

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1826 of 2015

In

Civil Writ Jurisdiction Case No. 12923 of 2015

Sunita Devi, wife of Sri Nagendra Rai, Resident of Village- Asuiyan, P.O and P.S- Marhaura, District- Saran at Chapra, presently Chief Councilor, Nagar Panchayat, Marhaura, District- Saran at Chapra.

.... Appellant/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, Saran at Chapra, District- Saran at Chapra.
5. The Sub-Divisional Officer, Marhaura, District- Saran at Chapra.
6. The Executive Officer, Nagar Panchayat, Marhaura, P.O and P.S.- Marhaura, District Saran at Chapra.
7. Smt. Radhika Devi, wife of not known to the petitioner, presently Deputy Chief Councilor, Nagar Panchayat, Marhaura, P.O. and P.S.- Marhaura, District -Saran at Chapra.
8. Sri Amar Kumar Singh, son of not known to the petitioner
9. Sri Shailendra Kumar Singh, son of not known to the petitioner
10. Smt. Mira Devi, wife of not known to the petitioner
11. Sri Ashok Kumar Singh, son of not known to the petitioner
12. Sri Shailendra Sah, son of not known to the petitioner
13. Smt. Urmila Devi, wife of not known to the petitioner
14. Smt. Geeta Devi, wife of not known to the petitioner
15. Smt. Urmila Devi, wife of not known to the petitioner
16. Smt. Kalawati Devi, wife of not known to the petitioner
17. Sri Shailendra Kumar, son of not known to the petitioner
18. Smt. Priyanka Kumari, wife of not known to the petitioner
19. Smt. Sunita Devi, wife of not known to the petitioner
20. Sri Manoj Kumar Singh, son of not known to the petitioner
21. Sri Kauleshwar Nut, wife of not known to the petitioner

Respondent Nos. 8 to 21 are the Ward Councilors of Nagar Panchayat, Marhaura, through the Executive Officer, Nagar Panchayat, Marhaura , P.O and P.S- Marhaura, District- Saran at Chapra.

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

.... Respondent/s

Appearance :

For the Appellant : Mr. S.B.K. Manglam, Advocate.
Mr. Ravi Ranjan, Advocate
Ms. Anita Kumari, Advocate
For the S t a t e : Mr.U.S.S.Singh, G.P.-1
For the Private Respondents: Mr. Y.V. Giri, Sr. Advocate
Mr. Ashish Giri, Advocate
For the Respondent-S.E.C. : Mr. Amit Shrivastava, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER
(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

9 05-11-2015

Heard Mr. S. B. K. Mangalam, learned Counsel, for the appellant, and Mr. U. S. S. Singh, learned Government Pleader No. 1, appearing for the State. Also heard Mr. Y. V. Giri, learned Senior Counsel, appearing for the private respondents, and Mr. Amit Srivastava, learned Counsel, appearing for the State Election Commission.

2. The appellant came to this Court with a writ petition, made under Article 226 of the Constitution of India, which gave rise to CWJC No. 12923 of 2015, questioning the initiation of proceedings of *No Confidence Motion* against her on the ground that the *requisition*, in question, dated 08.08.2015, seeking her removal from the Office of the Chief Councillor, Nagar Panchayat Marhaura, Saran, at Chapra, by way of *No Confidence Motion*, had not been served on, or furnished to, her; rather, the *requisition* had been given to the Office of the Executive Officer, Nagar Panchayat Marhaura, Saran, at Chapra, by ignoring, thus, the statutory provisions embodied in Rule 2 (i) of the Bihar Municipal No Confidence Motion Process Rules, 2010, read with Section 25 (4) of the Bihar Municipal Act, which warrant that *requisition* for *No Confidence Motion* shall be

given to the person, whose removal is sought by way of *No Confidence Motion*.

3. The writ petition was resisted by the *requisitionists*, as respondents in the writ petition, contending that they had gone to the writ petitioner (i.e., the Chief Councillor, Marhaura Municipality) to give *requisition* calling for a *special meeting* for considering *No Confidence Motion* against her (i.e., the writ petitioner), but when the writ petitioner, as Chief Councillor, refused to receive the *requisition*, they handed over the same to the Executive Officer, Marhaura Nagar Panchayat, which was received by the Office Clerk of the Executive Officer on 08.08.2015.

