

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4264 of 2004

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Bishnu Kant Chaudhary, son of late Chandra Kant Chaudhary, resident of Ward no.16, Tirhut Colony, under Madhubani Town, P.S.+District-Madhubani, as the Manager of the Idol Sri Bajrangbali.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector of District (D.M.), Madhubani.
3. The Sub-Divisional Officer (Sadar), Madhubani-cum-President, Sanskrit Uchcha Vidyalaya, Madhubani.
4. The Secretary, Sanskrit Uchcha Vidyalaya, Ward no.16, Jaldhari Chowk, Madhubani, district-Madhubani.
5. The Municipal Commissioners, through the Executive Officer, Madhubani Municipality, Madhubani, District-Madhubani.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. T.N.Maitin, Sr.Advocate Mr. Shashi Nath Jha, Advocate
For the Respondent nos.1to3 :		Mr. Sayed Arshad Alam, SC-3 Mr.Mahtab Alam, AC to SC-3
For the Respondent no.4	:	Mr.Satish Chandra Jha, Advocate
For the Respondent no.5	:	Mr. Purushottam Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA

ORAL JUDGMENT

Date: 31-07-2015

Heard the parties.

The petitioner has approached this Court in the present proceeding filed under Article 226 of the Constitution of India assailing the validity and correctness of the notice/direction dated 11.03.2004 (Annexure-5) issued by the Executive Officer, Madhubani Municipality, Madhubani (respondent no.5), whereby the petitioner was directed to remove the alleged encroachment from a plot of land bearing Khesra No.7537 area two kathas fifteen dhurs allegedly belonging to the respondent no.4.

It is a common ground of the parties that, before issuance of the impugned notice/direction dated 11.03.2004, no regular proceeding was initiated either by the respondent no.5 or any other competent authority under any provisions of law, and without giving

any opportunity of hearing to the petitioner, the impugned notice/direction has been issued to him for removal of alleged encroachment allegedly made by him.

Learned senior counsel appearing on behalf of the petitioner submits that the lands in question is a private land belonging to the writ petitioner, whereas learned counsel appearing on behalf of the respondent no.4 submits that the lands belonging to the Sanskrit High School, Jaldhari Chowk, Madhubani.

In view of the rival claims, this Court is of the opinion that, before issuing the impugned notice/direction, an opportunity of hearing ought to have been given by the respondent no.5, but, admittedly, that has not been done in the present case. Hence, there has been violation of the principles of natural justice.

For the reasons recorded above, particularly on the ground of violation of the principles of natural justice, the impugned notice/direction dated 11.03.2004 (Annexure-5) issued by the Executive Officer, Madhubani Municipality, Madhubani (respondent no.5) is hereby quashed and set aside with a liberty to him or any other competent authority to start a fresh proceeding with respect to the lands in question for passing an appropriate order in accordance with law.

It is clarified that, before passing any final order with respect to the lands in question, an opportunity of hearing must be given by the competent authority to all concerned including the writ petitioner and the respondent no.4.

The present writ petition stands allowed to the extent indicated above.

Arvind/-

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(Birendra Prasad Verma, J)