

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10005 of 2021

Nitya Nand Kumar Son of Late Karya Nand Prasad singh Resident of village-
Khoja Gacchi, P.s.- Barbigha, District- Sheikhpura

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Panchayati Raj Govt. of Bihar, Patna
2. Principal Secretary, Department of Panchayati Raj, Govt. of Bihar, Patna
3. The Principal Secretary, Department of Urban Development and Housing Department, Govt. of Bihar, Patna
4. The District Magistrate, Sheikhpura
5. The Block Development Officer, Barbigha
6. The Circle Officer, Barbigha
7. The Executive Officer, Nagar parisad, Barbigha
8. The Chairman Nagar Parisad, Barbigha

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Bipin Kumar, Advocate Mr. Satyam Shivam Sundaram, Advocate
For the Respondent/s	:	Mr. Kameshwar Pd. Gupta (GP10) Mr. Neeraj Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

3 04-03-2022 This application has been taken up for online hearing through video conference because of COVID-19 pandemic restrictions.



The petitioner has a grievance against inclusion of all villages of *Gram Panchayat*, Samas Khurd within Barbiga *Nagar Parishad* in accordance with the provisions under Bihar Panchayat Raj Act, 2006 ('the Act' for short).

Mr. Ramakant Sharma, learned counsel appearing on behalf of the petitioner has submitted that more than eighty per cent of the population of the said *Panchayat* is based on agricultural activities, mostly inhabited by marginal and poor farmers and below poverty line (BPL) labourers and, therefore, such inclusion does not satisfy the requirement under the first *proviso* to Section 3 of the Act.

In our view, the submission made on behalf of the petitioner is squarely covered by a Division Bench decision of this Court rendered on 17.01.2022 in ***CWJC No. 7446 of 2021 (Usha Devi and Ors. Vs. State of Bihar and Ors.)***, paragraph 47-52 of which reads as under :-

“47 Having regard to the discretion given to the Governor under Article 243Q of the Constitution of India, the notifications issued under Chapter II of the Act of 2007 cannot be considered to be discharge of administrative functions, much less adjudicatory in nature. Though the notifications under Sections 4 and 6 of the Act of 2007 are issued under Article 166 of the Constitution of India, but the same may be termed as legislative rather than administrative.

48 By no stretch of imagination, the exercise of



declaration of intention or constitution of municipal area may be termed as adjudicatory function. Chapter II of the Act of 2007, therefore, consciously omits the requirement of disposing of the objections received in response to the notification issued under Section 4 of the Act of 2007. Chapter II of the Act of 2007 only provides an opportunity to the inhabitants of the city, town or Nagar Panchayat to submit their objection in writing to the State Government within one month from the date of publication of intention to constitute a municipal area. The Act of 2007, therefore, requires the State Government to take such objection into consideration; and consciously omits any prescription for disposal of the objections or passing of orders thereupon.

49 The notifications issued under Chapter II of the Act of 2007 are issued in exercise of functions which partakes legislative character though issued under Article 166 of the Constitution of India.

*50 In this connection, this Court would take into consideration decision of the Apex Court in the case of **Sundarjas Kanyalal Bhatija & Others -Versus- Collector, Thane, Maharashtra & Others**, reported in (1989) 3 Supreme Court Cases 396. The relevant paragraphs are being reproduced:*

“27. Reverting to the case, we find that the conclusion of the High Court as to the need to reconsider the proposal to form the Corporation has neither the attraction of logic nor the support of law. It must be noted that the function of the government in establishing a Corporation under the Act is neither executive nor administrative. Counsel for the appellants was right in his submission that it is legislative process indeed. No judicial duty is laid on the government in discharge of the statutory duties. The only question to be examined is whether the statutory provisions have been complied with. If they are complied with, then, the court could say no more. In the present case the government did publish



the proposal by a draft notification and also considered the representations received. It was only thereafter, a decision was taken to exclude Ulhasnagar for the time being. That decision became final when it was notified under Section 3 (2). The court cannot sit in judgment over such decision. It cannot lay down norms for the exercise of that power. It cannot substitute even “its juster will for theirs”.

28. Equally, the rule issued by the High Court to hear the parties is untenable. The government in the exercise of its powers under Section 3 is not subject to the rules of natural justice any more than is legislature itself. The rules of natural justice are not applicable to legislative action plenary or subordinate. The procedural requirement of hearing is not implied in the exercise of legislative powers unless hearing was expressly prescribed. The High Court, therefore, was in error in directing the government to hear the parties who are not entitled to be heard under law.”

51 Likewise, in the instant case, the notifications issued by the Governor in exercise of powers under Chapter II of the Act, having its roots in Article 243Q (2) of the Constitution of India cannot be subjected to judicial review applying the principles of natural justice, requiring the passing of reasoned orders upon objections received in response to notification issued under Section 4 of the Act of 2007.

52 Once the objections are invited, considered and notification issued, it is not for the constitutional Courts under Article 226 of the Constitution of India to sit in judgment over the decision leading to issuance of the notification upgrading or constituting a larger Municipal Area.”

In view of the law laid down in case of ***Usha Devi*** (supra), no relief as is being sought in the present writ



application deserves to be granted. This application is accordingly dismissed.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

K.K.RAO/-

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