

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No 7446 of 2021**

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1. Usha Devi Wife of Basant Kumar resident of village- Lalpati, Post- Baghla, Gram Panchayat- Babhangawa, Police station and Block- Triveniganj, District- Supaul
2. Ajit Kuma Son of Sri Kapleshwar yadav resident of village and P.o.- Baljora, Under gram panchayat Thalaha Garhia South, Police Station and Block- Triveniganj, District- Supaul
3. Vijendra Yadav Son of Sri Mahadeo Yadav resident of village - Latauna North, P.o.- Latauna, Gram panchayat Latauna North, Police Station and Block- Triveniganj, District- Supaul
4. Sanjay Kumar Das Son of Sri Deo Narayan Das resident of village - Bisanpur Daparkha, P.o. and Gram panchayat - Daparkha, Police Station and Block- Triveniganj, District- Supaul

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Urban Development and Housing, Govt. of Bihar, Patna
3. The Principal Secretary, Department of Panchayati Raj, Govt. of Bihar, Patna
4. The Joint Secretary Department of Urban development and Housing, Govt. of Bihar, Patna
5. The District Magistrate, Supaul
6. The District Panchayat Raj Officer, Supaul
7. The Deputy Collector, Land Reforms, Triveniganj, District- Supaul
8. The Sub Divisional Officer, Triveniganj, District- Supaul
9. The Block Development Officer, Triveniganj, District- Supaul
10. The Circle Officer, Triveniganj, District- Supaul

... .. Respondent/s

***WITH***

**Civil Writ Jurisdiction Case No 7804 of 2021**

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1. Shambhu Kumar Yadav S/o Ramashish Yadav, resident of Village-Ward no.- 06, Punaura Paschim, P.O. and P.S.-Punaura, District-Sitamarh, PIN-843302.
2. Shailendra Kumar, S/o Jageshwar Khirhar, resident of Village-Ward no.-04, Amghatta, P.O. and P.S.-Sitamarhi, District-Sitamarh, PIN-843302.
3. Anchala Devi, W/o Santosh Kumar Singh, resident of Village-Ward no.-6, Punaura Purvi, Punaura, P.O. and P.S.-Punaura, District-Sitamarh, PIN-843302.
4. Israt @ Israt Khatun, W/o Md. Hasim Kuraishi, resident of Village-Ward no.-12, Mehsaul Purvi, P.O.-Mehsaul, P.S.-Sitamarhi, District-Sitamarh,



PIN-843302.

5. Ranju Kumari, W/o Mukesh Kumar Yadav, resident of Village-Chakmahila, P.O. and P.S.-Chakmahila, District-Sitamarh, PIN-843302.
6. Mantoria Devi, W/o Siyaram Rai, resident of Village-Ward no.-03, Bishwanathpur, P.O. and P.S.-Dumara, District-Sitamarh, PIN-843301.
7. Shila Singh, W/o Rajkishor Singh, resident of Village-Ward no.-4, Govind Phanda, P.O.-Maniari, P.S.-Punaura, District-Sitamarh, PIN-843327.
8. Sanjeet Kumar, S/o Nagendra Sah, resident of Village-Ward no.-10, Bariyarpur, P.O. and P.S.-Sitamarhi, District-Sitamarh, PIN-843302.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Urban Development Department, Government of Bihar, Patna.
2. The Principal Secretary, Urban Development Department, Government of Bihar, Patna.
3. The Principal Secretary, Panchayati Raj Department, Bihar, Patna.
4. The Deputy Secretary, Urban Development Department, Government of Bihar, Patna.
5. The Commissioner, Tirhut Division, Muzaffarpur.
6. The District Magistrate, Sitamarhi.
7. The District Development Commissioner, Sitamarhi.
8. The Circle Officer, Dumara, Sitamarhi.
9. Nagar Parishad, Sitamarhi through its Executive Officer, Nagar Parishad, Sitamarhi.
10. Nagar Panchayat, Dumra through its Executive Officer, Nagar Panchayat, Dumra, Sitamarhi.

... .. Respondent/s

**Appearance :**

(In Civil Writ Jurisdiction Case No 7446 of 2021)

For the Petitioner/s : M/s Harsh Anuj, Prashant Kr, Mithilesh Kr, Advs

For the Respondent/s : Mr Ravish Chandra, AC to SC VI

(In Civil Writ Jurisdiction Case No 7804 of 2021)

For the Petitioner/s : Mr Rajendra Narayan, Sr Advocate with

M/s Anuj Kumar, Pratik Kumar, Advocates

For the Respondent/s : Mr Abbas Haider, SC VI

M/s Ravish Chandra, R K Singh, (ACs to SC VI)



For the Nagar Nigam : M/s Subodh Kr, Surendra Kishore, Advocates

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**CORAM: HONOURABLE MR JUSTICE CHAKRADHARI SHARAN SINGH**  
**and**  
**HONOURABLE MR JUSTICE MADHURESH PRASAD**

**CAV JUDGMENT**

**(Per: HONOURABLE MR JUSTICE MADHURESH PRASAD)**

**Date : 17-01-2022**

Mr Rajendra Narayan, learned senior counsel has appeared for the petitioners in CWJC No 7804 of 2021. Mr Harsh Anuj, learned counsel has made submissions for the petitioners in CWJC No 7446 of 2021. The State counsel has also appeared in both the cases. In CWJC No 7804 of 2021, Nagar Parishad, Sitamarhi is also represented by the learned counsel. Parties are in agreement that issues are common in both the writ petitions and, therefore, the matter may be heard together. Accordingly, both these matters have been heard together and are being disposed by this common order.

