

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12939 of 2021

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Jai Prakash Sinha S/o Gajadhar Mahto, Resident of Village - Garib Nagar, P.S.
- Suryagarha, District - Lakhisarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Urban Development and Housing Department, Govt. of Bihar, Patna.
3. The Joint Secretary, Urban Development and Housing Department, Govt. of Bihar, Patna.
4. The Divisional Commissioner, Munger.
5. The District Magistrate, Lakhisarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vijay Kumar, Adv
For the Respondent/s : Mr. Kinkar Kumar, SC-9
Ms. Deepika Sharma, AC to SC-9

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

2 28-02-2022 The petitioner has put to challenge a notification dated 03.03.2021 issued by the Urban Development and Housing Department, Government of Bihar to the extent, village *Garib Nagar*, to which the petitioner belongs has been included within Nagar Parishad *Suryagarha*.

Learned counsel appearing on behalf of the petitioner has drawn our attention to the recommendation made by the District Magistrate, *Lakhisarai* dated 02.02.2021, wherein he had



suggested to the State Government not to include the said *Garib Nagar* village within the proposed Nagar Parishad *Suryagarha*. He submits that without considering the said recommendation of the District Magistrate, the State Government has issued the impugned notification.

Learned counsel for the petitioner however has not been able to demonstrate that the said recommendation made by the District Magistrate, *Lakhisarai* pointed out any discrepancy reflecting deviation from the parameters requisite for constitution of a Nagar Parishad under Section 3 of the Bihar Municipal Act, 2007 (in short 'Act'). It is not the case of the petitioner that he had made any objection under Section 5 of the Act against the proposal to constitute the Nagar Parishad *Suryagarha*. It is noteworthy that the Act does not contemplate consideration of any objection/representation made after notifications under Sections 6 and 8 are issued.

As the petitioner admittedly did not raise any objection under Section 5 of the Act, it is impermissible for him to question the correctness of the impugned final notification issued under Section 6 of the Act in view of Division Bench decision of this Court based on *Usha Devi & Ors. vs. the State of Bihar & Ors.* rendered on 17.01.2022 in C.W.J.C. No. 7446/2021,



paragraph nos. 17 and 18 of which reads as under:

*“17 In this connection, this Court would consider it appropriate to refer to decision of Hon’ble Apex Court in the case of **Board of Directors, Himachal Pradesh Transport Corporation & Another -Versus- K C Rahi**, reported in (2008) 11 Supreme Court Cases 502. Even in the context of a departmental proceeding wherein there is requirement of observing the principles of natural justice, the Apex Court, in the judgment, has held that when pursuant to notice sent to the delinquent by publication in the newspaper, he did not respond or participate, in such event “plea of principles of natural justice is deemed to have been waived and he is estopped from raising the question of non-compliance with principles of natural justice...”*

18 In the instant case, this Court would observe that none of the provisions of the Act of 2007, quoted hereinabove, require the passing of an order on the objections received in response to the notification of intention to constitute a municipal area. Section 5 of the Act of 2007 merely postulates taking into consideration of the objections.”

Further, the submission made on behalf of the petitioner that the notification requires inference by this Court because the State Government failed to consider the recommendation made by the District Magistrate is not sustainable for the apparent reason that the said recommendation did not point out any relevant issue before the State Government, worth consideration, in the light of provisions under Section 3 of the Act. This aspect



has also been dealt with, in relation to consideration of objection under Section 5 of the Act by the Division Bench in the case of **Usha Devi** (supra), paragraph nos. 39 and 40 of which read as under:

*“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”.”

For the aforesaid reasons, we do not find any merit in this writ application. The impugned notification does not require interference.

This writ application has no merit and is accordingly dismissed.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

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