

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1341 of 2015

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Pramila Achal wife of Pramod Narain Achal, resident of Plot No. 734, Rajbanshi, Nagar, P.S. Shastri Nagar, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Building Construction Department, Govt. of Bihar, Patna.
2. Principal Secretary, Building Construction Department, Govt. of Bihar, Patna.
3. Under Secretary, Building Construction Department, Govt. of Bihar, Patna.
4. Joint Secretary, Building Construction Department, Govt. of Bihar, Patna.
5. Bihar State Building Construction Corporation Ltd. Patna through its Chairman.
6. Chairman, Bihar State Building Construction Corporation Ltd. Patna.
7. Managing Director, Bihar State Building Construction Corporation Ltd. Patna.
8. Superintendent Engineer, South Bihar Circle, Patna.
9. Executive Engineer, South Bihar Circle, Patna.

.... Respondent/s

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Appearance:

For the Petitioner/s	:	Mr. Satyabir Bharti, Advocate Mr. Harsh Singh, Advocate
For the Respondent nos. 1 to 5:	:	Mr. Gautam Bose, Sr. Advocate Mr. Ajay Kumar, A.C. to A.A.G.-8 Mr. S.M. Ghosh A.C. to A.A.G.-8
For the Respondent nos. 6 & 7:	:	Mr. Tej Bahadur Singh, Sr. Advocate Mr. Shashi Priya Pathak, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 09-03-2015

Heard Mr. Satyabir Bharti, learned counsel appearing on behalf of the petitioner, Mr. Gautam Bose, learned Additional Advocate General No. 8 for the State and Mr. Tej Bahadur Singh, learned senior counsel appearing for the Bihar State Building Construction Corporation Limited and its authorities.

With the consent of the parties the writ petition is being disposed of at the stage of admission itself.

The writ petition was filed praying for the following reliefs:

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- (i) Issuance of an appropriate writ, order or direction in the nature of mandamus commanding the Respondents to remove the boundary wall blocking the entrance to the main gate of petitioner's residential house and provide unobstructed access to the main mettalled road as ordained in the Govt. instruction dated 29.05.1986 as well as license deed dated 20.02.1990 entered into between the Govt. and petitioner's late husband pursuant thereto.
 - (ii) Issuance of an appropriate writ, order or direction in the nature of mandamus commanding the Respondents to act in terms of the license dated 20.02.1990 issued by the Government of Bihar (Building Construction Department) through the Executive Engineer (P.W.D.) Construction Division No. 1, Patna in favour of Petitioner's late husband, which allowed him, his family members, his heirs and assignees, access to the main road through Plot No. 735, Khata No. 243 situated at Rajbanshi Nagar, PS Shastri Nagar, District Patna being a plot of land belonging to the State Government (Building Construction Department).
 - (iii) Issuance of an appropriate writ, order or direction in the nature of mandamus restraining the Respondents from creating any



hindrance in ingress and egress from petitioner's residential house and consequential access to the main road from the eastern side of petitioner's residential house in future.

- (iv) Issuance of an appropriate writ, order or direction restoring status quo ante by directing the Respondents to remove the boundary wall constructed in front of the main gate of the petitioner's house and to allow unhindered ingress and egress therefrom the house and peaceful access to the main road during the pendency of the writ application.
- (v) Issuance of such other appropriate writ(s), order(s) and/or direction(s) as Your Lordships may deem fit and proper in the facts and circumstances of the instant case.

Fact of the case briefly stated is that the husband of the petitioner purchased a plot bearing no. 734 of khata no. 243 situated in Rajbanshi Nagar in the town and district of Patna vide registered sale deed dated 25.5.1979. The plot of land and the boundary description mentioned at paragraph-5 of the writ petition demonstrates that whereas there was government land existing on the eastern and northern side of the plot bearing Plot No. 735 and Plot No. 731 respectively, the western side of the plot was owned by Smt. Rama



Devi bearing Plot No. 734 and the southern side was owned by Krishna Singh. Since the plot was landlocked hence the husband of the petitioner who was serving as Electrical Executive Engineer with the erstwhile Bihar State Electricity Board requested the Building Construction Department for grant of passage and which request of the petitioner was duly forwarded by the Superintending Engineer to the Chief Engineer, Building Construction Department alongwith the estimate and the map prepared by the Executive Engineer vide letter bearing Memo No. 1949 dated 14.9.1985, a copy of which is placed at Annexure-1 to the writ petition. The husband of the petitioner was required to deposit a sum of Rs. 7,100/- for grant of easementary rights which was deposited by him. The formalities completed, the Joint Secretary, Building Construction Department vide his letter dated 29.5.1986 addressed to the Superintending Engineer, South Bihar Circle bearing Memo No. 3305 dated 6.6.1986 (Annexure-2) communicated the government decision regarding grant of easementary rights to the husband of the petitioner without conferring any title on him and which remained with the government. The Superintending Engineer was directed to prepare a formal agreement in this regard. The agreement so drafted was executed between the husband of the petitioner and the department as is manifest from the letter of the Executive Engineer bearing Memo No. 290 dated



