

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3426 of 2022

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Mazhar Ali Son of Late Mujaffar Ali, resident of Village - Mushkipur (Rasalpur) Ward No. 6, P.O. - Jamalpur Gogri, P.S. - Gogri, District - Khagaria.

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Nagar Development and Housing Department Government of Bihar, Patna.
2. The Principal Secretary, Nagar Development and Housing Department Government of Bihar, Patna.
3. The District Magistrate Cum Collector, Khagaria.
4. The Additional District Magistrate, Khagaria.
5. The District Panchayat Raj Officer, Khagaria.
6. The Incharge Officer District Development Cell, Khagaria.
7. The District Agriculture Officer, Khagaria.
8. That District Statistical Officer, Khagaria.
9. The Sub-Divisional Officer, Gogri, Khagaria.
10. The Circle Officer, Gogri, Khagaria.
11. The Gram Panchayat Raj, Mushkipur, P.S. - Gogri, District - Khagaria.

... .. Respondents

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Appearance :

For the Petitioner : Mr. Anil Kumar Choudhary, Advocate
For the Respondents : Mr. Yogendra Pd. Sinha, AAG-7
Mr. Shankar Kumar, AC to AAG-7

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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 : 20-05-2022

Heard learned counsel for the parties.

2. The sole petitioner claims to be the resident of village Muskipur under Gram Panchayat Muskipur. He has put to challenge a notification dated 26.12.2020 issued by the Urban



Development and Housing Department, Government of Bihar, declaring its intention to up-grade Gogri-Jamalpur Nagar Panchayat to Gogri-Jamalpur Nagar Parishad including within its area, the said Muskipur Gram Panchayat. The petitioner's challenge to the said notification is mainly on two grounds as is evident from the submission made on behalf of the petitioner. Firstly, it is the case of the petitioner that no consent has been taken from the Gram Panchayat, Muskipur, before issuance of the said notification, requisite under Section 11 of the Bihar Panchayat Raj Act, 2006. It is secondly submitted that the notification does not satisfy the requirement of population as stipulated under the second *proviso* to Section 3(1) of the Act.

3. On careful reading of the pleadings in the writ application, in our opinion, the second contention deserves to be rejected outright inasmuch as there is no averment at all to support the said contention that the notification does not fulfill the requirements under the second *proviso* to Section 3(1) of the Act. The said contention is accordingly rejected.

4. So far as the petitioner's contention with relation to requirement of obtaining consent from the Gram Panchayat, stipulated under Section 11 of the Act is concerned, we are of the view that the same too cannot be sustained in view of a Division



Bench decision of this Court rendered on 09.03.2022 in C.W.J.C. No. 8511 of 2021 (*Manoj Kumar and Others vs. The State of Bihar and Others and other analogous matters*). Paragraphs 5, 9 and 10 of the said decision in the case of *Manoj Kumar* (supra) are relevant and are being reproduced hereinbelow: -

*“5. He has submitted that the counter affidavit does not disclose that the mandate under Section 11 of the Bihar Panchayat Raj Act, 2006 (in short ‘the Panchayat Raj Act’) has been complied. The substance of the submission is that there has been no consultation with the Panchayats while excluding area/village(s) from a Panchayat area and constituting a Municipal Area. In support of his submission, he has placed reliance on the decision dated 23.04.2010, rendered in C.W.J.C. No. 10074 of 2009 (Neelam Devi vs. The State of Bihar and Others). Since the issue regarding the requirement under Section 11 of the Panchayat Raj Act warranting consultation with the Panchayat Body, has not been considered by the Division Bench in the case of Usha Devi (supra), the decision rendered in Neelam Devi (supra) on this point holds the field. In view of decision rendered in **Neelam Devi** (supra), non-compliance with the statutory requirement of consultation with the Gram Panchayats under Section 11 of the Panchayat Raj Act in the instant case is by itself sufficient to hold that the exercise undertaken by the authorities is illegal.*