2 CWJC No 7446 of 2021 was filed with a prayer for quashing the draft notification No 4335 dated 26.12.2020 by the State Government declaring its intention to constitute Triveniganj Nagar Parishad. By the said notification, 4 Gram Panchayats, comprising the area of 5 villages, mentioned in Column 3 of the draft notification, were proposed to be constituted as a municipal area, details of which were specified in Column 5 of the draft



notification. By the said notification, inhabitants, who were likely to be effected, were given an opportunity to submit objections in writing within a month from the date of draft notification in terms of Sections 4 and 5 of the Bihar Municipal Act, 2007 (hereinafter referred to as the *Act of 2007*).

3 Petitioner No 1 was Mukhiya of Babhangama Gram Panchayat, Petitioner No 2 was Mukhiya of Thalha Garhia South, Petitioner No 3 was Mukhiya of Latauna North and Petitioner No 4 was Mukhiya of Daparkha Gram Panchayat.

4 Their specific case is that earlier the Authorities had brought out a similar Notification which was assailed in CWJC No 6369 of 2017. An assurance was made in the said proceedings by the District Magistrate, Supaul that all statutory requirements prior to sending of the recommendation to the State Government shall be followed. In view of such categorical statement, writ petition was disposed of with the hope that the issue shall be finally settled expeditiously and within a period of three months. The Draft Notification dated 13.04.2017, which was the subject matter of the said proceeding, was set aside to facilitate fresh steps in this regard.

5 The instant writ petition has been filed alleging violation of Section 3 of the Act as it existed prior to the Bihar



Municipal (Amendment) Act, 2020 (hereinafter referred to as the “*Amendment Act, 2020*”, published in Bihar Gazette on 10.08.2020, even though the draft notification has been issued thereafter, i.e., on 26.12.2020. Learned counsel appearing for the petitioners has submitted that based on the last census of 2011 (Annexure 3), he is in a position to show that requisite non-agricultural population even as per the Amendment Act, 2020 is not satisfied and constitution of urban area is unsustainable in law. We have, thus, allowed him to make his submissions.

6 It is submitted by the learned counsel for the petitioners that the impugned Draft Notification dated 26.12.2020 has again been published illegally without satisfying the requirements of law and also with the oblique motive to disturb the petitioners. After creation of Nagar Parishad, elections will have to be conducted afresh and the petitioners could not continue as duly elected Mukhiyas for their entire tenure, as the Gram Panchayats would cease to exist.

7 It is also submitted by the learned counsel, that for constitution of an urban area, as per Section 3 of the Act of 2007, the agricultural population was required to be less than 50%. Referring to the census of 2011, it has been contended that the population involved in agricultural work in Triveniganj Block is



more than 50%. Therefore, creation of Nagar Parishad is unsustainable in view of the proviso to Section 3 (1) of the Act of 2007.

**8** The petitioners have stated that they have made their objections by a representation dated 23.01.2021. Copy of the representation is Annexure 4 to the writ petition. In the representation, they have stated that 89.8% male and 87.7% female population of Triveniganj Block is involved in agricultural work. As per the census, only 10.2% of male population and 12.31% of female population are engaged in non-agricultural activities. Based on the last census, which is of 2011, the requirement of less than 50% of the population of their Gram Panchayats being engaged in agricultural work is not satisfied. Constitution of a Municipal area proposed in the Notification dated 26.12.2020 is, thus, unsustainable in law.

**9** By filing Interlocutory Application No 1 of 2021, the petitioners have sought quashing of Notification dated 17.02.2021 whereby and where under urban area, namely, Triveniganj Nagar Parishad has been constituted/notified after filing of the writ petition.

**10** State has filed a counter affidavit. The specific stand of the State is that the petitioners who are elected as Mukhiyas for



their respective villages in the election held in the year, 2016 are not expected to raise uncalled for objections, and obstructions in the upgradation of their respective Gram Panchayat for their individual interest to continue as Mukhiya for a period of 5 years. The factual assertions made by the petitioners in the writ petition regarding the composition of agricultural and non-agricultural population have also been denied and disputed by Respondent-State in its counter affidavit. Placing reliance on the census of 2011 contained in Annexure 3 of the writ petition, it has been stated in the counter affidavit that the total population of Triveniganj is 3,22,477. The same includes 1,67,461 male population and 1,55,016 female population. There are total 1,39,287 Main + Marginal workers, which is less than 50%. Referring to column 7 of Annexure 3, it is stated that 28.92% of male population and 18.58% of female population was engaged in cultivation work which again is below 50% of total population of workers.

