

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13286 of 2015

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1. Ghulam Sarwar Khan, Son of Late Shamshi Ahmad Khan.
 2. Tufail Ahmad Khan, Son of Late Shamshi Ahmad Khan.
 3. Wasi Ahmad Khan, Son of Late Shamsher Ahmad Khan.
 4. Farhan Khan, Son of Late Shafi Ahmad Khan.

Petitioner no. 2 to 4 are represented through petitioner no.1 as holder of power of attorney on their behalf, R/o Muradpur Delha, Gusulkhan Road, P.S. Civil Lines, District - Gaya.

5. Sajid Parwez, Son of Sri Md. Siddique Alam, R/o B – 3, Enayat Colony Gaya.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Urban Development Department, Government of Bihar.
2. The Gaya Municipal Corporation, Gaya through Municipal Committee.
3. The Municipal Commissioner, Gaya Municipal Corporation, Gaya.
4. The Executive Engineer, Gaya Municipal Corporation, Gaya.
5. The Police Station House Officer, Civil Line, Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Raghib Ahsan, Sr. Adv. with Mr. S.M. Shabbir Alam
For the Respondent-State	:	Mr. Ashok Kumar, SC-11
For Gaya Municipal Corporation:	:	Mr. Ravindra Kr. Priyadarshi

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

4 23-09-2015 Heard Mr. Raghib Ahsan, learned senior counsel appearing on behalf of the petitioners, learned counsel for the State and Mr. Ravindra Kumar Priyadarshi, learned counsel appearing for the Gaya Municipal Corporation.

The petitioners are aggrieved by the notice dated 11.12.2014 present at Annexure-1 to the writ petition whereby the petitioners have been directed to respond to the charges of having deviated from the sanctioned plan. The show cause has been issued in a proceedings registered as Unauthorized



Construction Case No.103/25 of 2014. The petitioners are also aggrieved by the order dated 21.5.2015 of the Municipal Commissioner, Gaya present at Annexure-2 whereunder the petitioners have been directed to demolish the unauthorized construction.

The writ petition was filed complaining that the proceedings have been held behind their back; no measurement was taken in the presence of the petitioners and that they have not been given sufficient opportunity to defend their case.

A counter affidavit has been filed on behalf of the Corporation refuting the claim of the petitioners while enclosing certain notices to demonstrate that the petitioners had knowledge of the proceedings and have deliberately not participated.

In the entire dispute one startling feature that I have noticed upon production of the record is that there is no formal adjudication of the matter. Although a measurement report is present at Annexure-8 to the writ petition but Mr. Ahsan, learned senior counsel appearing for the petitioners disputes the same, inter alia, on grounds that it was not done in the presence of the petitioners. He further submits that although the map has been sanctioned for ground floor + three floors but they have yet been charged of unauthorized construction on the third floor.

Be that as it may, the fact remains that there is a



charge by the petitioners that the entire proceedings have been conducted behind their back which is being refuted but there is no unimpeachable document on record which would support the service of notice on the petitioners. Although Mr. Priyadarshi refers to some notices to canvass that it was served on the representatives of the petitioners but according to Mr. Ahsan, the notice has not been served on the petitioners.

In the disputed circumstances and in absence of any adjudication on the issue I deem it fit and proper to remand the matter back to the Municipal Commissioner, Municipal Corporation, Gaya for its reconsideration and disposal afresh in accordance with law.

Let a fresh measurement be carried out by a team of officials consisting of Engineers and Amin of the Corporation in the presence of the petitioners on 5.10.2015 at and around 11 A.M. The petitioners or their authorised representatives should be present and no objection on any ground would be entertained in case they are not present on the said date when the measurement is carried out. The measurement report should bear the signature of the petitioners or their authorised representative. In case the measurement report confirms that the petitioners have deviated from the sanction map then let a show cause be served upon them pointing out the deviations. The petitioners

would respond to the notice within two weeks of its service and whereupon the matter would be disposed of by the Municipal Commissioner after opportunity of personal hearing to the petitioners.

It is made very clear that the petitioners would be vigilant in the matter for this order being passed in presence of the counsel for the parties is sufficient notice to them and any objection of ex-parte disposal would not be entertained.

In view of the order so passed the notice dated 11.12.2014 and 21.5.2015 impugned at Annexures-1 and 2 respectively have become meaningless and are accordingly set aside.

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

Let status-quo as existing today in between the parties be maintained until disposal of the matter.

(Jyoti Saran, J)

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