

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11414 of 2021

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Kirti Azad @ Chunchun S/o Late Umakant Singh Ex-Mukhia Gram Panchayat Samas Khurd, R/o Village- Koja Gachhi, P.S.- Barbigha, Dist- Sheikhpura.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Govt. of Bihar, Patna.
2. The Director, Urban Development and Housing Department, Govt. of Bihar, Patna.
3. The Commissioner, Munger Pramandal At Munger, P.S. and Distt- Munger.
4. The District Magistrate, Sheikhpura, P.S. and Distt- Sheikhpura.
5. The Executive Officer, Nagar Parishad Barbigha/Nagar Panchayat, Barbigha, P.S.- Barbigha, Distt- Sheikhpura.
6. The Chairman, Nagar Panchayat Barbigha, P.S.- Barbigha, Distt- Sheikhpura.

... .. Respondents

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Appearance :

For the Petitioner	:	Dr Anjani Pd. Singh, Advocate
For the Respondent State:		Mr Abbas Haider, S.C.-6
For the Respondent No.5 :		Mr Neeraj Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 15-02-2022

This matter has been taken up for hearing online because of *COVID-19* pandemic restrictions.

2. The petitioner, an ex-Mukhiya, of Gram Panchayat Samas Khurd in the district of Sheikhpura, is aggrieved by a notification issued vide Memo. No.1328 dated 17.03.2021 by



Urban Development and Housing Department, Government of Bihar, whereby the said Gram Panchayat has been included in Nagar Parishad, Barbiga, in the exercise of the power vested in the State Government under Section 8 of the Bihar Municipal Act, 2007.

3. We have heard Dr Anjani Prasad Singh, learned counsel appearing on behalf of the petitioner, Mr Abbas Haider, learned Standing Counsel No. 6 for the State of Bihar and Mr Neeraj Kumar Singh, learned counsel for the Nagar Parishad, Barbiga.

4. It is the petitioner's case that the notification is in teeth of the second proviso to Section 3 of the Act, which mandates that the population of main cultivator workers and marginal cultivator workers of an urban area (larger, medium or transitional) must be less than of 50% of the total population of workers in such area in all cases. The petitioner's case is that 90% to 95% of the panchayat village population is agricultural farming. It is petitioner's further case that the villages under Gram Panchayat Samas Khurd are at a distance of five km. to 10 km. from the Nagar Parishad, Barbiga, which has wrongly been made part of the said Nagar Parishad, leaving aside the nearer villages, deliberately against the interest of the villagers of the Gram



Panchayat Samas Khurd. It is the petitioner's case that he had raised an objection against the proposal to include the said Gram Panchayat Samas Khurd into the Barbigha Nagar Parishad. Without duly considering the petitioner's objection, Gram Panchayat Samas Khurd has been incorporated into the Nagar Parishad, Barbigha by the impugned notification, the petitioner contends.

5. Dr Anjani Prasad Singh, learned counsel appearing on behalf of the petitioner, has submitted with reference to the statement made in paragraph 14 of the writ petition that since 75 per cent of the population of Gram Panchayat Samas Khurd is of either marginal cultivator workers or main cultivator workers, the status of the Gram Panchayat ought not to have been altered, and it should not have been included in Barbigha Nagar Parishad. According to him, objections raised by the petitioner and others have been casually considered by the authorities and rejected without due application of mind.

6. A counter affidavit has been filed on behalf of the State of Bihar from which it transpires 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 districts at the



departmental level, a necessity to issue guidelines addressing various issues, especially a need for constitution of committee under the chairmanship of the District Magistrate for review of the amended proposal was felt. Accordingly, the Secretary, Urban Development and Housing Department, through a letter dated 13.12.2020, informed all the District Magistrates of Bihar to send amended proposals for the constitution of new urban bodies. In response to the said letter dated 13.12.2020, the District Magistrate, Sheikhpura, recommended the Secretary of the Department through his letter dated 19.12.2020 for extension of Barbigha Nagar Parishad. A copy of the said recommendation has been brought on record by way of Annexure-R/3 to the counter affidavit, from which it transpires that the villages of Gram Panchayat Samas Khurd were recommended to be included in Nagar Parishad, Barbigha by way of extension. It is a specific case of the State of Bihar, based on the said letter dated 19.12.2020 and other statistics provided by the District Magistrate, that percentage of the population of main cultivator workers and marginal cultivator workers in the proposed extended area of Barbigha Nagar Panchayat was arrived at 23.6 per cent of the total number of workers. Based on the said recommendation, the Department published a notification dated 26.12.2020 in accordance with and



