

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14253 of 2015

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Sri Harshbardhan Narayan, S/o Sri Shivendra Narayan, R/o- Mohalla- Swarajpuri
Road, P.S.- Civil Line, District- Gaya

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Urban Development of Housing Department, Govt. of Bihar, Patna
2. Municipal Commissioner, Gaya, Municipal Corporation Gaya
3. District Magistrate, Gaya.
4. Sri Raj Kumar Prasad, S/O Late Ramchandra Prasad, R/o Samarpan Bhawan, Mohalla Kanya Pathsale Ramana Road, Gaya P.S. Civil Line Distt.- Gaya

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rajendra Prasad, Advocate
For the State : Md. Naushaduzzoha, AC to SC-18
For the Municipal Corporation : Mr. Rabindra Kumar Priyadarshi.

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
ORAL JUDGMENT

Date: 18-09-2015

The petitioner seeks direction to the respondent no.3 to stop the illegal construction being made by the respondent no.4 upon Plot No.982 corresponding to Municipal Plot No.12866 of Area 18 ½ Dhur in violation of the agreement, the Building Bye-laws and the Municipal Act. He further seeks direction for making an inquiry against the illegal construction made by the respondent no.4 and for a further direction to demolish the illegal construction and restore the possession of the petitioner as it was existing before agreement. He also seeks direction to the respondent no.2 to dispose of the representation of the petitioner by a reasoned order after making a

proper inquiry.

Learned counsel for the respondent no.2 has raised preliminary objection that the writ application is not maintainable as the petitioner wants specific performance of the contract or extension of his agreement.

So far this aspect is concerned, he appears to be correct as in a writ application, a direction can not be given for performing in accordance with agreement or for annulling the agreement as that is to be decided by a civil court of competent jurisdiction. However, since the petitioner has claimed that respondent no.4 has made illegal construction not only violating the agreement with him but also in violation of the map which has been sanctioned by the Gaya Municipal Corporation and, as such, if a petition has been filed before the Municipal Commissioner to make an inquiry in this regard and take a decision and if it is found that any construction has been made contrary to the approved plan then the consequential action be taken in accordance with law then it would be his duty to make an inquiry upon it and take a decision accordingly under the provisions of Sections 323 and 324 the Municipal Act which clearly lays down that if some building has been constructed without proper sanctioned or approved map then the consequential step can be taken by the Chief Municipal Officer, who, in case of Municipal Corporation would be

Municipal Commissioner. Therefore, for that purpose, in my considered opinion, the writ petition is maintainable as the petitioner has also filed this application against inaction of respondent no.2.

Learned counsel for the petitioner confines this writ petition to that extent only.

Accordingly, this writ application is being disposed of, without going into the merit of the case, with a direction to the Municipal Commissioner, Gaya to dispose of the application filed by the petitioner as contained in Annexure-4 on its own merit and in accordance with law within a period of two months after granting reasonable opportunity to all the concerned parties and after necessary inquiry.

The petitioner, if so desired, would also be at liberty to file an application before him under Section 324 of the Municipal Act for stopping the construction of the concerned building upon which he would also be required to take a decision in accordance with law after granting reasonable opportunity to the parties concerned.

(Dr. Ravi Ranjan, J)

V.K. Pandey/-

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