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**Court :** Rajasthan

**Decided On :** Oct-25-1977

**Reported in :** 1977WLN(UC)423

**Judge :** D.P. Gupta, J.

**Appeal No. :** S.B. Civil Writ Petition No. 415 of 1977

**Appellant :** Umed Singh

**Respondent :** State of Rajasthan and ors.

**Advocate for Pet/Ap. :** Mr. P.L. Chaudhary

**Disposition :** Petition dismissed

**Judgement :**

**D.P. Gupta, J.**

1. In this writ petition the petitioner has chalneged the order of the State Government dated August 29, 1977, published in the Rajasthan Gazette, dated September 28, 1977 by which it was declared that the area comprised in village Rani Khurd ceased to be a Municipality. The case of the petitioner is that the order issued by the State Government does not show as to whether the re presentations submitted by the petitioner and other inhabitants of the locality were considered and decided by the State Government before issuing the notification declaring that

the area comprised in village Rani Khurd ceased to be a Municipality. The case of the petitioner is that initially a Gram Panchayat was constituted in respect of the village Rani Khurd, but by the Notification dated September 4, 1975 the State Government had created a Municipal Board in respect of the local area comprised in the aforesaid village Rani Khurd. Thereafter another Notification was issued on March 8, 1977 proposing that the aforesaid local area may again be converted from a Municipality to a Panchayat.

2. It has been mentioned in the writ petition that according to the census of 1971 the population of village Rani Khurd was 5652 but that in the middle of the year 1976 the population of the said village was approximately 9000/- when the petition came up for admission before this Court the petitioner was directed by the order dated October 3, 1977 to file documentary evidence to show that the population of the village Rani Khurd was more than 8000, as required under Section 5 of the Rajasthan Municipalities Act, 1959 ('hereinafter referred to as 'the 1959 Act'). The petitioner thereupon filed two documents. Exhibit 9 is the statement prepared by the Executive Officer of the Municipal Board, Rani Khurd showing that the total population of the village in the 1974-75 was 7295 & in the year 1976-77 it rose to 8155 according to the ration cards issued in the aforesaid area. Exhibit 10 is the statement prepared by the District Statistical Officer, Pali, dated June 28, 1976 according to which the approximate population of village Rani Khurd in the year 1976 was 9000. It was on the basis of the aforesaid documents produced by the petitioner in support of his submission that the writ petition was admitted on October 6, 1977 and an interim stay order was passed.

3. However, when S.B. Civil Writ Petition No. 456 of 1977 Ghisilal v. Mohanlal and Ors. came up for admission before me it appeared that the State Government has issued a notification dated September 27, 1977 creating a Gram Panchayat in respect of village Rani Khurd, apparently on the basis that the population of the said village was 5653. In that writ petition the grievance of the petitioner was that although the Gram Panchayat has been constituted for the local area comprising of the village Rani Khurd, yet the Administrator of the Municipal Board is functioning and it was then realised that the Administrator appeared to be doing so on the basis of the interim state order passed in this writ petition on October 1,

1977. A notice was thereupon issued to the petitioner calling upon him to show cause why the order of admission should not be revoked. The State Government and other respondents have also filed replies to the stay application stating that the population of the village Rani Khurd according to the census report of 1971 is 563 and that the objections received by the State Govt., were duly considered, and thereafter the Notification dated August 29, 1977 (Exhibit 6) was issued declaring that the area comprised in village Rani Khurd shall cease to be a Municipality.

4. This case has come up to day for orders in pursuance of the notice issued on October 13, 1977 calling upon the petitioner to show cause why the order of admission of the writ petition should not be revoked in the circumstances mentioned above.

