

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5725 of 2020

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Balaji Steel Corporation Private Limited, a company incorporated under the provisions of Companies Act, 1956, having its registered office at Bhartiya Palace, Bandar Bagicha, Frazer Road, Patna 800001, through its Director, Amit Kumar Bhartiya, aged about 42 years (Male), Son of Prabhu Dayal Bhartiya, resident of 701, Shanti Kunj Apartment, Bank Road, Chhajjubag, P.S. Kotwali, P.O. G.P.O., Town and District Patna - 800001.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Urban Development and Housing Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna 800001.
2. The Secretary, Urban Development and Housing Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna - 800001.
3. The Collector cum District Magistrate, Patna.
4. The Patna Municipal Corporation, through the Municipal Commissioner Second Floor, Block- C Maurya Lok Complex, Buddha Marg, Patna, Bihar 800001.
5. The Municipal Commissioner, Patna Municipal Corporation, Second Floor, Block-C Maurya Lok Complex, Buddha Marg, Patna, Bihar - 800001.
6. The Additional Municipal Commissioner (Encroachment), Patna Municipal Corporation, Block-C Maurya Lok Complex, Buddha Marg, Patna, Bihar - 800001.
7. The Executive Officer, Patna City Circle, Patna Municipal Corporation, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Avinash Shekhar, Advocate
For the State	:	Mr. Vikash Kumar, SC 11
For PMC	:	Mr. Prasoon Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 01-06-2020

The matter has been heard *via* video conferencing
due to lockdown imposed on account of the COVID-19
pandemic.

2. Heard Mr. Avinash Shekhar, learned counsel for



the petitioner; Mr. Vikash Kumar, learned Standing Counsel 11 (hereinafter referred to as 'SC 11') for the State; and Mr. Prasoon Sinha, learned counsel for the Patna Municipal Corporation (hereinafter referred to as the 'Corporation').

3. The petitioner has moved the Court for the following reliefs:

"i) For issuance of a writ in the nature of certiorari for quashing letter no. 933 dated 19.05.2020 issued by Respondent Executive Officer, Patna City Circle, Patna Municipal Corporation, under Section 435 of the Bihar Municipal Act, 2007 alleging that the petitioner has committed encroachment upon the drain/"Nala" located on NH 30 and directing the petitioner to remove the same till 30.05.2020, failing which he same shall be demolished at the cost of the petitioner?

ii) To hold and declare that issuance of notice vide letter no. 933 dated 19.05.2020 without initiating any proceeding or enquiry tantamounts to violation of the principles of natural justice and thus, the letter deserves to be quashed for such violation.

iii) To issue an appropriate writ, order or direction in the nature of mandamus directing the Respondent Patna Municipal Corporation to cover the concerned drain in order to facilitate access between the roads/locality which flank the drain/"Nala", as it has been done in the case of others structures falling within the same Municipal area.

iv) To issue an appropriate writ, order or direction in the nature of mandamus directing the Respondent not to take nay coercive steps against



the petitioner in relation to the letter no. 933 dated 19.05.2020 during the pendency of this writ application.

v) This Hon'ble Court may further adjudicate and hold that issuance of notice of encroachment and demolition to the petitioner in an exceedingly pick and choose manner, is not only discriminatory, but also arbitrary exercise of power vested in the respondent authorities.

vi) This Hon'ble Court may further adjudicate and hold that in light of the fact that the petitioner has been using the pathway, after inserting eight huge pipes for free flow of drainage since last ten years, it cannot be deprived of the same, as Municipal Tax to the extent of Rs. 7.50 Lac per annum is being paid for the said property.

vii) this Hon'ble Court may further adjudicate and hold that the proposed demolition will leave the petitioner with no feasible access to its land, despite payment of huge tax against which the Municipal authorities are bound to provide such facility, as such, the same cannot be permitted.

viii) To hold and declare that the respondent Municipal Corporation is duty bound to provide access over plank to facilitate the owner of a property to approach public street/road and in case of sewerage it has to be covered and there cannot be any discrimination within the same Municipality.

ix) To grant any other relief or reliefs which the Petitioner may be found entitled to in the facts and circumstances of the case.”

4. On 29.05.2020, the matter was adjourned to enable learned counsel for the Corporation to assist the Court.

5. Mr. Prasoon Sinha, learned counsel for the Corporation submitted that though he has forwarded the



materials/brief received by him on e-mail to the Corporation, but instructions have not been received.

6. In view of the order the Court proposed to pass, learned counsel for the petitioner; State and Corporation agreed that the matter be disposed off.

7. As per the claim of the petitioner, he had constructed a passage over a drain by installing a hume pipe, though he fairly admitted that there was no written permission taken from the competent authority, however, no objection was raised for the last several years. Learned counsel for the petitioner submitted that, suddenly, without prior notice, on 19th May, 2020 *vide* the impugned notice, he was asked to remove the said construction, which is used for ingress and egress to his premises, which is a warehouse. It was further submitted that he has filed a representation before the authorities and there is a provision in the Bihar Municipal Act, 2007 which allows building of structures, roads etc., on a drain with permission of the Chief Executive Officer of the Corporation. It was submitted that the petitioner is ready to abide by the decision taken by the Corporation with regard to the design and structure of the road which he may be permitted to construct, at his cost, ensuring that the same does not hamper or obstruct in any manner the



free flow of water/drainage.

