

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14348 of 2015

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Insaaf Manch, Madhubani through its President Surendra Kumar Jaypuridar, son of Late Sita Nandan Prasad resident of mohalla Jaldhari Choudhary, Ward No. 29, Police Station Sadar, District Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Chief Secretary, Government of Bihar, Patna.
3. The District Magistrate, Madhubani, District Madhubani.
4. The Sub Divisional Magistrate, Sadar, Madhubani, District Madhubani.
5. The Executive Officer, Nagar Parishad, Madhubani, District Madhubani.
6. The Nagar Parishad through its Chairman, District Madhubani.

.... Respondent/s

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Appearance :

For the Petitioner	:	Mr. Pankaj Kumar Sinha, Advocate Mr. Kamal Kishore Jha, Advocate
For the Nagar Parishad	:	Mr. Purusottam Jha, Advocate Mr. Vikash Kumar Jha, Advocate
For the State	:	Mr. Ranjan Kumar, AC to GA-12

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 21-10-2016

By this public interest litigation grievance has been raised by the residents of Madhubani Nagar Parishad with regard to certain construction of shops being made professedly by the Nagar Parishad itself. It is submitted that the shops are being constructed near the Sadar Hospital without seeking permission from the hospital authorities. The answer of Nagar Parishad is that shops are being constructed on the lands of Nagar Parishad and no permission of Sadar Hospital is required. That answers the first objection. Then the



objection is that the shops are being constructed without issuing tender for its construction. The counter affidavit states that the Nagar Parishad is constructing it out of its own funds through its own employees. It has not employed private contractors nor has given the contract to the private contractors. That adequately, in our view, answers the second objection. It is then submitted that the shops are being constructed over the drain virtually blocking the drains.

Learned counsel for the Nagar Parishad states otherwise. There is a supplementary counter affidavit filed by respondent no. 5, the Executive Officer of the Nagar Parishad in which the plan has been annexed. A reference to the plan would clearly show that contiguous to the shops is a 3 ft. public drain and then there is public road. Thus, the 3 ft. public drain is between the shop and the road. The same plan also shows that there is stair-case as per design from the shop to the road. The stair-case is of “DRY RAMMED KHOA” Thus, it is clear that the drain would cease to exist. The Nagar Parishad cannot itself block the drain or cover the drain in a manner that cleaning it would become difficult, if not impossible. Whoever has drawn the plan and sanctioned it has either deliberately chosen to overlook this aspect of the matter or ignored it. Both of which are wrong. We would, therefore, direct the Collector-cum-District Magistrate, Madhubani to personally enquire into this

aspect of the matter and ensure that the drain is maintained properly and if any construction has been done to obstruct the drain, to ensure that it is broken up and removed within 24 hours. He would also enquire into as to who has passed this plan without application of mind and take appropriate action against him.

The next objection is that on one hand Nagar Parishad states that it has no fund, and to raise funds it is constructing the shops. On the other hand, it does not disclose from where the money has come for this construction. In the writ petition, the allegation is that money has been inappropriately collected from chosen few to whom the shops are to be then rented so that they could make progress. Even though counter affidavit and supplementary counter affidavit has been filed, there is no specific rebuttal to this. However, we direct the Collector-cum-District Magistrate, Madhubani to see that proper accounts are maintained in this regard as also, that if the shops are constructed and when the shops are ready, there should be wide publicity and competitive bids are there for settlement of the shops, if otherwise the construction of the shops are proper.

Ordinarily, we should have given this responsibility to the Executive Officer of the Nagar Parishad, but at the Bar, it is submitted that pursuant to the orders of this Court the

Executive Officer even though has been removed, he continues to exercise his powers in defiance thereof and the whole game is being conducted by him.

Learned counsel for the Nagar Parishad states that this is all wrong as the Executive Officer himself has come and sworn the counter affidavit and the supplementary counter affidavit on behalf of Nagar Parishad. We would not like to go into these controversies, for, it is upon the Collector-cum-District Magistrate, Madhubani to look into this aspect of the matter.

With the observations and directions aforesaid, the writ petition stands disposed of.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Arjun/Rajesh

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