5. I have heard Mr. P.L. Chaudhary, learned Counsel for the petitioner and the Additional Government Advocate. It is not in dispute that according to the census report of 1971, which is the most recent Government census report available at present, the population of village Rani Khurd is 5653. Sub-section (22) of Section 3 of the 1959 Act defines 'population' used with reference to any local area as the population according to the returns of the most recent Government census for the time being. Section 5 of the 1959 Act authorises the State Govt., to declare any city or town or village or two or more neighbouring towns or villages as a Municipality provided the population of such area is not less than 8000 inhabitants. The proviso to Section 5 authorises the State Government to constitute any local area, of which the population is less than 8000 inhabitants to be a Municipality, only for exceptional reasons which have to be clearly set forth in the proclamation issued under Section 6 as well as in the Notification issued under Section 4 of the 1959 Act. In the present case it is not in dispute that village Rani Khurd was initially a Gram Panchayat and that neither in the Notification issued under Section 6 nor in the Notification issued under Section 4 of the aforesaid Act any exceptional reasons have been enumerated while constituting the said local area into a Municipality. The population which has to be taken into consideration for the purposes of Section 5 of the 1959 Act is that mentioned in the most recent Government census, according to the definition contained in Sub-section (22) of Section 3 of the 1959 Act. Thus the population of village Rani Khurd, relevant for

the purposes of creation of a Municipal Board Under Section 5, was 5653 which is admittedly the figure specified in the census report of 1971. In the absence of any exceptional circumstances, the local area comprised in village Rani Khurd could not, therefore, be converted into a Municipality under Section 5 of the 1959 Act and the Notification issued by the State Govt. on September 4, 1975 (Exhibit 1) is ex facie illegal and without jurisdiction. It was in this context that this Court made enquiry from the petitioner, before admitting the writ petition, as to what was the population of village Rani Khurd, as it appeared that the State Government intended to convert the local area comprised in village Rani Khurd into a Gram Panchayat because of the fact that the population thereof was less than 8000 inhabitants, at must be observed that the learned Counsel for the petitioner did not draw the attention of this Court to the provisions of Sub-section (22) of Section 3 of the 1959 Act which defined the word 'population', so, far as it is relevant for the purposes of declaration of a local area as a Municipality under Section 5 for the said Act, and on the basis of certificates Exhibits 9 and 10 it was erroneously argued that the population of the village Rani Khurd was more than 8000 inhabitants at the time when the impugned order was passed by the State. Government on August 29, 1977. In view of the clear provisions contained in Sub-section (22) of Section 3 of the 1959 Act, the population mentioned in the most recent Government census was only relevant for the purposes of creation of the Municipality under Section 4 of the 1959 Act, & the argument that the population of the village Rani Khurd was more than 8000 at the time when the impugned order dated August 29, 1977'wad passed is wholly Without any substance, I am of the view that the admission of this writ petitioner was secured by suppressing the relevant provisions contained in Sub-section (22) of Section 3 of the 1959 Act, and if the said provision would have been brought to my notice on 6-10-1977 the petition would not have been admitted at, all as according to the most recent Govt., census the population of tillage Rani Khurd was admittedly only 5653 and no special reasons were assigned in the Notification Exhibit 1 dated September 4, 1975 creating the focal area comprised in the aforesaid village as a Municipality. The extraordinary jurisdiction of this Court cannot be utilized for the purposes of obtaining restoration of an ex-facie illegal order like the one dated September, 1975 (Exhibit 1). I strongly feel that the process of the court should not have been

misused in the present case for obtaining an interim stay order on the basis of an absolutely untenable argument and by suppressing the relevant Provision of law. Moreover, in the present case, from the reply of the respondents to the show cause notice, it appears that the objections filed by the petitioner and other persons to the Notification issued under Section 6 of the %939'Act were duly considered by the State Government and as there were no special reasons for constituting the local area comprised in the village Rani Khurd as a Municipality and as the population thereof was much less than 8000 inhabitants, the State Government was perfectly justified in declaring that the said local area ceased to be a Municipality and in later issuing a Certification converting the said local area into a Gram Panchayat.

6. In view of all what has been said above, I am of the view that the admission of this writ petition was obtained improperly and in the result the order of admission of this writ petition dated October 6, 1977 is recalled and the writ petition is dismissed.