**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.10252 of 2016**

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Parmanand Prasad Son of Sri Acchelal Prasad Resident of Village and P.O Bhagwanganj, P.S. Bhagwanganj, District- Patna.

.... .... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate-cum-District Election Officer (Panchayat), Patna.
2. The District Magistrate, Patna, District- Patna.
3. The Block Development Officer, Masaurhi, District- Patna.
4. Sri Manoj Singh son of Sri Tuntun Prasad Singh Resident of Village- Khanpura, P.O.- Bhagwanganj, P.S. Masaurhi, District- Patna.
5. The State Election Commission (Panchayat), Bihar, Patna through the State Election Commissioner.

.... .... Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. S. B.K. Mangalam with |
| | | Mr. Ravi Nananda, Advocates |
| For the State | : | Mr. Anuj Kumar, AC to GP 24 |
| For the SEC | : | Mr. Amit Shrivastava with |
| | | Mr. Girish Pandey, Advocates |

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**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH**

ORAL JUDGMENT

**Date: 26-07-2017**

Heard learned counsel for the petitioner; State and State Election Commission.

2. Despite valid service of notice on respondent no. 4, there is no representation on his behalf. Even on 24.07.2017, nobody had appeared on his behalf.

3. In view of the aforesaid, the Court has proceeded with hearing the matter for its final disposal.

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4. The petitioner has moved the Court for quashing of order dated 15.06.2016 passed by the Munsif, Masaurhi in Election Petition No. 1 of 2016 by which he has restrained the petitioner to function as Mukhiya of Gram Panchayat, Bhagwanganj till his appearance and filing of written statement.

5. The petitioner was elected to the post of Mukhiya of the aforesaid Gram Panchayat but prior to him being administered oath, in Election Petition No. 1 of 2016 preferred by the respondent no. 4, an *ex parte* order was passed on 15.06.2016 restraining the petitioner from functioning on the post. The same is under challenge in the present writ petition.

6. Learned counsel for the petitioner submitted that first and foremost such type of an order of restrain, as an interim measure is beyond the competence and jurisdiction of the forum before which the election petition is pending. He submitted that the law has been settled that such election petition is not a remedy either under common law or under the Code of Civil Procedure, 1908 (hereinafter referred to as the 'C.P.C.') as the same is totally circumscribed by the provisions of the Statute which has created the forum. For such proposition, learned counsel relied upon a decision of the Hon'ble Supreme Court in the case of **Jyoti Basu v. Debi Ghosal** reported as **(1982) 1 SCC 691**. Learned counsel submitted that in the present

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case, the forum/authority issuing an *ex parte* restrained order is contrary to establish norms by which such proceedings are governed. It was further submitted that only for the purposes of procedural formalities, the provisions of the C.P.C. are to be resorted to but the general power available to a Court do not apply to such forum/authority hearing the election petition. Learned counsel submitted that the order being patently illegal deserves to be set aside.

7. Learned counsel for the State Election Commission supported the contention of learned counsel for the petitioner and has further referred to a decision of the Co-ordinate Bench of this Court dated 28.07.2016 in **C.W.J.C. No. 10661 of 2016 (Mamta Devi vs. The State of Bihar & Ors.)** where the authority had directed the declared winner on the post of Mukhiya not to be administered oath and the Court had held the same to be beyond jurisdiction.

8. Learned counsel for the State also concurred with the submissions of learned counsel for the petitioner and the State Election Commission.

9. Having considered the rival contentions, the Court is also of the opinion that the authority prescribed to hear the election petition, the Munsif, Masaurhi in the present case, could not have exercised such power of granting *ex parte* restrain order against the petitioner, who, as of now is the duly elected Mukhiya. The

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Constitution contemplates that the authority as well as the Courts should facilitate in election, which also implies that the person who is so elected may take over and start functioning on the post to which he is elected and that the will of the majority is respected. This being the position, there cannot be any casual approach to passing of interim order restraining the person who has been duly elected till such time the election is not set aside after following the due procedure of law. Similar view has also been expressed in the case of **Mamta Devi** (supra).

10. In view thereof, the order dated 15.06.2016 passed by the Munsif, Masaurhi in Election Petition No. 1 of 2016 is set aside.

11. The writ petition stands allowed.

**(Ahsanuddin Amanullah, J)**

Anjani/-

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