

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3592 of 2014

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1. Smt. Lakhapato Devi W/O Sri Madan Prasad Sah Resident of Village,
P.O. and P.S.- Kochas, District- Rohtas

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Urban Development and Housing Department, Government of Bihar, Patna
2. The Joint Secretary, Urban Development and Housing Department, Government of Bihar, Patna
3. The Deputy Secretary, Urban Development and Housing Department, Government of Bihar, Patna
4. The District Magistrate-Cum-District Election Officer (Municipality), Rohtas at Sasaram
5. The District Panchayat Raj Officer, Rohtas at Sasaram
6. The Senior Deputy Collector, Rohtas at Sasaram
7. The Block Development Officer, Kochas, Rohtas
8. The Circle Officer, Kochas, Rohtas
9. The State Election Commission, Bihar through its Additional Secretary-Cum-Joint Election Commissioner, Govt. of Bihar, Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bishwa Nath Chaudhary, Adv.
For the Respondent-State: Mr. A. Ujjwal, S.C. 25
For the S.E.C. : Mr. Girish Pandey, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

6 27-04-2015 Heard Mr. Raj Kishore Prasad, learned counsel for the petitioner, learned counsel for the State and Mr. Girish Pandey, learned counsel for the Election Commission.

The petitioner who happens to be the Ex-Mukhiya of the erstwhile Gram Panchayat, Kochas has questioned the order bearing Memo No. 950 dated 10.4.2013 of the Deputy Secretary, Department of Urban Development and Housing, Government of Bihar whereby the State Government in exercise of powers vested



under the provisions of Sections 4 and 6 of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act') have constituted the Nagar Panchayat which would also consist of village Kochas from where the petitioner contested the Mukhiya election and succeeded. The petitioner is principally aggrieved by her loss of status as Mukhiya of the Gram Panchayat and in the process complains of statutory violations in the notification.

Learned counsel submits that it is after declaration is made by the State Government upon enquiry as to whether a larger area is capable of declaration as a Nagar Panchayat that a publication of such declaration is made in an official gazette and in at least two newspapers and the same is also pasted in a conspicuous place. A public proclamation is also to be made by beating of drums and after this exercise is completed that objections are invited of such intention and after consideration of objection received in this regard that the State Government under Section 6 can declare an area to form a large urban area, a city, town or transitional area as a municipal area under 'the Act'. According to the petitioner, this mandatory exercise has been given a go-bye and thus the notification impugned at Annexures 7 and 8 is without sanction of law.

After affidavits being exchanged in the present proceeding

that the State was directed to specifically answer the issues raised by the petitioner and whereafter a supplementary counter affidavit has been filed on the specific issues raised as noted above.

The records of the proceedings manifests that the Panchayat Samiti, Kochas in its meeting held on 8.6.2010 resolved that since more than 70% of the population of the area in question were engaged in non agricultural works hence the larger area be declared as a Nagar Panchayat. A copy of the resolution of the Panchayat Samiti is present at Annexure-A. It is following such resolution that a decision was taken at the level of the State Government to constitute the area in question as a municipal area and following which a request was made in the public relation department of the State Government to publish the notification in two major newspapers. Paragraph 5 of the counter affidavit mentions that the notification in question was published on 8.12.2012 in four local newspapers namely, Rastriya Sahara, Aaj, Sanmarg and the Times of India, Patna. It is further stated that copies of the notification was also pasted at the public places and proclamation was made by beating of drums as required under Section 4 of the Act. It is thereafter mentioned that since no objections were raised on the notification of the State Government to constitute the area as a municipal area that a formal notification

impugned at Annexure-7 of the writ petition was issued. It is further stated that the election has already taken place and the Nagar Panchayat has been constituted.

As noted above the exercise is sought to be questioned by the petitioner on two grounds namely:

(a) Non compliance of Section 4 and 5 of 'the Act': In so far as the issue of non compliance of Sections 4 and 5 of 'the Act' is concerned, in the opinion of this Court in view of the fact that the petitioner happens to be the Mukhiya of the erstwhile Gram Panchayat, Rohtas and a decision was taken at the level of the Panchayat Samiti of which the petitioner is also a member, to constitute the area in question as a municipal area with no objection coming from the petitioner to question such decision before any appropriate forum, she has waived of her right to question the consequences of the decision of the Panchayat Samiti.

(b) Non disposal of objection: In so far as issue of disposal of objection is concerned, once a decision has been taken at the level of the Panchayat Samiti itself to constitute a municipal area on grounds that 70% of its population or more is engaged in non-agricultural work,

the rest of the exercise on the part of the State Government becomes a completion of formality. Further the records of the proceedings manifests that no objections to the notification were received. Thus the State Government has not defaulted in the same rather each step has been followed.

This Court in the circumstances discussed is not persuaded to interfere with the decision of the State Government and the writ petition is accordingly disposed of.

(Jyoti Saran, J)

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