

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 2392 of 2017

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Dhirendra Kumar, Son of Late Maheshwari Prasad Sharma, Resident of Mohalla-
Jawahar Park, P.O. +P.S.- Warisaliganj, District: Nawada.

.... Petitioner/s

Versus

1. The Chairman, Nagar Parishad, Warisaliganj, Nawada.
2. The Executive Officer-cum-Circle Officer, Nagar Panchayat, Warisaliganj, Nawada.
3. Satyanarayan Singh, Son of Sri Ram Keshwar Singh, Resident of Mohalla:-
Jawahar Park, Warisaliganj, P.O. +P.S. Warisaliganj, District- Nawada.
4. The District Magistrate, Nawadah, P.S. & District- Nawadah.
5. The Superintendent of Police Nawadah, P.S. & District- Nawadah.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Anjani Kumar, Sr. Advocate Mr. Hansraj, Advocate
For the Respondent No. 1 &2 :		Mr. Md. W. Rahman and Mr. K. K. Tiwari, Advocates
For the Respondent No. 3	:	Mr. Kumar Kaushik, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 29-06-2017

Heard Mr. Anjani Kumar, learned senior counsel along

with Mr. Hansraj, learned counsel for the petitioner; Mr. Md. W.

Rahman, along with Mr. K. K. Tiwari, learned counsel for the

respondents no. 1 and 2 and Mr. Kumar Kaushik, learned counsel for

the respondent no. 3.

2. The petitioner has moved the Court for the following

reliefs:

*“(A) For issuance of an appropriate writ
for quashing the memo no. 962 dated 03.11.2016
(Annexure-8) issued by the Executive Officer, Nagar
Panchayat Warisaliganj, District- Nawada whereby
the petitioner has been directed to close the window*



of eastern side within four weeks failing which the action will be taken under the provisions of Bihar Municipal Act.

(B) Any other relief or reliefs for which the petitioner is found entitled under the law as well as on facts.”

3. The issue relates to a dispute as to whether the petitioner has constructed his house in conformity with the sanctioned map of the year 1995. As per the respondents, the same is in violation of the approved map and also against the bye-laws related to set back. Further, the issue is as to whether the windows opened by the petitioner on the eastern side of the said building is legally justified in terms of the approved/sanctioned map and the bye-laws.

4. Learned counsel for the petitioner submitted that in terms of the earlier order of the Court dated 20.04.2016 in C.W.J.C. No. 6160 of 2016, a spot measurement was required to be made in the presence of the parties which till date has not been done and still a direction is there to close the window of the building of the petitioner. Learned counsel submitted that he is limiting his prayer to actual measurement in his presence being made and then consequences may follow.

5. Learned counsel for the respondents submitted that though the same issue *inter se* between the father of the petitioner and



respondent no. 3 was the subject matter of Title Suit No. 86 of 2003/2005 of 2008, in which prayer for injunction having been refused and ultimately the suit itself being dismissed for non prosecution on 22.12.2008, the petitioner by not disclosing such fact has not come before the Court with clean hands and on this ground alone, the writ petition deserves to be dismissed. It was further submitted that the petitioner's father had claimed in the Title Suit that the house was built in the year 1978 whereas in the present writ application, the stand is that it was built in the year 1996, which amounts to misleading the Court for oblique reasons and ulterior motives to prejudice the mind of the Court and thus, influence the Court in the ultimate order which it may pass. Learned counsel further submitted that the issue is limited to the fact as to whether the petitioner has built the house in question as per the sanctioned plan and more importantly as to whether, the required offset under the bye-laws has been complied with. Learned counsel submitted that the Government *Amin* has done the measurement and has recorded a finding that the offset which was required to be minimum of 3 feet has not been left and thus, the petitioner has to suffer the consequences.

6. Having considered the matter, the Court would briefly go into the background of the dispute. The respondent no. 3



and the petitioner are vendees from the same vendor though the respondent no. 3 was the purchaser prior to the petitioner. The plots of the petitioner and respondent no. 3 are adjacent. There is also an existing boundary between the said two plots. The father of the petitioner having filed title suit in the year 2003 had sought the following reliefs:

“I. That it be declared that the plaintiff is entitled to exercise light and air through the windows and ventilators existing in the eastern wall of the plaintiff’s house as fully detailed in Schedule-I of the plaint.

II. That the defendant be permanently restrained from making any kind of interference in plaintiff’s right of easement with respect to light and air.

