

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.451 of 2017

Arising out of

Civil Writ Jurisdiction Case No. 2012 of 2017

With

Interlocutory Application No. 1699 of 2017.

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Sri Anish Akhatar @ Anis Akhtar, son of Late Sadakat Hussain, Resident of Mohalla - Kalibagh, Mohammad Nagar, Ward No. 14, P.O. Bettiah, P.S. Bettiah Town, District - West Champaran at Bettiah.

.... Appellant

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, Municipal Administration-cum-Joint Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
4. The Deputy Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
5. The District Magistrate, West Champaran at Bettiah, District - West Champaran at Bettiah.
6. The Additional Collector, West Champaran at Bettiah, District - West Champaran at Bettiah.
7. The Executive Officer, Nagar Parishad, Bettiah, P.O. Bettiah, P.S. Bettiah Town, District - West Champaran at Bettiah.
8. Jahangir Alam, son of not known to the petitioner, Resident of Mohalla - Lal Bazar, Pakija Market, Church Road, Bettiah, P.O. Bettiah, P.S. Bettiah Town, District - West Champaran at Bettiah.

.... Respondents /Respondents 1st Set.

9. Janak Sah, son of Narsingh Sah, Resident of Ward No. 2, Jamadar Tola, P.O. Bettiah, P.S. Bettiah Town, District - West Champaran at Bettiah.

.... Writ petitioner / Respondent 2nd Set.

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Appearance:

For the Appellant/s : Mr. P.K. Shahi, Sr. Advocate,
Mr. Jagjit Roshan and
Mr. Om Prakash Singh, Advocates.

For the Respondents-State: Mr. Yogendra Prasad Sinha, AAG 7.

For the Respondent no.7: Mr. Priyadarshi Matri Sharan, Advocate.



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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 09-03-2017

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench on 28.02.2017 whereby the functioning of the elected candidate, i.e., the appellant, consequent to the removal of the writ applicant, was stayed pending final hearing of the Writ Application.

2. Admittedly, in an election conducted after removal of the writ applicant, the appellant is a successful candidate. Whether the writ applicant succeeds against his removal is to be finally decided but the relief claimed finally cannot be granted by virtue of an interim order as the relief is the ultimate relief which can be granted in the Writ Application. Therefore, by virtue of an interim order, the main Writ Petition cannot be decided. Still further, an elected candidate cannot be made non-functional by virtue of an interim order. The question of valid removal of the writ applicant is yet to be finally decided by the Writ Court.

3. Consequently, we set aside the order passed by the learned Single Bench on 28.02.2017. The appellant will continue to discharge his duties as elected Chief Councillor of Nagar Parishad,



Bettiah till the final decision of the Writ Application in accordance with law.

4. The Letters Patent Appeal is accordingly allowed.

(Hemant Gupta, ACJ)

(Sudhir Singh, J)

Dilip/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	

