

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10580 of 1998

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1. (a) Shashi Shekhar
(b) Ravi Shekhar
Both are sons of Late Ram Rekha Singh and are residents of Plot no. 745, Chitragupta Nagar, Patna
2. (a) Gyan Chandra Singh son of late Nawab Singh and husband of petitioner no. 2 (Madhuri Devi)
(b) Sunil Kumar Singh son of Gyan Chandra Singh
(c) Anil Kumar Singh son of Gyan Chandra Singh
All are residents of Plot no. 745, Chitragupta Nagar, Patrakar Nagar (old PS-Kankarbagh), Town and District-Patna, 800020.
- Petitioners

Versus

1. P.R.D.A. through its Vice-Chairman.
2. Vice Chairman, P.R.D.A, Maurya Lok Complex, Dak Bungalow Road, Patna.
3. The State of Bihar.
4. Patna Municipal Corporation, Patna through its Municipal Commissioner, Patna.
5. Municipal Commissioner, Patna Municipal Corporation, Maurya Lok, Patna.
- Respondent/s
- =====

Appearance :

For the Petitioner/s : Mr. Uma Shankar Prasad, Sr. Adv.
Mr. Kamla Kant Singh
Mr. Kamala Kant Tiwary
Mr. Shyama Nand Jha

For the Respondent/s : Mr. SC 9
Mr. Sanjay Prakash Verma
Mr. Hargovind Singh
Himkar
Kumari Amrita (GP-10)
Mr. Rajendra Pd Singh
Mr. Pawan Kumar Mishra
Mr. Rajesh Kumar AC to GP-10

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 20-04-2015

Heard learned counsel for the petitioners and
learned counsel for the Municipal Corporation.

In this case, petitioners are seeking a relief of
mandamus restraining the respondents from demolishing the
residential house and boundary wall of the petitioners, situated

in Plot no. 744 in Mohalla-Sadikpur Yogi, presently it is known as Chitragupta Nagar, Kankarbagh Police Station within Patna Town bearing Holding nos. 454/405, 736/ 455/1B.

As per the case of the petitioners that petitioner no. 1 purchased 2 katha of land whereas petitioner no. 2 purchased 1.5 kattha of land on 9th October 1969 through two sale deeds having private road of 10 feet in front of their building having total only six houses over the plot, being blind lane.

As per claim of the petitioners, they have constructed their respective houses after getting building map sanctioned by the Patna Improvement Trust in the year 1994, later on the Patna Improvement Trust was taken over by the Patna Regional Development Authority and as on today, it is Patna Municipal Corporation, as the P.R.D.A. has merged in it. Claim has been made by the petitioners that during 1995-97, the authority of Patna Municipal Corporation had put the red mark on the boundary wall and the building declaring encroachment, unauthorized construction, for demolition but it was never acted upon and later on, in the year 1998, again the employees of the P.R.D.A. put the red mark over the boundary wall and the building for demolition.

As per the claim of the petitioners, during the relevant period, as per clause 18.6 of the Building Byelaws, the



width in between two houses was required to be 2.6 meters which is less than 10 feet and has submitted that before putting the red mark on the boundary wall as well as building, no proceeding was ever initiated, petitioners were never given any hearing and the authority of Patna Municipal Corporation put the mark for the purposes of demolition and in support of the submission, reliance has been placed on judgment reported in 1997 BBCJ 733, 1997 BBCJ 734, para 12 and the order dated 13th September 1996 passed in Arun Kumar Mukharjee's case, on the strength of aforesaid judgment, the counsel for the petitioner submits that the action of the respondent putting red mark is *per se* illegal and they are required to be restrained from demolishing the structure.

The counsel for the Patna Municipal Corporation in the counter affidavit, only statement has been made that they have put the red mark in pursuance of the order passed in Arun Kumar Mukharjee's case except that there is no other materials made available in the counter affidavit. If the width of the road as per clause 18.6 at the relevant time was required to 2.6 meters which was taken into consideration while passing the map by the Patna Improvement Trust and later amendment will not be basis for the measurement of the width of the road should be more than 2.6 meters. If the authority is intending to bring the road more than 2.6 meters, the only

method is left to the authority to acquire the private land which is supported from the view taken in the aforesaid judgments.

As in the present case without proceeding the authorities have put the red mark over the boundary wall and the building cannot be said to be legal, valid and sustainable, and accordingly respondents are restrained.

The Patna Municipal Corporation, if so advised, may proceed with the matter and may pass order in accordance with law.

Accordingly, this petition is allowed with the aforesaid observation.

(Shivaji Pandey, J)

Mahesh/-

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