

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.399 of 2013

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Chandra Bhushan Prasad Sharma Son of Sri Trijugi Narayan Singh, resident
of Mohalla- Bus Stand, Rajgir, Police Station- Rajgir, District- Nalanda
..... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Nalanda at Biharsharif
3. Executive Engineer, P.W.D., Nalanda at Bihar Sharif
4. Sub-Divisional Officer, P.W.D., Sub Division-Rajgir, Near Bus Stand
Rajgir, Police Station- Rajgir, District- Nalanda
..... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manish Kumar No-2, Advocate
For the Respondent/s : Mr. Dhananjay Kumar, AC to GP 16

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

6 18-05-2015

Heard the parties.

2. The petitioner has filed the present writ petition seeking a direction to the respondent-State and its authorities preventing them from constructing building and boundary wall in front of the house and further for a direction to remove the structure or any building already constructed in front of western wall of the house and land of the petitioner.

3. It has been admitted in paragraph 4 of the writ petition that just adjacent west of the land of the petitioner, PWD road is existing since long, which has further been widened by acquiring 18 decimals of land of survey plot no. 2421 from western part.

4. In the whole writ petition, it has nowhere been asserted that any approachable road of the petitioner has been encroached upon by the respondents by making any construction over the public land belonging to the State of Bihar or which was acquired after following procedure prescribed under the law.

5. The matter has been contested by the respondents by filing a detailed counter affidavit on behalf of the respondent nos. 3 and 4. The claim of the petitioner has been disputed by making averments in different paragraphs of the counter affidavit. In paragraphs 10 and 12 it has been asserted that, in fact, it is the petitioner besides other anti social elements who are trying to encroach the public land. The petitioner is said to be running a wine/liquor shop. Paragraphs 10, 11, 12 and 13 of the counter affidavit are relevant, which are reproduced hereinbelow:

“Para 10 : That since the Godown had lost its applicability and there was encroachment by the antisocial elements upon acquired land of the government and the petitioner who runs a liquor shop also tried to encroach a part of this acquired land for running his wine/liquor shop. Due to wine/liquor shop there remains gathering of anti-social elements besides the office and they urinate and litter here and there making it difficult to sit in the office.

Para 11 : That request vide letter no. 49 dated 10.04.2012 has been made by the Sub Divisional Officer, Road Sub Division, Rajgir to Circle Officer, Rajgir for proper measurement of entire acquired land.

Para 12 : That Rajgir is an international tourist place and visit by the higher official for inspection is off and on therefore for the purpose of removing the encroachment made by antisocial element, from the enquired land and for safety of official equipment, it was decided to construct 5' high pipe railing boundary and by which petitioner could not be effected either for lighting or anyhow, rather a passage of 10' width is being given from the rest acquired land of for the easement.

Para 13 : That from the above said fact it is evident that this writ petition has been brought by the petitioner only with an effort to continue to encroachment to run his wine/liquor shop therefore prayer made in this writ application is not considerable and liable to be dismissed.”

6. The facts stated in the counter affidavit have not been controverted by the petitioner by filing any rejoinder affidavit though copy of the aforesaid counter affidavit was served upon the learned counsel for the petitioner way back on 25.02.2013.

7. In view of the assertions made on behalf of the respondents in the counter affidavit, which have been reproduced hereinabove, the prayer made on behalf of the petitioner is completely misconceived and cannot be countenanced.

8. In the result, the writ petition has to fail and is, accordingly, dismissed.

(Birendra Prasad Verma, J)

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