

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6060 of 2022

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1. Ajay Kumar, S/o Sri Dhruv Sah, Ward No. 09, San Saraiya, P.O.-San Saraiya, P.S.-Bettiah Mufassil, District-West Champaran.
 2. Ramu Kumar Patel, S/o Sri Jogi Prasad, Ward No. 10, San Saraiya, P.O.-San Saraiya, P.S.-Bettiah Mufassil, District-West Champaran.
 3. Jaymangal Sharma, s/o Sri Motilal Sharma, Ward No. 15, San Saraiya Kadamwa Tola, P.O.-San Saraiya, P.S.-Bettiah Mufassil, District-West Champaran.
 4. Ambika Rao, S/o Late Shiv Rao, Ward No. 07, San Saraiya, P.O.-San Saraiya, P.S.-Bettiah Mufassil, District-West Champaran.
 5. Upendra Prasad, S/o Sri Ramaswarath Prasad, Ward No. 07, San Saraiya, P.O.-San Saraiya, P.S.-Bettiah Mufassil, District-West Champaran.

... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
2. The Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
3. The Joint Secretary, Urban Development and Housing Dept. Government of Bihar, Patna.
4. The District Magistrate, West Champaran.
5. The Chief Municipal Officer, Bettiah, District-West Champaran.

... .. Respondents

with
Civil Writ Jurisdiction Case No. 6468 of 2022

1. Kashi Prasad Gupta S/o- Late Ramchandra Prasad Gupta, Ward No. 01, Laiya Tola, Ahwar Majharia, P.O.- Pipra Pakari, P.S.- Bettiah Mufassil, District- West Champaran.
2. Sanjiv Kumar Singh S/o- Sri Rajeshwar Singh Ward No. 01, Laiya Tola, Ahwar Majharia, P.O.- Pipra Pakari, P.S.- Bettiah Mufassil, District- West Champaran.
3. Anil Kumar S/o- Sri. Saryug Sah Ward No. 02, Laiya Tola, Ahwar Majharia, P.O.- Pipra Pakari, P.S.- Bettiah Mufassil, District- West Champaran.
4. Subhan Miyan S/o- Late Hadis Miyan Ward No. 03, Khairi Tola, Ahwar Majharia, P.O.- Pipra Pakari, P.S.- Bettiah Mufassil, District- West Champaran.
5. Munna Miyan S/o- Sri Chokat Miyan Ward No. 08, Chudiharwa Tola, Ahwar Majharia, P.O.- Pipra Pakari, P.S.- Bettiah Mufassil, District- West Champaran.



... .. Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
2. The Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
3. The Joint Secretary, Urban Development and Housing Dept, Government of Bihar, Patna.
4. The District Magistrate, West Champaran.
5. The Chief Municipal Officer, Bettiah, District- West Champaran.

... .. Respondents

Appearance :

(In Civil Writ Jurisdiction Case No. 6060 of 2022)

For the Petitioner/s : Mr. Harendra Kumar Tiwary, Advocate

For the Respondent/s : Ms. Deepika Sharma, AC to SC 9

(In Civil Writ Jurisdiction Case No. 6468 of 2022)

For the Petitioner/s : Mr. Harendra Kumar Tiwary, Advocate

For the Respondent/s : Ms. Deepika Sharma, AC to SC9

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and**

HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 29-07-2022

Heard Mr. Harendra Kumar Tiwary, learned counsel for the petitioners and Ms. Deepika Sharma, learned counsel for the State in these two applications.

2. With consent of the parties, both the applications have been heard together and are being disposed of by a common order.

3. In CWJC No.6060 of 2020, the petitioners seek quashing of the notification issued vide memo no.1529 dated 31.03.2021 by the Urban Development and Housing



Department, Government of Bihar whereby San Saraiya Gram Panchayat has been included in Nagar Nigam, Bettiah in the exercise of powers vested in the State Government under Sections 3(1)(a), 4, 5 6 and 8 of the Bihar Municipal Act, 2007 (for short 'the Act of 2007').

4. In CWJC No.6468 of 2022, the petitioners seek quashing of the aforesaid notification whereby Ahwar Majharia Gram Panchayat has been included in Nagar Nigam, Bettiah in the exercise of powers vested in the State Government under Sections 3(1)(a), 4, 5 6 and 8 of the Act of 2007.

5. In CWJC No.6060 of 2022, Mr. Harendra Kumar Tiwary, learned counsel for the petitioners submitted that in the light of the draft proposal dated 26.12.2020 and paper publication dated 27.12.2020, local people and civic body representatives submitted their detailed objections to the respondents stating therein that San saraiya Gram Panchayat did not fulfill criteria for inclusion in Bettiah Nagar Nigam. The said panchayat consists of 80 percent population based on either agricultural income or wages under MANREGA programme or daily wages. He contended that there is neither any industrial activity nor industrial scope in the Gram Panchayat and as such the petitioners requested for its non-inclusion in the Bettiah



Nagar Nigam. He submitted that without taking into consideration the objections raised by the local people and civil body representatives, on 31.03.2021, the State Government issued impugned notification whereby the said Gram Panchayat has been included in Bettiah Nagar Nigam. He contended that the impugned notification is erroneous and arbitrary as certain areas which are close to Bettiah town have not been included in Bettiah Nagar Nigam due to political reasons and remote areas like the Panchayat in question has been included in Bettiah Nagar Nigam.

6. In CWJC No.6468 of 2022 also it has been argued by Mr. Tiwary, learned counsel for the petitioners that inspite of objections raised by the local people regarding inclusion of Ahwar Majharia Gram Panchayat in Bettiah Nagar Nigam, the impugned notification has been issued whereby the said Panchayat has been included in Bettiah Nagar Nigam. He contended that Ahwar Majharia Gram Panchayat is 9 kilometres away from the Bettiah Town where the maximum population is based on either agricultural income or wages under the MANREGA programme or daily wages but arbitrarily it has been included in the Bettiah Nagar Nigam whereas Pathari Ghat, Khiria Ghat, Khushi Tola, Sant Ghat and Bettiah Dih are



in the heart of Bettiah town but they have not been included in Bettiah Nagar Nigam. He contended that non-consideration of the objections raised by the local people is arbitrary, unjust and unfair.

7. On the other hand, Ms. Deepika Sharma, learned counsel for the State submitted that the State of Bihar undertook an exercise for constitution of new urban bodies and up-gradation/extension of the area of old urban local bodies. During the review of the proposals obtained from all the districts at the departmental level, a necessity to issue guidelines addressing various issues specially a need for constitution of committee under the Chairmanship of the District Magistrate for review of amended proposal was felt. Accordingly, the Secretary, Urban Development and Housing Department notified all the District Magistrates of Bihar to send amended proposals for constitution of new urban bodies in response to the said letter. The District Magistrate, Bettiah, prepared the amended proposal dated 26.12.2020 which was sent for publication in the Bihar Gazette and local newspaper and was published on 27.12.2020. The District Magistrate, Bettiah had recommended the Secretary of the Urban Development and Housing Department for inclusion of San Saraiya Gram Panchayat and Ahwar Majharia Gram



Panchayat into Bettiah Nagar Nigam. She contended that after receipt of the amended proposal from the District Magistrate, Bettiah in exercise of powers conferred under the various provisions of the Act of 2007 declaring the intention of the State Government to alter the area of Bettiah Nagar Nigam by way of extension was published. Objections were invited under Section 5 of the Act. The District Level Committee headed by the District Magistrate after taking into consideration the objections and all the relevant materials prepared a report whereafter the impugned notification including San Saraiya Gram Panchayat and Ahwar Majharia Gram Panchayat into Bettiah Nagar Nigam was issued. She contended that the notification has been issued after following the statutory requirements as prescribed under the various provisions of the Act of 2007. She submitted that an identical issue came for consideration before another Division Bench of this Court in *Usha Devi vs. State of Bihar* since reported in **2022 (1) PLJR 833** wherein it has categorically been held that 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 up-grading or constituting a larger municipal area.



8. We have heard learned counsel for the parties and carefully perused the record.

9. The State Government has ample power to constitute a municipal area or abolish or alter limits of municipal area. Such powers are to be exercised in accordance with the provisions prescribed under Sections 3, 4, 5, 6, 7 and 8 of the Act of 2007.

10. Section 3 of the Act of 2007 provides for declaration of intention to constitute a municipal area. Section 4 provides for publication of declaration. Section 5 provides for consideration of objection filed by any inhabitant of the city to the State within one month from the date of its publication and casts a duty upon the State Government to take such objection into consideration. Section 6 provides that on the expiry of one month from the date of publication of notification under Section 4 and after consideration of the objections which may be submitted, the State Government may, by notification, constitute such large urban area, city, town or transnational area or any specified part thereof as a municipal area under the Act of 2007. Section 7 provides for classification of municipal area on the basis of population as ascertained at the last preceding census of which the relevant figures have been published and Section 8



provides that the State Government may, by notification, withdraw any municipal area or part thereof from the operation of the Act of 2007 or exclude from a municipal area any local area comprised therein and defined in the notification, or include within a municipal area any local area contiguous to such municipal area and defined in the notification, or divide any municipal area into two or more municipal areas, or unite two or more contiguous municipal areas so as to constitute one municipal area, or revise the boundary of two or more contiguous municipal areas.

11. In the instant case, there is no procedural lapses on the part of the respondents. The respondents have provided an opportunity to the inhabitants of the locality in respect of which notification had been published under Section 4 of the Act of 2007 to object in writing to the State Government within a month from the date of publication conveying the intention of the State Government to include the gram panchayats in question in Nagar Nigam. After providing for an opportunity to file objections within one month, impugned notification including two gram panchayats in question in Bettiah Nagar Nigam was issued after dealing with objections.

12. Impugned notification was issued in the exercise of



functions which partakes legislative character though issued under Article 166 of the Constitution of India.

13. In this regard, it would be relevant to refer to paragraph 27 of judgment of the Supreme Court in the case of ***Sundarjas Kanyalal Bhatija & Ors. vs. Collector, Thane, Maharashtra & Ors.***, since reported in ***(1989) 3 SCC 396*** which reads as under :-

“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”.

14. In the same manner, in the instant case, since the statutory provisions have been complied with and the impugned notification was issued only after compliance of the statutory requirements under the Act of 2007, we see no reason to sit in judgment over the decision leading to issuance of notification including San Saraiya Gram Panchayat and Ahwar Majharia Gram Panchayat into Bettiah Nagar Nigam.

15. For the reasons stated, hereinabove, the writ petitions being devoid of any merit, are, hereby, dismissed.

(Ashwani Kumar Singh, J)

(Shailendra Singh, J)

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CAV DATE	NA
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