in the exercise of power under Sections 3(1)(a), 4, 5, 6 and 8 of the Act, declaring the intention of the State Government to alter the area of Nagar Parishad, Barbigha, by way of extension. In terms of the said notification, 13 new villages were proposed to be included, including the village Samas Khurd. Objections were invited under Section 5 of the Act. The district-level committee headed by the District Magistrate took into consideration the objections. Further, in pursuance of a departmental letter dated 10.03.2021 for constitution and extension of the area of municipal bodies in Sheikhpura district and also for removal of anomalies as pointed out by the Census Directorate, a fresh proposal was sent on by the District Magistrate to the Department on the same day on 10.03.2021 from which it can be seen that total population of main cultivator and marginal cultivator workers in the extended Barbigha Nagar Panchayat has been found to be 835, which is 23.12 per cent of the total number of workers.

7. Accordingly, taking into consideration all relevant materials, the impugned notification extending area of Barbigha Nagar Parishad, in which Samas Khurd Gram Panchayat has been included, came to be published.

8. Mr. Abbas Haider, learned Standing Counsel No.6 appearing on behalf of the State of Bihar has submitted that the



writ application is based on the wrong notion that population of main cultivator workers and marginal cultivator workers of a village or a gram panchayat is the determining criteria for its inclusion into an urban body. He has submitted that population percentage of the main cultivator workers and marginal cultivator workers of the entire proposed extended urban area including the area contiguous to such municipal area proposed to be included after extension is required to be considered to satisfy the requirement of the first *proviso* to Section 3(1) of the Act.. He has submitted that the objections of the villages were taken into consideration at the appropriate level, some of which were accepted, leading to the exclusion of some of the villages, which were earlier proposed to be included in Barbigha Nagar Parishad. He submits that there has been active consideration of the objections raised by the inhabitants depending upon the nature of such objections.

9. Before advertng to rival submissions advanced on behalf of the parties and pleadings on record, we must notice the ambit of Section 8 of the Act, which confers power on the State Government to abolish or alter the limits of a municipal area by a notification. The ways of abolition and alterations include inclusion within the municipal area any local area contiguous to



such municipal area as defined in the notification [see (c) of Section 8 of the Act]. The first proviso to Section 8 of the Act mandates that the procedure laid down for the constitution of a municipal area under the Act shall be followed *mutatis mutandis* in each such case. The second proviso to Section 8 of the Act requires obtaining views of the municipality affected by any such notification and consideration of the municipality's opinion as aforesaid before a final declaration is made. We are not concerned with the third proviso for the present adjudication, which relates to Cantonment area or part thereof, as defined in the Cantonments Act, 1934. The procedure for the constitution of a municipal area is laid down in Sections 3, 4, 5 and 6 of the Act. Section 3 of the Act envisages that after making such enquiry as it may deem fit, and having regard to the population of any area, the density of any population therein, revenue generation for the local population of such area, percentage of employment in non-agricultural activities in such area, the economic importance of such area and such other factors as may be prescribed, the State Government may, by notification, declare its intention to specify such area to be a larger urban area or a medium urban area or a transitional urban area. The first proviso puts certain preconditions for such declaration based on population. For example, in case of a larger urban area,



the population must be two lakhs or more; for a medium urban area, it should be 40000 (forty thousand) or more, but less than two lakhs, and in the case of transitional area, the population should be 12000 (twelve thousand) or more, but not more than 40000 (forty thousand). A declaration under Section 3 shall be invalid if it does not fulfill the mandatory requirement of the first proviso to Section 3 of the Act. The second proviso to sub-section (1) of Section 3 mandates that for a declaration of intention under Section 3 of the Act, the total population of main cultivator workers and marginal cultivator workers shall be below 50 per cent of the total population of workers in such area in all cases. The second proviso to sub-section (1) of Section 3 of the Act reads as under: -

"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, the density of population therein, 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.”