4. However, as no further progress was made subsequent to the handing over the *requisition* to the Executive Officer, Marhaura Nagar Panchayat, a learned single Judge of this Court disposed of the writ petition, by order, dated 17.08.2015, granting liberty to the appellant to move the Court in case the *requisition* is sought to be acted upon.

5. Soon after the order, dated 17.08.2015, was passed, disposing of the writ petition (CWJC No. 12509 of 2015t), notice, in question, was issued, on 17.08.2015, by the *requisitionists*, fixing the date of *special meeting*, on

20.08.2015, giving thereby merely three days' to the writ petitioner-appellant to raise objection.

6. Feeling aggrieved, the appellant, once again, approached this Court by filing another writ petition, which came to be registered as CWJC No. 12923 of 2015.

7. Having regard to the fact that the *requisition* had allegedly been given to the writ petitioner-appellant (i.e., the Chief Councillor) and on her alleged refusal to receive the *requisition*, the *requisition*, according to the *requisitionists*, had been given to the Executive Officer, coupled with the fact that the writ petitioner-appellant knew that the *special meeting* was to be convened on 20.08.2015, the learned single Judge refused to interfere. The relevant observations, appearing in the order, dated 15.09.2015, read as under:

"Considering that it is the stand of the requisitionists that the attempt to serve the requisition did not meet with success and hence it was filed in the office of the Executive Officer as well as considering the fact that the requisition is now well within the knowledge of the Chief Councillor, in my opinion, the submission of Mr. Mangalam cannot be accepted. Once the requisition has come to the knowledge of the Chief Councillor she cannot take shelter on hyper

technicality. That the copy of the requisition is present at Annexure-1 and the requisitionists present before this Court press the same, in my opinion, the petitioner as the Chief Councillor cannot shirk away from the responsibility so cast upon her under the Rules to fix the date of special meeting.

In the circumstances discussed and finding no infirmity in the requisition, the petitioner as the Chief Councillor shall now proceed to fix the date of special meeting on/or before 28.9.2015 for consideration of the motion so moved against her vide the requisition dated 8.8.2015 placed at Annexure-1 and on the failure of the petitioner to abide by the same and ensure compliance of the order passed by this Court, that the requisitionists shall be at liberty to proceed in the matter in the light of the statutory provisions underlying Rule 2(iii) of 'the Rules' and take the motion to its logical conclusion."

8. Aggrieved by the order, dated 15.09.2015, this appeal has been preferred by the writ petition.

9. We do not find that the observations made, the conclusions reached and the directions given by the learned single Judge suffer from any infirmity, factual or



legal; more so, when we notice that it is a question of fact as to whether the *requisition* had or had not been given to the appellant and whether the appellant had or had not refused to accept the *requisition*. Such disputed question of fact, we emphasize, could not have been decided in a writ petition inasmuch as such an intensely disputed question of fact can be determined only by recording evidence, which is, ordinarily, neither permissible nor desirable in a proceeding under Article 226 of the Constitution of India. The remedy, therefore, with the appellant, lied in instituting appropriate suit in a civil Court of competent jurisdiction, for redressal of her grievance, if any. This apart, if a *requisition* is given to a Chief Councillor and he/she refuses to accept the *requisition*, it cannot defeat the right of the *requisitionist* to call a *special meeting* if the *special meeting* is not convened by the Chief Councillor in accordance with law. Whether the *requisitionists* had given *requisition* to the appellant, as a Chief Councillor, seeking convening of a *special meeting* to discuss the *motion of no confidence* against her, is a matter of fact and since this fact is disputed, a writ proceeding is not the appropriate proceeding for determination of such dispute.

10. Because of what have been discussed and pointed out above, we do not find that the appellant has

been able to make out a case calling for interference with the order, dated 15.09.2015, passed, in CWJC No. 12923 of 2015, which stands impugned in this appeal. We, therefore, leave the appellant with liberty to approach, for the remedy of her grievance, the civil court of competent jurisdiction with appropriate suit and, if such a suit is filed, the learned Court below shall dispose of the same expeditiously in accordance with law.

11. In the result and for the foregoing reasons, the appeal fails and is, accordingly, dismissed.

12. However, there shall be no order as to costs.

(I.A. Ansari, ACJ)

(Anjana Mishra, J)

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