

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21180 of 2021

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Rani Kumari Wife of Pramod Kumar Singh Resident of Village - Koriyawan,
P.O. Hansadih, P.S. Masaurhi, District- Patna, presently residing at J.P. Road,
Lakhibag, P.O. and P.S. Masaurhi, District- Patna, presently Chief Councilor,
Masaurhi, Nagar Parishad, District- Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Urban Development and Housing
Department, Government of Bihar, Patna.
3. The Under Secretary, Urban Development and Housing Department,
Government of Bihar, Patna.
4. The District Magistrate, Patna. District- Patna.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. S.B.K.Mangalam, Advocate Mr. Awnish Kumar, Advocate Mr. Gaurav Kumar, Advocate
For the Respondents	:	Mr. Ravish Chandra, AC to SC-6

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 24-02-2022

Section 8(c) of the Bihar Municipal Act, 2007 (in short 'the Act') confers upon the State Government power, *inter alia*, to include within a municipal area, any local area contiguous to such municipal area and defined in the notification. Sections 3, 4, 5 and 6 of the Act deal with constitution of municipal areas. Section 7 of the Act deals with classification of municipalities which is not relevant for controversy at hand. The first proviso to Section 8 of the Act envisages that the procedure laid down for constitution of



a municipal area under the Act (Sections 3 to 6 of the Act) shall be followed *mutatis mutandis* in each such case.

2. Section 12 of the Act deals with constitution of municipality, sub-section (8) of which provides that in a municipal area newly constituted, the local authority, having jurisdiction over such area, immediately before such area was constituted in a municipal area, shall continue to have jurisdiction and perform its function till such time, not exceeding six months from the date of notification under Section 6 of the Act as may be necessary for holding elections. Sub-section (9) of Section 12 of the Act confers authority upon the State Government of Bihar to designate persons/person as Administrator of Board of Administrators as may be notified.

3. This is not in dispute that there existed a Nagar Parishad, Masaurhi. In exercise of power under Section 8(c) of the Act, certain panchayats have been included within the municipal area of Nagar Parishad, Masaurhi, with the issuance of a notification dated 03.03.2021 by the Urban Development and Housing Department, Government of Bihar, under Sections 3(1)(a), 4, 5, 6 and 8 of the Act. After issuance of the said notification dated 03.03.2021, elections could not be held for the said Nagar Parishad. The State Government has come out with a



notification dated 13.12.2021 in exercise of power under sub-section (9) of Section 12 of the Act, appointing the District Magistrate of the concerned district or any Additional Collector authorized by him to be the Administrator of the said Nagar Parishad. The said notification dated 13.12.2021 is under challenge in the present writ application.

4. The only question of law which has emerged in the present writ application on the basis of rival submissions made on behalf of the parties is; whether the impugned notification shall have the effect of a notification under Section 6 of the Act, in view of the first proviso to Section 8 of the Act.

5. At the very outset, it is noted that the aforesaid notification dated 03.03.2021 is a composite notification under Sections 6 and 8 of the Act.

6. The facts are brief and not in dispute. The notification dated 03.03.2021 issued by the State Government is not under challenge, whereby some panchayats came to be included within the municipal area of Nagar Parishad, Masaurhi.

7. We have heard Mr. S.B.K. Mangalam, learned counsel appearing on behalf of the petitioner and Mr. Ravish Chandra, learned A.C. to S.C.-6 on behalf of the State of Bihar.



8. Mr. Mangalam, learned counsel appearing on behalf of the petitioner has submitted that though Section 6 of the Act has been mentioned in the notification dated 03.03.2021, whereby certain Gram Panchayats have been included in the municipal area of Nagar Parishad, Masaurhi, the said notification can be treated to be a notification under Section 8 of the Act and not a notification under Section 6 of the Act. He has accordingly submitted that since the notification dated 03.03.2021 is a notification under Section 8 of the Act, sub-section (8) of Section 12 of the Act, which refers to notification under Section 6 of the Act, is inapplicable. Such being the position, the State Government could not have invoked the provisions under sub-section (9) of Section 12 of the Act by appointing Administrator, treating the Nagar Parishad, Masaurhi, to be dissolved upon its reconstitution by the said notification dated 03.03.2021, with the inclusion of the Gram Panchayats within the local area of said Nagar Parishad. He has submitted that the consequence of the notification dated 03.03.2021 is not constitution of new municipal body rather of inclusion of some more area within the existing municipal area.

9. Mr. Ravish Chandra, learned A.C. to S.C.-6 has submitted countering the submissions that it is incorrect to contend that the notification dated 03.03.2021 is not a notification under



Section 6 of the Act. He submits that Section 8 of the Act is enabling provision, which enables the State Government to withdraw any municipal area or part thereof from the operation of the Act, to include within a municipal area any local area contiguous to such municipal area and to divide any municipal area into two or more municipal areas, by way of notification. According to him, once a notification is issued under Section 8 of the Act, the effect of such notification can be given effect to only with the issuance of notification under Section 6 of the Act. He contends that this is the reason why the composite notification under Sections 6 and 8 of the Act has been issued by the State Government on 03.03.2021. He has taken us to the definition of municipality under sub-section (66) of Section 2 of the Act to contend that a municipality means an institution of self-government constituted under Section 12 of the Act read with Article 243-Q of the Constitution of India. He has also referred to sub-section (59) of Section 2 of the Act, which defines municipal area as an area constituted as municipal area under Section 6 of the Act. He has, thus, submitted that with the inclusion of local area (panchayats) contiguous to Masaurhi Nagar Parishad, a new municipal area has been formed within the meaning of sub-section (59) of Section 2 of the Act. He has submitted that the constitution



of the municipality itself stands changed in view of Section 12 of the Act read with sub-section (66) of Section 2 of the Act. He has contended that the provision under Section 12(9) of the Act has been made to give effect to the constitutional mandate under Article 243-U(1)(3)(b) of the Constitution of India, which stipulates conduct of an election to constitute a municipality before the period of six months from the date of its dissolution. He has submitted that in order to give effect to the provision under Article 243-U(3)(b) of the Constitution of India, adequate provision has been made under sub-section (8) of Section 12 of the Act.

