

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8511 of 2021

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1. Manoj Kumar S/o-Shri Vishwanath Prasad Resident of Village-Bariya baina, P.O.-Bairiya, P.S.-Sona Gopalpur, Block-Sampatchak, District-Patna.
 2. Santosh Kumar S/o-Shri Ramjanam Singh Resident of Village-Sampatchak, P.O.-Bairiya, P.S.-Sona Gopalpur, District-Patna.
 3. Geeta Devi W/o-Shri Hardeo Kumar, Resident of Village-Sampatchak Baina Bairiya, P.O.-Bairiya, P.S.-Sona Gopalpur, District-Patna.
 4. Rakesh Kumar S/o-Shri Shivji Singh Resident of Village and P.O.-Bairiya, P.S.-Sona Gopalpur, District-Patna.
 5. Sunita Devi W/o-Shri Jai Prakash Gupta, Resident of Village-Manpur Bairiya, P.O.-Bairiya, P.S.-Sona Gopalpur, District-Patna.

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Urban Development Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Urban Development Department, Govt. of Bihar, Patna.
3. The Joint Secretary, Urban Development Department, Govt. of Bihar, Patna.
4. The Divisional Commissioner, Patna.
5. The District Magistrate, Patna.
6. The Block Development Officer, Block-Sampatchak, District-Patna.
7. The Principal Secretary, Department of Panchayati Raj, Govt. of Bihar, Patna.

... .. Respondents

with

Civil Writ Jurisdiction Case No. 9056 of 2021

1. Sanjeet Kumar S/o-Shri Suresh Ravidas, resident of Village-Kushpar, P.O.-Bairiya, P.S.-Gaurichak, Block-Sampatchak, District-Patna.
2. Ramesh Prasad, S/o-Shri Ramdeban Prasad, resident of Village-Gosaimath, P.O.-Bairiya, P.S.-Sona Gopalpur, District-Patna.
3. Anil Kumar, S/o-Shri Ram Prawesh Singh, resident of Village-Ajeemchak, P.O.-Bairiya, P.S.-Gaurichak, District-Patna.
4. Akhilesh Kumar Singh, S/o-Shri Ganesh Singh, resident of Village-Hathder, Sampatchak, P.O.-Bairiya, P.S.-Gaurichak, District-Patna.

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Urban Development Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Urban Development Department, Govt. of Bihar, Patna.



3. The Joint Secretary, Urban Development Department, Govt. of Bihar, Patna.
4. The Divisional Commissioner, Patna.
5. The District Magistrate, Patna.
6. The Block Development Officer, Block-Sampatchak, District-Patna.
7. The Principal Secretary, Department of Panchayati Raj, Govt. of Bihar, Patna.

... .. Respondents

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with

Civil Writ Jurisdiction Case No. 11651 of 2021

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Sandeep Kumar Yadav S/o -Shri Shashi Bhushan Prasad Resident of Village-Sadichak, P.O.-Mittanchak, P.S.-Sona Gopalpur, District-Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Urban Development Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Urban Development Department, Govt. of Bihar, Patna.
3. The Joint Secretary, Urban Development Department, Govt. of Bihar, Patna.
4. The Divisional Commissioner, Patna.
5. The District Magistrate, Patna.
6. The Block Development Officer, Block-Sampatchak, District-Patna.
7. The Principal Secretary, Department of Panchayati Raj, Govt. of Bihar, Patna.

... .. Respondents

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with

Civil Writ Jurisdiction Case No. 15097 of 2021

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1. Kapil Kumar S/o - Jamuna Prasad resident of - Ramthanipur, P.O. - Bairiya, P.S. - Sona Gopalpur, Block - Sampatchak, District- Patna.
2. Mantun Singh S/o - Shri Suryabansi Prasad resident of Village - Sahpur, P.O. - Bairiya, P.S. - Sona Gopalpur, District- Patna.
3. Baleshwar Prasad S/o - Shri Sadhu Sharan Rai resident of Village - Ilahibagh, P.O. - Bairiya, P.S. - Sona Gopalpur, District- Patna.
4. Ajay Kumar S/o - Shri Indra Rai resident of Village - Ilahibagh, P.O. - Bairiya, P.S. - Sona Gopalpur, District- Patna.

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Urban Development Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Urban Development Department, Govt. of Bihar, Patna.



3. The Joint Secretary, Urban Development Department, Govt. of Bihar, Patna.
4. The Divisional Commissioner, Patna.
5. The District Magistrate, Patna.
6. The Block Development Officer, Block - Sampatchak, District- Patna.
7. The Principal Secretary, Department of Panchayati Raj, Govt. of Bihar, Patna.

