

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 17727 of 2016

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Vimal Saw @ Vimal Gupta, Son of Late Mohan Sah @ Mohan Ram,
Resident of Mohalla-Chanwar Takiya, Sasaram, P.S.-Sasaram (Town),
District-Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Urban Development and Housing Department, Govt. of Bihar, Patna.
3. The District Magistrate, Rohtas at Sasaram.
4. The Sub-divisional Magistrate, Sasaram, Rohtas.
5. Nagar Parishad, Sasaram through its Executive Officer.
6. Sanjeev Gupta @ Chunilal, Son of Late Panna Lal Gupta, Resident of Mohall-Chawar Takiya, P.S.-Sasaram (T), District-Rohtas.

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Subash Kumar, Adv.

For the Sasaram Nagar Parishad: Mr. Vijay Shankar Upadhyay, Adv.

For the State : Mr. Rajnish Chandra, AC to SC-6

For the Private Respondent : Mr. Brajesh Kumar, Adv.

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 23-11-2016

Heard parties.

Petitioner is aggrieved by the order dated 09.7.2014 passed by Nagar Executive Officer, Nagar Parishad, Sasaram by which the decision has been taken to remove the encroachment on “Aam Gali” of Sasaram Nagar Parishad from the Plot No. 143, Khata No. 139, Holding No. 313 situated in Mohalla-Chawar Takiya, P.S.-Sasaram (T), Thana No. 126 under Sasaram Municipality (Nagar Parishad), District-Rohtas.



It appears that one Sanjeev Gupta @ Chunilal filed C.W.J.C. No. 13236 of 2012 due to the alleged inaction of Municipal Authorities for removal of encroachment from the concerned land. The writ petition was disposed of vide order 16.07.2013, as contained in Annexure-1 directing the Nagar Parishad, Sasaram to look into the complaint of the petitioner of the aforesaid case and dispose it of within two months. After that, notices were issued to the writ petitioner of this case also and he also filed a reply to the show cause notice which has been appended as Annexure-2. Final order was passed vide Annexure-3 which is under challenge. Thereafter, again a direction was given on 30.9.2016 by the Executive Officer of the Nagar Parishad to the Sub Divisional Officer, Sasaram at Rohtas to comply the order contained in Annexure-3. The petitioner again filed a representation before the Executive Officer but nothing was done, hence, this writ petition was filed.

It is contended that during the pendency of the writ petition the authorities have demolished the platform as well as “Chhaja” of the house and have imposed cost of Rs. 25,000/- for removal of the encroachment. Therefore, I.A. No. 9109 of 2016 has been filed for amendment of the writ petition by addition of reliefs mentioned in paragraph 1(a) (b) (c) and (d) thereto.

The Interlocutory application No. 9109 of 2016 is



allowed. The relief mentioned in paragraph 1(a) (b) (c) and (d) would form part of the writ petition.

Learned counsel for the petitioner has submitted that, in fact, it is a private gali and, therefore, it is not under the jurisdiction of the Nagar Parishad to remove any encroachment made upon this.

However, when a question was asked as to how the land concerned is to be considered as private gali and in whose name the land stands recorded in the concerned record of rights, learned counsel has conceded that the land stands recorded in the name of the Nagar Parishad. Then, learned counsel for the petitioner drew contention of this court towards definition of private lane given under Section 2(79) of the Bihar Municipal Act, 2007. It is contended that since the petitioner and the private respondent are only having their residence adjacent to the lane concerned, it has to be considered as a private lane.

Such submission made on behalf of the petitioner is noted only to be rejected. Definition clearly stipulates that private street would mean any street/road/gali/passage which is not public street. However, learned counsel for the petitioner has conceded that the street belongs to the Nagar Parishad, therefore, it is not understandable as to how he is carrying such impression that it would be a private lane.



Though it is contended that the public lane culminates to the house of the private respondent and before his house, the house of petitioner is situated but it is not understandable that even then they would have a right to invade the public street.

Learned counsel places reliance upon a decision of Single Judge Bench of this Court rendered in the case of **Vinay Kumar Pappu @ Binay Kumar vs. The State of Bihar & Ors. [1981 PLJR 129]**. However, that decision would also not come to the help of the petitioner as in that case there was a passage connecting the plot of the plaintiff as well as the owner who was in possession of holding no. 345. There was a passage being plot No. 9873 connecting the holdings which the respondent has been using as a private passage which is not a case here. It is not the case that the lane is being used only by the petitioner and the private respondent for a passage between their holdings rather it admittedly connects a road/lane therefore, it cannot be a case of the petitioner that the public does not have any access to the lane which is recorded as a municipal lane.

Thus, in my view, the petitioner has miserably failed to establish his case. The impugned order has been passed considering the report of the *Amin* which indicates that the petitioner has encroached the public land and constructed a



“Chabutra” and “Chajja” over it and that was required to be demolished. The same has already been demolished under the orders of the Competent Authority.

Accordingly, in my view the order impugned does not warrant any interference by this Court.

As a result, this writ petition stands dismissed.

(Dr. Ravi Ranjan, J.)

Siddharth/Vikash-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA

