

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10520 of 2013

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Poonam Roy W/o Subhender Kumar Suman and D/O Gorakhnath Rai R/o
Village - Dumarhar, P.S. Darauli, Dist - Siwan, Presently residing at A/67,
Mitra Mandal Colony, Saket Vihar, Anisabad, Phulwarisharif, Patna

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Government Of Bihar, Patna
2. The Magistrate, Gaya Collectorate, Gaya
3. The Deputy Development Commissioner, Gaya
4. Gaya Municipal Corporation, Gaya through the Municipal Commissioner, Gaya
5. The Nagar Panchayat, Bodh Gaya through its Executive Officer, Bodh Gaya, Gaya
6. The Executive Officer, Nagar Panchayat, Bodh Gaya, Gaya
7. The Block Development Officer, Bodh Gaya, Gaya
8. The Junior Engineer, Nagar Panchayat, Bodh Gaya

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. Avanish Kumar Singh, Advocate

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

3 02-03-2016 Heard Mr. Avanish Kumar Singh, learned counsel appearing for the petitioner, counsel for the State, Md. Rashid Arshad, Assisting Counsel to SC-18 for the State, Mr. Rabindra Kumar Priyadarshi for the Gaya Municipal Corporation and Mr. Ashok Kumar for the Nagar Panchayat, Bodh Gaya.

The petitioner is aggrieved by the rejection of her representation by the Executive Officer, Nagar Panchayat, Bodh Gaya bearing Memo No. 1987 dated 01.10.2012 whereby proposal to construct a building on a plot bearing Khata No. 767, Plot No.

4222 situated in Mohalla-Rajapur, Ward No.-6 at Bodh Gaya in the District of Gaya has been rejected *inter alia* on grounds that the plot in question under the master plan falls under the green belt.

Although there are specific averments by the petitioner contradicting the view so taken by the Executive Officer and a rebuttal thereto by Mr. Ashok Kumar appearing for the Nagar Panchayat but that may not be necessary to be dealt with for the present as Mr. Avanish Kumar Singh, learned counsel for the petitioner has invited the attention of this Court to a Bench decision reported in **2012(1) PLJR 550 (Drikunj Charitable Society vs. State of Bihar)**. It is submitted that the Bench considering similar objections raised by the Municipality to the proposal advanced by a number of persons for construction of their houses has recorded its opinion in paragraph-37 to 39 of the judgment to hold that the master plan itself is without legislative sanction. He thus submits that since the very foundation of the impugned order resting on the master plan has been held to be illegal by this Court hence the rejection of the proposal of the petitioner would also become unsustainable.

Mr. Ashok Kumar, learned counsel appearing for the Nagar Panchayat has informed this Court that the Nagar Panchayat

has moved in intra court appeal against the Bench decision rendered in the case of Drikunj Charitable Society (supra) bearing L.P.A. No. 1238 of 2012 and which is pending consideration before this Court. Mr. Ashok Kumar while contesting the claim of the petitioner has informed that despite the restraint order, substantial constructions have already been made by the petitioner.

Having heard learned counsel for the parties and considering that the issue of validity of master plan prepared for Bodh Gaya which is the foundation for the rejection order impugned at Annexure-7, after being held without legislative sanction by the writ court, is pending consideration in LPA No. 1238 of 2012, the order bearing Memo No. 1987 dated 01.10.2012 issued by the Executive Officer impugned at Annexure-7 cannot be upheld and is accordingly set aside. Pending disposal of L.P.A. No. 1238 of 2012 the parties contesting would maintain status quo as existing today and the constructions whatsoever made by the petitioner as existing today would be governed by the final outcome of the Letters Patent Appeal under reference.

The writ petition is allowed with the directions aforementioned.

(Jyoti Saran, J)

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