

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 16142 of 2021

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Saurabh Kumar Son of Late Gyaneshwar Kumar Resident of Mohalla -
Jurawan Singh Marg, Hassan Chowk, Ward No. 11, P.O. - Lalbagh, P.S. -
Town, District- Darbhanga.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, Darbhanga.
3. The Senior Superintendent of Police, Darbhanga.
4. The Sub - Inspector, Town Police Station, Darbhanga.
5. The Officer - in - Charge, Disaster Management, Darbhanga.
6. The Sub - Divisional Magistrate, Sadar, Darbhanga.
7. The Circle Officer, Sadar, Darbhanga.
8. Darbhanga Municipal Corporation Through the Municipal Commissioner.
9. The Municipal Commissioner, Darbhanga Municipal Corporation,
Darbhanga.
10. Kameshwar Ojha Son of Late Raghvendra Ojha Resident of Mohalla -
Jurawan Singh Marg, Hassan Chowk, Ward No. 11, P.O. - Lalbagh, P.S. -
Town, District- Darbhanga.
11. Devashish Prasoan Son of Sri Kameshwar Ojha Resident of Mohalla -
Jurawan Singh Marg, Hassan Chowk, Ward No. 11, P.O. - Lalbagh, P.S. -
Town, District- Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr Abinash Kumar, Advocate
For the S t a t e	:	Mr Abbas Haider, SC VI
		Mr Ravish Chandra, AC to SC VI
For Respondents 8 & 9	:	Mr Bindhyachal Rai, 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 : 26-04-2022

Heard learned counsel for the petitioner and the
respondents.



2 It is the petitioner's grievance that Respondents No 10 and 11 are constructing a Mall, adjacent to the petitioner's residential premises in violation of the building bye laws. Further, the construction, which is being made by the said private respondents, has caused damage to the petitioner's house. It has been stated in the writ application that on an assurance given by the said private respondents, the petitioner had shifted to a rented house. The said private respondents had assured to get the repairs done in the petitioner's house for the damage caused during the course of construction of the Mall. The petitioner has complained that the private respondents have not acted in terms of the assurance and are rather making constructions in contravention of the building bye laws.

3 It appears that on a complaint made by the petitioner before Municipal Corporation, an enquiry was conducted and measurement was done by local Amin of the land in question. The Amin is said to have made his report disclosing deviation in construction of the Mall and the damage caused to the petitioner's building during the course of construction of the Mall. Immediately after the Amin submitted his report, the petitioner approached the Sub Divisional Officer under Section 133 (1) (d) of the Code of Criminal Procedure (for brevity, *Cr P C*), 1973.



Section 133 (1) (d), Cr P C empowers a Magistrate to make a conditional order if he considers that any building is in such a condition that it is likely to fall and thereby causing injury to person leaving or carrying business in the neighbourhood or passing by and that in consequence of the removal, or repair or support to such building or structure is necessary.

4 The petitioner has filed the present writ application seeking direction to the respondent-authorities to stop the aforesaid illegal construction work as also take appropriate action against the private respondents under the provisions of Bihar Municipal Act, 2007.

5 From the pleadings and documents brought on record, it is evident that the petitioner's case under Section 133 (1) (d) of the Cr P C has been registered and the authorities have proceeded to act under the said provision. Against an order passed by the Magistrate under Section 133 (1) (d) of the Cr P C, the private respondents had filed a revision application which was allowed by an order dated 18.03.2021 passed by the Additional District Judge, Darbhanga. By the said order, the matter has been remanded to the Sub Divisional Officer, Sadar Darbhanga. It appears from an order dated 01.04.2021, which has been brought on record by way



of Annexure 7 to the writ application, that notices have already been issued to the private respondents.

6 In our view, since the grievance of the petitioner has been taken cognizance of by the statutory authorities, no further direction is required to be issued by this Court in the present proceeding, in the facts and circumstances as emerging from the pleadings on record. We are further of the view that the petitioner has not pursued the matter before the Corporation after having filed his representation on 01.10.2020. It appears to us that after submission of report by the Amin, the petitioner chose to pursue remedy under the provisions of Cr P C.

7 Be that as it may, this application is disposed of with a liberty to the petitioner to pursue his grievance before the Municipal Corporation, simultaneously considering the nature of allegation, which has been made in the writ petition.

(Chakradhari Sharan Singh, J)

(Madhuresh Prasad, J)

M.E.H./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.04.2022
Transmission Date	NA

