

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16433 of 2015

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1. Nem Chand Agarwal S/o late Rati Ram Agarwal

2. Sonu Dutt S/o late Mani Mohan Dutt

Both resident of Mohalla-Binodpur, Ward no.-31, Sector No. SE-036, Katihar,
District- Katihar.

.... Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Ministry of Urban
Development & Planning, Government of Bihar Patna.

2. The Commissioner Purnea Commissionaire, Purnea Pramandal at Purnia

3. The Katihar Nagar Municipality, Katihar through the Executive Officer, Katihar
Municipality, Katihar at P.O. + P.S.- Katihar District- Katihar.

4. The Chief Executive Officer, Katihar Nagar Nigam, Katihar at P.O. + P.S.-
Katihar District- Katihar.

5. The Municipal Commissioner, Katihar Nagar Nigam, Katihar at P.O. + P.S.-
Katihar District katihar.

6. The District Magistrate and Incharge of Urban Planning, Katihar at P.O. + P.S.
Katihar District-Katihar.

7. The SDO, Katihar town , Katihar District

8. The Civil surgeon, Katihar District- Katihar.

9. The Regional Manager, State Bank of India, Regional Branch Office, Region-III,
Purnia.

10. The Branch Manager, State Bank of India, Katihar Branch , Katihar.

.... Respondents 1st set.

11. Ram Sharan Sah, S/o late Garib Sah, resident of mohalla-Markan Colony
Daheriya, Katihar, P.S.-District-Katihar.

12. Asha Sharan, w/o Ram Saran Sah, resident of mohalla-Binodpur, Ward No.31,
Sector No. SE-036, Katihar, District-Katihar at present Sub Divisional Hospital,
Barsoi, Katihari.

....Respondent 2nd Set

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Appearance :

For the Petitioner/s : Mr. Kuber Pathak, Advocate



For the Respondent-KMC : Mr. Vinay Ranjan, Advocate

For the Private respondent : Mr. Anurag Saurav, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 06-11-2017

The present writ petition has been filed by the petitioners for the following reliefs:-

- (i) For directing the official respondents particularly respondent no.5, the Chief Executive Officer, Katihar, Nagar Nigam, Katihar to exercise his power so vested in him, according to Bihar Municipal Act, 2007 to stop the illegal construction and remove the encroachment with immediate effect.
- (ii) For directing the respondent State officials particularly Collector/District Magistrate, Katihar and SDO Katihar to stop the illegal construction of private respondent in complete violation of Bihar Building By Laws 2013 & 2014 as well as in complete violation of section 313 of Bihar Municipal Act, 2007 as well as in compliance of finding of the competent authority of the Katihar Nagar Nigam.
- (iii) For directing the Civil Surgeon i.e. Respondent No.10 from granting license to run a Nursing Home/Clinic/Dispensary in a pure residential area on only 3 decimal area of land situated at mohallah Binodpur Survey Ward No.14



appertaining to Khata No.24, Plot No.243 at Katihar District.

- (iv) For directing the private respondents from construction Nursing home which is a public utility Building in complete violation of the Bihar Municipal Law, 2007, Bihar Building By Laws 2013 & 2014 & without any valid license.
- (v) For directing the official respondents to immediately stop the illegal and unsanction construction of the buildings of Private respondents, who have no respect for law of Municipality.
- (vi) For directing the private respondent from illegal construction of their house, creating problem for the petitioners and others making such construction and opening nursing home in residential area having road just 8 ft wide is completely unsafe and disturbing right to privacy, right to fresh air and hygienic conditions by not keeping any arrangement in their land.
- (vii) For granting a direction to issue a commission in case the respondent 2nd set came with this case that they have construction their house as per sanction map at the cost of the petitioner.
- (viii) For granting any other reliefs for which the petitioners are entitled for.

2. The petitioners claim that they have filed the present writ petition for self as well as in representative capacity as



not only the petitioners but other residents of the locality are also aggrieved from the respondents.

3. The case of the petitioners is that they are residing in ward no.31 of Katihar Nagar Nigam, which is purely residential in nature and no commercial activities like running clinic or nursing home or dispensary goes on in the said locality. The private respondents have purchased a piece of homestead land in their name appertaining to Mohalla-Binodpur, Survey Ward No.14, Khata No.24, Plot No.243. After purchase the said plot on which old house was already constructed have been demolished and they have started making new construction on the same with a view to open a nursing home in violation of various provisions of Municipal Act, 2007 and Bihar Building By-laws 2013 or 2014. The private respondents have disturbed drainage of the locality and the construction is being made without any sanctioned plan.

4. The further case of the petitioners is that they have already moved before the office of Katihar Nagar Nigam and placed the entire material before the competent authority in October, 2014 whereafter, notices were issued to the private respondents, but they did not care and continued with their construction work, which going on in utter violation to the Municipal Act.

5. The petitioners state that they raised their protest



before the various authorities of the district, but no action has been taken so far. The private respondents are not only violating the Municipal Laws, but also of laws framed for establishment of nursing homes, clinics etc. by opening nursing home in the residential area, which is completely unhygienic, unsafe and bad.

6. Learned counsel for the petitioners submitted that the entire issue of construction by the private respondents and establishment of clinic and nursing home in a residential area requires immediate action by the respondents, but they are sitting tight over the matter in spite of the protest made by the petitioners and the residents of the locality.

7. Respondent Nos. 11 and 12 have filed counter affidavit in the matter. The case of the private respondents is that as the construction work was undertaken by the respondents after approval of map from the respondent corporation. Thus, the Municipal Corporation did not proceed on the complaint made by the petitioners vide Complaint No.59-33/2014, Abhilekh No.02/2014.

8. Further, for cancellation of license of nursing home also, the petitioners made application before the Civil Surgeon-cum-Chief Medical Officer, Katihar, which was already rejected. The private respondents obtained registration and opened



nursing home. The respondents have taken all necessary clearances including no objection from the Bihar State Pollution Control Board vide Letter No.1166 dated 19.11.2015.

9. Learned counsel for the respondent nos. 11 and 12 submitted that the dispute raised by the petitioners is purely a private dispute between the parties, which cannot be adjudicated in writ jurisdiction.

10. Having heard learned counsel for the parties and perused the record, I am of the opinion that the writ petition is misconceived. It is apparent from the pleadings of the parties that the facts of the case are very much in dispute. Such disputed questions of fact cannot be satisfactorily gone into or adjudicated in a writ jurisdiction. I am also of the view that the dispute between the parties is purely private and personal and, in such a case, writ petition is not an appropriate remedy, because of various reasons, one of which is that the Court under Article 226 of the Constitution cannot issue writ of mandamus to a private individual unless he acted in exercise of statutory power and/or was discharging public duty. The legality of construction of a building or establishment of a nursing home on a private land by a private party is purely of private character and, if the petitioners are aggrieved, they have other statutory remedies in law, but a writ petition for such a dispute is



impermissible in law.

11. In the result, the application being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.11.2017
Transmission Date	NA