**11** Petitioners 1, 2 and 4 have approached this Court without raising any objection. Petitioner No.3 has filed his objection dated 23.01.2021, but without availing the opportunity of hearing before Respondent No 5, the writ petition has been filed before this Court.



**12** This Court would find that the petitioners, in their rejoinder, have not specifically denied such averments made in the counter affidavit. In paragraph 12 of the rejoinder, they have made an evasive and vague reply which reads as follows:

*“12. That with regard to the statements made in Paragraph No 21 of the counter affidavit under reply, it is hereby submitted that from perusal of representation/objection dated 23.01.2021 (Annexure 4), it can be visualized that the representation was submitted and accepted in the office of Respondent No 5 within one month, i e, the stipulated period and such type of statements on behalf of respondents shows their irresponsible and negligent attitude towards the genuine cause of the petitioners.”*

**13** Having taken note of the stand of the parties and before proceeding to consider the same, this Court would consider it apposite to reproduce Section 3 of the Act of 2007 as amended by the Amendment Act, 2020 which reads as follows :-

**3. Declaration of intention to constitute a municipal area.-** (1) *The State Government may, after making such inquiry as it may deem fit, and having regard to the population of any urban area, density of population there in, the revenue generated for the local administration of such area, the percentage of employment in non-agriculture activities in such area, the economic importance of such area, and such other factors as may be prescribed, by notification, declare its intention to specify such area to be a larger urban area, or a medium urban area, or a transitional area:*

*Provided that no such declaration shall be made unless the population*



*(a) in the case of a larger urban area, is two lacs or more,*

*(b) in the case of medium urban area, is forty thousand or more but is less than two lacs, and*

*(c) in the case of a transitional area, that is a small town, is twelve thousand and more but not more than forty thousand:*

*“Provided further that the total population of main cultivator workers and marginal cultivator workers shall be below fifty percent of total population of workers in such area in all cases.”*

***Explanation.-*** *“Revenue generated for the local administration” shall not include-*

*(a) taxes, if any, distributed to the Municipality by the State Government,*

*(b) loans and grants from the State Government, and*

*(c) loans and grants from the Central Government or institution or other source.*

*(2) The State Government shall, by notification, declare an area specified as-*

*(i) a larger urban area to be a city,*

*(ii) a medium urban area to be a town, and*

*(iii) a small town or transitional area to be a Nagar Panchayat or urban growth centre*

*(3) Notwithstanding anything contained in sub-section(1), the State Government may, by notification, determine separate conditions, to constitute any hill area, pilgrim centre, tourist centre or mandi as a municipal area.”*

**14** We have considered it useful to underline the second proviso to Section 3 (1) of the Amendment) Act, 2020 because the



petitioners' counsel has alleged the constitution of Nagar Parishad to be in violation of the same.

**15** The other relevant provisions, namely, Sections 4, 5, 6, 7 and 8 of the Amendment Act, 2020 are also being reproduced for the sake of easy reference.

**4. Publication of declaration.**-(1) *The State Government may by a notification, published in the Official Gazette and in at least two leading newspapers, at least one of which shall be in vernacular intelligible conveyed its intention to constitute a municipal area to the inhabitants of the local area concerned.*

*(2) A copy of the notification shall also be pasted at a conspicuous place in the office of the Collector of the district and, where there is a Municipality, also in the office of the Municipality and in such other public places as the State Government may direct.*

*(3) Public proclamation about the Constitution of a municipal area shall be made either by beating of drum throughout the local area concerned or through any other publicity media.*

**5. Consideration of objection.**- *Any inhabitant of the city, town or Nagar Panchayat in respect of which a notification has been published under Section 4 may, object to anything contained in the notification and submit his objection in writing to the State Government within one month from the date of its publication, the State Government shall take such objection into consideration.*

**6. Constitution of Municipal Area.**- *On the expiry of one month from the date of publication of notification under Section 4 and after consideration of all or any of the objections which may be submitted, the State Government may, by notification, constitute*



*such Large Urban area, city, town or transnational area or any specified part thereof as a municipal area under this Act.*

**7. Classification of Municipal areas.-** *The State Government may, for the purpose of application of the provisions of this Act, classify any municipal area on the basis of the population as ascertained at the last preceding census of which the relevant figures have been published, as-*

*(a) a larger urban area having population above 2,00,000*

*(b) a medium urban area of-*

**Class 'A'** *municipal area having population above 1,50,000 but not exceeding 2,00,000, or*

**Class 'B'** *municipal area having population above 1,00,000 but not exceeding 1,50,000, or*

**Class 'C'** *municipal area having population above 40,000 but not exceeding 1,00,000, and*

*(c) transitional small urban area having population above 12,000 but not exceeding 40,000:*

