

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5793 of 2015

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Shiv Shankar Upadhayay

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar

For the Respondent/s : Mr. Smt. Namrata Mishra- Ga13

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 28-03-2016

Heard learned counsel Mr. Sanjay Kumar for the petitioner and learned A.C. to G.A.13 on behalf of the respondents.

This application under Article 227 of the Constitution of India has been filed by the plaintiff-petitioner for setting aside the order dated 02.02.2015 passed by A.D.J.-VI, Nalanda at Bihar Sharif in Miscellaneous Appeal No.16 of 2014 whereby the lower appellate court set aside the order dated 28.08.2014 passed by Munsif, Bihar Sharif in Title Suit No.44 of 2014 allowing the injunction application.

It appears that the plaintiff-petitioner filed the suit for injunction praying for restraining the defendants-respondents from making construction in front of the land of petitioner being Plot Nos.3694 and 3695. Thereafter injunction application was filed under Order 39 Rule 1 and 2 of the Code of Civil Procedure. The

trial court recorded the finding that only 3-4 feet wide road has been left by the State authorities and, therefore, it is inconvenient for the plaintiff as such the plaintiff has got prima-facie case and balance of convenience in favour of the plaintiff and allowed the injunction application. The State authorities filed miscellaneous appeal. The lower appellate court after hearing both the parties recorded a clear finding that in front of Plot No.3694 four feet wide road has been left and thereafter wall on the public land has been constructed for 'Samudayik Bhawan' and there is wide road in front of Plot No.3695 and, therefore, recorded finding contrary to the finding of the trial court.

In view of the fact that the court below has also passed a reasoned order considering the pros and cons and the materials available on record, it cannot be said that the order suffers from jurisdictional error or it occasioned failure of justice or the court below has assumed jurisdiction not vested in it by law nor it can be said that the court below exercised the jurisdiction in the manner not permitted by law and, therefore, I find no reason to interfere with the impugned order in exercise of supervisory jurisdiction. Thus, this writ application is dismissed.

Harish/-

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(Mungeshwar Sahoo, J)