

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.8918 of 2014

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M/s Nathmal Omkar Mal, Garment whole sale dealer, Ujjay Marker, Siwan through its proprietor Sudhansu Kumar Saraiya, S/o Late Omkar Mal Saraiya, New Market, P.S. Town, District – Siwan.

.... Petitioner/s

Versus

1. The State of Bihar, through District Magistrate, Siwan.
2. The Executive Officer, Municipal Council, Siwan.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. N.K. Agrawal, Sr. Advocate with
Mr. Vijay Anand
For the Respondent/s : Mr. Amaresh Kumar, AC to SC-15
For the Nagar Parishad, Siwan: Mr. Ravi Bhushan Verma

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 16-09-2015

Heard Mr. N.K. Agrawal, learned senior counsel appearing on behalf of the petitioner, learned counsel for the State and Mr. Ravi Bhushan Verma, learned counsel appearing for the Nagar Parishad, Siwan.

The petitioner is aggrieved by the notice of demand dated 24.1.2014, whereby the Executive Officer, Nagar Parishad, Siwan while charging the petitioner of encroaching on a public land has not only proceeded to demolish the encroachment but has also raised a demand of Rs.10,000/- on the petitioner by way of penalty for meeting the cost of such demolition.

Mr. Agrawal, learned senior counsel appearing on behalf of the petitioner while elaborating on the sequence of events,



has submitted that the plot in question bearing holding no.475 admeasuring 4 katha 11 dhurs with dimension of 117 feet from north to south and 64 feet from east to west was purchased by the grandmother of the petitioner as back as in the year 1945. It is the case of the petitioner that consequent upon the purchase that the drain in question was constructed by the ancestor of the petitioner on the purchased land, to facilitate the flow of rain/drain water. It is stated that subsequently the Municipality constructed other drains and connected the same with the drain so constructed by the petitioner's family and treated it to be the drain of the Municipality.

With reference to a notice present at Annexure-3 it is stated that an encroachment proceeding was initiated against the petitioner in the year 1984 and which was duly replied by the petitioner vide Annexure-2. With reference to the statement made in paragraphs 4 and 14 of the reply filed by the petitioner present at Annexure-2 it was submitted that not only the petitioner denied any construction on the public land but it is also clarified that the drain ran beneath the construction and within the purchased land of the petitioner.

Mr. Agrawal, referring to the order of the Land Reforms Deputy Collector, Siwan dated 2.4.1984 which forms part of Annexure-3 series submits that the proceedings were dropped. It



is submitted that since thereafter the right of the petitioner over the drain was never questioned by the Municipal authorities and it is almost after three decades that on 31.12.2013 the authorities of the Municipality demolished the facilitation provided by the petitioner over the drain. He submits that it is after carrying out the demolition that the demand notice in question was issued on 24.1.2014 and which has been questioned by the petitioner through the present writ petition filed on 15.4.2014.

It is contended that it is after the filing of the writ petition that the authorities of the Municipality woke up from the slumber to realise that the exercise has been carried out without giving any notice or opportunity of hearing to the petitioner and when vide letters dated 27.5.2014, 9.10.2014, 10.11.2014 and 15.7.2015 discussed in paragraph 11 of the counter affidavit and at Annexure-‘C’ that the orders were issued for measurement. It is the contention of Mr. Agrawal that this post-facto exercise carried out by the Municipality after carrying out the demolition and imposing penalty on its own reflects arbitrariness in the function and the illegality in the demand notice.

Mr. Ravi Bhushan Verma has appeared for the Municipality to contest the contention and to submit that since the constructions were found on the public land that the demolitions



having been carried out and which suffers from no infirmity. Mr Verma, however, even while making such statement relying upon the counter affidavit could not demonstrate as to whether any opportunity of hearing was provided to the petitioner before the exercise was carried out and whether the measurement was carried out in his presence.

I have heard learned counsel for the parties and perused the records.

In view of the uncontroverted submissions made by Mr. Agrawal regarding denial of hearing before the alleged act of demolition was carried out by the Municipality as also considering the post fact exercise undertaken by the Municipality to ascertain the factual position by carrying out measurement of the alleged encroachment in the backdrop of the stand taken by the petitioner also noted above, it would not detain this Court any further to hold that the notice bearing Memo no.255 dated 24.1.2014 issued by the Executive Officer, Nagar Parishad, Siwan present at Annexure-6 is *per se* illegal and is accordingly set aside. The matter is remitted back to the Executive Officer, Nagar Parishad, Siwan for a decision afresh in accordance with law and after giving an opportunity of hearing to the petitioner and also after carrying out fresh measurement after due notice and in presence of the petitioner. The

measurement report should bear the signature of the petitioner and/or his authorised representative and an advance notice of measurement should be served on the petitioner.

The writ petition is allowed with the observations/directions aforementioned.

The petitioner is permitted to pray for release of the iron grill which is stated to have been constructed over the drain as a preventive measure as also to facilitate movement and has been seized by the Municipality.

(Jyoti Saran, J)

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