

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13506 of 2022

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1. Surendra Kumar Son of Late Ram Suresh Singh, resident of Village- Pahal Bigha, Police Station- Kako in the district of Jehanabad.
 2. Binod Kumar Singh, Son of Ram Swaroop Prasad Singh, resident of Village- Kako, Police Station- Kako in the district of Jehanabad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
2. The Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
3. The Deputy Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
4. The Joint Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
5. The Divisional Commissioner, Magadh Division, Gaya.
6. The District Magistrate-cum- Collector, Jehanabad.
7. The Senior Deputy Collector-cum- Additional Collector, Jehanabad.
8. The Block Development Officer, Kako in the district of Jehanabad.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sunil Kumar, Advocate

For the Respondent/s : Mr.Yogendra Pd. Sinha (AAG 7)

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 : 16-09-2022

Heard learned counsel for the parties.

Petitioners have prayed for following reliefs:-

- i. To quash the Notification contained in Memo No. 519 dated 10.2.2021 issued under the signature of



respondent no.4 by which the Nagar Panchayat, Kako has been constituted in most illegal and arbitrary manner as Dargah of Hazrat Bibi Kamal Alaihe Rahman (Lady Sufi Sant) and area of Kainat Nagar has not been left over and the same has not been included in the Nagar Panchayat, Kako whereas Kako is known for the Dargah of Bibi Kamal.

- ii. Also to direct the respondents to include the area of Dargah of Hazrat Bibi Kamal Alaihe Rahman and area of Mohalla- Kainat Nagar in the territorial jurisdiction of Nagar Panchayat, Kako.
- iii. Also to direct the respondents to exclude the population of Schedule Tribes from Ward No. 1,4,10,14 and 16 total 28 population of Schedule Tribes members have been shown by the B.D.O., Kako as per his self-choice whereas no member of Schedule Tribes is residing in the above mentioned Wards of Nagar Panchayat, Kako. But the fake data of showing the population of Schedule Tribes was made available by the B.D.O., Kako.
- iv. Also to direct the respondents to include the water shed (Badki Panihas) in the territorial jurisdiction of Newly constituted Kako Nagar Panchayat as the Water shed which is existing in the main area of Kako and earlier it was in Kako West Gram Panchayat which has been included in the Nagar Panchayat, Kako.



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)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA

