

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13181 of 2022

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Karunesh Kumar Mishra son of Late Krishna Ballabh Mishra, Resident of Village -Shri Shirmia, Ward No. 05, P.O. and P.S. - Gogri, District- Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Urban Development, Government of Bihar, Patna.
3. The Principal Secretary, Department of Panchayati Raj, Government of Bihar, Patna.
4. The Divisional Commissioner, Munger Division, Munger.
5. The District Magistrate-cum-District Collector, Khagaria.
6. The Sub-Divisional Officer, Gogri District- Khagaria.
7. Block Development Officer, Gogri, District - Khagaria.
8. The Circle Officer, Gogri, District- Khagaria.
9. The State Election Commission, Bihar, Patna through its Chairman.
10. The Chairman, State Election Commission, Bihar, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Roshan Kumar Mishra, Advocate
For the Respondent/s : Mr.Yogendra Pd. Sinha (AAG-7)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 09-09-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

“(i) To issue a writ in the nature of mandamus commanding/directing the Respondents in particular Respondent No. 5, the District Magistrate-cum-Collector, Khagaria, not to change the earlier SIMAKAN (demarcation) published in

PRARUP in Prapatra-6 under which by amalgamating the Ward No. 4, 5 and 6 of village-Shri Shirnia, a new ward is created for the purpose of extending the Nagar Parishad Gogri Jamalpur in pursuant to letter No. 1427 dated 11.04.2022 published from the level of State Election Commission, Bihar Patna for which objections were invited from the concerned villagers and since the said SIMAKAN was rightly published by the authority, so no any objection was raised/submitted against the said PRARUP, but subsequently in final publication of Prapatra-6 the earlier SIMAKAN has been changed despite raising/submitting an objection by any of the villager of village-Shri Shirnia and thereby most of the famous places like Hamara H.P. Petol Pump Mathurapur Middle School, Shri Shirnia, BRC., P.L. Shiksha Niketan, Mathurapur and National Inter School, Gogri has been cut down and amalgamated in another Ward bearing Ward No. 11 although the land of Middle School, Shri Shirnia and National Inter School, Gogri were donated by the people of village- Shri Shirnia and apart from that several religious palaces were also cut down from earlier published PRARUP/SIMAKAN in the final publication of Prapatra-6.

ii. To issue a writ in the nature of mandamus commanding/directing the Respondent No. 5 to accept and approved the earlier SIMAKAN/PRARUP draft published for extending the Nagar Parishad Gogri Jamalpur for which the villagers including petitioner has no objection at all.

Iii. And/or any other relief/reliefs which this Hon'ble Court may deem fit and proper in the facts and circumstances of this Case."

Notification for holding elections of Municipal Bodies has been issued by the State Election Commission, as such, present writ petition is not maintainable.

Article 243-ZG of Constitution Bars interference

by Courts in electoral matters which reads as under:-

Notwithstanding anything in this Constitution,-

“(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243-ZA shall not be called in question in any Court;

(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.”

Under Section 8 of the Municipal Act, State Government is empowered to include/exclude any area in municipal body after following due procedure as prescribed in Municipal Act.

Section 8 of Municipal Act, 2007 read as follows:-

“8. Power to abolish or alter limits of municipal area.- The State Government may, by notification.-

(a) withdraw any municipal area or part thereof from the operation of this Act, or

(b) exclude from a municipal area any local area comprised therein and defined in the notification, or

(c) include within a municipal area any local area contiguous to such municipal area and defined in the notification, or

(d) divide any municipal area into two or more municipal area, or unite two or more contiguous municipal area so as to constitute one municipal area, or

(f) revise the boundary of two or more contiguous municipal areas:

Provided that the procedure laid down for the constitution of a municipal area under this Act shall be followed mutatis mutandis in each such case:

Provided further that the views of the Municipality affected by any such notification shall be invited by the State Government within such time as may

be specified in the notification, and the State Government shall consider the views of the Municipality as aforesaid before a final declaration is made:

Provided also that no such notification shall be issued where any part of the municipal area or any neighbouring area is a cantonment or part of a cantonment, as defined in the Cantonment Act, 1924.”

Accordingly, the writ petition is dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	