*Provided that for the purpose of classification of municipal areas in any hill area, pilgrim centre, tourist centre or mandi town, the government may, by notification, determine separate size of population for each class of such municipal areas.*

**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.”*

**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.

**17** In this connection, this Court would consider it appropriate to refer to decision of Hon'ble Apex Court in the case of *Board of Directors, Himachal Pradesh Transport Corporation & Another -Versus- K C Rahi*, reported in *(2008) 11 Supreme Court Cases 502*. Even in the context of a departmental proceeding wherein there is requirement of observing the principles of natural justice, the Apex Court, in the judgment, has held that when pursuant to notice sent to the delinquent by publication in the newspaper, he did not respond or participate, in such event "plea of principles of natural justice is deemed to have been waived and he is estopped from raising the question of non-compliance with principles of natural justice..."

**18** In the instant case, this Court would observe that none of the provisions of the Act of 2007, quoted hereinabove, require the passing of an order on the objections received in response to the notification of intention to constitute a municipal



area. Section 5 of the Act of 2007 merely postulates taking into consideration of the objections.

**19** In so far as the objection by the petitioner No 3 that under Section 3 of the Act of 2007, there is a requirement that agricultural population has to be below 50%, this Court would observe that such submission does not find any sustenance from the statutory provision. The second proviso to section 3 contemplates that the total population of main cultivator workers and marginal cultivator workers shall be below 50% of total population of workers in such areas in all cases, and not that 50% of total population has to be non-agricultural, as submitted by learned counsel for the petitioners. The objection raised by petitioner No 3 in this regard is misconceived and legally unsustainable.

**20** The averments made in the counter affidavit, which are based on data from the last census of 2011 (Annexure 3), make it abundantly clear that only 28.92% of male population and 18.58% of the female population, out of total population of cultivators were engaged in cultivation work. If both these percentages are taken together still it constitutes only 47.5% which is below 50% of total population of workers, which is one of the requisite factors under the second proviso to Section 3 of the Act



of 2007, for declaring intention to constitute a Municipality. The same is evident from column 7 of Annexure 3.

**21** Another aspect of the matter is that fulfillment of requisite factors under Sections 3 and 7 of the Act of 2007 has to be considered in relation to “such area”. The expression “such area” has repeatedly been used in Section 3 of the Act of 2007 and refers to the “urban area”, which was proposed to be constituted and to come into existence as a result of the process of constitution/ upgradation of Municipality/Urban Area.

**22** It is clear from these statutory provisions that the requisite population, density of population, revenue generated for local administration, percentage of employment in non-agricultural activities, economic importance and other requirements, contemplated under Sections 3 and 7 of the Act of 2007, are not requirements in respect of the rural area/individual panchayat/small municipal area, which are sought to be included for the purposes of upgradation or constitution of Municipal Area under the Act of 2007. The said requisites are to be satisfied in respect of the municipal area which has to come into existence as a result of the process undertaken for constitution of municipality in accordance with Chapter II of the Act of 2007.



**23** Thus, in our opinion petitioners' case, that the requisite composition of non-agricultural population/workers are to be satisfied in respect of all the four individual Gram Panchayats, is misconceived and fallacious.

**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, 2007, 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.



**28** The submission of the petitioners that they are going to be deprived of their full tenure as Mukhiyas, therefore, is not legally sustainable.

**CWJC No. 7804 of 2021**

**29** We now advert to the case of the petitioners in CWJC No. 7804 of 2021. The factual matrix of this case is also similar inasmuch as the petitioners of this case also are *Mukhiyas* of the Gram Panchayats and have sought quashing of the notification bearing memo no. 5UD/Gathan-07/2016-1485/UD & HD, Patna, Dated 13.04.2020 whereby the areas of Bhawdepur, Punoura, Khadka, Madhuban, Talkhapur, Paraspatti, Simara, Khairwa, Vishwanathpur, Madhopur Raushan, Bhagwatipur Amghatta, Rajopatti, Chackmahila, Mehsoul, Mohanpur, Bariyarpur, Bharokothi, Nagar Parishad Sitamarhi and Nagar Panchayat Dumra have been constituted as Nagar Nigam, Sitamarhi in the district of Sitamarhi. It is the case of the petitioners' that the declaration of the larger municipal area (Nagar Nigam) is contrary to Article 243Q (2) of the Constitution of India.

**30** It is submitted by the learned senior counsel representing the petitioners that the notification declaring the larger municipal area is without giving opportunity for filing objections and without considering the objections filed by the



petitioners. As per sections 4 and 5 of the Act of 2007 the State Government was required to convey its intention to constitute the Municipal Area by a notification in the manner prescribed therein. In the instant case, notification of intent to constitute a Municipal Area was not published in the requisite newspapers.

