

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8189 of 2020

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Suresh Chandra Yadav, S/o Late Ram Sahay Yadav, Resident of Mohalla -
Puraniganj, Yadav Tola, Munger.

... .. Petitioner/s

Versus

1. Nagar Nigam Munger through its Commissioner, Munger.
2. Commissioner, Nagar Nigam, Munger.
3. Deputy Commissioner, Municipal Corporation, Munger.

... .. Respondent/s

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Appearance :

For the Petitioner : Mr Shrinandan Prasad Singh, Sr. Advocate
with
Ms.Prakritita Sharma, Advocate
For the Respondent-Corporation :Mr. Anjani Kumar, Sr. Advocate
Mr.Amit Kumar Jha, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 08-12-2021

Heard learned counsel for the parties.

2. The petitioner is seeking quashing of a notice dated 25.06.2020, issued by the Deputy Commissioner, Municipal Corporation, Munger, whereby he has been asked to remove encroachment from the land, which has been described in the impugned order to be the Corporation's land. He has been informed, through the said notice, that if the encroachment is not removed, action would be taken under the provisions of Sections



435, 436 of the Bihar Municipal Act, 2007 (hereinafter referred to as “the Act”).

3. The impugned order has been brought on record by way of Annexure 1 to the writ application, from which it appears that the land has been described as Survey Ward No.E, Sheet No.07, Khesra No.1214, admeasuring 540 Sq.Ft.

4. It appears from the said notice that measurement was carried out by an *Amin* of the Corporation on a complaint made by one Madan Mohan Yadav.

5. Mr. Shri Nandan Prasad Singh, learned Senior Counsel appearing on behalf of the petitioner, referring to the said notice, has submitted that evidently, before issuance of notice, no opportunity of hearing was afforded to the petitioner. He has further submitted that even the measurement of the land was taken behind his back. He accordingly contends that the impugned notice has been issued in violation of the principles of natural justice and is, therefore, unsustainable.

6. Mr. Anjani Kumar, learned Senior Counsel appearing on behalf of the Corporation, on the other hand, has submitted that since the Corporation found encroachment over the Corporation’s land, caused by the petitioner, he was asked to remove such encroachment. He contends that this application is



premature and deserves to be dismissed also on the ground and is not maintainable in view of availability of alternative remedy before the Tribunal constituted under the Act.

7. It is evident from the impugned notice that the measurement of the land was taken behind the petitioner's back and before issuance of notice, no opportunity was given to the petitioner to put forth his case. Further, on perusal of the counter affidavit, it is evident that it is an admitted fact that the petitioner was not given any opportunity of hearing before issuance of the notice.

8. In such view of the matter, the impugned notice dated 25.06.2020 requires interference by this Court, which is, accordingly, quashed.

9. This application stands allowed.

10. The Corporation shall, however, be at liberty to proceed in the matter for getting the land in question re-measured in presence of the petitioner and proceed in accordance with law, thereafter.

11. Learned Senior Counsel appearing on behalf of the Corporation has raised apprehension that the petitioner may not co-operate in getting joint measurement of the land carried out.



12. In such view of the matter, it is directed that let the land in question be measured in presence of the petitioner on 21st December, 2021 at 11:00 A.M. If the petitioner does not participate in the process of measurement on 21st December, 2021, the Municipal Corporation shall be at liberty to proceed further, in accordance with law.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

PNM

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.

