

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1511 of 2015

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Amarendra Kumar, son of Late Bhagwati Prasad Shah, resident of Mohalla-Sipah, Ward No. 6, P.O. and P.S. Arwal, District-Arwal

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna
3. The Director, Urban Development and Housing Department, Government of Bihar, Patna
4. The District Magistrate, Arwal, District-Arwal
5. The Executive Officer, Narag Parishad Arwal, District-Arwal
6. Smt. Maya Devi, wife of Sri Baldeo Prasad,
7. Sri Chandra Bhushan Singh, son of not known to the petitioner
8. Smt. Seema Devi, wife of not known to the petitioner
9. Smt. Babita Devi, wife of not known to the petitioner
10. Smt. Bano Praveen, wife of not known to the petitioner
11. Smt. Shakeela Khatoon, wife of not known to the petitioner
12. Smt. Najma Khatoon, wife of not known to the petitioner
13. Sri Nitya Nand Singh, son of not known to the petitioner
14. Sri Satyendra Bahelia, son of not known to the petitioner
15. Smt. Sabila Khatoon, wife of not known to the petitioner
16. Sri Awadh Prasad, son of not known to the petitioner
17. Sri Raju Kumar, son of not known to the petitioner
18. Sri Gopal Singh, son of not known to the petitioner
19. Sri Suresh Chaudhary, son of not known to the petitioner
20. Smt. Usha Devi, wife of not known to the petitioner
21. Sri Akhilesh Saw, son of not known to the petitioner
22. Smt. Punam Kumari, wife of not known to the petitioner
23. Sri Ram Kishore Verma, son of not known to the petitioner
24. Sri Baijnath Prasad, son of not known to the petitioner
25. Sri Yadu Chaudhary, son of not known to the petitioner
26. Sri Ram Binay Paswan, son of not known to the petitioner
27. Smt. Nilu, wife of not known to the petitioner
28. Smt. Gita Devi, wife of not known to the petitioner
29. Sri Ramanand Singh, son of not known to the petitioner

Respondent nos. 6 to 29 are the Ward Councilors of Nagar Parishad, Arwal through the Executive Officer, Nagar Parishad, Arwal, District-Arwal

30. The State Election Commission (Municipality) through the Secretary, 4th Floor Sone Bhawan, Birchand Patel Path, Patna

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. S.B.K. Manglam, Advocate
Mr. Chandan, Advocate

For S.E.C. : Mr. Amit Shrivastava, Advocate
 Mr. Girish Pandey, Advocate
 For the Respondent no.5: Mr. Sanjeev Nikes, A.C. to G.P. 25
 For respondent nos. 13 to 29: Mr. Y.V. Giri, Sr. Advocate
 Mr. Ranjeet Choubey, Advocate
 For the State : Mr. Rajesh Kumar Sinha, A.C. to G.P.-25

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

2 02-02-2015 Heard Mr. S.B.K. Manglam for the petitioner, Mr. Rajesh Kumar Sinha, Assisting Counsel to G.P. 25 for the State, Mr. Sanjeev Nikes for the Nagar Parishad, Arwal, Mr. Amit Shrivastava for the State Election Commission and Mr. Y.V. Giri, learned senior counsel for respondent nos. 13 to 29.

The writ petitioner has questioned the proceedings of the special meeting of Nagar Parishad, Arwal held on 5.1.2015 whereby the 'no confidence motion' moved against the petitioner has been passed and the petitioner who happens to be the Chief Councilor has been voted out of office.

According to the petitioner of the 24 elected members of the Nagar Parishad only 21 were present and of whom only 20 had voted. It is contended that of the 20 votes cast only 12 were cast in support of the motion which does not constitute a majority in terms of Section 25(4) of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act') to declare the motion passed against the petitioner.



The record of the 'no confidence motion' passed in the special meeting held on 5.1.2015 is placed at Annexure-A and manifests that of the 24 elected members 21 were present in the special meeting and had participated in the voting of whom 13 voted to support the motion while three voted against the motion and the vote cast by four of the members were declared invalid.

Mr. Manglam, learned counsel for the petitioner with reference to a letter of the Deputy Secretary, Urban Development and Housing Department dated 20.1.2015 placed at Annexure-11 of the interlocutory application has submitted that the petitioner had filed a compact disc which contains the videography of the special meeting and supports the case of the petitioner and it is after viewing the video that a doubt has been raised to the minutes of the proceedings of the special meeting by the Deputy Secretary who has requested the Divisional Commissioner, Magadh Division, Bihar to enquire into the matter and submit his report. It is thus the contention of Mr. Manglam that the interpolation in the special meeting stands supported by Annexure-11.

The argument of Mr. Manglam has been contested by Mr. Giri, learned senior counsel appearing for the respondents who with reference to the counter affidavit filed on behalf of the private respondents has submitted that it is on the conduct of the



petitioner that an FIR has been instituted against him inasmuch as not being satisfied by the outcome of the special meeting that the petitioner resorted to pressure tactics and even threatened the Executive Officer which is manifest from his report addressed to the District Magistrate dated 7.1.2015, a copy of which forms part of Annexure-A series. It is submitted by Mr. Giri that the petitioner was earlier ousted in a 'no confidence motion' passed on 16.6.2014 which was questioned by him before this Court in CWJC No. 10138 of 2014 and which was allowed on technical grounds and even in the second round proceedings the petitioner has been voted out of office but not being satisfied he has resorted to illegal tactics. He submits that the facts are apparent from the record requiring no inference in exercise of extraordinary jurisdiction.

Mr. Rajesh Kumar Sinha, learned State counsel has submitted that on the directions of the State Government that a committee has been constituted to look into the issue raised by the petitioner and who has prepared its report. He submits that the report would be submitted to the State Government for its decision on the issue raised by the petitioner.

Having heard learned counsel for the parties and taking into consideration the nature of contest as well as bearing in mind

that pursuant to the orders of the State Government, a Committee has been constituted to consider the grievance raised by the petitioner in the backdrop of the evidence available, this Court is of the opinion that until such time that a final decision is taken by the State Government on the issue raised, any expression by this Court would be prejudging the issue.

In the circumstances discussed, the writ petition is disposed of with a direction to the Principal Secretary, Urban Development Department to pass appropriate orders taking into consideration the issue raised by the petitioner and in the backdrop of the report submitted by the Committee but any such order to be passed should be after due notice and opportunity of hearing to the contesting parties.

Any election held in the meanwhile would be subject to final outcome of the proceedings.

With the observations and directions aforementioned, the writ petition and the interlocutory application bearing I.A. No. 720 of 2015 are disposed of.

(Jyoti Saran, J)

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