

Mushe Khan and Anr Vs. State and Ors

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Court : Rajasthan Jodhpur

Decided On : Dec-11-2014

Appellant : Mushe Khan and Anr

Respondent : State and Ors

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR
D.B.Civil Writ Petition No.8157/2014 Mushe Khan & anr. V/s State of Rajasthan &
ors. Alongwith connected D.B.Civil Writ Petition Nos.:- 7127/2014 8004/2014
8064/2014 8074/2014 8085/2014 8092/2014 8117/2014 8119/2014 8130/2014
8133/2014 8134/2014 8135/2014 8136/2014 8138/2014 8140/2014 8145/2014
8152/2014 8155/2014 8156/2014 8158/2014 8159/2014 8165/2014 8167/2014
8168/2014 8174/2014 8182/2014 8184/2014 8186/2014 8201/2014 8207/2014
8209/2014 8210/2014 8211/2014 8222/2014 8233/2014 8238/2014 8253/2014
8256/2014 8258/2014 8262/2014 8265/2014 8266/2014 8274/2014 8306/2014
8307/2014 8315/2014 8316/2014 8317/2014 8319/2014 8321/2014 8331/2014
8343/2014 8344/2014 8348/2014 8358/2014 8359/2014 8363/2014 8371/2014
8372/2014 8373/2014 8374/2014 8375/2014 8378/2014 8379/2014 8380/2014
8394/2014 8395/2014 8399/2014 8400/2014 8401/2014 8402/2014 8403/2014
8410/2014 8411/2014 8412/2014 8418/2014 8419/2014 8421/2014 8422/2014
8423/2014 8424/2014 8426/2014 8427/2014 8428/2014 8430/2014 8433/2014
8435/2014 8436/2014 8441/2014 8443/2014 8444/2014 8446/2014 8448/2014
8449/20174 8450/2014 8451/2014 8452/2014 8454/2014 8455/2014 8456/2014

8457/2014 8458/2014 8459/2014 8460/2014 8462/2014 8463/2014 8467/2014
8468/2014 8469/2014 8471/2014 8472/2014 8473/2014 8474/2014 8476/2014
8483/2014 8487/2014 8492/2014 8498/2014 8503/2014 8504/2014 8509/2014
8510/2014 8511/2014 8513/2014 8514/2014 8515/2014 8517/2014 8521/2014
8525/2014 8526/2014 8529/2014 8533/2014 8534/2014 8535/2014 8536/2014
8538/2014 8540/2014 8541/2014 8545/2014 8548/2014 8549/2014 8550/2014
8551/2014 8552/2014 8554/2014 8555/2014 8557/2014 8558/2014 8559/2014
8560/2014 8562/2014 8563/2014 8566/2014 8567/2014 8568/2014 8569/2014
8570/2014 8573/2014 8574/2014 8575/2014 8577/2014 8578/2014 8579/2014
8580/2014 8581/2014 8582/2014 8583/2014 8587/2014 8589/2014 8591/2014
8593/2014 8637/2014 8640/2014 8653/2014 8655/2014 2 8663/2014 8668/2014
8670/2014 8671/2014 8672/2014 8673/2014 8675/2014 8677/2014 8678/2014
8679/2014 8692/2014 8704/2014 8705/2014 8706/2014 8709/2014 8713/2014
8722/2014 8724/2014 8725/2014 8726/2014 8728/2014 8729/2014 8731/2014
8732/2014 8733/2014 8735/2014 8753/2014 8755/2014 8758/2014 8769/2014
8775/2014 8777/2014 8784/2014 8785/2014 8788/2014 8797/2014 8800/2014
8803/2014 8804/2014 8824/2014 8831/2014 8838/2014 8841/2014 8843/2014
8854/2014 8855/2014 8876/2014 8882/2014 8886/2014 8893/2014 8894/2014
8896/2014 8897/2014 8905/2014 8911/2014 8915/2014 8917/2014 8918/2014
8919/2014 8942/2014 8946/2014 8949/2014 8955/2014 8956/2014 8957/2014
8959/2014 8971/2014 9001/2014 9003/2014 9017/2014 9048/2014 9182/2014
9068/2014 9156/2014 9316/2014 8236/2014 8166/2014 8194/2014 9291/2014