III. Cost of the suit.

IV. Any other relief or reliefs.”

7. The said suit was filed against the petitioner. At the relevant time, the petitioner’s father had not raised any dispute before any forum with regard to the boundary wall existing between the petitioner and the respondent no. 3 to be incorrect requiring any fresh measurement. The matter being of a purely civil nature and that too between private parties, cannot be gone into or adjudicated by any administrative authority for it involves questions of fact and adjudication of right, title and possession, which lies within the sole domain of the civil Court of competent jurisdiction. The said title suit



was also finally dismissed for non prosecution on 22.12.2008 and has since attained finality. Thus, the petitioner at this stage and before this Court cannot have any grievance with regard to demarcation of his plot vis-à-vis, the respondent no. 3. Such issue, besides being beyond the reliefs prayed for in the present writ application and also not agitated before the competent forum earlier, by sheer efflux of time has reached finality and cannot be reopened. Further, *inter se* between the petitioner and the respondent no. 3, the title suit filed by the father of the petitioner having been dismissed and no action taken thereafter, such issue cannot be gone into at this stage. Moreover, there is no counter case filed or application on behalf of the petitioner in the present case asking for any such re-measurement of the plots of the petitioner, the respondents and any other vendee of the adjoining plot(s). Thus, to this extent, there cannot be any scope of there being settlement of any dispute or re-measurement by any authority relating to the fresh demarcation and fixing of boundary between the plots of the petitioner, the respondent no. 3 and any other co-vendee of the same plot from the same vender, much less by this Court. Such dispute, if any, being purely of a private civil nature, had to be agitated before a Civil Court of competent jurisdiction, which not having been done, has become final and rights stand crystallized and thus, in law, as of today, the boundary wall existing between the two



plots, has to be accepted as correct.

8. Coming to the issue involved in the present writ petition, which is in continuation and which can be traced back to the direction of a Bench of this Court earlier in its judgment and order dated 20.04.2016 in C.W.J.C. No. 6160 of 2016, filed by the petitioner, the construction made by the petitioner of his house has to be measured, in relation to the sanctioned map on the basis of the actual position existing on the ground, in the presence of the stake holders.

9. Learned counsel for the parties have agreed to such measurement.

10. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties and in the background of the discussions made hereinabove, including the agreement of the parties for actual measurement in their presence, the writ petition stands disposed off with a direction to the respondent no. 2 to get the measurement of the house of the petitioner on his plot done in the presence of the parties for which the petitioner and the respondent no. 3 or their representative will appear before the respondent no. 2 on 17th July, 2017 at 11.00 A.M. in his official Chamber. The respondent no. 2 shall thereafter fix a date, within a week, for actual measurement on the site. The petitioner and the



respondent no. 3 or their representative shall also be permitted to be present during such measurement and the exercise shall also be videographed. Depending on the outcome of the measurement, the respondent no. 2 shall pass an order disposing off the complaint filed by the respondent no. 3 within two weeks thereafter. It goes without saying that the respondent no. 2 shall also ensure that the order passed by him is implemented without any undue delay.

11. It is made clear that the scope of such measurement as indicated above shall not extend to reopening the issue of fixing of boundary between the petitioner, respondent no. 3 and any other co-vendee from the same vender as such issue has attained finality and the petitioner is precluded from raising the same, either before this Court or the respondents no. 1 and 2.

12. At this stage, learned counsel for respondents no. 1 and 2 submitted that for carrying out the direction of the Court smoothly, the local administration be directed to cooperate especially with regard to the actual site measurement and thereafter, as may be required, for implementation of the order to be passed by the respondent no. 2.

13. The Court finds substance in such submission.

14. In view thereof, let the District Magistrate, Nawadah and the Superintendent of Police, Nawadah be impleaded



as respondents no. 4 and 5 in the present writ petition. Necessary correction be made in the cause title of the writ petition by the learned counsel for the respondents no. 1 and 2. A direction is issued upon the newly impleaded respondents no. 4 and 5 to extend all required assistance for implementing and complying with the present order. The respondent no. 2 shall serve a copy of this order on the respondents no. 4 and 5 within one week from today.

15. It is further made clear that the Court has not expressed its opinion on the merits of the matter and the issue shall be independently looked into by the respondent no. 2, as it is solely dependant on the actual measurement on the ground.

16. The Court would indicate that any non cooperation by any of the parties shall not prevent the respondent no. 2 in carrying out the exercise in terms of the present order, in accordance with law and within the prescribed time frame.

(Ahsanuddin Amanullah, J.)

P. Kumar

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