

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6251 of 2021

Navin Kumar son of Chitranjan Thakur resident of village - Sherna, P.O. and P.S. Kanti, District- Muzaffarpur, presently Mukhiya of Gram Panchayat Raj, Manikpur Narottan, Block - Kanti, District- Muzaffarpur.

... .. Petitioner

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 Joint Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
4. The Divisional Commissioner, Tirhut Division, Muzaffarpur.
5. The District Magistrate, Muzaffarpur.
6. The District Statistical Officer, Muzaffarpur, District- Muzaffarpur.
7. The Sub - Divisional Officer, West Muzaffarpur, District - Muzaffarpur.
8. The Block Development Officer, Kanti, District - Muzaffarpur.
9. The Nagar Panchayat, Kanti through the Executive Officer, P.O. and P.S. Kanti, District- Muzaffarpur.

... .. Respondents

with

Civil Writ Jurisdiction Case No. 5298 of 2021

1. Babita Devi Wife of Dr Shambhu Nath Sharan resident of village- Sharma, P.s.- Rusulpur, P.s.- Mahua, District- Vaishali at Hajipur, presently Mukhiya of Gram Panchayat Raj, Mangauraho, Block- Mahua, District- Vaishali at Hajipur
2. Pramod Kumar Sah Son of Lakshmi Sah resident of village and P.o.- Sherpur Chhatwara, P.s.- Mahua, District- Vaishali at Hajipur, presently Mukhiya of gram Panchayat Raj, Sherpur Chhatwara, Block- Mahua, District- Vaishali at Hajipur

... .. Petitioners

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 Divisional Commissioner, Tirhut Division, Muzaffarpur
4. The District Magistrate, Vaishali at Hajipur, District- Vaishali at Hajipur
5. The Additional Collector Vaishali at Hajipur, District- Vaishali at Hajipur
6. The District Panchayat Raj Officer, Vaishali at Hajipur, District- Vaishali at Hajipur
7. The Incharge Officer, District Development Cell, Vaishali at Hajipur, District- Vaishali at Hajipur



8. The District Agriculture Officer, Vaishali at Hajipur, District- Vaishali at Hajipur
9. The District Statistical Officer, Vaishali at Hajipur, District- Vaishali at Hajipur
10. The Sub Divisional Officer, Mahua, District- Vaishali at Hajipur
11. The Circle Officer, Mahua, District- Vaishali at Hajipur
12. Nagar Panchayat Mahua, P.O. and P.s.- Mahua, District- Vaishali at Hajipur through the Executive Officer,

... .. Respondents

Appearance :

(In Civil Writ Jurisdiction Case No. 6251 of 2021)

For the Petitioner : Mr. Shashi Bhushan Kumar Manglam, Advocate
Mr. Awnish Kumar, Advocate

For the Respondents : Mr. Subhash Pd. Singh (GA3)

(In Civil Writ Jurisdiction Case No. 5298 of 2021)

For the Petitioners : Mr. Shashi Bhushan Kumar Manglam, Advocate

For the Respondents : Mr. Surendra Kishore Thakur, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 21-03-2022

A Division Bench of this Court in its decision rendered on 17.01.2022 in *CWJC No. 7446 of 2021 (Usha Devi and Ors. Vs. State of Bihar and Ors.)* and another analogous matter has dealt in detail the scope of judicial review under Article 226 of the Constitution of India of a decision of the State Government to constitute a Municipal Area in exercise of power under Section 6 of the Bihar Municipal Act, 2007 (hereinafter referred to as the 'Act'). The said view has



subsequently been reiterated by the Division Bench decisions in case of *Kirti Azad Vs. State of Bihar and Ors.* rendered on 15.02.2022 in *CWJC No. 11414 of 2021* and dated 09.03.2022 rendered in *CWJC No. 8511 of 2021 (Manoj Kumar and Ors. Vs. State of Bihar and Ors.)* and other analogous matters.

2. In these two cases also, decisions of the State Government taken in exercise of the said power under Section 6 of the Act have been put to challenge. Since both the cases involve the same legal issue, they have been heard together with the consent of the parties and are being disposed of by the present common judgment and order.

