

Anita Devi Wife of Sunil Kumar Ravidas, Resident of Village - Mahungay,
Post Office - Batiya, Police Station - Sono, District - Jamui.

Versus

1. Asha Devi Wife of Yogendra Das, Resident of Village - Katawah, Post Office- Batiya, Police Station - Sono, District - Jamui.
2. Shanti Devi, Wife of Shankar Das, Resident of Village Mahungay, Post Office - Batiya, Police Station - Sono, District -Jamui.
3. Secretary, State Election Commission, Bihar, Patna.
4. District Magistrate cum Election Officer (Panchayat), Jamui, Police Station - Jamui, District - Jamui.
5. Circle Officer, Sono - cum - Assistant Election Officer, Sono, Police Station - Sono, District Jamui.
6. Block Development Officer, Sono - cum - Assistant Election Officer, Sono, Police Station- Sono, District -Jamui.
7. Circle Officer Cum Assistant Election Officer, Khaira, Police Station- Khaira, District - Jamui.

... .. Respondent/s

Appearances : Mr. Pankaj Kumar Sinha, Advocate
For the Petitioner/s : Mr. Ravi Ranjan, Advocate
For the SEC. : Mr. Girish Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

4 16-07-2024 Heard learned counsel for the parties.

2. *This writ application is directed against the order dated 26.05.2023 passed in Election Suit No. 3 of 2021, passed by the Court of Munsif, Jamui, whereby and where under the learned Munsif, Jamui rejected the application filed*



by the petitioner, Anita Devi on 23.02.2023 preferred under order VII Rule 11 of the Code of Civil Procedure (rejection of plaint). Further prayer is for the issuance of an appropriate writ / writs, order / orders, direction / directions to the respondents as may deem fit in the interest of Justice.

3. The facts of the case is/are as follows:-

4. The Gandar Gram Panchayat in the district of Jamui, Block Sono is reserved for Schedule Caste women. The petitioner on the basis of caste certificate granted by Khaira Circle, Jamui filed her nomination. Asha Devi (respondent no.1) was also a contestant and subsequently, the petitioner was declared returned candidate. This followed the Election Suit No. 3 of 2021 preferred by Asha Devi and the ground taken was that the petitioner has fraudulently secured the Schedule Caste woman certificate as the house of the petitioner's father is in the State of Jharkhand and not in the State of Bihar and as such since the certificate has been procured in the State of Bihar, her Election is liable to be set aside.

5. The defendant played hide and seek rule inasmuch as she appeared on notice, disappeared thereafter and then reappeared in the Election Suit No. 3 of 2021 inasmuch as after filing of the Election suit on 29.11.2021 which was



admitted on 05.01.2022, though the State as also defendant no. 4 to 7 appeared, the present petitioner (defendant no.1) chose not to appear and the matter went ahead ex parte against her. The issues were settled and the record was running for the evidence in which the State also cross-examined the plaintiff when the defendant no.1/petitioner herein reappeared and wanted recall of the ex parte proceeding. It was allowed with a cost. It was only thereafter that on 28.11.2022, she submitted her written statement.

6. Later, a petition was preferred for deciding the issue of plaintiff not serving notice under Section 80 of the C.P.C. before institution of the suit.

7. The matter was taken up on 26.05.2023 which was rejected on the ground that the defendant no.1 lost the opportunity to raise the contention of rejection of plaint on the date, she filed her written statement. Once the defendant no.1 did not deny the legality and/or non-compliance of any provision of law in her written statement, she lost her opportunity to raise the matter of legality at the stage (Annexure-3 to the petition).

8. Aggrieved, the present writ petition.

9. Learned counsel for the petitioner submits that



the learned Court clearly erred in not taking up the plaint of the petitioner as the noticing the fact that Section 80 C.P.C. notice was required to be served before the filing of the suit.

10. Mr. Ravi Ranjan representing the State Election Commission has taken this Court to Rule 106 (for short 'The Rules') of the Bihar Panchayat Election Rules, 2006 which read as follows:-

106. Election petition. - (1) An election petition against any elected candidate may be filed under section 137 of the [Act]¹ before the prescribed Court of Law within thirty days from the date of declaration of the election results.

(2) the following may be joined as respondents by the petitioner to his/her election petition -

(a) Where the petitioner, claims to declare the election of all or any of the returned candidate as void in addition to his/her claim for any other candidate to be legally elected, in such a case all the contesting candidates other than the



petitioner; and where no such additional claim has been made, all the candidates, and,

(b) Any other candidate against whom allegation of any corrupt practices is made in the petition.

11. He submits that when the period for filing of the suit itself is 30 days, the contention put forward by the petitioner that the 80 C.P.C. notice was required before the filing the suit is fit to be rejected. He submits that if the contention of the petitioner is accepted, no suit can be filed within the period prescribed under 'The Rules'.

12. Learned counsel submits that even otherwise the learned Court rightly held that when the defendant no.1-petitioner herein preferred her written statement and did not raise the said question, it cannot be as an afterthought later preferred to decide the issue of non-service of notice under Section 80 of the Code of Civil Procedure. He further submits that the petitioner is doing show only to delay the disposal of the Election Suit No. 3 of 2021. He as such submits that the petition is fit to be dismissed with cost.

13. Having gone through the submissions put



forward by the parties and after perusing the materials on record, this Court finds force in the submission of learned counsel appearing on behalf of the respondents. The order itself shows the conduct of the petitioner. She appeared, thereafter, her absence resulted into the Court taking the matter ex parte against her. She reappeared and the petition was allowed after imposing a cost. The petitioner thereafter preferred written statement and no such contention was raised then. Later, she took the plea of non-service of notice under Section 80 of C.P.C.

14. The mandatory period of 30 days is envisaged under Rule 106 of 'The Rules' for filing of the Election petition. The learned counsel for the respondent has rightly submitted that if the 80 C.P.C. is followed, no Election petition can be filed within the 30 days envisaged. This Court in the light of the aforesaid facts, find no error in the order dated 26.05.2023 passed in the Election Suit No. 3 of 2021 by Court of Munsif, Jamui.

15. The writ petition is dismissed.

16. Further, in view of the fact that the Election Suit No. 3 of 2021 is pending since 2021, before it becomes infructuous, it is necessary that the learned Court takes up the



matter with seriousness/sincerity and disposed of at an earliest.

17. It is made clear that the said Election petition
be disposed maximum by 31st December, 2024.

(Rajiv Roy, J)

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