

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1706 of 2013

In

Civil Writ Jurisdiction Case No.4084 of 2005

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Pramod Mishra S/O Shri Ram Mishra Resident of Village Semari, Police
Station- Dawath, District- Rohtas.

... .. Petitioner-Appellant

Versus

1. The State Of Bihar
2. The Chairman Notified Area Committee, Piro, District- Bhojpur.
3. Bangali Prasad Gupta S/O Late Devi Dayal Shah(deceased) Resident of
Village Piro, Police Station Piro, District- Bhojpur.
4. Binod Mishra S/O Shri Ram Mishra Resident of Village- Semari, Police
Station Dawath, District- Rohtas.
5. Surendra Pandey S/O Awadh Bihari Pandey Resident of Village
Basarath, Police Station- Nawanagar, District- Buxar.
6. Smt. Rajmati Devi W/O Jagdishwar Pandey Resident of Village Jadupur,
Police Station Agiaon, District- Bhojpur.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. M.N. Choubey, Sr. Advocate Mr. Ashok Kumar Garg Mr. Siddharth Harsh
For Respondent No.3		Mr. Atul Kumar Pandey
For Respondent Nos 4 to 6		Mr. Umesh Narayan Dubey

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN

SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 14-08-2018

Heard Mr. Kamal Nayan Chaubey, learned Senior
Counsel appearing for the appellant-writ petitioner with Mr.
Ashok Kumar Garg, Advocate-on-record, and Mr. Atul Kumar
Pandey, learned counsel appearing for the respondent no. 3.
There is no appearance on behalf of the State or the respondent
no. 2. Respondent nos. 4 to 6 are represented through Mr.



Umesh Narayan Dubey.

We have heard learned counsel for the parties and have perused the records.

By the order impugned passed by the learned Single Judge put to challenge herein, the writ petition was dismissed on grounds of delay, inasmuch as in the opinion of the learned Single Judge, though the order under challenge in the writ petition was passed on 10.08.2001, the writ petition was preferred after a delay of 04 years in the year 2005. Apart therefrom, the learned Single Judge also took notice of the fact that some of the coparceners of the writ petitioner i.e. respondent nos. 4 to 6 had earlier moved this Court in CWJC No. 11853 of 2001 but had chosen to withdraw the writ petition. It is taking note of the laches apparent from the face of record that the learned Single Judge refused to exercise the extraordinary jurisdiction vested under Article 226 of the Constitution of India.

Mr. Chaubey, learned Senior Counsel has chosen to concentrate on the issue of jurisdiction as, according to him, the order passed by the Special Officer dated 10.08.2001 suffered from the vice of coram non iudice inasmuch as according to Mr. Chaubey, while the power exercised by the Special Officer,



Notified Area Committee, was under Section 388 of the Bihar and Orissa Municipal Act 1922 (hereinafter referred to as 'the Act') but vide an amendment introduced through Act no. 2 of 1995, this provision was deleted, thus ending the constitution of a Notified Area Committee. It is the submission of Mr. Chaubey that on dissolution of the Notified Area Committee, the Special Officer became a 'persona non designata' and since he passed the order in the said capacity after the amendment in the Act through Act No. 2 of 1995, it is a nullity.

It is also the submission of Mr. Chaubey in reference to the judgment and decree of civil court passed in Title Suit No. 9 of 1963 that a challenge to the possession of the appellants-writ petitioner over the holding in question was refused by the learned Munsif vide judgment and decree present at Annexure-1 and which decree has also been confirmed by the appellate court. It is, thus, the submission of Mr. Chaubey that, not only on the exercise of jurisdiction but even on merits, the order passed by the Special Officer in Mutation Case No. 02 of 2001 was unsustainable and a delay in the circumstances explained, could not be an obstruction for the relief prayed.

Per contra, it is the argument of Mr. Pandey, appearing for the decree holder that an earlier challenge by the



coparceners of the appellant-writ petitioner in CWJC No. 11853 of 2001, to the same order passed by the Special Officer, ended when they chose to withdraw the writ petition and it is after withdrawal of the said writ petition that wisdom came upon the appellant-writ petitioner to question the same order. The submission of Mr. Pandey is seconded by Mr. Dubey appearing for respondent nos.4 to 6.

We have heard learned counsel for the parties and perused the records.