3. The petitioner in CWJC No. 6251 of 2021 was the Mukhia of Manikpur Narottam *Gram Panchayat* and is a resident of village Sherna under the said *Gram Panchayat*.

4. The Urban Development and Housing Department, Government of Bihar came out with a notification dated 26.12.2020 declaring its intention to upgrade *Nagar Panchayat* Kanti to *Nagar Parishad* Kanti by including, *inter alia*, the said village Sherna of Manikpur Narottam *Gram Panchayat* within the area of the proposed upgraded *Nagar Parishad* Kanti. The said notification has been put to challenge in CWJC No. 6251 of 2021. During the pendency of the writ application, the



Department came out with the final notification under Section 6 of the Act dated 03.03.2021 upgrading the said *Nagar Panchayat* to *Nagar Parishad* including within its area, the said Sherna village. By seeking amendment in the writ petition the petitioner has put to challenge the subsequent notification dated 03.03.2021, through I.A. No. 1/2021. Since the final notification issued pursuant to the impugned notification dated 26.12.2020 is sought to be challenged by seeking amendment, I.A. No. 1/2021 is allowed. The petitioner has been permitted to question the validity of the notification dated 03.03.2021. The averments made in I.A. No. 1/2021 filed in CWJC No. 6251 of 2021 have been treated to be a part of the main writ application for the purpose of the present adjudication. Learned counsel for the petitioner has addressed this Court on the point of correctness of the said impugned notification dated 03.03.2021.

5 The petitioners of CWJC No. 5298 of 2021, have put to challenge another notification dated 26.12.2020 issued by the Urban Development and Housing Department, Government of Bihar, declaring its intention to upgrade Mahua *Nagar Panchayat* to Mahua *Nagar Parishad* by including two *Gram Panchayats* within its area, namely, Mangurahi *Gram Panchayat* and Sherpur Chhatwara *Gram Panchayat*. In this



case also, during the pendency of the writ application, a notification under Section 6 of the Act came to be issued on 26.03.2021, which is sought to be challenged by seeking amendment in the writ application through I.A. No. 1/2021. Since the notification dated 26.03.2021 has been issued pursuant to the draft notification dated 26.12.2020, which is under challenge in the main writ application, I.A. No. 1/2021 stands allowed. Petitioners thus stand permitted to question the validity of the notification dated 26.03.2021 (Annexure-P-10) in CWJC No. 5298 of 2021. Averments made in I.A. No. 1/2021 have been treated to be a part of the main writ application for the purpose of present adjudication.

6. Mr. S.B.K. Manglam, learned counsel appearing on behalf of the petitioners does not dispute that the legal issues involved in these applications are squarely covered by the decisions of this Court in case of *Usha Devi* (supra), *Kirti Azad* (supra) and *Manoj Kumar* (supra). He has, however, submitted that the decision of this Court in case of *Usha Devi* (supra) requires reconsideration to the extent it has been held that with the issuance of a notification under Section 4 of the Act declaring the State Government's intention to constitute a particular area as a Municipal Area, the provisions of Bihar



Panchayat Raj Act, 2006 cease to operate in respect of such area. He has submitted that mere declaration of intention of the State Government to constitute or upgrade an urban body under Section 4 of the Municipal Act shall not have the consequence of non-application of the provisions of the Panchayat Raj Act in respect of such area. He contends that until a notification is issued under Section 6 of the Municipal Act, the provisions of the Panchayat Raj Act shall operate in respect of such area proposed to be included within municipal area. This submission has been made in the context of the first proviso to sub-section (1) of Section 11 of the Panchayat Raj Act which reads as under:

“(1) Subject to the general or special orders of the Government, the District Magistrate may, by notification in the District Gazette, declare any local area comprising a village or a group of contiguous villages or part thereof to be a Gram Panchayat area with a population within its territory as nearly as seven thousand.

Provided that the District Magistrate may, after consultation with the Gram Panchayat concerned, by a notification, at any time, include within or exclude from any Gram Panchayat area any village or part thereof and alter the name of the Gram Panchayat.”