SAW16902014 11.12.2014 HONBLE ACTING CHIEF JUSTICE SUNIL AMBWANI
HONBLE MR.JUSTICE PRAKASH GUPTA Mr G.R. Punia, Mr M.R. Singhvi, Mr
Rajesh Joshi, Dr Nupur Bhati, Mr Mahesh Bora, Mr Hemant Chaudhary, Mr
Rakesh Arora, Mr Trilok Joshi, Mr O.P. Mehta, Mr Mohit Singhvi, Mr Ramesh
Purohit, Mr Sachin Acharya, Mr Sandeep Shah, Mr Rajesh Chaudhary, Mr
Kuldeep Mathur, Mr Kailash Khatri, Mr Bharat Devasi, Mr R.S. Chaudhary, Mr
Parikshit Nayak, Mr Sambhoo Singh, Mr Vineet Dave, Mr.M.A.Siddiqui,
Mr.Deepesh Beniwal, Mr.I.R.Choudhary, L.S.Jodha. for the petitioners. Mr N.M.
Lodha, Adovcate General assisted by Mr Rajesh Panwar, Addl. Advocate General
and Mr Vikas Balia, for the Rajasthan Election Commission. ...for the respondents

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1. We have heard learned counsel appearing for petitioners, learned Advocate General for the State of Rajasthan and Mr Vikas Balia for the Rajasthan State Election Commission. 3 2. In these writ petitions, filed before learned Single Judge, an interim order was passed as follows: In the meanwhile and until the next date, the State Government shall not finalise and notify the division of wards/constituencies of re-constituted/newly created Gram Panchayats and Panchayat Samities in question pursuant to the impugned Notification No..15(1) // /2014/1473 , dated 05.11.2014.. 3. We are informed that writ petitions, raising almost similar question, were filed in Jaipur Bench of the High Court, where the hearing was concluded and the judgment is reserved. There is no interim order passed by the Division Bench of this Court at Jaipur Bench.

4. When these matters came up for hearing before learned Single Judge, he was of the opinion that since the notifications, by which the exercise of delimitation of wards was being carried out, are legislative in character, and such matters, in view of the orders passed by the then Chief Justice on 28.2.2011, should be heard by a Division Bench; all the matters be listed before the Division Bench for hearing.

5. After hearing the learned counsel appearing for the parties at length, we reserve the judgment, to be pronounced at an early date.

6. Learned Advocate General and learned counsel appearing for the Rajasthan State Election Commission have prayed to vacate the 4 interim orders dated 20.11.2014, which has the effect of staying the entire election process for constitution of Gram Panchayats in the State of Rajasthan.

7. It is submitted by learned counsel appearing for the Rajasthan State Election Commission that five years' term prescribed under Article 243E of the Constitution of India, which provides that duration of Panchayats to be of five years from the date appointed for its first meeting, is coming to an end in the State of Rajasthan on 23rd January, 2015. There is very little time left to complete the statutory process of preparing electoral rolls, issuing notifications and fixing dates giving minimum prescribed period for nominations and for dates of polling for holding elections.

8. Learned Advocate General and learned counsel appearing for the Rajasthan State Election Commission have drawn the attention of the Court to Article 243-O of the Constitution of India, which has been incorporated in the Rajasthan Panchayati Raj Act, 1994 as Section 117 and which bars the Courts to interfere in electoral matters. It is submitted that Article 243-O is included in Part-IX of the Constitution of India providing for the Panchayats. The bar to interference by Courts includes (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under Article 243K and further provides in (b) that no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any Law made by the legislature of a State. Article 243-O of the Constitution of India provides as follows:- 243-O. Bar to interference by courts in electoral matters.- Notwithstanding anything in this Constitution,- (a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 243K, shall not be called in question in any court; (b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.. 9. Learned Advocate General states that in all the districts of Rajasthan except 2 or 3 districts, the notifications for delimitation of wards have been issued and that since elections are imminent and have to take place on or before 23rd January, 2015, this Court may vacate the interim orders, to allow the election process to be completed in accordance with the provisions of the Constitution of India.

10. Having considered the arguments advanced at the Bar and the objections, which have been raised by learned Advocate General and learned counsel appearing for the Rajasthan State Election Commission, we are of the view that interim orders which may have the effect on the Panchayat Elections for constitution of the Gram Panchayats and Panchayat Samitis should not be allowed to continue at this stage. We are not impressed with the arguments that the re-constitution of wards, carried out without following the statutory process and in which the orders on the objections raised by the petitioners have not been passed giving reasons and are affected by the malafides of the political leaders, is

sufficient ground to interfere with the subject Notifications. The Notifications for reconstitution of the wards/constituencies of the reconstituted/newly created Gram Panchayats and Panchayat Samitis has been carried in almost all the districts in the State of Rajasthan and the elections are imminent to be held in the entire State before 23rd January, 2015. It is thus not in public interest, to pass any order, which may have the effect of delaying and postponing the elections. It is also not permissible, for the Court, after the insertion of Article 243-O of the Constitution of India, to cause any interference in the process of the elections of Panchayats.

11. The interim orders passed by learned Single Judge are hereby vacated and all the stay applications are rejected. A copy of this order will be placed in all the connected files. (PRAKASH GUPTA), J.

(SUNIL AMBWANI), Actg. CJ.

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