**31** It is also submitted that Section 6 of the Act of 2007 contemplates such notification “after consideration of all or any of the objections”. The petitioners have submitted their objection under Section 4 of the Act of 2007. Non- consideration of the same amounts to a procedural irregularity and violation of the statutory provisions contained in Sections 4,5 and 6 of the Act of 2007 and, therefore, the notification of the larger municipal area (Nagar Nigam) is unsustainable for non compliance of the mandatory procedure under the statute. Learned senior counsel has strenuously urged that petitioners’ objections were required to be taken into consideration as per section 5 of the Act of 2007. However, the fact that petitioners’ objections have not been considered is admitted from the counter affidavit of Respondents No 2 and 4. The relevant paragraph relied upon by the learned senior counsel, i e, paragraph No. 6 (I) is being reproduced:-

*“(I).                      Thereafter,                      the  
objections/suggestions were made available to  
the Department and after due examination,*



*received objections were not found worthy of consideration.”*

**32** The submission is that it is the specific stand of the respondents that the objections were not found worthy of consideration. This clearly means that the objections were not considered.

**33** The State counsels have submitted that no case is made out for interference by this Court in writ jurisdiction. The submission is that the provisions of the Act of 2006 will not prevail over the Act of 2007. The proposal for constitution of the municipal area was upon approval of the Cabinet. Thereafter, the draft notification was published in the newspapers inviting objections. They have submitted that the draft notifications were also sent to the District Magistrate. After due publicity of the draft notification, number of objections were filed. The same were sent to the Department of Urban Development and Housing by the District Magistrate. They have stated that recommendation for the proposal was based on an assessment of the relevant factors. The entire exercise, noted above, was undertaken in accordance with the provisions contained in the Act of 2007, where after the Hon’ble Governor of Bihar was pleased to constitute the municipal area leading to issuance of the notification under Section 6 of the Act of 2007.



**34** Submission of the learned senior counsel has persuaded us to have a look at the objections made by the petitioners as contained in Annexure-6 of the writ petition. Having considered the same, we are tempted to reproduce the same, which reads as follows:-

“ निवेदन पूर्वक कहना है कि प्रस्तावित नगर निगम सीतामढ़ी के लिए नगर परिषद् सीतामढ़ी द्वारा बिहार सरकार को भेजे गये प्रस्तावित क्षेत्र के अन्तर्गत पुनौरा पश्चिमी पंचायत को गलत विवरणी के साथ शामिल किया गया हुआ है।

1. श्रीमन् को ज्ञात हो कि पुनौरा पश्चिमी पंचायत के क्षेत्र का विवरण निम्नरूपेण है –

| सम्पूर्ण क्षेत्रफल<br>(हेक्टेयर में) | कृषि योग्य भूमि<br>(हेक्टेयर में) | कृषि योग्य भूमि का<br>प्रतिशत | गैर कृषि योग्य<br>भूमि<br>(हेक्टेयर में) | गैर कृषि योग्य<br>भूमि का प्रतिशत |
|--------------------------------------|-----------------------------------|-------------------------------|------------------------------------------|-----------------------------------|
| 374.46                               | 254.63                            | 68 (अड़सठ)                    | 119.83                                   | 32 (बत्तीस)                       |

जबकि बिहार सरकार के प्रावधान के अनुसार वैसे ही क्षेत्र को नगर निगम के क्षेत्र के अन्तर्गत शामिल किया जायेगा व शामिल किया जाना है जिसके अन्तर्गत गैर कृषि योग्य भूमि उस क्षेत्र के संपूर्ण क्षेत्रफल का 75% (पचहतर प्रतिशत) है।

2. पुनः उपर्युक्त तथ्यों के अतिरिक्त पुनौरा पश्चिमी पंचायत में
1. निबंधित किसानों की संख्या – 225
  2. पैक्स मतदाताओं की संख्या – 1103
  3. पूर्वीकता प्राप्त गृहस्थी राशन कार्ड की संख्या – 1442
  4. वर्ष 2011 के आंकड़ों के अनुसार जनसंख्या – 6972
  5. मनरेगा मजदूरों की संख्या – 1497
  6. बी0पी0एल0 परिवारों की संख्या – 1368

इसके अलावा पुनौरा पश्चिमी पंचायत के किसानों एवं कृषि मजदूरों को कृषि कार्य एवं अन्य मद में सरकार द्वारा चलाये जा रहे विभिन्न योजनाओं के तहत लाभ प्रदान किये जा रहे हैं।

