

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21677 of 2014

Vinay Kumar Pappu, aged about 42 years S/o Dr. S.N. Roy Yadav, resident of Goriatoli, Station Road, Patna, P.O. G.P.O., P.S. Kotwali, District Patna, Bihar.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Secretary, Urban Development and Housing Department, Govt. of Bihar.
3. The Special Secretary, Urban Development and Housing Department, Govt. of Bihar.
4. The Patna Municipal Corporation through the Municipal Commissioner, Patna, having it's office at Maurya Lok Complex, Bailey Road, Patna.

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 21942 of 2014

Sanjay Kumar Singh aged about 48 Years Son of Sri Mohan Prasad Singh, resident of Digha Ghat, Patipur, P.O-Digha, P.S-Digha, Patna-800001, District -Patna, Bihar.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Secretary, Urban Development and Housing Department, Govt. of Bihar.
3. The Special Secretary, Urban Development and Housing Department, Govt.of Bihar.
4. The Patna Municipal Corporation through the Municipal Commissioner, Patna having it's office at Maurya Lok Complex, Bailey Road, Patna.

.... Respondent/s

Appearance:
(In CWJC No. 21677 of 2014)

For the Petitioner/s : Mr. Gajendra Pratap Singh, Advocate
For the P.M.C. : Mr. Y.V. Giri, Sr. Advocate
Mr. Ranjeet Kumar Pandey, Advocate
For the Respondent/s : Mr. Dr. Anshuman, SC-14

(In CWJC No. 21942 of 2014)

For the Petitioner/s : Mr. Gajendra Pratap Singh, Advocate
For the P.M.C. : Mr. Y.V. Giri, Sr. Advocate
Mr. Ranjeet Kumar Pandey, Advocate
For the Respondent/s: Mr. Pushkar Narain Shahi- AAG 10

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 02-02-2015



Mr. Gajendra Pratap Singh for the petitioners in the two writ petitions, Mr. Ravindra Kumar, Assisting Counsel to AAG-10 in CWJC No. 21942 of 2014 and Mr. Y.V. Giri representing the Patna Municipal Corporation in both the writ petitions.

Since the issue raised in both the writ petitions are identical hence both have been taken up together for consideration with a view to their final disposal.

The petitioners in the two writ petitions have questioned the initiation of proceedings by the State Government in its Department of Urban Development and Housing in purported exercise of power vested under Section 69 of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act') and the Rules framed thereunder.

A preliminary objection has been raised by Mr. Ravindra Kumar questioning the maintainability of the writ petitions *inter alia* on grounds that the petitioners have approached this Court at the stage of notice itself and which is premature for adjudication at this stage.

Responding to the preliminary objection it is contended by Mr. Singh appearing for the petitioners in the two writ petitions that since the very initiation is contrary to the statutory provisions hence the present challenge.

It is submitted by Mr. Singh learned counsel for the



petitioners with reference to the provisions underlying Section 69 of the Act to submit that there are certain prerequisites attached to the exercise of powers by the State Government for dissolving a municipality and the foremost prerequisite is a notice to the municipality which is defined under Section 2(66) of the Act. He submits that no notice has been served on the Municipality by the State Government as mandated under Sections 69(2) (a) of the Act which is a condition precedent to an exercise of power under Section 69(1) of the Act.

The argument of Mr. Singh has been seconded by Mr. Giri, learned senior counsel appearing for the Municipal Corporation and with reference to the statement made in paragraph-6, 7 and 8 of the counter affidavit filed in CWJC No. 21677 of 2014 it is submitted that a specific statement to that effect has been made by the Corporation and has not been controverted by the State Government.

This matter was twice earlier adjourned to enable the learned State counsel to file a supplementary counter affidavit on the issue raised in the writ petitions. It is stated by Mr. Singh that though a supplementary counter affidavit has been filed pursuant to the time granted but it yet does not answer the issue raised by the petitioners.

Mr. Ravindra Kumar, learned State counsel rather fairly admits to the fact situation that no notice has been served on the Patna

Municipal Corporation.

I have heard learned counsel for the parties and I have perused the records. Though learned State counsel's objection as to the maintainability of writ petition on grounds of premature challenge, in any other circumstance, would have drawn attention but where the initiation of any proceeding is founded on apparent illegality then it would be ridiculous to permit a continuation of such proceeding and allow the subjects to surrender to the illegalities and undergo the rigours thereof, only to be set aside ultimately.

Section 69 of the Act vests power in the State Government to dissolve a municipality and such power has to be exercised in the circumstances discussed in the sub-section (1) thereof. It is not in a routine manner that this power is to be exercised rather it is only upon satisfaction expressed by the State Government that the municipality has shown incompetence or has persistently made default in performance of duties or in exercise of power of functions imposed under the Act or any other law or has exceeded or abused its power or is unable to function under the provisions of the Act, that the State Government can exercise such powers but before it decides to do so, a notice under sub-section (2) (a) of Section 69 is to be served on the municipality thereby affording opportunity to submit its representation against the proposed exercise. The governmental



action does not stop at this stage either rather on receipt of any such representation by the municipality that the State Government is required to constitute a Committee consisting of five members as described in sub-section (2) (b) of Section 69 and it is only upon receipt of the report by the Committee when the State Government can pass final orders after considering the representation of the petitioners but such order also has to be passed after giving an opportunity of being heard to the municipality.

The legislature has thus laid down the manner in which the power of dissolution of a municipality can be exercised by the State Government and which is mandatory in nature.

Insofar as the case in hand is concerned, it is not in dispute that not even the first step to such exercise as mandated under Section 69(2) (a) of the Act requiring the State Government to serve a notice on the municipality has been followed rather notices have been issued to the ward councilors and two of whom have questioned the same through the two writ petitions.

When a statute prescribes a procedure and enjoins a duty on a statutory authority, it has to be strictly followed and there is no short cut to such exercise.

The circumstances discussed hereinabove leave no room for confusion that the initiation of proceedings by the State

Government in purported exercise of power under Section 69 of 'the Act' is not in consonance with the statutory provisions.

For the reasons aforementioned, the proceedings so initiated by the State Government by service of notice on the ward councilors requiring them to show cause against the proposed dissolution in purported exercise of power under Section 69(2) of the Act as impugned in the two writ petitions cannot be upheld and are accordingly set aside. The writ petitions are allowed.

The orders passed, however, would not preclude the State Government to proceed in the matter in accordance with law.

(Jyoti Saran, J)

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