Insofar as the reliance by Mr. Choubey to the decree in the suit is concerned, we are satisfied that a dismissal of the suit in no manner establishes the right of the appellant-writ petitioner even if he would claim that he is in possession of the holding. In our opinion it would be a preposterous proposition to hold that the dismissal of the suit against the appellants was sufficient to uphold their right and title. The argument advanced is lacking in merit and is accordingly rejected.

Insofar as the second limb of argument of Mr. Choubey regarding the exercise of jurisdiction by the Special Officer, Notified Area Committee, being without sanction of law by virtue of repeal of section 388 of 'the Act' vide Amendment Act No.2 of 1995, is concerned, we are satisfied to record that



even this argument does not hold good in view of multiple amendments introduced to the Act vide Section 390C and Section 391 of 'the Act'. Even if, we would be persuaded to accept the argument of Mr. Choubey that a delay cannot be an impediment for striking down an exercise without jurisdiction and the principles underlying the 'coram non judice' is well settled, a cursory glance to the Savings Clause present in Section 390C of 'the Act' read alongside the provisions of Section 391 of the said Act, would be sufficient to reject the submission of Mr. Chaubey because it saves the constitution of a Notified Area Committee until the constitution of a municipality. Section 390C and Section 391 reads as under:-

“[390C. Savings.-(1) The Municipalities, and the Notified Area Committees on the commencement of this Act shall cease to function as such and the same shall be constituted, in the manner and under the provisions of this Act and such area may be declared, by notification in accordance with the provisions of sub-clauses (i) and (ii) or clause (a) of subsection(1) of Section 4 of the Act as Municipal Council or Nagar Panchayat, as the case may be:

Provided that in any Municipal area or Notified Area or part thereof is in



the opinion of the State Government not capable of being declared as a Municipality under the provisions of this Act, such area or part thereof may be governed by the provisions of the Bihar Panchayat Raj Act, 1993 (Bihar Act 19, 1993):

Provided further, notwithstanding the provisions of this Act, the Municipality and the Notified Area Committee which were validly constituted under the B. & O. Municipal Act, 1922 (B. & O. Act 7, 1922) shall continue to function till the constitution and the first meeting of the Municipality.

(2) Notwithstanding anything contained in the act, anything done or any action taken by the Municipal authority or the N.A.C. in exercise of any power conferred by or under the B. & O. Municipal Act, 1922 (B. & O. Act 7 of 1922), shall be deemed to have been done or taken by the Municipality or the Panchayat, as the case may be, under the provisions of this Act or the Bihar Panchayat Raj Act, 1993 (Bihar Act 19, 1993).

(3) The provisions of the Act shall have effect notwithstanding anything contained to the contrary in the Bihar and



Orissa Act 7, 1922.]

391. Continuity of municipalities, officers, appointments, rules, etc, not affected by Act.- *All municipalities constituted, Commissioners, Chairman, and Vice-Chairman appointed or elected, committees established, limits defined, appointments, rules, orders and bye-laws made, licenses granted, notifications and notices issued, taxes and rates imposed and proceedings taken under any of the enactments repealed by section 2 shall, so far as may be deemed to have been respectively constituted, appointed, elected, established, defined, made, granted, issued, imposed and taken under this Act.”*

The pleadings are silent on these issues. According to Mr. Pandey, learned counsel for the respondent no. 3, these issues were never raised by the appellant-writ petitioner at any stage. In our opinion, in absence of any pleading by the appellant-writ petitioner that a municipality was constituted much prior to the passing of the order impugned by the Special Officer thus, bringing the existence of the Notified Area Committee to an end, the reliance by Mr. Chaubey to the deletion of Section 388, would not come to his aid because the



Notified Area Committee so constituted, continued to have its existence, until the constitution of municipality and alongside existed the power vested in the Chairman appointed thereunder, in terms of the provisions underlying Section 391 of ‘the Act’.

A plain look at the order passed by the Special Officer, Notified Area Committee impugned at Annexure-4 to the writ petition, would confirm that exercise of jurisdiction by the Special Officer is in the capacity of a Chairman, Notified Area Committee and which exercise of powers stands protected under Section 391 read alongside the second proviso of Section 390C of ‘the Act’.

For the reasons so discussed, we find no error in the judgment and order passed by the learned Single Judge impugned herein, requiring indulgence.

The appeal is, accordingly, dismissed.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

Ashish/HR/-

AFR/NAFR	NAFR
CAV DATE	N/A
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