

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18874 of 2010

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Md. Parvez Alam, S/O Late Md. Idrish, R/O Kakarwa Basti, Ward No. 29,
P.S. and Distt.- Araria

.... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Secretary Urban Development and Housing Department,
Government of Bihar, Patna
3. The District Magistrate, Araria
4. The Principal Secretary Road Construction Department, Government of
Bihar, Patna
5. The Municipal Council, Araria through its Executive Officer
6. Smt. Afsana Praween, Chief Councillor-Cum-Chairperson Empowered
Standing Committee, Municipal Council, Araria
7. Mr. Paras Kumar Bhagat, Deputy Chief Councillor-Cum-Vice
Chairperson Empowered Standing Committee, Municipal Council, Araria
8. Mr. Resham Lal Paswan, Councillor of Ward No. 15, Municipal Council,
Araria
9. Smt. Hasina Khatoon Councillor of Ward No. 24, Municipal Council,
Araria
10. Sri Azim Akhtar, Councillor of Ward No. 25, Municipal Council, Araria
11. Mr. Anil Kumar, S/O not known to the petitioner at Present Executive
Officer, Municipal Council, Araria

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Murari Pd.Sinha
For the Respondent no.1to4: Mr. Rajesh Ranjan, AC to SC-31
For the Respondent no.5 : Mr.Sanjay Kumar Sharma

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

2 23-03-2015

Heard the parties.

The matter at issue is encroachment made by the Municipal Council (Nagar Parishad), Araria over the public land belonging to the Road Construction Department, Government of Bihar, which were acquired for widening of public Road in Araria town and consequential prayer of petitioner for removal of such encroachment.

The petitioner has filed the present writ petition seeking a declaration that the construction of shops made by the Nagar

Parishad, Araria over the portion of the land situate in front of Sadar Hospital, Araria is illegal and void. He further seeks a direction to the official respondents for removal of the aforesaid encroachment from the aforesaid public land.

A counter affidavit has been filed on behalf of the respondent no.4, the Principal Secretary, Department of Road Construction, Government of Bihar, Patna, which has been duly sworn by the Executive Engineer, Road Construction Department, Road Division, Araria. The paragraph nos.5, 6, 12 and 20 of the aforesaid counter affidavit are relevant for adjudication of the issues raised in the present writ petition, and are, therefore, reproduced hereinbelow :-

“5. That part of Purnia, Araria, Forbesganj Road i.e. N.H. 57-A four lane, now under the control of NHAI. It passes by side of Araria Market. Its location is Araria Zeromile to Chandni Chowk i.e. under N.H. 57, now under the control of Executive Engineer, N.H. Division, Araria. This part of the road now lies in the jurisdiction of N.H. Division, Araria.

6. That in front of Sadar Hospital Araria, Nagar Parishad Araria has constructed shops outside the western boundary without obtaining no objection certificate from competent authority of the Road Construction Department encroaching land of the aforesaid road which was acquired many years ago during the construction of road. The land was in full utilization of public and was meant for widening of road.

X	X	X	X
X	X	X	X

12. That in reply to the statements made in Para-2(A) of the writ petition is concerned, it is submitted that the construction of shops by Nagar Parishad, Araria is illegal as the land in question does not belong to Nagar Parishad,

Araria.

X	X	X	X
X	X	X	X

20. That in reply to the statements made in para-6 of the writ petition is concerned, it is submitted that the Nagar Parishad, Araria forcibly constructing double storied shops in from to Sadar Hospital, Araria outside the western boundary wall of Hospital on the land bearing C.S.Plot No.5658 and 5659 (P) corresponding to R.S.Plot No.10206 which are the lands of the Road Construction Department, Bihar. The C.S.Plot No.5658 and 5659(P) were acquired under declaration no.1947 dated 05.02.2060 Page No.419 Part-II of Bihar Gazette later on it was also notified in District Gazette on. The lands were acquired for the purpose of improvement of Purnea, Araria, Forbisganj Road. The western portion of R.S. Plot No.10206 (Part) is also the acquired land for the purpose of Road vide land acquisition case no.169/56-57.

In this way Araria Nagar Parishad has got no right and concern with the aforesaid land on which shop is constructed forcibly.

Against this construction the concerned Assistant Engineer, Road Sub-Division Araria No.-II wrote a letter to Circle Officer, Araria vide letter no.236 dated 23.09.2009 regarding the alleged construction of shop by Nagar Parishad, Araria and requested to vacate the land from encroachment.

Executive Engineer R.C.D., Road Division, Araria wrote a letter to the same Circle Officer, Araria vide letter no.989 dated 25.09.2009 and requested to vacate the land from encroachment, copy of the letter was given to District Magistrate, Araria.

Executive Engineer R.C.D., Road Division, Araria wrote a letter to the Circle officer, Araria vide letter no.1063 WE dated 11.08.2010 and copy of this letter was given concerned officer of District Administration and higher officer of Road Construction

Department.

