

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10962 of 2023

=====

Sunil Kumar S/O Fagu Singh, R/O Jagadev Nagar, Sasaram, Rohtas, Bihar-821115.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, The Urban Development and Housing Department, Government of Bihar, Patna.
3. The Municipal Commissioner, Sasaram Municipal Corporation Rohtas.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Ms.Mayuri, Advocate
For the Respondent/s : Mr.Yogendra Prasad Sinha, AAG-7

=====

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

6 09-07-2024 **I.A. No. 01 of 2024:**

Today on call, there is no counter affidavit and in the meantime, has come the Interlocutory Application No. 01 of 2024 for addition of relief pursuant to the letter no. 285 dated 10.6.2024 issued by the respondent no.2 by which an information has been given regarding decision taken in the meeting of the Empowered Standing Committee dated 8.6.2024 requesting the State Government to take a decision for appointing a new Commissioner in place of the present one in the Municipal Corporation Sasaram. This request has been made under section 36(4) of the Act.

2. There is no objection from the State Government.



3. In that background, I. A. No. 01 of 2024 is allowed.

4. The relief sought for will be the part of the main writ petition.

5. Heard Ms. Mayuri, learned counsel for the petitioner and the State.

6. The petitioner has prayed for grant of the following reliefs:

(i) for issuance of a direction, order or writ, including a writ in the nature of mandamus directing the state government to terminate the appointment of Municipal Commissioner, Sasaram in accordance with Section 37 of the Bihar Municipal Act, 2007;

(ii) for issuance of a direction, order or writ, including a writ in the nature of mandamus directing the state government to appoint a competent Municipal Commissioner in Gaya Municipal



Corporation in consultation with the Empowered Standing Committee in accordance with Section-36(4) of Bihar Municipal Act, 2007;

(iii) for issuance of a direction, order or writ, including a writ in the nature of mandamus directing the state government to set up an enquiry against the Municipal Commissioner as to under what circumstances the false FIR was registered against the Mayor;

(iv) for issuance of a direction, order or writ, including a writ in the nature of mandamus suspending the Municipal Commissioner forthwith;

(v) for issuance of a direction, order or writ, including a writ in the nature of mandamus directing the Municipal Commissioner to



show cause as to why he did not act on the resolutions passed by the Empowered Standing Committee; (vi) any other relief/reliefs that the petitioner may be found to be entitled to in the facts and circumstances of the present case.

7. Learned counsel for the petitioner took this Court to Section 36(7) of the Bihar Municipal Act, 2007 which read as follows:

“36(7) Notwithstanding anything contained in the foregoing provisions of this Section, the State Government may, at any time, in the case of any person appointed to any post referred to in sub-section (1), terminate his appointment:

Provided that if, in the case of any such officer, the empowered Standing Committee so decides, the State Government shall terminate the appointment of such officer”.



8. It is the case of the petitioner who is an elected member of the Municipal Corporation, Sasaram that the entire developmental scheme in the municipal area of Sasaram is being hampered due to whimsical attitude of the said official inasmuch as he is neither cooperating nor acting on the advice of the Empowered Standing Committee and in that background repeatedly request was made to the State Government (letter no. 88 dated 26.6.2023-Annexure-11 to the writ petition) and upon failure to do so, the writ petition.

9. A counter affidavit has come on behalf of the Urban Development and Housing Department, Bihar, Patna and as usual despite the anguish shown by this Court on 18.7.2023 in the case of **Advertisers Welfare Association Vs. the State of Bihar** (C.W.J.C. No. 19358 of 2021), they continue with an Annexure showing that they have informed the concerned Municipal Corporation to file an appropriate affidavit. It seems that the Department and its lawyer never go through the different paragraphs of the writ petition before shooting off cryptic statement of fact which culminates into the filing of the counter affidavit. The only silver lining is paragraph 9 which read as follows:

9. That as regards the reliefs as



prayed for by the petitioner in the present writ petition to terminate the appointment of the Municipal Commissioner of the Sasaram Municipal Corporation it is respectfully submitted that it is under the competence and jurisdiction of the General Administration Department. Government of Bihar, Patna for posting and removal of the Municipal Commissioner from Municipal Corporation”.

10. Ms. Mayuri, learned counsel for the petitioner submits that Department is actually shirking of its responsibility inasmuch as when it is the Department who decides the posting, he can very well recall the said officer.

11. Though, the name of learned counsel on behalf of Sasaram Municipal appears in the cause list, upon call, he is not present.

12. A perusal of the ordersheet would show that on 30.4.2024, the respondent no.3 was directed to file counter affidavit. On 19.6.2024 also, an earlier bench directed him to



file counter affidavit.

13. Now that the Empowered Standing Committee of the Municipal Corporation, Sasaram has taken a decision communicated to the concerned department vide letter no. 285 dated 10.6.2024 (Annexure-12 to the Interlocutory Application), the ball is in the Court of Departmental Secretary.

14. The writ petition stands disposed of with a direction to the respondent no.2, the Principal Secretary, Urban Development and Housing Department, Bihar, Patna to take a decision on the letter no. 285 dated 10.6.2024 at an earliest and in case as per the counter affidavit filed by it, the same has to be forwarded to the General Administration Department, Bihar, Patna, to do so at the earliest. The entire process has to be completed in next two months.

15. The petitioner also intends to provide a copy of the order to the concerned respondent within two weeks.

(Rajiv Roy, J)

Ravi/-

U			
---	--	--	--

