

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23656 of 2012

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1. Mukesh Kumar son of Late Chanam Lal Rai
 2. Mithlesh Kumar, son of Late Chanam Lal Rai
 3. Kamlesh Kumar, son of Late Chanam Lal Rai
 4. Niraj Kumar, son of Late Chanam Lal Rai All resident of Saristabad
Western Tola, P.O. Anishabad, P.S. Gardanibagh, Dist- Patna

.... Petitioner/s

Versus

1. Patna Municipal Corporation Maurya Lok, Patna, P.S. Kotwali, Patna
through the Municipal Corporation, Patna
2. The Municipal Commissioner Patna Corporation Maurya Lok Patna,
P.S. Kotwali, Distt.- Patna
3. The Municipal Building Tribunal, Patna through Its Chairman
4. Naina Devi widow of Late Naseeb Lal Rai
5. Amit Kumar son of Late Naseeb Lal Rai
6. Bablu Kumar son of Late Naseeb Lal Rai All resident of Mauja
Chitkohra, Mohalla- Saristabad, P.S. Gardanibagh, Dist- Patna
7. The Secretary, Town Development Department New Secretariat Vikash
Bhawan, Patna- 15

.... Respondent/s

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Appearance:

For the Petitioner/s : Mr. V.R.P. Singh, Advocate
Mr. Rajendra Singh, Advocate
For the State-Respondent/s :Mr. S.S. Shabbar Hussain GP-4
Ms. Punam Kumari Singh, AC to GP-4
For the P.M.C. : Mr. Sanjay Prakash Verma, Advocate
For the private Respondent:Mr. Jay Ram Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

9 08-01-2016 Heard Mr. V.R.P. Singh for the petitioner, Mr. Sanjay
Prakash Verma for the Corporation, Mr. Jay Ram Singh appearing
for the private respondent and counsel for the State.

The parties contesting herein come from the same family
and basically it is a family dispute. While the private respondent is
complaining against the constructions made by the petitioner



which according to him was a passage for his ingress and egress, it is the stand of the petitioner that there is no such passage nor the ingress or egress of the private respondent is anywhere hampered. It is further the stand taken by Mr. V.R.P. Singh that whatsoever construction have taken place, is in tune with the map sanctioned by the Corporation. It is the complaint of the petitioner that without verification of the facts on record that the impugned orders have been passed treating the constructions as an encroachment on the passage available to the private respondent when in fact there exists no passage. Counsel for the petitioner has also placed on record a map to submit that there exists no passage.

Since there was a dispute whether the map placed on record at Annexure-6 was approved by the municipal authorities or not that the matter was adjourned enabling Mr. Sanjay Prakash Verma to ascertain the factual position as to whether the same has been approved. The matter has thereafter been taken up today when Mr. Verma on instructions informs this Court that the map has been approved by the Municipal authorities. The map apparently does not reflect any passage on the western side of the plot which is the bone of contention.

In the circumstances where the map placed at Annexure-6 is approved by the municipal authorities and which does not

show any passage on the western side of the plot, it stands confirmed that the order passed by the Municipal Commissioner as affirmed by the Municipal Tribunal treating the western portion of the plot in question to be a passage is contrary to the facts on record. In the circumstances, the order insofar as it directs the petitioner to remove the *Chhajja* projected over the western portion of the plot is concerned, treating it to be an illegal construction is set aside. Insofar as the *inter se* dispute in between the parties regarding any such passage is concerned, the aggrieved can take recourse to the civil law remedy that is available to him in law. The order impugned stands modified to the aforementioned extent.

The writ petition is allowed.

(Jyoti Saran, J)

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