for issuance of notification under Section 3 by noting the 21 report of the Deputy Commissioner. Said submission note dated 03.03.2021 is perused by us and it reads: Objections/suggestions received within the stipulated period were examined and placed in the file for perusal. As per the report of the Deputy Commissioner, Kolar District and the Director, Directorate of Municipal

Administration, Bengaluru final Notification has to be notified for converting Grama Panchayat Area of Vemagal and Kurugal including Purahalli Village of Shettihalli Gram Panchayat and Kalva, Manjali, Chikkavallabhi and Bettahosapura Villages of Chowdadenahalli Grama Panchayat of Kolar Taluk, Kolar District as a Transitional area as mentioned in Schedule-A along with boundaries mentioned in Schedule - B, as a Town Panchayat area of Vemagal and Kurugal. Accordingly, the Final Notification is annexed herewith. In view of the above facts, approval of His Excellency, the Governor of Karnataka is solicited to issue final Notification, which is annexed herewith as per Section 3, 9, 349, 351 and 355(B) of the Karnataka Municipalities Act 1964 for notifying Grama Panchayat Area of Vemagal and Kurugal including Purahalli Village of Shettihalli Gram Panchayat and Kalva, Manjali, Chikkavallabhi and Bettahosapura Villages of Chodadenahalli Grama Panchayat of Kolar Taluk, Kolar District as mentioned in Schedule - A, along with boundaries mentioned in Schedule - B, as a Transitional Area and further specifying it as a Town Panchayat Area of Vemagal and Kurugal. 22 18. It requires to be noticed from the aforesaid submission note that there is no reason assigned as to why said objections are to be over ruled. In other words, submission note placed before the Governor does not indicate as to why objections so received have to be held as insufficient or invalid. That apart, judgment of the Coordinate Bench, which has been pressed into service by the learned Additional Advocate General in Kempanna's case referred to herein supra, would indicate that in the facts obtained in said case, the records disclosed that objections received were considered by the State Government and a detail note on the objections was prepared and submitted to the Governor. The Division Bench while affirming the view taken by learned Single Judge has noticed that observation made by the learned Single was to the following effect:

"Learned Government Advocate has made available the records relating to the impugned notification. From the records it is seen that all the objections received in respect of both the Municipal Councils were considered by the State Government and detail note on the 23 objections was prepared and submitted to the Governor."

(emphasis supplied by us) 19. Taking cue from the observations made by the learned Single Judge as affirmed by the Division Bench, Sri.Dhyan Chinnappa has made a valiant attempt to contend that at the stage of issuing preliminary notification or proclamation itself approval of the Governor had been taken and submission note which had been placed by the State Government before Governor had been examined, considered and approved by the Governor and this was also preceded by approval accorded by the Cabinet on 27.11.2020 and as such there is no infirmity in the procedure contemplated under Section 9 of the Act. There is no dispute to the fact that prior to issuance of impugned notification dated 02.12.2020, Cabinet has approved the issuance of proclamation or preliminary notification dated 27.11.2020 and Governor had also approved the same. It is only thereafter Section 9 of the Act would step in namely, Section 9 of the Act would operate for issuance 24 of notification under Section 3 of the Act to declare any local area to be a smaller urban area or altering the limits of any such smaller urban area or declaring any local area shall cease to be smaller urban area. The legislative intent under Section 9 is clear and unambiguous namely, a statutory duty is cast on the Governor to cause publication of proclamation in English and Kannada in Official Gazette by giving not less than thirty (30) days before publication of any such notification by calling for objections, which in the instant case was called for after the issuance of notification on 02.12.2020 and objections have been received on 29.12.2020 Annexure-'C' series and it was this objection which was required to be forwarded by the Director of Municipal Administration for being placed before the Governor, who in turn was required to have recorded his satisfaction of either the objections so raised being insufficient or invalid or rejected the same as being insufficient and invalid and ordered for issuance of notification. In the instant case, as already noticed by us hereinabove, neither the submission note 25 nor the note put up before the Governor would indicate of such an exercise having been undertaken. On the other hand, report of the Deputy Commissioner has been placed along with communication dated 31.12.2020 forwarded by the Director of Municipal Administration for perusal and approval to be granted by the Governor and approval so granted do not indicate about objections having been considered and as such, said contention cannot be accepted and it stands rejected.

20. Learned Additional Advocate General appearing for the State has vehemently contended that mere preparation of a report by the Deputy Commissioner would not vitiate the proceedings which culminates in issuance of impugned notification , is an argument which cannot be accepted, inasmuch as, there cannot be any infraction of the mandatory procedure as prescribed under Section 9 of the Act. As noticed hereinabove, in the instant case, objections have been received by the Director of Municipal Administration - third respondent and he could have forwarded every such objection with all reasonable despatch, to the Governor for being considered. The original records, which has been made available by the learned AGA, has been perused and communication dated 18.02.2021 forwarded by the Director, Municipal Administration to the Principal Secretary, Urban Development Department disclose that based on the report of the Deputy Commissioner he has recommended for accepting same and based on said recommendation, submission note has been placed before the Governor by the Principal Secretary to Government, Urban Development Department.

21. At the outset, it requires to be noticed that report of the Deputy Commissioner is the basis on which the submission note has been forwarded to the Governor. The procedure prescribed under Section 9 does not indicate of any role required to be played by the Deputy Commissioner either in receiving the objections or said report of Deputy Commissioner being forwarded to the Governor. There is neither reference to the nature of objections in the submission note placed before the Governor namely, as to what is the nature of objections or why said objections to the proposed notification is insufficient or invalid. The submission note which is prepared by the Principal Secretary to the Government, Urban Development Department, do not disclose the details of those objections for being considered by the Governor either for being accepted or rejected. In other words, submission note does not disclose as to whether objection has been considered objectively or subjective satisfaction having been arrived at either by the Deputy Commissioner or Director, Municipal Administration and Governor on the basis of said submission note placed before him and Governor having found objections are insufficient or invalid.

22. The mandate of Section 9 of the Act being that Governor should form an opinion that objections to the proposed notification being insufficient or invalid, would alone qualify for notification being issued under Section 3 of the Act as otherwise not. The consideration of objections by the Governor is not discernable from the file or submission note and there is no material 28 available to hold that on the basis of submission note, the Governor has recorded his subjective satisfaction.

23. As already noticed hereinabove, even submission note does not disclose or indicate with regard to nature of the objections and its consideration thereof by the Urban Development Department which crystallized into submission note so as to arrive at a conclusion that submission note prepared and placed before Governor itself disclosed that consideration of objections being there for presuming that Governor had arrived at a subjective satisfaction on an objective assessment of such submission note. In the absence of these facts forthcoming from the file placed before the Governor, the irresistible conclusion which will have to be drawn is there is non compliance of mandatory provision of Section 9 of the Act. For the reasons aforestated, we proceed to pass the following:

29.

ORDER

(i) Writ petition is allowed. (ii) Notification bearing No.NAE148MLR2020dated 05.03.2021 (Annexure-G) is quashed. (iii) Liberty is reserved to the State Government to proceed from the stage of consideration of objections received opposing constitution of transitional area. (iv) No order as to costs. SD/- JUDGE SD/- JUDGE DR