3. पुनौरा पश्चिमी पंचायत में 80% (अस्सी प्रतिशत) आबादी ग्रामीण मुख्य सड़क से 2 से 3 कि०मी० की दुरी पर टोला के रूप में स्थित है, जिसके चारों तरफ कृषि भूमि है। इसे पंचायत अन्तर्गत आधुनिक युग में भी कोई चौक चौराहे नहीं है एवं नागरिकों को जिविकोपार्जन का मुख्य साधन कृषि कार्य एवं मजदुरी है। ऐसी परिस्थिति में नगर निगम होने पर आम नागरिक अपने परिवारों का भरण-पोषण करेंगे या नगर निगम का कर चुकायेगे।
4. कोरोना महामारी के दौरान जन राष्ट्रीय स्तर पर लॉकडाउन का पालन किया जा रहा है और संचार साधनों का गाँवों तक पहुँच पाना संभव नहीं हो पा रहा है। इस परिस्थिति में राज्य सरकार एवं जिला प्रशासन द्वारा अत्यंत ग्रामीण क्षेत्रों को नगर निगम में शामिल कर ग्रामिणों को आपत्ति देने से बंचित करने का प्रारूप प्रकाशित करना ग्रामिणों को आपत्ति देने से बंचित करने का प्रयास है। साथ ही साथ इसमें BIHAR MUNICIPAL ACT-2007 के प्रावधानों का अनुपालन भी नहीं किया जा रहा है। ग्रामीण क्षेत्रों को नगर निगम में शामिल करने पर उनपर करो का अतिरिक्त बोझ पड़ने वाला है और



- वैसे समय में जब ग्रामिणों का घरों से बाहर निकलना संभव नहीं हो पा रहा है। इस तरह का व्यापक परिवर्तन सर्वथा उनके हितों के प्रतिकूल और अन्यायपूर्ण है और ग्रामिणों को उनके अधिकार से वंचित करने का प्रयास है।
5. सीतामढ़ी को नगर निगम बनाने के लिए कुल 2,00,000 (दो लाख) की आबादी की गणना के लिए उन क्षेत्रों को शामिल किया गया है जो पूर्णतः कृषि आधारित हैं और वहाँ कोई भी लघु और कुटीर उद्योग नहीं है।
  6. राष्ट्रीय जनगणना 2011 के आंकड़ों के अनुसार भी सीतामढ़ी जिले की आबादी की लगभग 77% (सतहतर प्रतिशत) जनसंख्या कृषि कार्यों में संलग्न है। प्रस्तावित नगर निगम में नये पंचायतों को शामिल किये जाने के बाद किसी भी तरह से कुल आबादी का 75% (पचहतर प्रतिशत) हिस्सा गैर कृषि कार्यों में संलग्न नहीं है। जिला प्रशासन के स्वयं के आंकड़े भी इसके प्रतिकूल हैं।
  7. उपर्युक्त परिस्थिति में किसी भी प्रकार से पुनौरा पश्चिमी पंचायत को प्रस्तावित नगर निगम, सीतामढ़ी के प्रस्तावित क्षेत्र में शामिल किया जाना न्यायोचित नहीं है। ऐसा प्रतीत होता है कि प्रस्तावित नगर निगम, सीतामढ़ी के क्षेत्र के निर्धारण में बिहार सरकार, जिला के कर्मचारियों एवं पदाधिकारियों द्वारा पुनौरा पश्चिमी पंचायत के संदर्भ में बिहार सरकार के प्रावधानों के अनुसार सही-सही विवरणी नहीं दिया गया है, अपितु बिना किसी जाँच-पड़ताल के एवं स्थानीय प्रतिनिधियों से कोई वार्ता व सम्मेलन के गलत विवरण व प्रतिवेदन समर्पित कर पुनौरा पश्चिमी पंचायत को प्रस्तावित नगर निगम, सीतामढ़ी के लिए प्रस्तावित क्षेत्र में शामिल कर दिया गया है।

अतः श्रीमान् से करबद्ध प्रार्थना है कि इस आवेदन के आलोक में गंभीरता से विचार करते हुए पुनौरा पश्चिमी पंचायत के संदर्भ में समर्पित प्रतिवेदन के वास्तविकता ..... की अपने स्तर से जाँच पड़ताल कर पुनौरा पश्चिमी पंचायत को प्रस्तावित नगर निगम सीतामढ़ी के प्रस्तावित क्षेत्र से बाहर रखने व मुक्त करने की कृपा प्रदान की जाए। जिससे की पुनौरा पश्चिमी पंचायत के अति गरीब किसानों एवं कृषि मजदूरों के हितों की रक्षा हो सके। इसके लिए श्रीमान् का सदा आभारी रहेंगे।

श्रीमान् का विश्वासभाजन  
पुनौरा पश्चिमी पंचायत के नागरिक एवं जनप्रतिनिधिगण "

**35 Bare perusal of Annexure-6 would show that:**

**Point No 1:** The objection is based on geographical area involved in agricultural and non agricultural activities within Punoura West Panchayat.

**Point No 2:** The objectionist has stated a particular number of registered farmers, Primary Agricultural Credit Society voters, ration card holders, Mahatma Gandhi National Rural Employment Guarantee Act, 2005 labourers and below poverty line (BPL) families.

