

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8544 of 2017

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Parmanand Prasad, S/o Late Kamta Prasad, R/o Mohalla- Maulabad, Ward No.19,
P.O.+P.S.- Daudnagar, Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary, Urban Development Department, Government of Bihar, Patna.
3. The Joint Secretary cum Director, Municipal Election, Urban Development Department, Government of Bihar, Patna.
4. The District Magistrate, Aurangabad.
5. The Sub-Divisional Officer, Daud Nagar, Aurangabad.
6. The Daud Nagar Municipality through its Executive Officer, Daud Nagar, Aurangabad.
7. The Executive Officer, Daud Nagar Municipality, Daud Nagar, Aurangabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Priyadarshi Matri Sharan with
Mr. Kanhaiya Pandey, Advocates

For the State : Mr. Subhash Prasad Singh, GA 3

For the Daud Nagar Nagar Parishad : Mr. Ashutosh Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 31-08-2017

Heard learned counsel for the petitioner, State and Daud
Nagar Nagar Parishad.

2. The petitioner has moved the Court for the following
reliefs:

- “(i) That the notification bearing memo no. 3726
dated 02.06.2017 issued by respondent no. 2
contained in annexure-6 may be quashed.*
- (ii) that the respondents may be directed to
immediately issue notification for constitution of*



Daud Nagar Nagar Parishad in terms of section 6 of the Bihar Municipal Act, 2007 and the respondents may be directed to immediately send the proposal to state election commission for holding election of newly constituted Daud Nagar Nagar Parishad in terms of section 441 of the Bihar Municipal Act, 2007.

(iii) That the definition of administrator provided u/s 2(2) of the Bihar Municipal Act, 2007 so far as vesting of power of Chief Executive Officer in administrator appointed in terms of section 12 (9) of the Bihar Municipal Act, 2007 may be declared unconstitutional and illegal.

(iv) That any other relief or reliefs may be allowed which will be just proper and equitable on the opinion of this Hon'ble court."

3. In sum and substance, the contention of the petitioner is that though the Daud Nagar Nagar Parishad may have completed five years of existence, but in the absence of fresh elections, the arrangement had to be made under Section 12 (8) of the Bihar Municipal Act, 2007 (hereinafter referred to as the 'Act') and not under Section 12 (9) of the Act, as has been done by the impugned notification dated 02.06.2017.

4. Learned counsel for the petitioner submitted that the Daud Nagar Nagar Panchayat was already in existence, but it has been upgraded into Daud Nagar Nagar Parishad, which would amount to a



new municipal area being constituted. Learned counsel submitted that since the same was preceded by notifications under Sections 3 and 4 of the Act, the same would amount to creation of a new municipal area and once the new municipal area is created, arrangement has to be under Section 12 (8) of the Act. Learned counsel submitted that section 12 (8) of the Act contemplates that in the event the elections are not held, the erstwhile body shall continue to exist for a maximum period of six months from the date of notification under Section 6 of the Act. Learned counsel submitted that five years period of Daud Nagar Nagar Parishad was over on 09.06.2017, and thus, upon extension it shall be 08.12.2017. For such proposition learned counsel placed reliance on a decision of a co-ordinate Bench of this Court in the case of **Syed Shahid Raza vs. State of Bihar** reported as **2010 (2) PLJR 501**.

5. Learned counsel for the State, who has filed counter affidavit on behalf of respondent no. 2, referring to the same, submitted that the notification under Section 4 of the Act has been issued on 28.07.2017.

6. Having considered the matter, the Court does not find force in the submissions of learned counsel for the petitioner that the impugned notification under Section 12 (9) of the Act is erroneous and ought to have been under Section 12 (8) of the Act. Sub-sections (8) and (9) of Section 12 of the Act read as under:



“ (8) In a municipal area newly constituted, the local authority having jurisdiction over such area immediately before such area was constituted as a municipal area, shall continue to have jurisdiction and to perform its functions till such time, not exceeding six months from the date of the notification under section 6, as may be necessary for holding elections.

(9) If, for any reason, it is not possible to hold the general election of a Municipality before the expiry of the period of five years specified in sub-section (5), the Municipality shall stand dissolved on the expiration of the said period, and all the powers and functions vested in the municipal authorities under this Act or under any other law for the time being in force shall be exercised or performed, as the case may be, by such person or persons to be designated as Administrator or Board of Administrators as the State Government may, by notification, appoint.”

7. From bare reading of the said sub-sections it is clear that Section 12 (8) of the Act applies in a case where a ‘municipal area’ is ‘newly constituted’ whereas Section 12 (9) of the Act deals where already there is a presupposition of a ‘municipality in existence. In the present case, the Nagar Panchayat is also a ‘municipal area’ under the Act and has only been ‘upgraded’ into Nagar Parishad. On the basis of population figures, there are three categorizations, as per



Section 13 of the Act. At the lowest rung is Nagar Panchayat and then, depending on increased population, it is categorized as Nagar Parishad and finally after the population exceeding a further upper limit it becomes a Nagar Nigam. In that view of the matter, once Daud Nagar Nagar Panchayat was already in existence it would not be a case where the upgradation would be a ‘constitution of a new municipal area’ as it is only ‘re-classification’ from Nagar Panchayat to Nagar Parishad. The judgment referred and relied upon by learned counsel for the petitioner in the case of **Syed Shahid Raza** (supra) has not considered such aspect and thus cannot be said to be a binding precedent.

8. For the reasons aforesaid, the writ petition stands disposed off with the observation that the State, after having notified upgradation of Daud Nagar Nagar Panchayat into the Daud Nagar Nagar Parishad, the rest of the statutory and legal formalities are required to be completed expeditiously so that early election to the body is held, in accordance with law without any undue delay.

9. Learned counsel for the State shall communicate the order to the concerned respondents.

(Ahsanuddin Amanullah, J)

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