

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20983 of 2021

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Mukesh Mani, Son of Divakant Choudhary, Resident of Village- Jhakhara,
P.S.- Sarairanjan, District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna, Bihar.
2. The Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna.
3. The Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
4. The Joint Secretary of Bihar Government, Patna, Bihar.
5. The District Magistrate, Samastipur.
6. The Block Development Officer, Sarairanjan, Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ram Kishor Chaudhary, Advocate
For the Respondent/s : Mr.Subhash Pd. Singh, G.A.-3

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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 : 28-02-2022

The notification dated 03.03.2021, issued by the Urban Development and Housing Department, Government of Bihar, is being assailed in the present writ application, whereby in exercise of the powers under Section 3(1)(a), 4, 5, 6 and 8 of the Bihar Municipal Act, 2007, (hereinafter referred to as “the Act”), Nagar Panchayat Sarairanjan has been constituted. The petitioner is a



resident of Village-Jhakhara which has also been included in the said Nagar Panchayat.

2. It is an admitted fact that before issuance of notification under Section 6 of the Act, intention to declare and constitute the said Nagar Panchayat was notified by the State Government under Section 4 of the Act. Section 5 of the Act permits inhabitants of the area proposed to be converted into an Urban Local Body to raise objection. The petitioner, admittedly, did not raise any objection before issuance of final notification under Section 6 of the Act.

3. In our view, in the light of the Division Bench Decision of this Court dated 17.01.2022 rendered in ***C.W.J.C. No.7446 of 2021 (Usha Devi Vs. The State of Bihar and another analogous matter)***, the petitioner cannot maintain this writ application, he having not raised any objection under Section 5 of the Act. Paragraphs 16 to 18 of the said decision read 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.

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."



4. Accordingly, this writ application is dismissed in the light of the decision of this Court in the case of **Usha Devi** (supra).

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

PNM

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