**Point No 3:** The objectionist has given the details of percentage of population at a distance of 2 to 3 kilometers from the



main road and that their “Tolas” are surrounded by agricultural lands, mainly relying upon agricultural resources.

**Point No 4:** The objectionist has raised the hardships arising out of COVID – 19 Pandemic.

**Point No 5:** Objection has been raised that the areas, which have been included for constituting the Sitamarhi Nagar Nigam are mainly agricultural based and there are no small or cottage industries in the area.

**Point No 6:** The objectionist claims that 77% of the population of the district of Sitamarhi is engaged in agricultural works.

**Point No 7:** The objectionist has claimed that for the above noted reasons, the inclusion of Punoura West Panchayat in the proposed Sitamarhi Nagar Nigam is unjust and illegal.

**36** The objections raised are prima facie irrelevant as they do not, in any way, assert or make out a case that there is absence of any of the requisite factors contemplated under Section 3 of the Act of 2007. All the seven objections, which have been raised are wholly irrelevant to the statutory provision, under which the petitioners have claimed to have raised the objections.

**37** Another fact is that same is only in respect of 1 out of the various villages which have been included for the purposes of constitution of the Nagar Nigam. There is nothing on record to show that any objection has been raised which is relevant to the statutory requirements, as per the Act of 2007, in respect of the various other areas, or alleging that the Municipal Area which is to



come into existence, does not satisfy the requirements of the Act of 2007 for want of any of the requisite factors enumerated therein.

**38** Section 5 of the Act of 2007 provides an opportunity to any inhabitant in the city, town or Nagar Panchayat in respect of which a notification has been published under Section 4 of the Act of 2007, to object in writing to the State Government within a month from the date of publication conveying intention of the State Government to constitute a municipal area. The opportunity provided under Section 5 of the Act of 2007 must be construed to be for filing of objections with respect to violation/non-fulfillment of the requisite factors contained in the Act in respect of the larger Municipal area/urban area to be constituted. The opportunity to object cannot be claimed to raise any and every issue under the sun. In the instant case, objections by the petitioners is in respect of parameters which are not germane to the issue of upgradation/constitution of Municipal Area as per the Act.

**39** Thus, from a bare reading of the objection, it appears that there is no allegation regarding there being absence of any of the requisite factors/parameters under Sections 3 or 7 of the Act of 2007. When the objection raised is wholly irrelevant, as in the instant case, this Court would consider it useful to refer to decision of the Apex Court in the case of *Bhikhubhai Vithlabhai Patel &*



***Others -Versus- State of Gujarat & Another***, reported in (2008) 4 ***Supreme Court Cases 144***. Paragraph 25 of the said judgment is noteworthy inasmuch as the same has elaborated the meaning and purport of the word “consider”. Paragraph 25 of the judgment reads as under:

*“25. The formation of the opinion by the State Government is with reference to the necessity that may have had arisen to make substantial modifications in the draft development plan. The expression: “as considered necessary” is again of crucial importance. The term “consider” means to think over; it connotes that there should be active application of the mind. In other words the term “consider” postulates consideration of all the relevant aspects of the matter. A plain reading of the relevant provision suggests that the State Government may publish the modifications only after consideration that such modifications have become necessary. The word “necessary” means indispensable, requisite, indispensably requisite, useful, incidental or conducive, essential, unavoidable, impossible to be otherwise, not to be avoided, inevitable. The word “necessary” must be construed in the connection in which it is used. (See Advanced Law Lexicon, P Ramanatha Aiyar, 3<sup>rd</sup> Edn, 2005.)”*

40 Being guided by the said judgment, this Court would arrive at a conclusion that consideration is to be of the relevant aspects. The objectors, as in the instant case, cannot be permitted to raise issues which are wholly irrelevant and then claim that the authority is required to consider them, when it is manifest from



bare reading of the objection itself that the objections raised are not germane to the issues under the Act of 2007. The State Government, therefore, is fully justified in rejecting the petitioner's objection as being "not worthy of consideration".

**41** Submission of the learned senior counsel that no opportunity was granted for filing objections seems to be factually misplaced having regard to Annexure 5. The same is a photostat copy of paper publication dated 29.04.2020 brought on record by the petitioners themselves. The same is a notification declaring intention to constitute a municipal body including Sitamarhi Nagar Parishad, Dumra Nagar Panchayat and 17 nearby mouzas, to the extent of their areas specified in the said draft notification, into a larger municipal body. Thus, the records reveal that opportunity was granted, and the petitioners had availed the opportunity by filing their objection (Annexure 6 to the writ petition).

**42** We are of the opinion that the scope of judicial review with regard to challenge to constitution/upgradation of municipal areas is also an issue which requires to be considered.

**43** The constitutional mandate under Article 243Q of the Constitution of India is for constitution of one or the other of the three classes of urban/municipal areas specified in sub-clauses (a), (b) or (c) in Article 243Q (1) of the Constitution of India.



