

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 17462 of 2016

Along with

Interlocutory Application No. 1077 of 2017

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Kaushal Kaushik, Son of Late Jagdish Prasad, Resident of Village- Nisarpura, P.O.-
Amarpura, P.S.- Naubatpur, District- Patna, Presently Chief Councilor, Nagar
Panchayat, Naubatpur, P.O. and P.S.- Naubatpur, District- Patna.

.... 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 Under Secretary, Urban Development and Housing Department,
Government of Bihar, Patna.
4. The Special Secretary, Urban Development and Housing Department,
Government of Bihar, Patna.
5. The Executive Officer, Nagar Panchayat, Naubatpur, P.O. and P.S. Naubatpur,
District- Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S. B. K. Mangalam, Advocate
For the Intervenor	:	Mr. Shrinandan Prasad Singh, Advocate
For the State	:	Mr. Rajiv Roy, G.P.1 Mr. Suresh Kumar, A.C. to G.P. 1
For the Respondent No. 5	:	Mr. Gopal Govind Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 20-06-2017

Heard learned counsel for the parties.

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2. After some arguments, learned counsel for the



applicant, who had wanted to intervene in the matter stands disposed off as not pressed.

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3. At the request of the court, the Principal Secretary, Urban Development and Housing Department is present and has also assisted the Court.

4. The Court shared its concerns with the Principal Secretary with regard to the actual mode and implementation of schemes sanctioned and approved by the Urban Local Bodies which are financed fully by the funds of the concerned Urban Local Bodies which may have been generated through their own resources or devolved from the State Government or the Central Government under the Finance Commission Recommendation. The Court discussed the matter in details with the Principal Secretary and in the considered opinion of the Court, the Constitutional scheme contemplates that the Urban Local Bodies which are also local self governments run independently by themselves and should have autonomy. Autonomy devoid of financial autonomy is no autonomy. If the funds are those of the Urban Local Bodies then law requires that being local self Governments, they have the final authority with regard to deciding with regard to the manner and mode of spending funds relating to schemes which may be financed by their funds.



They are further entitled to ensure that the implementation of such schemes is done in the manner required and are also entitled to monitor the implementation of such schemes. The Court after being assisted by the Principal Secretary, is in agreement with him that the scheme envisages, as of now, that with regard to actual implementation of the projects by the State Government, the same shall be through its various Departments/Corporations which would be the agency to implement and execute the projects sanctioned and approved by the Urban Local Bodies. Thus, the Court deems it appropriate to clarify the situation that in all projects/schemes, which are approved and sanctioned by the Urban Local Bodies and which are to be financed by their own funds, though may be carried out through the various Departments of the State Government or Corporations including the District Urban Development Agency, but the actual implementation and execution of such projects shall be amenable to overall supervision of the concerned Urban Local Bodies to the extent that they can make inspection, call for periodical reports and also give direction to the executing agency with regard to any irregularities found, which shall have to be either explained or corrective measures taken by the executing agency and that too within the shortest possible time so as not to frustrate the object. With regard to schemes which may be implemented in the concerned



geographical area of the Urban Local Bodies which are substantially financed from the funds other than the funds of the Urban Local Bodies, the mode adopted by the State Government and the procedure prescribed shall be followed. However, even for implementation of such schemes, there should be some sort of consultation with the Urban Local Bodies so that the schemes do not overlap or are not contrary to what the Urban Local Bodies desires, as there should neither be any confrontation nor clash of interest. To clarify the matter, the Court would only give one example in the sense that if the Central Government takes up a project to make a road which is to pass through the geographical area of any Urban Local Body then consultation should be there with the Urban Local Body with regard to the route or the area through which such road will pass. However, such consultation does not mean that the Urban Local Bodies will have the final say and the practical aspect and overall public interest would be taken into consideration and ultimately it would be the decision of the State Government which would prevail. It is further clarified that if any query/recommendation of the Urban Local Bodies communicated to the executing agency with regard to any scheme implemented from the funds of the Urban Local Bodies is not responded to or taken note of or complied with, the Urban Local Bodies shall be entitled to recommend action against



the concerned officer/contractor to the Principal Secretary of the Urban Development and Housing Department which shall be duly looked into and action taken, in accordance with law, expeditiously.

5. It appears that by order dated 17.01.2017, as an interim measure, the Executive Officer, Nagar Panchayat, Naubatpur was restrained from exercising any financial power. Today he is present in Court along with the registers relating to the engagement of daily wagers. The Court has perused the same. The order restraining him from exercising any financial power stands recalled.

6. The Executive Officer has assured the Court that henceforth he will act totally under the jurisdiction of the Urban Local Body without being guided by any other factor and shall duly and sincerely implement all the decisions and directions given by the Urban Local Body. However, he shall be entitled to put his views before the body but the ultimate decision taken by the Urban Local Body shall prevail. He shall also not frustrate any decision taken by the Urban Local Body at his level and at best he can bring it to the notice of the State Government, if according to him the decisions are contrary to the statutory provisions which he shall indicate in such communication.

7. As assured by the Principal Secretary, Urban Development and Housing Department, let necessary



directions/clarifications be issued by the State Government in the matter in terms of the discussions made in this order, within three weeks from today.

8. The writ petition stands disposed off in the
aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

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