(Underlined for emphasis)

7. With reference to the *proviso* underlined above, it is his submission that carving out any area from a *Gram*



Panchayat for the purpose of its inclusion within the area of an urban body amounts to “exclusion” from any *Gram Panchayat* certain area within the meaning of the first proviso to sub-section (1) of Section 11 of the Act. He has accordingly, submitted that it is imperative for a District Magistrate to consult the *Gram Panchayat* in accordance with the aforesaid statutory prescription under the first proviso before taking a decision to include any area of the aforesaid *Gram Panchayats* within the area of newly constituted/upgraded urban body. He has reiterated that sub-section (ii) of Section 1 of the Panchayat Raj Act cannot have the effect of non-application of the provisions under the said Act, on mere issuance of a notification under Section 4 of the Municipal Act.

8 This Court in case of *Usha Devi* (supra) has held in paragraphs 24 to 27 as under :

“24 There is also no legal basis for the petitioners to contend that till such time their tenure as Mukhiya under the provisions of the Bihar Panchayat Raj Act, 2006 (for brevity, the Act of 2006) is not completed, the draft notification under Section 4 of the Act of 2007 cannot be issued. Scope and applicability of the Act of 2006 under which the petitioners claim security of tenure as Mukhiya is clear from Section 1 of the Act of 2006, as it stands subsequent to its amendment by the Bihar Panchayat Raj (Amendment) Act, 2007, w e f 04.09.2017 which reads as follows:



“1. Short title, Extent and Commencement.-*(1) This Act may be called the Bihar Panchayat Raj (Amendment) Act, 2017.*

(2) It shall extend to the whole of the State of Bihar excepting the areas to which the provisions of the Bihar Municipal Act, 2007 (Bihar Act No 11 of 2007) or Cantonment Act, 1924 (Act II of 1924) apply.

(3) It shall come into force at once.”

25 The statute, in unambiguous terms mandates, that it extends to the whole of the State of Bihar, excepting the area to which the provisions of the Act or Cantonment Act, 1924 applies.

26 The irresistible conclusion is that the moment the provisions of the Act of 2007 are applied, by virtue of a notification issued under Section 4 of the Act of 2007 declaring intention to constitute a particular area as a Municipal Area, the Act of 2006; and the security of tenure as Mukhiya, claimed by the petitioners thereunder, cannot come in the way of the process for upgradation or constitution of a municipality in accordance with the Act.

27 Section 14 of the Act of 2006 further clarifies this aspect. It clearly states that unless sooner dissolved under any law for the time being in force, Gram Panchayat is to continue for five years from the date appointed for its first meeting, and no longer. This provision finds its basis in Article 243E (1) of



the Constitution of India. Article 243E (1) of the Constitution of India and Section 14 (1) of the Act of 2006 are in pari materia. Section 14 (1) of the Act of 2006 read with Section 1 of the Act of 2006, therefore, makes it clear that dissolution of the Panchayat is by virtue of “law”, namely, application of the provisions of Section 4 of the Act of 2007, by issuance of an intention to declare the area as a municipal area, under the Act.”

(Underlined for emphasis)

9. This issue again fell for consideration by the Division Bench in the case of **Manoj Kumar** (supra). The Division Bench taking note of the law laid down in the case of **Usha Devi** (supra) has held in paragraphs 9 and 10 as under :

“9. As per the submission of the petitioners’ counsel, we, for the moment, are concerned with the first ground noted above, which has been dealt with and decided by the Hon’ble Single Judge in the case of Neelam Devi (supra). The statutory provision has been considered under the unamended Panchayat Raj Act, which has subsequently been amended. The action of the State authorities, which is challenged in the instant proceeding is under the amended provisions, pursuant to the Bihar Panchayat Raj Amendment Act, 2017. The provision of the Bihar Panchayat Raj Act, 2006, as existing pursuant to the 2017 amendment, has been considered by this Court in the case of Usha Devi (supra). The relevant paragraph being paragraphs 24 to 27 of the same, which this Court considers it useful to reproduce: -

“24 There is also no legal basis for



the petitioners to contend that till such time their tenure as Mukhiya under the provisions of the Bihar Panchayat Raj Act, 2006 (for brevity, the Act of 2006) is not completed, the draft notification under Section 4 of the Act of 2007 cannot be issued. Scope and applicability of the Act of 2006 under which the petitioners claim security of tenure as Mukhiya is clear from Section 1 of the Act of 2006, as it stands subsequent to its amendment by the Bihar Panchayat Raj (Amendment) Act, 2017, w e f 04.09.2017 which reads as follows:

“1. Short title, Extent and Commencement.-(1) This Act may be called the Bihar Panchayat Raj (Amendment) Act, 2017.

