

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1026 of 2017

In
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.- Warsaliganj, District- Nawada.

.... Appellant/s

Versus

1. The Chairman, Nagar Parishad, Warsaliganj, Nawada.
2. The Executive Officer-cum-Circle Officer, Nagar Panchayat,
Warsaliganj, Nawada.
3. Satya Narayan Singh, Son of Sri Ramkeshwar Singh, resident of
Mohalla- Jawahar Park, P.O. + P.S.- Warsaliganj, District- Nawada.
4. The District Magistrate, Nawada.
5. The Superintendent of Police, Nawada, P.S. & District- Nawada.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Anjani Kumar, Sr. Advocate
Mr. Hansraj, Advocate

For Respondent nos.1 and 2 : Mr. Krishna Kant Tiwari, Advocate

For Respondent no.3 : Mr. Kumar Kaushik, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

**HONOURABLE MR. JUSTICE ANIL KUMAR
UPADHYAY**

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

9 29-01-2018 Having heard learned counsel for the parties, we find

that in pursuance of the order passed on 18.09.2017, the Nagar
Parishad, Warsaliganj (respondent nos. 1 and 2) have conducted
an inspection and submitted a report, which has been brought on
record as Annexure-A and in the summary of the report at serial
no.2 certain findings have been recorded with regard to the
window being constructed by the petitioner contrary to the
sanctioned plan.

2. Mr. Anjani Kumar, learned senior counsel
vehemently submits that report is not properly prepared and



relevant facts have not been taken note of.

3. We are hearing appeal arising out of an order passed in a writ petition (C.W.J.C. No. 2392 of 2017) on 29.06.2017 and the Writ Court has confined its decision and limited to the question of the petitioner being issued a notice for closing the window, which has been constructed contrary to the sanctioned plan. The Writ Court did not go into the issue, and in particular directed for measurement to be undertaken and on the outcome of the measurement consequential action to be taken.

4. We, in our wisdom, after considering the various aspects, directed for measurement to be conducted and now from the report of the measurement, as has come on record, we find that there is some dispute with regard to the construction of window contrary to the sanctioned plan. Now in this appeal, which arises out of a proceeding under Article 226 of the Constitution, we will not go into a fact finding enquiry with regard to what is the sanctioned plan, how and in what manner the window has been constructed and whether the enquiry report now submitted by the Executive Officer, Nagar Panchayat, Warisaliganj, Nawadah is correct or not, all these are disputed questions of fact. The petitioner should, therefore now, take recourse to the common law/remedy available i.e. by filing a suit for which liberty has already been granted by the Writ Court to seek indulgence into the



matter by the Court and pray for injunction wherein all questions of facts can be sorted out in accordance with law, if required, after collecting the evidence and appointing pleader commissioner.

5. Accordingly, granting liberty to the petitioner to take recourse to the aforesaid remedy, we dispose of the matter.

6. We may indicate that the learned trial court, in case proceedings are initiated by the petitioner, shall proceed in the matter in accordance with law and shall not be influenced by any interim or final order passed either in the writ petition or in this appeal and shall proceed to decide the issue afresh in accordance with law based on the enquiry and evidence that may come on record.

7. In the pending proceedings before the trial court for a period of 30 days there shall be status quo from the date of filing of suit, thereafter it would be for the court to grant any interim protection.

8. All questions including objections to be raised by the parties are kept open for the trial court.

9. With the aforesaid, the appeal stands disposed of.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

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