

MANU/BH/0027/1982

Equivalent Citation: AIR1982Pat108, 1982(30)BLJR215, 1982PLJR102

IN THE HIGH COURT OF PATNA

Civil Writ Jurn. Case No. 5309 of 1978

Decided On: 18.02.1982

Appellants: **Narain Sharan Sharma**

Vs.

Respondent: **Lalita Devi and Ors.**

Hon'ble Judges/Coram:

R.P. Sinha , B.P. Jha and C.S.S. Sinha , JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: Indu Shekhar Prasad Sinha and Sachidanand Sharma, Adv.

For Respondents/Defendant: K.P. Verma, Adv. General and B.P. Gupta, Adv.

JUDGMENT

R.P. Sinha, J.

1. This writ application was at first heard by a Division Bench of this Court consisting of B. P. Jha and Chaudhary Sia Saran Sinha, JJ. Since the Hon'ble Judges differed on the only point on which the writ petition was to be decided, it has been referred to me.

2. The petitioner has made a prayer in the writ application to quash Annexures 3, 4 and 6 to the application. The petitioner had filed an application before the District Judge of Patna under Section 242 (5) of the Patna Municipal Corporation Act, 1951 (hereinafter referred to as 'the Act') and an order of ad interim injunction against respondents 1 to 3 was passed. Thereafter the District Judge, Patna, by his order (Annexure 4) transferred the case to the file of Additional District Judge, Patna. In pursuance of the order of the District Judge, order of transfer was issued by the Registrar of Civil Court, Patna which is Annexure 3. After the transfer of the case to the file of First Additional District Judge, Patna, the petitioner raised an objection before him that he was not competent to hear the case. By order (Annexure 6) the learned Additional District Judge has overruled the objection. Hence the petitioner has filed the present writ application here.

3. The contention of learned counsel for the petitioner has been that the Additional District Judge, Patna, is not competent to try the case as, according to him, it is the District Judge, Patna, alone who under the provision of Section 242 (5) of the Act has been empowered to try the case. The contention on behalf of the respondents, on the other hand, has been that the application filed under Section 242 (5) of the Act before the District Judge can be disposed of by the Additional District Judge on transfer made to him by the District Judge.

4. The only question to be decided in this writ application is whether the District Judge alone or an Additional District Judge also is competent to dispose of on

transfer to him by the District Judge an application filed under Section 242 (5) of the Act. Choudhary Sia Saran Sinha, J., for the reasons stated in his judgment, has been of the view that the application filed by the petitioner challenging the competence of the Additional District Judge is without merit and should be dismissed, whereas B. P. Jha, J., on the contrary, is of the view that only the District Judge is vested with the power and jurisdiction to decide an application under Section 242 (5) of the Act and hence he has allowed the application and remanded the case.

5. Having gone through the judgments of my learned brethren and the authorities referred to in the judgments and after hearing learned counsel for the parties I am of the view that the provisions of Sections 242 (5), 502, 503 and 504 (5) of the Act, Section 8 of the Bengal, Agra and Assam Civil Courts Act, 1887 and Section 24 of the Civil Procedure Code have to be considered carefully in order to ascertain as to whether the District Judge alone or the Additional District Judge also is competent to dispose of the application under Section 242 (5) of the Act. The term 'District Judge' has not been defined in the Act although the term 'the Magistrate' has been defined under Section 4 (ww) of the Act as follows :--

" 'the Magistrate' includes the District Magistrate of Patna, the Magistrate-in-charge of Patna City and sadar sub-divisions and any other Magistrate subordinate to the District Magistrate to whom the Dist. Magistrate has made over any of his duties under this Act." The term 'District Judge' has been defined: in the General Clauses Act as follows :--

" 'District Judge' shall mean the Judge of a principal Civil Court of original jurisdiction"

6. I may point out that the Act with which we are concerned is Patna Municipal Corporation Act, 1951 (Bihar Act 13 of 1952). Section 1 (2) of the Act prescribes the territorial jurisdiction and lays down that it applies only to Patna. This Act was passed with a view to consolidate and amend the law relating to the municipal affairs of the town and suburbs of Patna including the areas administered by the Patna City Municipality and the Patna Administration Committee. So this Act applies only within the area stated above. Consequently under the heading 'Legal proceedings in general' Section 502 of the Act provides that the District Judge of Patna shall exercise all the powers and jurisdiction expressly conferred on or vested by the provisions of this Act. Under Section 503 thereafter the procedure is laid down for inquiry before Civil Courts. Under this section for the purposes of any appeal, inquiry or proceeding under the Act, the High Court and the District Judge, Patna, are to exercise all powers conferred on them by the Code of Civil Procedure, 1908 and they have to observe the procedure prescribed in the said enactment so far as the same is not inconsistent with the provisions of this Act. Now we may pass on to Section 544 of the Act where provisions have been made for filing election petitions. There also the District Judge of Patna is the Prescribed Authority before whom an application challenging the election for the reasons stated in the section is to be filed. In Sub-section (5) of Section 544 of the Act the term 'District Judge of Patna' has been extended to include any person for the time being exercising the powers of the District Judge of Patna.

7. In my opinion, the term 'District Judge of Patna' has been mentioned in the section of the Act with a view to prescribe the jurisdiction for the purposes of filing applications for injunction or election petition and not that only the District Judge of Patna alone can. dispose of those applications. I may repeat again that under Section 503 of the Act it has been laid down that for the purposes of any appeal, inquiry or

proceeding under the Act, the High Court and the District Judge, Patna may exercise all the powers conferred on them by the Code of Civil Procedure, 1908 and shall observe the procedure prescribed in the said enactment so far as it is not inconsistent with the provisions of the Act.

8. Now, the question is whether the Additional District Judge, who has undoubtedly co-extensive jurisdiction with that of the District Judge and both of them are equally competent to dispose of any matter except with this difference that the District Judge is the Judge of principal Civil Court of original jurisdiction where applications are to be filed, can dispose of such applications on transfer to him by the District Judge. Section 8 (1) and (2) of the Bengal, Agra and Assam Civil Courts Act, 1887 reads as follows :--

"8. Additional Judges.-- (1) When the business pending before any District Judge requires the aid of Additional Judges for its speedy disposal, the State Government may, having consulted the High Court, appoint such Additional Judges as may be requisite.

(2) Additional Judges so appointed shall discharge any of the functions of a District Judge which the District Judge may assign to them, and in the discharge of those functions, they shall exercise the same powers as the District Judge."

In my opinion, the District Judge both under the provisions of Section 24 of the Code of Civil Procedure and also under Sub-section (2) of Section 8 of the Bengal, Agra and Assam Civil Courts Act, 1887 can transfer such applications to Additional District Judges for disposal.

9 . A number of decisions have been referred to by learned counsel for the respondents in support of the fact that the Additional District Judge is competent to dispose of such matters which have been transferred to him by the District Judge. The decisions are (1) Mt. Daho Kuer v. Mt. Tural Dei MANU/BH/0243/1924; (2) Lila Mahton v. Sheo Govind Singh MANU/BH/0027/1956; (3) Bijan Kumar Bose v. Gouri Bose MANU/BH/0026/1975; (4) G. C. Bazfarua v. State of Assam AIR 1954 Ass 161 and (5) Ajit Kumar Bhunia v. Sm. Kanan Bala Devi, (MANU/WB/0154/1960 : AIR 1960 Cal 565). These decisions have been referred to and fully discussed in the judgment of Chaudhary Sia Saran Sinha, J. which S" need not repeat them over again and, in my opinion, he has rightly observed that although all those decisions relate to provisions of Acts other than the Patna Municipal Corporation Act, yet the principle of law enunciated therein can be taken for interpreting the term 'District Judge' in the instant case.

10 . Having examined the provision of law and the decisions and arguments submitted by learned counsel for the parties, I am of the view that an Additional District Judge is also competent to decide matters in respect of which application under Section 242 (5) of the Act is filed before the District Judge, as I do not find anything in the Act from which it can be concluded that the power of the District Judge for transferring such cases filed under Section 242 (5) of the Act has been restricted or there is anything from which it can be said that the District Judge and the District Judge alone, and not an Additional District Judge who is equally competent and has co-extensive jurisdiction, can decide the matter. I, therefore, agree with the view taken by my learned brother Chaudhary Sia Saran Sinha, J. The writ application is accordingly dismissed, but without costs.

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