20.2.1990, a copy of which is placed at Annexure-3 which also encloses the agreement entered into between the government and the husband of the petitioner. The deed of license which is enclosed with the letter grants perpetual easementary rights to the petitioner as well as his legal heirs and assigns in the light of the government decision bearing letter no. 2964 dated 29.4.1986, a copy of which is placed at Annexure-2 to the writ petition. The deed of license so executed also accompanies a map which shows that the passage granted to the petitioner was in the form of a *kacha rasta* going south from the entrance of the house of the petitioner connecting the P.W.D. metalled road. On the northern side of the house of the petitioner lay the property of the State Financial Corporation which is clearly demarcated in the map but the ingress and egress granted to the petitioner was through the southern portion of the property belonging to the government as it was the shortest route to reach the main road. It is not in dispute that following the deed of license granted by the State Government in its Building Construction Department pursuant to the decision taken at the level of the State Government on 29.5.1986 and followed by the agreement dated 20.2.1990 the petitioner and her family continued to enjoy the easementary rights so granted except that for a brief movement, obstructions were created by the officials of the Building Construction Department which upon



protest by the husband of the petitioner vide representations placed at Annexure-4 series were removed under the directions issued by the Building Construction Department present at Annexure-5 series. These obstructions also took place only until 1997 as is manifest from the documents present at Annexure-4 series and 5-series. Since thereafter, it is the contention of the petitioner that they were never put to any obstruction from using the easementary rights so granted to them by the State Government.

The complaint of the petitioner is that certain constructions began on the plot bearing No. 735 belonging to the Building Construction Department by the Bihar State Building Corporation Limited in December 2014 and during which process her main gate situated on the eastern side of the plot was blocked by erection of a wall thus completely stopping her passage to the main road. The petitioner drew the attention of the Principal Secretary, Building Construction Department on 8.9.2014 when such constructions had started but to no avail and it is when her main gate was completely blocked by the Corporation authorities that this writ petition was filed.

Whereas the entire reliance of Mr. Bharti, learned counsel appearing on behalf of the petitioner is on the agreement executed by the State Government which continues to be in force, such argument is sought to be contested by Mr. Bose and Mr. Singh on the anvil that



there is an alternative route available to the petitioner passing through the rear of the State Financial Corporation Godown and which is accepted even by the petitioner in her representation addressed to the Principal Secretary present at Annexure-6 more particularly paragraph-6 thereof. It is the contention of learned counsel appearing on behalf of the respondents that since there is already an alternative route available to the petitioner, she cannot rely upon an unregistered document to enforce any right. It is further the contention of learned counsel appearing on behalf of the respondents that since it was on a premise that there was no alternative route available to the petitioner which led to the execution of the agreement, hence in view of the acceptance by the petitioner to the alternative route available to her, she can have no grievance. It has also been contended by Mr. Bose, learned A.A.G.-8 that the agreement was not executed by a competent authority and thus cannot be enforced. It is contested by counsel for the respondents that since the constructions are already underway hence this Court may refrain from issuing any stoppage to the constructions and that upon completion of the construction, the petitioner may approach the Building Construction Department for redressal of her grievance. It was lastly contended by learned counsel for the respondents relying upon the provisions of Section 17 of the Registration Act that since the agreement has not been registered

hence the petitioner cannot draw any advantage on the basis of an unregistered document.

Rebutting the arguments of learned counsel for the respondents it is argued by Mr. Bharti that here is a case where an easementary right is granted to the petitioner by the positive act of the State Government and thus even if there is an alternative route available that would not dilute the terms and conditions of the contract as entered into between the parties which gives right of passage in perpetuity.

Learned counsel in support of his submissions has relied upon a judgment of the Supreme Court reported in **(2006) 5 SCC 545 (Hero Vinoth vs. Seshammal)** more particularly paragraph- 28 and 29 thereof.

I have heard learned counsel for the parties and have perused the materials on record.

