

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16767 of 2018

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1. Prabhat Kumar, S/o Late Basudeva Prasad, R/o West Boring Canal Road, P.S.-
S.K. Puri, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Govt. of Bihar, Patna.
2. The Principal Secretary, Road Construction Department, Govt. of Bihar, Patna.
3. The Principal Secretary, Urban Development Govt. of Bihar, New Secretariat,
Patna.
4. The Commissioner, Patna Municipal Corporation, Patna Division, Patna.
5. The District Magistrate, Patna.
6. The Senior Superintendent of Police, Patna.
7. The Officer Incharge, P.S. S.K. Puri, District- Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Siddhartha Prasad, Adv.

For the P.M.C. : Mr. Prabhakar Singh, Adv.

For the Respondent/s : Mr. Mahendra Prasad, AC to SC-20

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date: 09-10-2018

Heard Mr. Siddhartha Prasad, learned counsel appearing
for the petitioner, Mr. Prabhakar Singh, for the Patna Municipal
Corporation and Mr. Mahendra Prasad, AC to SC-20.

The petitioner has filed this writ petition against



threatened demolition of the boundary wall of his house situated on plot no. 1174 (part) and 1175 (part) West Boring Canal Road in the town and District-Patna.

The reason for which the petitioner feels threatened is that the authorities of the Road Construction Department has marked the front portion of his boundary wall as the same, according to respondents, is an encroachment on the public land and has been marked in red. The petitioner apprehends that since the marking has been done, the demolition can take place any time. A prayer is made to direct the respondent-authorities including those in the Road Construction Department, Patna Municipal Corporation, the District Magistrate, Patna and the Senior Superintendent of Police, Patna including the local Station House Officer of the S.K.Puri police station to restrain themselves from indulging in any demolition.

As noted above, the disputes relates to the house of the petitioner which is situated on a plot bearing no. 1174(part) and 1175(part) on the West Boring Canal Road in the town and District of Patna which plot was purchased by late mother of the petitioner Shanti Lata Prasad wife of Late Basudeva Prasad.

Mr. Prasad, refers to the sanction of the construction plan granted by the erstwhile Patna Improvement Trust which at the



relevant time had the jurisdiction to do so, to submit that the petitioner has not exceeded the construction plan. He further in reference to a map enclosed at Annexure-A to the counter affidavit of the State submits that the width of the public road running in front of the house of the petitioner has been measured as 110 feet, which was the width of the road when the house came up in the year 1968. He next refers to the statement made by the respondent Road Construction Department at paragraph 7 of the counter affidavit to submit that the respondent themselves do admit that there is an open expanse of 116 feet 3 inch in front of the house of the petitioner which by itself is a confirmation of the fact that there is no encroachment by the petitioner on the public road.

Learned counsel submits that the statement of the Road Construction Department at paragraph 7 read along side the map enclosed by them confirms that there is no encroachment by the petitioner of the public road. It is argued that where according to respondent themselves, the expanse in front of the house of the petitioner is more than 116 feet which is more than the width of 110 feet mentioned in the map, there cannot be any issue of encroachment. According to learned counsel, the respondent-authorities in the Road Construction Department have exceeded their jurisdiction to mark the front boundary wall of the petitioner



for the purpose of demolition.

Learned counsel for the State has tried to defend the action by submitting that the petitioner has constructed beyond the area purchased. In our opinion even if that be an issue between the petitioner and his vendor, no grievance or issue can be raised by the State on this count, so long as the construction by the petitioner is not an encroachment on a public land. According to the counter affidavit of the State in its Road Construction Department, the width of the road in front of the house of the petitioner is more than 116 feet. The map enclosed by the said department mentions the width at 110 feet. Meaning thereby the present width of the road is more than the width provided in the map.

The accompanying facts confirm that the exercise undertaken by the respondents in the garb of removal of encroachment from public land, by marking the boundary wall of the petitioner for the purpose of demolition is an abuse of statutory powers and consequently the respondent-authorities in the Road Construction Department, Patna Municipal Corporation along with the District Magistrate, Patna and the Senior Superintendent of Police, Patna are accordingly restrained from acting in furtherance of any such demarcation made by the Road Construction Department for carrying out demolition in any portion of the house



of the petitioner including the boundary wall.

Let the demarcation so put up by the Road Construction Department be removed by 12th of October, 2018.

Let a writ in the nature of mandamus issue accordingly.

The writ petition is allowed with the direction as above.

(Jyoti Saran, J)

(Nilu Agrawal, J)

Devendra/Priyanka

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	10.10.2018
Transmission Date	NA