Executive Engineer, Road Division, Araria wrote a letter to the Sub-Divisional Magistrate, Araria and requested for taking necessary steps regarding the release of land from encroachment copy of this letter was given to Executive Officer, Nagar Parishad, Araria, Circle Officer, Araria and District Magistrate, Araria.

Lastly matter was reported in the department vide letter no.1383 WE dated 29.10.2010, Superintending Engineer, R.C.D., Road Circle, Purnea ordered Ex-Engineer Road Division, Araria vide letter no.1572 dated 08.11.2010 to file a case under land encroachment Act, 1956. In compliance of letter no.1572 dated 08.11.2010 a case was filed by Assistant Engineer Road Sub-Division, Araria No.-II in office of Circle Officer, Araria. (Photo copies of Gazettes and letter are annexure A to I).”

(Emphasis added by me)

Learned State counsel appearing on behalf of the respondent nos.1 to 4, by referring to the averments made in the aforesaid counter affidavit, submits that the respondent Nagar Parishad, Araria has illegally encroached upon the public land belonging to the Road Construction Department for widening of the public road and construction made thereon is illegal and is fit to be demolished.

A counter affidavit has been filed on behalf of the respondent no.5 – the Municipal Council (Nagar Parishad), Araria, duly sworn by its Executive Officer. In the aforesaid counter affidavit, it has nowhere been stated that the lands in question bearing C.S.Plot No.5658 and 5659 (part) corresponding to R.S. Plot no.10206 (in short ‘lands in question’) situate in front of Sadar Hospital, Araria belong to Nagar Parishad, Araria. Rather



from the conjoint reading of averments made in the aforesaid counter affidavit, it is apparent that the statements made by the writ petitioner as also the respondent no.4 that the lands in question belongs to the Road Construction Department has not at all been disputed. However, learned counsel appearing on behalf of the respondent no.5 submits that the petitioner has no locus standi to file the present writ petition with respect to the lands in question, as same does not belong to him. According to him, the construction made by the Nagar Parishad, Araria over the lands in question was from its own fund after approval of the competent authority of the Municipal Council (Nagar Parishad), Araria. Yet, the learned counsel for the respondent no.5 has not been able to dislodge the claims of the petitioner as also the respondent no.4 that the Nagar Parishad, Araria is encroacher over the public land acquired for widening of public road in the township of Araria.

After having heard the parties and on consideration of the materials available on record, it is apparent that there is no dispute that the lands in question belong to the Road Construction Department, Government of Bihar and it was acquired for widening of the public road. It is further apparent that the lands in question is situate near the Sadar Hospital Araria within the township of Araria, the headquarter of the District. According to the respondent no.4, the public road in the town of Araria is required to be widened. The respondent no.5 has not brought any material/document on record to show that the lands in question was ever allotted to the Municipal Council, Araria by any competent authority of the respondent State. In the counter affidavit filed on behalf of the respondent no.5 also no document has been brought on record to show that the respondent Municipal

Council (Nagar Parishad), Araria is having any valid title and possession over the lands in question. Evidently, the respondent no.5 is encroacher over the lands in question, which is meant for the use of common people and was acquired for widening of public road.

In above view of the matter, any construction made by the Municipal Council, Araria (respondent no.5) over the lands in question has to be held illegal and void. Since the respondent no.5 is not claiming right, title and valid possession over the lands in question on the basis of any lawful document, therefore, there is no necessity for starting any encroachment proceeding for removal of the aforesaid encroachment. In fact, in view of the admission made by the respondent no.5, noticed above, simply steps are required to be taken by the respondent District Magistrate and other functionaries of the State of Bihar for removal of the aforesaid encroachment made by the Municipal Council, Araria over the lands in question. The illegal constructions made over the same are required to be demolished as early as possible and thereafter lands in question is required to be restored to the Road Construction Department for widening of the public road.

It is really shocking and surprising that the civic body like the respondent no.5, which is supposed to provide civic amenities as also wide public road to the people of Araria town, which is not only the headquarter of the district, but where District judgeship has also been recently established and is now functional, has itself encroached upon the public land in question and has made illegal construction over the same, creating obstruction in free flow of traffic in the town of Araria and marring the prospect of widening of public road in future. Impugned action of the

respondent no.5 cannot be countenanced from any standard.

For the reasons recorded above, let the entire exercise for removal of the encroachment and demolition of illegal structure made by the respondent no.5 over the lands in question be carried out by the respondent District Magistrate, Araria with the help of police force and other functionaries of the State at an early date preferably within a period of three months from the date of receipt/production of a copy of the present order either by the writ petitioner or by any of the respondents.

The writ petition stands allowed to the extent indicated with the observations and directions made above. However, the parties are left to bear their own costs.

(Birendra Prasad Verma, J)

Arvind/-

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