

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2872 of 2016

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M/s Magadh Tube Well Engineering Works through its proprietor Rajendra Prasad
Son of Devsharan Prasad, resident of Moh.- Kujapi, Police Station- Chandauti,
District- Gaya.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Urban
Development and Housing, Government of Bihar, Patna.
2. The District Magistrate, Gaya.
3. The Municipal Commissioner, Gaya Municipal Corporation, Gaya.
4. The Executive Engineer, Gaya Municipal Corporation, Gaya.
5. The Circle Officer, Gaya Town, Gaya.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Amar Nath Singh, Advocate
Mr. Binay Kumar, Advocate

For the Respondent-State : Mr. Narul Huda Khan, SC-1

For the Respondent-Corporation: Mr. Rabindra Kumar Priyadarshi, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 08-05-2018

The instant writ petition has been filed by the
petitioner to quash the notice vide letter No.2826 dated 11.12.2015
issued by the Municipal Commissioner, Gaya Municipal
Corporation, Gaya whereby he has directed the petitioner to remove
the construction made on public land in the light of the order issued



by the District Magistrate, Gaya vide letter No.7916 dated 28.1.2015.

2. It is submitted by Mr. Amar Nath Singh, learned counsel for the petitioner that the petitioner has not encroached public land rather the fact of the matter is that two shops admeasuring 40' x 40' area each were allotted to the petitioner vide order dated 11.07.1997 passed by the District Magistrate-cum-Administrator, Gaya Municipality on condition of deposit of a sum of Rs.1,30,000/- for each of the shops. In compliance with the said allotment, the petitioner deposited Rs.2,60,000/- and entered into an agreement on 04.03.2001 with the Administrator and the Executive Engineer of Gaya Municipality. He submitted that though the said shops are free from any encroachment, the Municipal Commissioner, Gaya vide impugned notice dated 11.12.2015 arbitrarily directed the petitioner to remove the construction made by the petitioner in order to ensure Gandhi Maidan, Gaya free from encroachment. He submitted that the impugned notice is wholly illegal, unjustified and unsustainable in the eye of law. He has further submitted that in the counter affidavit the Municipal Commissioner himself has conceded that the construction in question is situated outside the Gandhi Maidan, Gaya.



3. On the other hand, learned counsel appearing for the State submitted that the notice has been issued by the Municipal Commissioner Gaya, in the light of several orders passed by this Court in Public Interest Litigation relating to the removal of encroachment and beautification of Gandhi Maidan and nearby areas in the Gaya district. He submitted that in view of the orders passed by this Court, the District Magistrate, Gaya vide memo dated 28.11.2015 directed to the Sub-Divisional Officer, Sadar, Gaya, the Deputy Collector, Land Reforms, Gaya and the Circle Officer, Gaya with a copy to Municipal Commissioner and Additional Collector, Gaya for identifying and removing encroachments in Gandhi Maidan, Gaya and the nearby areas as per law for beautification. He submitted that even if the encroachment is not inside the Gandhi Maidan, it cannot be said that the alleged construction by the petitioner is not on public road on an area which is adjacent to the Gandhi Maidan.

4. Learned counsel appearing for the Municipal Corporation submitted that the writ petition is premature. He submitted that the petitioner has challenged a notice which has been issued by the Municipal Commissioner and it is not the case of the petitioner that the notice issued by the Municipal Commissioner is without jurisdiction.



5. In case the petitioner is of the opinion that there is no encroachment on any public land, the petitioner could have contested the matter before the Municipal Commissioner at the first instance and in case of an adverse order before the Municipal Building Tribunal. He submitted that though the petitioner has contended in the writ petition that he has filed a representation before the Municipal Commissioner but even before any decision could have been taken on his representation, he has rushed to this Court and filed the present writ petition.

6. I have heard learned counsel for the parties and perused the record.

7. It is not disputed by any of the parties that a notice for removal of encroachment has been issued by the Municipal Commissioner, Gaya to the petitioner who is vested with jurisdiction to deal with the matter of encroachment within the municipal area in accordance with law.

8. From a perusal of the Annexure-5 to the writ petition, it would be manifest that the petitioner has submitted a representation immediately after the receipt of the notice to the Municipal Commissioner, Gaya on 18.12.2015. It is true that immediately, thereafter, he has approached this Court and filed the instant writ petition. The petitioner has pleaded that the construction



in question was made by him following an allotment made by the Municipal Corporation themselves as back as in 1997. Such facts need be inquired into by making physical verification.

9. Keeping in mind totality of the circumstances, this Court deems it proper to remit the matter back to the Municipal Commissioner, Gaya to look into the representation filed by the petitioner on 18.12.2015 and pass appropriate order after giving an opportunity of hearing to the petitioner as early as possible preferably within a period of two months from the date of receipt/production of a copy of this order. Till then, the impugned notice dated 11th December, 2015 shall be kept in abeyance.

10. With the aforesaid observations, the writ petition is disposed of.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.05.2018
Transmission Date	NA

