

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12639 of 2015

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Rabindra Kumar Singh Son of Shri Ram Charitra Prasad Singh, Resident of Mohalla - Shantar, Ward No. 13, Purani Bazar, Lakhisarai under Lakhisarai Municipality Area, P.S. - Lakhisarai, District - Lakhisarai.

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary.
2. The Chief Secretary, Govt. of Bihar, Patna.
3. The District Magistrate, Lakhisarai.
4. The Superintendent of Police, Lakhisarai.
5. The Sub Divisional Officer, Lakhisarai.
6. The Circle Officer, Lakhisarai.
7. The Executive Officer, Lakhisarai Municipality, Lakhisarai.
8. Sideswar Singh, Son of Late Yugal Kishore Prasad Singh, Resident of Village - Jhinaura, P.S. - Lakhisarai presently residing at Mohalla - Shantar, Ward no. 7, P.S. & District - Lakhisarai.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Shree Nivas Madhuvan, Adv.
For the Respondent/s : Mr. Ashok Kumar Choudhary- AAG13
Mr. Anshuman Singh, AC to AAG13
For respondent no.8 : Mr. Mohan Kumar Singh, Adv.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

4 02-05-2016 Heard learned counsel for the parties.

This application in the nature of Public Interest Litigation has been filed seeking a direction to the respondents to take appropriate steps for removal of encroachment made by the private respondent no.8 upon the land which was in use as road by the public of Ward No. 12 and 13, Nagar Parishad, Lakhisarai.

It is the case of the petitioner that the said land is registered in the name of Governor of Bihar.

It has been submitted on behalf of the petitioner that there is specific finding of a Civil Court of competent jurisdiction to the effect that the said respondent no.8 has encroached upon the said land. It appears from the records that respondent no.8 had approached this Court by filing an application under Article 226 of the Constitution of India, giving rise to C.W.J.C.No. 191/2013, aggrieved by certain order passed in Encroachment Case No. 1/2011-12 by the Executive Officer, Lakhisarai, whereby he was found to have encroached upon the land in question.

The said writ application came to be dismissed by an order of this Court dated 18.4.2014. This Court, however, granted the said respondent no.8 liberty to file an appeal under the provisions of the Bihar Municipal Act before the appropriate forum/ authority/ Tribunal, after seeking condonation of delay, if any, to assail the said order of the Executive Officer, Lakhisarai passed in Encroachment Case No. 1/2011-12.

It is not in dispute that respondent no.8 has filed an appeal in the light of the liberty granted to him by the order of this Court, dated 18.4.2014, in C.W.J.C.No. 191/2013.

A counter affidavit has been filed, on behalf of respondent no.8, stating that in the said Appeal No. 4/2015, notices have been issued to the opposite parties and the said matter is still pending.

Learned counsel, appearing on behalf of the petitioner, has, on the other hand, submitted that the said appeal before the Tribunal is not at all maintainable as Section 329 of the Bihar Municipal Act does not provide for filing an appeal against an order passed by the Executive Officer for removal of encroachment.

Upon considering the materials on record, we find that this is not in dispute that the said appeal was preferred by respondent No.8 by virtue of the liberty granted by this Court, vide order, dated 18.4.2014, in C.W.J.C.No. 191/2013.

We are, therefore, in the present proceeding under Public Interest Litigation, not inclined to go into the question of maintainability of the said appeal. It will, however, remain open to the petitioner to raise objection of this nature before the Tribunal and it will be for the Tribunal to consider and decide the question as to whether the appeal is maintainable or not.

In the facts and circumstances of the case, noticed above, we close this proceeding with a direction to the Municipal Building Tribunal No.II to dispose of Appeal No. 4 of 2015,

within a period of three months from the date of appearance of the parties to the said appeal, including the petitioner of the present case.

This application stands disposed of accordingly.

(I.A.Ansari, ACJ)

(Chakradhari Sharan Singh, J)

Surendra/-

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