

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6160 of 2016

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1. Dhirendra Kumar, Son of Late Maheshwari Prasad Sharma, Resident of Mohalla-Jawahar Park, P.O.+P.S.- Warsaliganj, District- Nawada.

.... Petitioner/s

Versus

1. The Chairman, Nagar Parishad, Warsaliganj, Nawada.
2. The Executive Officer-cum-Circle Officer, Nagar Panchayat, Warsaliganj, Nawada.
3. Satyanarayan Singh, Son of Sri Ram Keshwar Singh, Resident of Mohalla-Jawahar Park, P.O.+P.S.- Warsaliganj, District- Nawada.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Siya Ram Shahi, Adv.
Mr. Hansraj, Adv.

For the Respondent/s : Mr. Krishna Kant Tiwari, Adv.

For the private Respondent No.: Mr. Kumar Kaushik, Adv.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 20-04-2016

Heard Mr. Siya Ram Shahi, learned counsel for the petitioner,
Mr. K.K. Tiwari, learned counsel for the Municipality, Mr. Kumar
Kaushik, learned counsel for the private respondent.

The petitioner is aggrieved by the order bearing memo No. 150
dated 16.2.2016 passed by the Executive Officer, Nagar Parishad,
Warsaliganj, District Nawada whereby the petitioner has been held
violating the provisions of the Bihar Municipal Act, 2007 and the bye
laws framed thereunder in the matter of construction of his house.
According to the Executive Officer, the construction made by the
petitioner is in violation of the map sanctioned by the Municipality.

This matter was earlier deliberated before this Court on a writ petition filed by the private respondent bearing C.W.J.C.No.8856 of 2004 and a coordinate Bench in consideration of the matter in dispute vide judgment and order dated 20.12.2011 disposed of the writ petition in the following terms:

“In view of the limited prayer as above, this writ application is disposed of with a direction to respondent no.3, i.e., the Executive Officer-cum-Circle Officer, Nagar Panchayat, Warisagaliganj, Nawadah, to consider and dispose of application/complaint filed by the petitioner, which is appended as Annexure-4, in accordance with law on its own merit after giving opportunity of hearing to all the concerned parties, if the same has already not been disposed of.

It is made clear that this Court has not formed any opinion with regard to the merit of the case of the petitioner.”

It is following the remand of the matter by this Court that the issue was considered on the complaint of the private respondent by the Executive Officer and which has resulted in the impugned order passed on 15.2.2016 as communicated vide Memo No.150 dated 16.2.2016.

The limited issue that has been raised by Mr. Shahi learned counsel for the petitioner is that the order has been passed ex parte and without opportunity of hearing to the parties as well as without supply of the measurement so carried out by the Amin as taken note in the impugned order. This Court taking note of the grievance raised



directed the counsel for the municipality to produce the records and which has since been produced for inspection by this Court. I have perused the records and which manifests that it is following the remand of the matter that a proceeding was initiated and when the parties contesting herein were directed to carry out the measurements and submit their report which obligation was not discharged by either of the parties and in the circumstances, the Executive Officer vide order passed on 31.3.2015 taking note of this default stayed the proceedings until the submission of the measurement report of the Amin by the contesting parties. Since the contesting parties again did not take any steps to carry out the measurement that the Executive Officer took this responsibility upon himself and directed the Anchal Amin, Warsaliganj to carry out the measurement vide order passed on 11.2.2016 and also by the same order directed the notice be served on the contesting parties. The proceedings thereafter does not record whether the notice was validly served on the parties and while it is the specific stand of the petitioner that notice was not served upon him nor there is any recording in the order sheet but it is the argument of Mr. Tiwari appearing for the municipality that the records demonstrate otherwise.

Be that as it may, since the order sheet does not record a service of notice on the contesting parties rather the order passed on



15.2.2016 is solely on the basis of the report of the Anchal Amin, the copy of which has admittedly not been served on the contesting parties, in my opinion, the petitioner has made out a case for indulgence. The order is not in consonance with the directions of this Court passed in C.W.J.C.No.8856 of 2004 for neither the report has been served on the contesting parties nor after the stay of the proceeding on 31.3.2015, the Executive Officer has satisfied himself whether the notice has been duly served on the contesting parties. At least the impugned order passed on 15.2.2016 does not indicate any such service.

For the reasons so aforementioned the order dated 15.2.2016 passed by the Executive Officer as communicated vide memo No. 150 dated 16.2.2016 impugned at Annexure-3 to the writ petition cannot be upheld and is accordingly set aside. The matter is remitted back to the Executive Officer for its consideration and disposal afresh and in the light of the order of this Court passed in C.W.J.C.No.8856 of 2014. The parties shall appear before the Executive Officer on 25.4.2016 at 11 A.M. when the Executive Officer shall proceed to dispose of the matter accordingly. Since the measurement report has admittedly not been served on the parties, let the Executive Officer serve the copy of the measurement report on the parties and afford them reasonable opportunity to contest the proceeding before

proceeding to dispose of the matter.

Considering the long pendency of the dispute, an expeditiously disposal preferably within 3 months from the date of receipt/production of a copy of the order would be expected.

It is self eloquent that this Court has not expressed any opinion on the merits of the case save and except that the order impugned has been passed on denial of opportunity to the contesting parties to contest the report of the Amin. The Executive Officer shall proceed accordingly.

The writ petition is allowed.

Let the records so produced be returned to Mr. K.K. Tiwari.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	