

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1347 of 2013

In
Civil Writ Jurisdiction Case No. 13540 of 2013

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1. Sanjeeta Devi W/O Akhileshwar Kumar Dubey R/O Village - Madhubani
Dubey Tola, P.S. Sangrampur, District - East Champaran, Bihar

.... Appellant/s

Versus

1. The State Of Bihar Through Chief Secretary, Government Of Bihar,
Patna
2. The Block Development Officer, Block - Sangrampur, District - East
Champaran
3. Up - Pramukh, Panchayat Samiti, Block - Sangrampur, District - East
Champaran
4. Phul Kumari Devi, Member, Panchayat Samiti - 16, Block - Sangrampur,
District - East Champaran
5. Ragini Devi, Member, Panchayat Samiti - 17, Block - Sangrampur,
District - East Champaran
6. Buni Sahni, Member, Panchayat Samiti - 5, Block - Sangrampur, District
- East Champaran
7. Jitendra Singh, Member, Panchayat Samiti - 11, Block - Sangrampur,
District - East Champaran
8. Aditya Kumar Pandey, Member, Panchayat Samiti - 10, Block -
Sangrampur, District - East Champaran
9. Buti Yadav, Member, Panchayat Samiti - 1, Block - Sangrampur, District
- East Champaran
10. Bachu Rai, Member, Panchayat Samiti - 2, Block - Sangrampur, District
- East Champaran

.... Respondent/s

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with

Miscellaneous Jurisdiction Case No.6276 of 2013

IN
LPA 1347 of 2013

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Sanjeeta Devi

.... Petitioner/s

Versus

The State Of Bihar & Ors

.... Respondent/s

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Appearance :

(In LPA No.1347 of 2013)

For the Appellant/s : Mr. Ajit Kumar

For the Respondent/s : Mr.

(In MJC No.6276 of 2013)

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE NAVIN SINHA
and
HONOURABLE MR. JUSTICE SHAILESH KUMAR
SINHA**

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE NAVIN SINHA)

6 23-12-2013

Heard learned counsel for the appellant, appearing private respondent and the State in both the applications.

The present appeal arises from order dated 3.9.2013 in C.W.J.C. No.13540/13 disposing the writ application with directions to the Block Development Officer for issuing fresh notice along with requisition and reasons fixing the Panchayat Samiti meeting on a specified date and time directed by the Court.

In the present appeal interim orders had been passed on 24.10.2013 directing that fresh elections shall remain stayed. The elections having been held notwithstanding the same, M.J.C. No.6276/13 has been instituted.

Learned counsel for the appellant relying on 1982 P.L.J.R. 376 (Shri Nawal Kishore Prasad Singh vs. State of Bihar) submits that he may be permitted to withdraw the contempt application as he proposes to persuade the Court by the aforesaid judgment that irrespective of all considerations any elections held in teeth of interim stay granted by the Court was a nullity and seeking initiating of contempt proceedings was not the only remedy available. M.J.C. No.6276/13 is permitted to be withdrawn.

Since we propose to dispose this appeal on a short question of law, we do not consider it necessary to take note of the facts except to the extent necessary.

The appellant questioned the statutory notice issued earlier fixing the date of special meeting by the Panchayat Samiti for a No Confidence Motion as not being in accordance with law. The private respondent conceded that the statutory notice did not meet the requirements of law.

In the appeal before us, a limited submission was made that if the statutory power and discretion along with the manner for exercise of power mentioned in Section-44(3) of the Bihar Panchayat Raj Act, 2006 was exercisable by the Executive Officer, the Court could not have usurped that jurisdiction.

We are in agreement with the submission on behalf of the appellant that if a statutory power is vested in an authority, the power has to be exercised by that authority alone. The Writ Court cannot usurp the jurisdiction of the statutory authority. The Writ Court may issue a Mandamus for exercise of power by the statutory authority but cannot put itself in the place of the statutory authority and exercise the same power in the same manner.

We therefore hold that the order under appeal is not sustainable to the extent that it fixes the date and time of the meeting. The Executive Officer shall, upon receipt of a copy of

the present order, proceed in accordance with law to exercise his statutory powers under Section-44(3) of the Act forthwith without any delay so that the No Confidence Motion can be tabled at the earliest opportunity in accordance with law.

Insofar as the fresh elections held contrary to the interim order dated 24.10.2013 is concerned, we hold that irrespective of the question that whether the order was communicated or not communicated with regard to which there is a divergence of opinion between the learned counsel, the fact of the matter is that any act done contrary to the specific direction of the Court is a complete nullity. Shri Nawal Kishore Prasad Singh (supra) relied upon on behalf of the appellant is a complete answer to the invalidity of such an election held in teeth of an order of the Court being a complete nullity. We therefore hold that the fresh election held cannot be relevant for any purposes whatsoever and declare it to be a nullity. We also consider it proper to clarify at this stage that till the No Confidence Motion is tabled in accordance with law the appellant shall exercise only routine powers.

The appeal is allowed to the extent indicated only.

(Navin Sinha, J)

(Shailesh Kumar Sinha, J)

K.C.jha/-