The issues which fall for consideration before this Court is;

- (a) Whether the agreement present at Annexure-3 is following a decision of the State Government and can be relied upon by the petitioner to enforce the right flowing therefrom and/or;
- (b) Whether the government can resile from the undertaking given thereunder and/or;
- (c) Whether an alternative route as accepted by the petitioner in any manner would dilute her right

under the agreement and/or;

- (d) Whether the agreement requires compulsory registration under Section 17 of the Act.

As I have discussed earlier the agreement is not a surreptitious act which has been privately carried out rather is a conscious decision of the State Government in its Building Construction Department. The decision to formalize an agreement regarding grant of easementary rights to the husband of the petitioner and his legal heirs is a well considered decision consciously taken at the level of the State Government as is manifest from the documents present at Annexure-1, 2 and 3. Annexure-1 is a letter dated 14.9.1985 bearing recommendation for grant of easementary rights to the husband of the petitioner from his residence to the main road and also refers to preparation of an estimate and map upon deposit of Rs. 7100/- for grant of the easementary rights by the husband of the petitioner. It is obvious that since this part was complied that a formal decision was taken at the level of the State Government communicated by the Joint Secretary in his letter bearing no. 2964 dated 29.5.1986 (Annexure-2) circulated vide memo no. 3305 dated 6.6.1986. The decision of the government regarding grant of easementary rights to the husband of the petitioner and his successors / legal heirs has been communicated to the Superintending Engineer



while making it clear that it would confer no ownership right on the petitioner which title would remain exclusively with the State Government. In fact the Joint Secretary while communicating the decision of the State Government in its Building Construction Department also directs the Superintending Engineer to complete the formalities by executing an agreement and which was followed up as is manifest from the letter of the Executive Engineer bearing Memo No. 209 dated 20.2.1990 (Annexure-3).

As I have already discussed the letter encloses the copy of the Licence granting exclusive easementary rights to the husband of the petitioner and his legal heirs and which grant is a grant in perpetuity until the conditions to the same stands breached by the husband of the petitioner or his legal heirs. The passage granted is clearly demarcated in the map which forms part of the license deed. The easementary rights granted to the husband of the petitioner and his legal heirs at the level of the State Government as back as in 1986 was sought to be interfered after 28 years by the government itself by blocking her outlet connecting the main road and it is in such circumstances that the petitioner is before this Court.

It has been rightly contested by Mr. Bharti that the right conferred on the petitioner is through a positive act of grant and not through necessity, meaning thereby that the easementary right granted



to the petitioner which has translated into an agreement and is existing since last 28 years can not be interfered with by the respondents. Since Plot No. 735 through which such easementary rights had been granted, belongs to the Government, they surely are at liberty to carry on any constructions they prefer but certainly cannot interfere with the grant given to the petitioner under the Licence. Though a bogey of registration has been raised by learned counsel for the respondents in an attempt to overcome the agreement of last 28 years and even when the State Government never doubted the agreement or put it to question before any forum but even such argument of learned counsel for the respondents has no legs to stand in view of the clear stipulation provided under Section 90 of the Registration Act which exempts certain documents executed by or on behalf of the Government from compulsory registration rather in its sub-section (2) upholds such agreement under deemed registration.

An alternative route available through the hind side of the property belonging to the State Financial Corporation cannot be a reason for the State Government to interfere with the rights of the petitioner more particularly where there is nothing on record to demonstrate that the so called passage behind the premises of the State Financial Corporation is a public road. On the contrary the map which is a part of the agreement at Annexure-3 pointedly shows that



the passage on the rear of the State Financial Corporation Godown is bounded by a boundary. Thus even though the petitioner may have been using such passage, it does not bestow any legal right on the petitioner to use the same rather she would always be at mercy of the Corporation authorities. It is indeed taking into consideration such aspect of the matter that the State Government consciously granted such easementary rights to the husband of the petitioner for had there been a public road already existing, there was no occasion for the State Government to grant such easementary rights.

My discussions on the issues formulated would answer the argument advanced on behalf of the respondents and I would not detain myself any further to hold that the construction of the boundary wall on the gate of the petitioner is wholly illegal and should be removed forthwith. The concerned authorities of the Building Construction Department and the Bihar State Building Construction Corporation Limited are directed to abide by the conditions of the agreement, a copy of which is placed at Annexure-3 to the writ petition and refrain from interfering with right of passage granted thereunder until such time the agreement is set aside by a court of competent civil jurisdiction. The concerned authorities of the Corporation and Building Construction Department are further directed to restore the easementary rights provided to the petitioner in

terms of the agreement and which restoration should be carried out within eight weeks from today.

The writ petition is allowed.

Let a writ of mandamus issue accordingly.

(Jyoti Saran, J)

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