... .. Respondents

Appearance :

For the Petitioner(s) : Mr. Shri Prakash Srivastava
(In all cases) Ms. Anu Priyadarshi
Ms. Kumari Chandana
Mr. Santosh Bharti
(In Civil Writ Jurisdiction Case Nos. 8511 of 2021 & 11651 of 2021)
For the Respondents : Mr. Rajiv Roy, GP-1
Mr. Suresh Kumar, AC to GP-1
(In Civil Writ Jurisdiction Case No. 9056 of 2021)
For the Respondents : Mr. Yogendra Prasad Sinha, AAG-7
Mr. Shankar Kumar, AC to AAG-7
(In Civil Writ Jurisdiction Case No. 15097 of 2021)
For the Respondents : Mr. Kinkar Kumar, SC-9
Ms. Deepika Sharma, AC to SC-9

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)

Date : 09-03-2022

In all these four writ petitions, the petitioners have assailed the notification dated 26.12.2020 bearing Memo No.4339 declaring the intention of the State Government to constitute Nagar Parishad, Sampatchak, comprising of four Panchayats including 21 villages.

2. The same notification is under challenge in the other three writ petitions also. The same counsel represents the petitioner(s) in all these four cases and, therefore, with the consent



of the parties, the four matters have been taken up and considered together.

3. The State has filed counter affidavits in C.W.J.C. No. 8511 of 2021, C.W.J.C. No. 9056 of 2021 as well as in C.W.J.C. No. 11651 of 2021. As per the counter affidavit, final notification bearing Memo. No. 959 dated 03.03.2021, constituting Nagar Parishad, Sampatchak, after completing the process for constituting a Municipal Area specified in Chapter-II of the Bihar Municipal Act, 2007 (in short 'the Municipal Act'), was issued under Section 6 of the Municipal Act. The State has placed on record various communications in support of their contention that the procedure requisite under Chapter-II of the Act has been followed.

4. Learned counsel appearing on behalf of the petitioners has raised only one issue, which, according to him, has not been dealt by the Division Bench in the case of *Usha Devi and Others vs. The State of Bihar and Others* (C.W.J.C. No. 7446 of 2021 and other analogous matter, disposed of on 17.01.2022).

5. He has submitted that the counter affidavit does not disclose that the mandate under Section 11 of the Bihar Panchayat Raj Act, 2006 (in short 'the Panchayat Raj Act') has been complied. The substance of the submission is that there has been



no consultation with the Panchayats while excluding area/village(s) from a Panchayat area and constituting a Municipal Area. In support of his submission, he has placed reliance on the decision dated 23.04.2010, rendered in C.W.J.C. No. 10074 of 2009 (*Neelam Devi vs. The State of Bihar and Others*). Since the issue regarding the requirement under Section 11 of the Panchayat Raj Act warranting consultation with the Panchayat Body, has not been considered by the Division Bench in the case of *Usha Devi* (supra), the decision rendered in *Neelam Devi* (supra) on this point holds the field. In view of decision rendered in *Neelam Devi* (supra), non-compliance with the statutory requirement of consultation with the Gram Panchayats under Section 11 of the Panchayat Raj Act in the instant case is by itself sufficient to hold that the exercise undertaken by the authorities is illegal.

6. Such submission has to be viewed while considering the fact that petitioners have chosen not to assail/challenge the final notification dated 03.03.2021 in any of these four writ petitions.

7. Counsel for the petitioners has, however, submitted that the admitted non-compliance with the mandatory provisions of Section 11 of the Panchayat Raj Act, which emerges from the pleadings on record, would render the entire exercise of



constitution of Municipality contrary to law and, therefore, this Court should consider the said submission being an issue of law.

8. Firstly, this court would observe that decision in the case of *Neelam Devi* (supra) was rendered in the context of a challenge to the action and notification issued, on these grounds: -

“(1) that before any part of any Gram Panchayat is taken out of the Gram Panchayat as mandatorily provided under proviso to sub-section (1) of Section 11 of the Bihar Panchayat Raj Act, 2006, the views of the Gram Panchayat have to be taken by the District Magistrate and that not having been done, the exclusion of the areas from the existing Gram Panchayats was invalid.

(2) Section 3 of the Bihar Municipal Act 2007 and, in particular, second proviso thereof provides that in all cases of constitution of Municipality, the non-agricultural population must be 75% or more which is not satisfied as all areas were part of duly notified Gram Panchayats which are rural areas having pre-dominantly agricultural population and if those areas are clubbed together, they cannot become urban areas where non-agricultural population would be more than 75%.

(3) As required by Section 5 of the Bihar Municipal Act, once draft notifications are issued and objections filed, the objections



must be considered by the State and the final notification issued under Section 6 of Municipal Act would, thereafter, be issued. This was not done and there was no consideration of objections.”

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.

(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.”

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.

11. These writ applications are thus dismissed.

12. There shall, however, be no order as to cost.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	11.03.2022
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