(2) It shall extend to the whole of the State of Bihar excepting the areas to which the provisions of the Bihar Municipal Act, 2007 (Bihar Act No 11 of 2007) or Cantonment Act, 1924 (Act II of 1924) apply.

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26 The irresistible conclusion is that the moment the provisions of the Act of 2007 are applied, by virtue of a notification issued under Section 4 of the Act of 2007 declaring intention to constitute a particular area as a Municipal Area, the Act of 2006; and the security of tenure



as Mukhiya, claimed by the petitioners thereunder, cannot come in the way of the process for upgradation or constitution of a municipality in accordance with the Act.

27 Section 14 of the Act of 2006 further clarifies this aspect. It clearly states that unless sooner dissolved under any law for the time being in force, Gram Panchayat is to continue for five years from the date appointed for its first meeting, and no longer. This provision finds its basis in Article 243E (1) of the Constitution of India. Article 243E (1) of the Constitution of India and Section 14 (1) of the Act of 2006 are in pari materia. Section 14 (1) of the Act of 2006 read with Section 1 of the Act of 2006, therefore, makes it clear that dissolution of the Panchayat is by virtue of “law”, namely, application of the provisions of Section 4 of the Act of 2007, by issuance of an intention to declare the area as a municipal area, under the Act.”

10. This Court having regard to the amended extant provisions of the Panchayat Raj Act has clearly held that the moment notification is issued under Section 4 of the Municipal Act, declaring the intention of the State Government to constitute/upgrade a Municipal Area, as in this case by impugned notification dated 26.12.2020, the provisions of the Panchayat Raj Act become inapplicable in view of the provisions contained in Section 1 of the Panchayat Raj Act. Thus, there is no scope to contend that Section 11 of the Panchayat Raj Act was mandatory and its non-compliance will in any way vitiate constitution of the Municipality. Submission of the petitioners’ counsel that



the issue has not been considered by the Division Bench, therefore, is incorrect. The issue stands settled by the Division Bench in the case of Usha Devi (supra). The submissions, therefore, are devoid of any merit. ”

10. However, in view of the submission by Mr. S.B.K. Manglam, learned counsel for the petitioners that the said aspect of the decision in the case of ***Usha Devi*** (supra) requires reconsideration, we have considered it apt to deal again with the provision under Section 1 of the Panchayat Raj Act and such provisions under the Municipal Act which are considered relevant for the present purpose.

11. We must record at this stage that the Panchayat Raj Act has been enacted to achieve the constitutional objective under Part IX of the Constitution of India, whereas the Municipal Act has been enacted to achieve the constitutional purpose under Chapter IX A of the Constitution. It is not the contention of Mr. Mangalam that any provision under the Panchayat Raj Act is in conflict with the constitutional mandate under Part IX of the Constitution. Similarly, it has not been disputed that the enactment of the Municipal Act is not in tune with the provisions under Chapter IX A of the Constitution. Sub-section (2) of Section 1 of the Panchayat Raj Act in no uncertain terms prescribes that it shall extend to whole of the



State of Bihar excluding the areas to which the provisions of Bihar Municipal Act, 2007 apply. On comparative examination of the aforesaid two enactments, it can be easily culled out that under the Panchayat Raj Act, a *Gram Panchayat* Area is notified at the level of the District Magistrate by a notification subject to general or special orders of the State Government, under Section 11 of the said Act. On the other hand, the power to constitute a municipal area vests in the State Government under Section 3 read with Section 6 of the Municipal Act and other provisions.