10. A declaration by way of notification under sub-section (1) of Section 3 of the Act shall be invalid if it does not fulfill precondition as prescribed in the second proviso as quoted above.

11. At this juncture, it is noted that it is not the petitioner's case that the notification is in breach of first proviso to sub-section (1) of Section 3 of the Act. In our opinion, it has been



rightly submitted by learned Standing Counsel No.6 representing the State of Bihar that percentage of population of main cultivator workers and marginal cultivator workers of total cultivator workers is not required to be determined in respect of a particular village or Panchayat for the purpose of the second proviso to sub-section (1) of Section 3 of the Act. Rather the same is to be computed based on such percentage of population of 'such area' in respect of which there is the intention of the State Government to constitute a municipal area. This view has been taken in a recent Division Bench decision of this Court, of which both of us (Chakradhari Sharan Singh and Madhuresh Prasad, JJ) are members, rendered on 17.01.2022 in C.W.J.C. No. 7446 of 2021 and an analogous matter (*Usha Devi Vs. The State of Bihar and Others*), paragraphs 21 to 23 of which is being usefully reproduced to address the issue at hand, that read as under: -

“21 Another aspect of the matter is that fulfilment of requisite factors under Sections 3 and 7 of the Act of 2007 has to be considered in relation to "such area". The expression "such area" has repeatedly been used in Section 3 of the Act of 2007 and refers to the "urban area", which was proposed to be constituted and to come into existence as



a result of the process of constitution/ up-gradation of Municipality/Urban Area.

22. It is clear from these statutory provisions that the requisite population, density of population, revenue generated for local administration, percentage of employment in non-agricultural activities, economic importance and other requirements, contemplated under Sections 3 and 7 of the Act of 2007, are not requirements in respect of the rural area/individual panchayat/small municipal area, which are sought to be included for the purposes of upgradation or constitution of Municipal Area under the Act of 2007. The said requisites are to be satisfied in respect of the municipal area, which has to come into existence as a result of the process undertaken for constitution of municipality in accordance with Chapter II of the Act of 2007.

23 Thus, in our opinion petitioners' case, that the requisite composition of non-agricultural population/workers is to be satisfied in respect of all the four individual Gram Panchayats, is misconceived and fallacious."



12. A clear statement is made in paragraph 7 H of the counter affidavit that the percentage of main cultivator workers and marginal cultivator workers of the area is 23.12 per cent of the total number of workers. The said statement made in the counter affidavit has not been denied and thus has remained uncontroverted.

13. It would be apt, at this stage, to notice the submission advanced on behalf of the petitioner that Samas Khurd Gram Panchayat being not contiguous to the Barbigha Nagar Parishad, could not have been included in the said Nagar Parishad by applying clause (c) of Section 8 of the Act. On perusal of Annexure-4 to the writ application, it is evident that after considering objections, new recommendations were made for constitution, up-gradation and extension of the area of municipal bodies in the district of Sheikhpura, including Barbigha Nagar Parishad. The petitioner's objection that the villages of Samas Khurd Gram Panchayat were 5-10 km. away from Barbigha Nagar Parishad and that there are 80 per cent agriculturists in the said gram panchayat, were considered. Dealing with the said objections, the District Magistrate recorded a clear finding that Samas Khurd Gram Panchayat and Barbigha Nagar Parishad have adjoining boundaries.



14. Taking into account the admitted facts and other materials available on record, we are of the definite view that the impugned notification does not suffer from any legal infirmity.

15. The scope of judicial review in the matter of constitution/up-gradation of an urban local body has been extensively dealt with in a recent decision rendered by this Court in case of **Usha Devi** (supra), taking note of Supreme Court's decision in case of **Sundarjas Kanyalal Bhatija v. Collector, Thane**, reported in (1989) 3 SCC 396, paragraphs 47 to 49 and 51 and 52 are being reproduced hereinbelow for the benefit of quick reference :

“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.

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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.”

16. For the reasons noted above, we do not find any merit in this writ application, which is accordingly dismissed.

17. There shall, however, be no order as to costs.

(Chakradhari Sharan Singh, J)

Madhuresh Prasad, J: I agree.

(Madhuresh Prasad, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	25.01.2022
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