8. At this juncture, when the Court asked learned counsel for the petitioner to take a categorical stand as to whether it was amenable to abide by the direction of the authorities with regard to the structure which may be permitted to be constructed by the petitioner, keeping in mind the cleaning of the drain and flow of uninterrupted water through it, he took a categorical stand before the Court that he is amenable to such order being passed by the Court.

9. Learned counsel for the State and Corporation submitted that they are carrying out a joint drive in the city of Patna in view of the incoming monsoon season and also being conscious of the sad experience which the city had faced in October, 2019 where there was widespread water-logging which continued for many days leading to multiple issues causing great hardship to the common man, including health, transportation, provisions etc. on such account. They submitted that the main reason for such water-logging was encroachment on public drains and in many cases it was found that the same had also been completely closed/blocked.

10. The Court, having considered the issue, is of the firm opinion that there cannot be any compromise with



regard to the important public interest involved as also the urgency and need for drastic action in such matters where, in the past, unfortunately, the city of Patna and its residents have had to face extreme hardship, for the simple reason that though there are adequate legal provisions for preventing such a situation, primarily due to blockage/constriction of passage for sewerage/rain water, the compliance and strict enforcement of the same has by and large been on paper only and the ground reality is that the situation has become alarming requiring bold and effective measures by the authorities concerned.

11. Be that as it may, the Court, without commenting on what has happened in the past, would only observe that today when the authorities are making sincere efforts, the Court would not try to interfere and rather help them in performing their statutory duties and obligations so that public interest does not suffer.

12. Thus, it is for the authorities to have the final say in the matter, in accordance with law, keeping in mind the ultimate public interest and the requirement of the drains having a free flow without any sort of hindrance.

13. Having regard to the aforesaid, the writ petition stands disposed off with liberty to the petitioner to file a fresh



representation, in terms of what has been recorded above. As learned counsel for the petitioner took a categorical stand that the petitioner is ready to construct a fresh structure with regard to the passage which he has constructed over the drain, as per the design, as may be directed by the Corporation, he would indicate the same in his representation. If such a representation is filed latest by Friday (05.06.2020), along with a copy of this order, before the Municipal Commissioner of the Corporation (respondent no. 5), the same shall be considered on its own merits, after giving opportunity of hearing to the petitioner, and specific order shall be passed by the respondent no. 5, within one week from filing of such representation. If the respondent no. 5 finds that the petitioner's case is genuine and there is provision in law and a structure can be built to connect the side of the drain on which the godown of the petitioner exists, to the other side, by a structure which in no way will obstruct the free flow of water in the drain or affect its cleaning in future, he would permit the petitioner to construct such passage, specifications of which shall also be spelt out in the order. The petitioner shall not digress or violate any of the specifications with regard to building of such passage. Further, if permitted, the petitioner shall complete such construction latest within two



weeks from the passing of the order by the respondent no. 5, as has been agreed by learned counsel for the petitioner. It shall also be ensured, both by the Corporation and the petitioner that the dimensions of the same shall only be such so as to provide passage to the petitioner's premises. Further, the petitioner shall give an undertaking that the said passage shall be used exclusively for his premises and he shall not permit its use by others, without written permission of the concerned authorities.

14. If permission is granted to the petitioner to make such construction, till two weeks from the passing of the order, the present structure of the petitioner may not be demolished. After that, either by the petitioner himself or at the cost of the petitioner, the Corporation shall demolish/remove and clear the existing structure to the satisfaction of the Corporation, making the drain free of any sort of structure over it, as is existing presently.

15. The Court would make it very clear that it has passed the present order in the special facts and circumstances of the present case, balancing the equities and taking the ground reality into consideration. It would further indicate that a strict responsibility is cast on the petitioner to abide by any further direction which may be given in the order by the Commissioner



of the Corporation, passed on the representation of the petitioner relating to fresh construction over the drain in question.

16. It is also worth indicating that learned counsel for the petitioner has himself stated that he would not waste time by waiting for the time which may be allowed to him to complete the construction and would try to complete the same immediately with full effort so as to ensure that public interest is not compromised and that the drain in question is made free flowing, as far as the petitioner is concerned.

17. Before parting, the Court, in consultation with learned counsel for the petitioner, State as well as the Corporation, would indicate that all parties are agreeable that if there is an alternate route available to the petitioner without having to make any passage over the drain in question, the petitioner would not have any right to seek another passage by constructing one over the drain.

18. The present observation is not to be misconstrued that the petitioner shall look for an alternative. The authorities, if finding that there is a route available to the petitioner for ingress and egress to the premises in question, the petitioner would be required to make use of the same, and in such circumstances no permission for any fresh construction



shall be required to be passed by the respondent no. 5, which shall be indicated in the order.

(Ahsanuddin Amanullah, J)

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