

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5886 of 2021

Ashok Kumar, son of Late Ram Batohi Paswan, resident of village - Baheri, P.O. and P.S. Baheri, District- Darbhanga, presently Mukhiya of Gram Panchayat Raj, Baheri East, Block - Baheri, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
3. The District Magistrate, Darbhanga.
4. The District Panchayat Raj Officer, Darbhanga, District- Darbhanga.
5. The Block Development Officer, Baheri, District- Darbhanga.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 6592 of 2021

Domni Devi, wife of Sri Ram Ashish Manjhi, resident of village - Baheri, P.O. and P.S. Baheri, District- Darbhanga, presently Mukhiya of Gram Panchayat Raj, Baheri, West, Block- Baheri, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
3. The District Magistrate, Darbhanga.
4. The District Panchayat Raj Officer, Darbhanga, District- Darbhanga.
5. The Block Development Officer, Baheri, District- Darbhanga.

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 5886 of 2021)

For the Petitioner/s : Mr. Shashi Bhushan Kumar Manglam, Advocate
For the Respondent/s : Mr. Yogendra Pd. Sinha, AAG-7
Mr. Rajeev Kr. Sinha, AC to AAG-7

(In Civil Writ Jurisdiction Case No. 6592 of 2021)

For the Petitioner/s : Mr. Shashi Bhushan Kumar Manglam, Advocate
For the Respondent/s : Mr. Subhash Prasad Singh, GA-3
Mr. Dilip Kumar, AC to GA-3

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH



and
HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)

Date : 04-04-2022

In both these matters the petitioners put to challenge a notice dated 26.12.2020 under Section 4 of the Bihar Municipal Act, 2007 (hereinafter referred to as 'the Act') issued by the State Government declaring its intention to notify Baheri Nagar Panchayat. The objections from the inhabitants of the area were invited under Section 5 of the Act. It is an admitted fact that despite opportunity available to these petitioners they did not raise any objection against the proposal of the State Government to notify Baheri as Nagar Panchayat.

2. During pendency of the writ application, the State Government came out with a final notification dated 03.03.2021 under Section 6 of the Act notifying Baheri as Nagar Panchayat. The said notification is sought to be challenged by seeking amendment in CWJC No. 5886 of 2021 through I.A. No. 1 of 2021. Similar application seeking amendment has been filed in CWJC No. 6592 of 2021. Since challenge in both the applications is to the same notification under Section 4 of the Act dated 26.12.2020 and subsequent notification under Section 6 of the Act dated 03.03.2021, they



have been heard together with the consent of the parties and are being disposed of by present common judgment and order.

3. Considering the fact that the notification dated 03.03.2021 is sequel to the same notification under Section 4 of the Act dated 26.12.2020, both the Interlocutory Applications (I.A. No. 1 of 2021 in CWJC No. 5886 of 2021 and I.A. No. 1 of 2021 in CWJC No. 6592 of 2021) are allowed. The averments made in the said Interlocutory Applications have been treated to be part of the pleadings in respective writ applications.

4. Mr. Manglam, learned counsel appearing on behalf of the petitioners in both the cases has drawn our attention to Annexure-B to the counter affidavit filed by Block Development Officer, Baheri, Darbhanga, which is a letter dated 17.11.2016 relating to proposal regarding constitution of Baheri Nagar Parishad. Mr. Manglam has attempted to assail the impugned notification under Section 4 of the Act on the ground that whereas the proposal was for constitution of Nagar Parishad, on the basis of said proposal, the State Government decided to declare its intention for constitution of Nagar Panchayat with issuance of the notification dated 26.12.2020. He has submitted that there has been no enquiry after 2016



based on which the State Government could have come out with notification under Section 4 of the Act.

5. There is statement made in paragraph 14 of the writ application that the total population of village Baheri is 10850 only and, therefore, the constitution of Baheri as Nagar Panchayt does not fulfill the requirement of sub section (1)(c) of Section 3 of the Act.

6. The Division Bench of this Court has clearly laid down in case of *Usha Devi vs. The State of Bihar & Ors.* (CWJC No. 7446 of 2021) in paragraph 16 that a person, who does not choose to make any objection under Section 5 of the Act after publication of notice under Section 4 of the Act, cannot be permitted to assail the draft notification or final notification in a writ proceeding.

7. Paragraph 16 of the said decision reads as under :-

“16. Before going into the controversy based on objections raised in the writ petition, it would be worthwhile to consider whether petitioner Nos. 1, 2 and 4 can be permitted to assail the draft notification or the final notification. Since these petitioners have chosen not to make any objection when they were afforded opportunity, there is no basis for them to maintain the instant writ proceedings. Having chosen not to avail the statutory opportunity, it



does not lie in their mouth to contend that there is any infirmity in the statutory process, much less non consideration of their objections. They cannot be permitted to invoke writ jurisdiction of this Court under Article 226 of the Constitution of India.

8. In relation to submission advanced on behalf of the petitioner that the total population of Baheri Village is only 10850 and, therefore, it does not fulfill the requirement of sub-section (1)(c) of Section 3 of the Act is also unsustainable for the reason that total population of the proposed Nagar Panchayat was clearly disclosed in the notification under Section 4 of the Act as 21872. Section 4 notification clearly mentions that the calculation of population is based on 2011 census.

9. It will be appropriate to mention here that it has been held in case of **Usha Devi** (supra) that the requisite population in terms of Sections 3 and 7 of the Act is to be specified in respect of the entire municipal area which has to come into existence as a result of process undertaken for constitution of municipality in accordance with Chapter-II of the Act.

10. For the foregoing reasons, we are of the



considered opinion that in the light of the Division Bench decision in case of **Usha Devi** (supra), this writ application cannot be maintained at the instance of these petitioners who failed to raise their objection. Further, we do not notice any illegality in the impugned notifications in view of the law laid down in case of Usha Devi (supra).

11. These writ applications are accordingly dismissed, being devoid of merit.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

Rajesh/-

| | |
|-------------------|------------|
| AFR/NAFR | NAFR |
| CAV DATE | NA |
| Uploading Date | 07.04.2022 |
| Transmission Date | NA |