**44** Having laid down such requirement, the proviso to Article 243Q (2) gives discretion to the Governor to determine and specify by public notification, the requisite population, density of population therein, the revenue generated for local administration, percentage of employment in non-agricultural activity, economic importance and such other factors as the Governor may deem fit for constitution of “a transitional area”, “a smaller urban area” or “a larger urban area”. The proviso to Article 243Q (1) of the Constitution of India gives similar discretion for constitution of industrial township instead of an urban area. Thus, the Constitution has provided discretion in the Governor for determining and specifying the requisites and for declaration of the class of municipal area/industrial township contemplated under Article 243Q of the Constitution of India.

**45** It is not in dispute that the requisite parameters under Article 243Q (2) of the Constitution of India has been specified in Sections 3 and 7 of Chapter II of the Act of 2007 by the State legislature.

**46** The publication of intention to constitute a municipal area and consequent constitution of the Municipal Area under the provisions of the Act of 2007, therefore, must be in accordance with; and on fulfillment of the requisite factors specified in



Chapter II of the Act. Section 5 of the Act of 2007 which is also part of Chapter II contemplates consideration of objections made by any inhabitant of the city, town or Nagar Panchayat in respect of which a notification declaring intention to constitute a Municipal Area has been published under Section 4 of the Act of 2007.

**47** Having regard to the discretion given to the Governor under Article 243Q of the Constitution of India, the notifications issued under Chapter II of the Act of 2007 cannot be considered to be discharge of administrative functions, much less adjudicatory in nature. Though the notifications under Sections 4 and 6 of the Act of 2007 are issued under Article 166 of the Constitution of India, but the same may be termed as legislative rather than administrative.

**48** By no stretch of imagination, the exercise of declaration of intention or constitution of municipal area may be termed as adjudicatory function. Chapter II of the Act of 2007, therefore, consciously omits the requirement of disposing of the objections received in response to the notification issued under Section 4 of the Act of 2007. Chapter II of the Act of 2007 only provides an opportunity to the inhabitants of the city, town or Nagar Panchayat to submit their objection in writing to the State



Government within one month from the date of publication of intention to constitute a municipal area. The Act of 2007, therefore, requires the State Government to take such objection into consideration; and consciously omits any prescription for disposal of the objections or passing of orders thereupon.

49 The notifications issued under Chapter II of the Act of 2007 are issued in exercise of functions which partakes legislative character though issued under Article 166 of the Constitution of India.

50 In this connection, this Court would take into consideration decision of the Apex Court in the case of ***Sundarjas Kanyalal Bhatija & Others -Versus- Collector, Thane, Maharashtra & Others***, reported in ***(1989) 3 Supreme Court Cases 396***. The relevant paragraphs are being reproduced:

*“27. Reverting to the case, we find that the conclusion of the High Court as to the need to reconsider the proposal to form the Corporation has neither the attraction of logic nor the support of law. It must be noted that the function of the government in establishing a Corporation under the Act is neither executive nor administrative. Counsel for the appellants was right in his submission that it is legislative process indeed. No judicial duty is laid on the government in discharge of the statutory duties. The only question to be examined is whether the statutory provisions have been complied with. If they are complied with, then, the court could say no more. In the present case the government did publish the proposal by a draft notification and also*



*considered the representations received. It was only thereafter, a decision was taken to exclude Ulhasnagar for the time being. That decision became final when it was notified under Section 3 (2). The court cannot sit in judgment over such decision. It cannot lay down norms for the exercise of that power. It cannot substitute even “its juster will for theirs”.*

*28. Equally, the rule issued by the High Court to hear the parties is untenable. The government in the exercise of its powers under Section 3 is not subject to the rules of natural justice any more than is legislature itself. The rules of natural justice are not applicable to legislative action plenary or subordinate. The procedural requirement of hearing is not implied in the exercise of legislative powers unless hearing was expressly prescribed. The High Court, therefore, was in error in directing the government to hear the parties who are not entitled to be heard under law.”*

**51** Likewise, in the instant case, the notifications issued by the Governor in exercise of powers under Chapter II of the Act, having its roots in Article 243Q (2) of the Constitution of India cannot be subjected to judicial review applying the principles of natural justice, requiring the passing of reasoned orders upon objections received in response to notification issued under Section 4 of the Act of 2007.

**52** Once the objections are invited, considered and notification issued, it is not for the constitutional Courts under Article 226 of the Constitution of India to sit in judgment over the



decision leading to issuance of the notification upgrading or constituting a larger Municipal Area.

**53** In view of the foregoing considerations, discussions and observations, this Court is of the opinion that the writ petitions are devoid of merit. The various notifications put to challenge in the instant proceedings are in accordance with the statutory requirements contained in Chapter II of the Act of 2007 and require no interference by this Court.

**54** The writ petitions are devoid of merit and are, accordingly, dismissed.

**(Madhuresh Prasad, J)**

**(Chakradhari Sharan Singh, J)**

**M.E.H./-**

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