12. Mr. S.B.K. Manglam, learned counsel for the petitioners has submitted that interpretation in the case of *Usha Devi* (supra), to the effect that, once a notification under Section 4 is issued in respect of an area, the provisions of Bihar Panchayat Raj Act shall have no application in relation to such area will have disastrous consequences, inasmuch as, even before issuance of a notification under Section 6 of the Act, the provisions under the Panchayat Raj Act, shall become inoperative. According to him, it results into a situation where a *panchayat* area will neither be governed by the Panchayat Raj Act nor by the provisions of Municipal Act as the various provisions of the Municipal Act would come into operation only



after a final notification under Section 6 or Section 8 of the Municipal Act, as the case may be, is issued.

13. We have already noticed that the power to notify an area, as an urban area vests in the State Government under the Municipal Act, whereas such power to constitute, include, or exclude an area in respect of a *Gram Panchayat* vests in the District Magistrate subject to general and special orders of the State Government. It is significant to note that, though there is a clear provision under Section 1 of the Panchayat Raj Act that it shall extend to whole of the State of Bihar except the areas to which the provision of Municipal Act, 2007 apply, there is no similar provision in the Bihar Panchayat Act. Sub-section (2) of Section 1 of the Municipal Act states that it shall extend to whole of the State of Bihar excluding only cantonment areas therein and not *panchayat* area. Apparently, the said provision under the Municipal Act does not exclude such area to which the provisions of the Panchayat Raj Act apply.

14. On a conjoint reading of Section 1 of the Municipal Act and Section 1 of the Bihar Panchayat Raj Act, which has been enacted to achieve the respective purposes of the provisions under Chapters IX and IX (A) of the Constitution respectively, it can be easily discerned that, whereas the



Municipal Act extends to whole of the State of Bihar excluding only cantonment areas, the Panchayat Raj Act extends to the whole of the State of Bihar except the areas to which the provisions of the Municipal Act apply. It can thus be easily deduced that once the provisions of the Municipal Act are applied in relation to any Panchayat under Panchayat Raj Act, the provisions of the Panchayat Raj Act shall have no application in respect of such area.

15. In such view of the matter, in our opinion, the decision rendered in the case of *Usha Devi* (supra) by this Court does not require any reconsideration. The submission made by Mr. S.B.K. Manglam, learned counsel that since there was no consultation as stipulated under the first proviso to sub-section (1) of Section 11 of the Panchayat Raj Act before issuance of the impugned notification under Section 6 of the Municipal Act requires interference by this Court is not at all sustainable and is accordingly rejected.

16. Mr. S.B.K. Manglam, learned counsel has referred to the provisions under Section 3 of the Municipal Act to contend that the said provision requires making of inquiry by the State Government having regard to the population of any urban area, the density of population therein, revenue generated



for the local administration of such area, percentage of employment in non-agricultural activities in such area, the economic importance of such area, etc.. He has argued that Section 3 mandates such inquiry to be conducted by the State Government before issuance of a notification under the provisions of the Act for constitution of an urban area. He has further argued, with reference to the averments made in the writ application that before issuance of the impugned notifications, no officer had ever visited the area in question to conduct an inquiry as stipulated under Section 3(1) of the Act and, therefore, impugned notifications are legally unsustainable.

17. In view of the aforesaid submissions, we deem it proper to reproduce Section 3 of the Bihar Municipal Act which reads as under :

“Section 3 - Declaration of intention to constitute a municipal area

(1) The State Government may, after making such inquiry as it may deem fit, and having regard to the population of any urban area, density of population there in, the revenue generated for the local administration of such area, the percentage of employment in non-agriculture activities in such area, the economic importance of such area, and such other factors as may be prescribed, by notification, declare its intention to specify such area to be a larger



urban area, or a medium urban area, or a transitional area:

Provided that no such declaration shall be made unless the population

(a) in the case of a larger urban area, is two lacs or more,

(b) in the case of medium urban area, is forty thousand or more but is less than two lacs, and

(c) in the case of a transitional area, that is a small town, is twelve thousand and more but not more than forty thousand: Provided further that the non-agricultural population in all cases shall be seventy five per cent or more.