XXX XXX XXX



9. *As per the submission of the petitioners' counsel, we, for the moment, are concerned with the first ground noted above, which has been dealt with and decided by the Hon'ble Single Judge in the case of Neelam Devi (supra). The statutory provision has been considered under the unamended Panchayat Raj Act, which has subsequently been amended. The action of the State authorities, which is challenged in the instant proceeding is under the amended provisions, pursuant to the Bihar Panchayat Raj Amendment Act, 2017. The provision of the Bihar Panchayat Raj Act, 2006, as existing pursuant to the 2017 amendment, has been considered by this Court in the case of Usha Devi (supra). The relevant paragraph being paragraphs 24 to 27 of the same, which this Court considers it useful to reproduce: -*

“24 There is also no legal basis for the petitioners to contend that till such time their tenure as Mukhiya under the provisions of the Bihar Panchayat Raj Act, 2006 (for brevity, the Act of 2006) is not completed, the draft notification under Section 4 of the Act of 2007 cannot be issued. Scope and applicability of the Act of 2006 under which the petitioners claim security of tenure as Mukhiya is clear from Section 1 of the Act of 2006, as it stands subsequent to its amendment by the Bihar Panchayat Raj (Amendment) Act, 2017, w e f 04.09.2017 which reads as follows:



“1. Short title, Extent and Commencement.-(1) *This Act may be called the Bihar Panchayat Raj (Amendment) Act, 2017.*

(2) *It shall extend to the whole of the State of Bihar excepting the areas to which the provisions of the Bihar Municipal Act, 2007 (Bihar Act No 11 of 2007) or Cantonment Act, 1924 (Act II of 1924) apply.*

(3) *It shall come into force at once.”*

25 *The statute, in unambiguous terms mandates, that it extends to the whole of the State of Bihar, excepting the area to which the provisions of the Act or Cantonment Act, 1924 applies.*

26 *The irresistible conclusion is that the moment the provisions of the Act of 2007 are applied, by virtue of a notification issued under Section 4 of the Act of 2007 declaring intention to constitute a particular area as a Municipal Area, the Act of 2006; and the security of tenure as Mukhiya, claimed by the petitioners thereunder, cannot come in the way of the process for upgradation or constitution of a municipality in accordance with the Act.*

27 *Section 14 of the Act of 2006 further clarifies this aspect. It clearly states that unless sooner dissolved under any law for the time being in force, Gram Panchayat is to continue for five years from the date appointed for its first meeting, and no longer. This provision finds its basis in Article 243E (1) of the*



Constitution of India. Article 243E (1) of the Constitution of India and Section 14 (1) of the Act of 2006 are in pari materia. Section 14 (1) of the Act of 2006 read with Section 1 of the Act of 2006, therefore, makes it clear that dissolution of the Panchayat is by virtue of “law”, namely, application of the provisions of Section 4 of the Act of 2007, by issuance of an intention to declare the area as a municipal area, under the Act.”

10. This Court having regard to the amended extant provisions of the Panchayat Raj Act has clearly held that the moment notification is issued under Section 4 of the Municipal Act, declaring the intention of the State Government to constitute/upgrade a Municipal Area, as in this case by impugned notification dated 26.12.2020, the provisions of the Panchayat Raj Act become inapplicable in view of the provisions contained in Section 1 of the Panchayat Raj Act. Thus, there is no scope to contend that Section 11 of the Panchayat Raj Act was mandatory and its non-compliance will in any way vitiate constitution of the Municipality. Submission of the petitioners’ counsel that the issue has not been considered by the Division Bench, therefore, is incorrect. The issue stands settled by the Division Bench in the case of Usha Devi (supra). The submissions, therefore, are devoid of any merit.

(Underscored for emphasis)



5. In view of the aforesaid discussion and the law laid down in case of *Manoj Kumar* (supra), we do not find any merit in this writ application.

6. This application is accordingly dismissed.

7. There shall, however, be no order as to costs.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	.05.2022
Transmission Date	N/A