10. Before we deal with rival submissions made on behalf of the parties in the background of the factual matrix, as noted above, we consider it apt to reproduce certain statutory provisions relevant for answering the legal question, which we have framed hereinabove. Section 8 of the Act reads as under: -

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 areas, or unite two or more contiguous municipal areas 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 Cantonments Act, 1924.

11. Sub-section (8) and (9) of Section 12 read thus: -

XXX

XXX

XXX

XXX



“(8) In a municipal area newly constituted, the local authority having jurisdiction over such area immediately before such area was constituted as a municipal are, shall continue to have jurisdiction and to perform its functions till such time, not exceeding six months from the date of the notification under Section 6, as may be necessary for holding elections.

(9) If, for any reason, it is not possible to hold the general election of a Municipality before the expiry of the period of *five* years specified in sub-section (5), the Municipality shall stand dissolved on the expiration of the said period, and all the powers and functions vested in the municipal authorities under this Act or under any other law for the time being in force shall be exercised or performed, as the case may be, by such person or persons to be designated as Administrator or Board of Administrators as the State Government may, by notification, appoint.”

12. The provision under Sections 12(8) and (9) of the Act are in furtherance of the constitutional mandate under Article 243-U of the Constitution of India. Article 243-U(1) reads as under:

"243-U. Duration of Municipalities, etc.—

(1) Every Municipality, unless sooner dissolved under any law for the time being in force, shall



continue for five years from the date appointed for its first meeting and no longer: (emphasis ours)

Provided that a Municipality shall be given a reasonable opportunity of being heard before its dissolution.”

13. Seen in light of this constitutional provision, Section 12(9) of the Act is clear to the extent it ensures the constitutional mandate regarding tenure of the municipality for five years and no longer by providing that the municipality shall stand dissolved on expiration of the Constitutional tenure.

14. Section 12(8) of the Act ensures fulfillment of the mandate under Section 243-U(3)(b), which reads as follows: -

*“243-U(3) An election to constitute a Municipality shall be completed
.....(b) before the expiration of a period of six months from the date of its dissolution:”*

15. The effect of abolition or alteration of the limits of a municipal area under Section 8 of the Act, has the effect of bringing into existence a new municipal area. Constitution of a municipal area by virtue of abolition or alteration of the limits of the municipal area under Section 8 of the Act cannot by any stretch of imagination be considered in any other manner than as contemplated under Section 2(59) of the Act, which reads as follows: -



“2 (59) “Municipal area” means an area constituted as a municipal area under Section 6;”

16. Accordingly, Section 12(8) of the Act limits the jurisdiction of the erstwhile local authority, in a municipal area newly constituted to maximum period of six months from the date of notification constituting a new municipal area under Section 6 of the Act. The effect of Section 12(8) and 12(9), as noticed above, is ensuring fulfillment of the constitutional mandate regarding duration of the municipality under Article 243U of the Constitution of India.

17. Seen thus, it is more than apparent that result of exercise under Section 8 of the Act is also constitution of a municipality.

18. In the wake of foregoing discussions, we do not have any hesitation in recording our definite opinion that procedure prescribed under Sections 3, 4 and 5 are essentially to be followed for any notification either under Section 6 of the Act or under Section 8 of the Act. A notification under Section 8 of the Act shall take effect by virtue of a notification under Section 6 of the Act. In our opinion, the notification dated 03.03.2021 issued by the Department has rightly referred to Sections 6 and 8 both of the Act under which it has been issued. The effect of a notification under Section 8 of the Act is creation of a new municipal area within the



meaning of sub-section (66) of Section 2 of the Act and a notification under Section 6 of the Act, a sequel to it. A notification under Section 8 of the Act shall be meaningless, if it does not has the same effect as that of a notification under Section 6 of the Act. However, this is not in dispute that the said notification dated 03.03.2021 has been issued under Section 6 of the Act also. Further, the notification dated 03.03.2021 specifically mentions as under: -

इस क्षेत्र को नगर परिषद्, मसौढ़ी, कहा जायेगा ।

19. The intention of the notification is loud and clear from its plain reading inasmuch as it refers to creation of a new municipal area, with wider area falling under columns 3 and 4 consequent upon inclusion of Panchayats/villages with the boundaries as specified in column 5 of the notification.

20. The Statute, therefore, clearly mandates that procedure laid down under Chapter II of the Act for constitution of a municipal area be followed *mutatis mutandis* while abolishing or altering the limits of any municipal area. The argument of the learned counsel for the petitioner that notification dated 03.03.2021 is not a notification under Section 6 of the Act is, therefore, unsustainable in view of the constitutional provisions considered above.



21. In view of the discussions aforesaid, we do not find any merit in the submission made on behalf of the petitioner that the said notification dated 03.03.2021 should be treated to be a notification under Section 8 of the Act only and, therefore, Section 12(8) of the Act shall have no application. The said submission is unsustainable and is accordingly rejected.

22. We do not find any merit in this application. This application is accordingly rejected.

23. There shall, however, be no order as to cost.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	08.03.2022.
Transmission Date	N/A