Explanation.—

"Revenue generated for the local administration" shall not include-

(a) taxes, if any, distributed to the Municipality by the State Government,

(b) loans and grants from the State Government, and

(c) loans and grants from the Central Government or institution or other source.

(2) The State Government shall, by notification, declare an area specified as-

(i) a larger urban area to be a city,

(ii) a medium urban area to be a town, and

(iii) a small town or transitional area to be a Nagar Panchayat or urban growth centre

(3) Notwithstanding anything contained in sub-section (1), the State Government may, by notification, determine separate conditions, to



constitute any hill area, pilgrim centre, tourist centre or mandi as a municipal area.”

18. In our view, it is manifest on a plain reading of Section 3 of the Act that the use of the expression ‘may’, ‘for making such inquiry as it may deem fit’, ‘having regard to the population of any urban area, etc.’ suggest that discretion lies with the State Government to declare its intention to specify such area to be a larger area or a medium urban area or a transitional area. The first and second proviso to sub-section (1) of Section 3 of the Act, as is evident from the language used are mandatory in character. The expressions ‘may’, and ‘may deem fit’ as falling in sub-section (1) of Section 3 disclose the legislative intent, which confers upon the State Government discretion in the matter of constitution of an urban area/municipal area. The authority of the State Government to constitute a municipal area is restricted, however, broadly by the two *provisos* attached to sub-section 1 of Section 3 of the Act and the provisions under Section 7 of the Act.

19. At this stage, we consider it useful to reproduce paragraphs 39 to 44 of the decision rendered in the case of ***Usha Devi*** (supra) which reads as under and answers the submission so advanced :-



*“39 Thus, from a bare reading of the objection, it appears that there is no allegation regarding there being absence of any of the requisite factors/parameters under Sections 3 or 7 of the Act of 2007. When the objection raised is wholly irrelevant, as in the instant case, this Court would consider it useful to refer to decision of the Apex Court in the case of **Bhikhubhai Vithlabhai Patel & Others -Versus- State of Gujarat & Another, reported in (2008) 4 Supreme Court Cases 144.** Paragraph 25 of the said judgment is noteworthy inasmuch as the same has elaborated the meaning and purport of the word “consider”. Paragraph 25 of the judgment reads as under:*

“25. The formation of the opinion by the State Government is with reference to the necessity that may have had arisen to make substantial modifications in the draft development plan. The expression: “as considered necessary” is again of crucial importance. The term “consider” means to think over; it connotes that there should be active application of the mind. In other words the term “consider” postulates consideration of all the relevant aspects of the matter. A plain reading of the relevant provision suggests that the State Government may publish the modifications only after consideration that such modifications have become necessary. The word “necessary” means indispensable, requisite, indispensably requisite, useful, incidental or conducive, essential, unavoidable, impossible to be otherwise,



not to be avoided, inevitable. The word “necessary” must be construed in the connection in which it is used. (See Advanced Law Lexicon, P Ramanatha Aiyar, 3rd Edn, 2005.)”

40 *Being guided by the said judgment, this Court would arrive at a conclusion that consideration is to be of the relevant aspects. The objectors, as in the instant case, cannot be permitted to raise issues which are wholly irrelevant and then claim that the authority is required to consider them, when it is manifest from bare reading of the objection itself that the objections raised are not germane to the issues under the Act of 2007. The State Government, therefore, is fully justified in rejecting the petitioner’s objection as being “not worthy of consideration”.*

41 *Submission of the learned senior counsel that no opportunity was granted for filing objections seems to be factually misplaced having regard to Annexure 5. The same is a photostat copy of paper publication dated 29.04.2020 brought on record by the petitioners themselves. The same is a notification declaring intention to constitute a municipal body including Sitamarhi Nagar Parishad, Dumra Nagar Panchayat and 17 nearby mouzas, to the extent of their areas specified in the said draft notification, into a larger municipal body. Thus, the records reveal that opportunity was granted, and the petitioners had availed the opportunity by filing their objection (Annexure 6 to the writ petition).*

42 *We are of the opinion that the scope of judicial review with regard to challenge to constitution/upgradation of municipal areas is also an issue which requires to be considered.*



43 The constitutional mandate under Article 243Q of the Constitution of India is for constitution of one or the other of the three classes of urban/municipal areas specified in sub-clauses (a), (b) or (c) in Article 243Q (1) of the Constitution of India.

44 Having laid down such requirement, the proviso to Article 243Q (2) gives discretion to the Governor to determine and specify by public notification, the requisite population, density of population therein, the revenue generated for local administration, percentage of employment in non-agricultural activity, economic importance and such other factors as the Governor may deem fit for constitution of “a transitional area”, “a smaller urban area” or “a larger urban area”. The proviso to Article 243Q (1) of the Constitution of India gives similar discretion for constitution of industrial township instead of an urban area. Thus, the Constitution has provided discretion in the Governor for determining and specifying the requisites and for declaration of the class of municipal area/industrial township contemplated under Article 243Q of the Constitution of India.

20. It is noteworthy that Mr. S.B.K. Manglam has also submitted that the impugned notifications can at the best be treated to be notifications under Section 8(c) of the Municipal Act and not under Section 6 of the said Act. The said submission deserves to be rejected in view of this Court’s decision dated 24.02.2022 rendered in ***CWJC No. 21180 of 2021 (Rani Kumari Vs. State of Bihar and Ors.)*** paragraphs 18 to 21 of which read as under :



“18 *In the wake of foregoing discussions, we do not have any hesitation in recording our definite opinion that procedure prescribed under Sections 3, 4 and 5 are essentially to be followed for any notification either under Section 6 of the Act or under Section 8 of the Act. A notification under Section 8 of the Act shall take effect by virtue of a notification under Section 6 of the Act. In our opinion, the notification dated 03.03.2021 issued by the Department has rightly referred to Sections 6 and 8 both of the Act under which it has been issued. The effect of a notification under Section 8 of the Act is creation of a new municipal area within the meaning of sub-section (66) of Section 2 of the Act and a notification under Section 6 of the Act, a sequel to it. A notification under Section 8 of the Act shall be meaningless, if it does not has the same effect as that of a notification under Section 6 of the Act. However, this is not in dispute that the said notification dated 03.03.2021 has been issued under Section 6 of the Act also. Further, the notification dated 03.03.2021 specifically mentions as under : -*

इस क्षेत्र को नगर परिषद्, मसौढ़ी, कहा जाएगा।

19 *The intention of the notification is loud and clear from its plain reading inasmuch as it refers to creation of a new municipal area, with wider area falling under columns 3 and 4 consequent upon inclusion of Panchayats/villages with the boundaries as specified in column 5 of the notification.*

20 *The Statute, therefore, clearly*



mandates that procedure laid down under Chapter II of the Act for constitution of a municipal area be followed mutatis mutandis while abolishing or altering the limits of any municipal area. The argument of the learned counsel for the petitioner that notification dated 03.03.2021 is not a notification under Section 6 of the Act is, therefore, unsustainable in view of the constitutional provisions considered above.

21 In view of the discussions aforesaid, we do not find any merit in the submission made on behalf of the petitioner that the said notification dated 03.03.2021 should be treated to be a notification under Section 8 of the Act only and, therefore, Section 12(8) of the Act shall have no application. The said submission is unsustainable and is accordingly rejected.”

(Underlined for emphasis)

20. In view of the above mentioned discussions, we do not find any substance in submissions made on behalf of the petitioners to assail the impugned notifications. In our opinion, these applications have no merit and are accordingly dismissed.

21. Before we part with it, we take judicial notice of the fact that umpteen number of cases are coming to this Court invoking writ jurisdiction questioning the decisions of the State Government to convert a rural area into an urban area by invoking powers under the provisions of the Municipal Act. On comparative examination of the provisions under the Bihar



Panchayat Raj Act, 2006 and the Bihar Municipal Act, 2007, it appears, though *prima facie*, that statutory policy is towards urbanization, apparently for easier access to various facilities to the villages in public interest, more often than not the Court is clueless in identifying the true reason behind such challenge to the State Government’s policy decisions to urbanize a rural area. This is an aspect which is left open to be addressed in appropriate case in future.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

K.K.RAO/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.04.2022
Transmission Date	NA

