

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19274 of 2021

Vishnu Kant Sahay Son of Late Bishwambhar Lal Resident of Mohalla-Nawagarhi, P.S.- Vishnupad, District- Gaya, Pin- 823001.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development and Housing Department, Bihar, Patna.
2. District Magistrate, Gaya.
3. Municipal Commissioner-cum-Administrator, Gaya Municipal Corporation, Gaya.
4. Town Vending Committee, Gaya, Municipal Corporation, Gaya through its Chairman.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Abhinav Srivastava, Advocate Mr. Raushan, Advocate
For the Respondent/s	:	Mr. Subhash Pd. Singh, GA-3 Mr. Rabindra Kumar Priyadarshi, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 03-03-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

- (i) Issuance of a direction, order or writ, including writ in the nature of mandamus commanding the concerned respondent authorities under the Urban Development and Housing Department of the State Government as well as the District Administration of Gaya and Municipal Corporation, Gaya to take steps towards removal of illegal encroachments from the pavements as well as the main K.P. Road in the district and town of Gaya and further to refrain from acting in furtherance of the purported decision taken by the Town Vending Committee of Gaya Municipal Corporation, Gaya during its emergency meeting held on 10/07/2021 with respect to settlement of the road including the pavements and pathway in favour of the



vendors who have been running businesses by encroaching upon the main road and thereby obstructing smooth running of the traffic and causing great inconvenience to the general masses in addition to creating life threats and hazards in the event of any untoward incident like fire, electricity short circuits, medical emergencies, etc.;

(ii) Issuance of a direction, order or writ, including writ in the nature of mandamus commanding the concerned respondent authorities under Gaya Municipal Corporation, Gaya as well as the District Administration of Gaya to refrain from acting in furtherance of the decision taken by the Town Vending Committee of the Gaya Municipal Corporation, Gaya taken during its meeting held on 10/07/2021, by which, inter alia, it has been decided to name and number the shops, mobile vending thelas of given dimension on the both the side of K.P. Road in the district of Gaya purportedly to implement the policy of the government to create vending zones and to extend protection of subsistence for the shop owners running from the footpaths;

(iii) Issuance of a declaration holding that the action on the part of the concerned respondent authorities under the Gaya Municipal Corporation, Gaya in seeking to settle the footpaths as well as portions of the main K.P. Road in the district and town of Gaya is completely impermissible in the eyes of law and as such, the concerned respondent authorities are liable to take steps towards removing the illegal encroachments from the both sides and parts of

K.P. Road in the district of Gaya, which is causing a threat to the safety of the shops as well as residents of the said road and furthermore causes great inconvenience to the general masses;

(iv) Any other relief that the petitioner may be found to be entitled to in the facts and circumstances of the present case.

From the counter affidavit dated 27.01.2022 filed by Mohammad Shahab Yahya, Dy. Municipal Commissioner, Gaya Municipal Corporation, Gaya on behalf of Respondent No. 3, namely Municipal Commissioner-cum-Administrator,



Gaya Municipal Corporation, Gaya, it is apparent that there is no proposal at any level pending consideration for creation of a vending zone on the K.P. Road, Gaya. Also, all functionaries, including the police authorities, and more specifically the Deputy Superintendent of Police (Traffic) has been directed to remove the encroachments on the said road.

The relevant portion of the counter affidavit is extracted as under:-

8. That apart from K.P. Road with a view to take constant visit on the temporary encroachment as well as permanent encroachment by street vendors two teams are regularly working right from 10:00AM to 06:00 PM and further the Dy. S.P. Traffic as well as officer-in-charge of traffic police station are being requested whenever the authorities of the corporation gets information regarding encroachment and Traffic Jam.
9. That whenever the municipal authorities get any application or complain the same is taken on priority basis and after removal of such permanent or temporary encroachment information is sent to the local police station to take steps and to monitor the area so, that no any further encroachment is made. Memo No.-1675 dated 05.10.2021 has been submitted to the officer-in-charge civil line police station after removal of encroachment on the complaint. Similarly officer-in-charge of Kotwali police station has been informed by the letter no.-1773 dated 28.10.2021 after removal of encroachment from K.P. Road Gaya.



12. That the Urban Development and Housing Department, Government of Bihar vide letter no.-2695 dated 02.12.2016 directed the urban local bodies to take steps for establishment of vending zone as per DAY-NULM scheme to support the urban street vendors after creation town vending committee. Under the direction of parent department, Government of Bihar, a vending committee has been created in which more than nine categories of persons have been made member such as 1. Civil Surgeon, Gaya, 2. Engineer, Gaya Municipal Corporation, 3. Superintendent of Police, Gaya, 4. Representative of leading Bank of District, 5. Member of Chamber of Commerce, 6. National Union for Workers, 7. City Manager/Revenue Officer, 8. Three members of Non-Government Organization (NGO)/Community Association, 9. 10 members from Town Level Federation of Street Vendors. After meeting of vender committee dated 11.02.2017 seven places has been selected for creation of vending zone. From perusal of this letter it is evident that K.P. Road is not there in the list. Vide memo no.- 1745 dated 14.07.2017 Assistant Engineer of the Municipal Corporation has been appointed as a nodal officer to make verification and for creation of Sketch map and other technical aspects so that a technical report be submitted.
13. That with regard to aforesaid seven places Dy. S.P. Traffic has been asked to verify the place and to make his report. The Executive Engineer, Bihar State Road Development Corporation has been requested to issue no objection certificate with regard to Bhusunda road to Jag Jeevan College Road. Similarly other concerned department/authority has been requested for issuance of no objection certificate. No Objection is in process of receipt and after that a technical report in a check list will be sent to the Urban Development and Housing Department for its approval.



14. That as far as annexure-2 which is a copy of meeting of ward councilor and others with regard to encroachment made by the house owners as well as the shopkeeper in the K.P. Road, Gaya, since this road is one of the widest road of town Gaya, hence, the shopkeepers as well as both sides of the road use to make allow the street vendors and Thelas vendors to keep their Thelas on front of houses owners and shop keepers by extracting money on the name of rent. To check the situation this meeting dated 10.07.2021 was held but it is made clear this meeting was not a meeting of vending committee constituted under the direction of state government. However it is make clear that no action has been taken pursuance to this annexure-2 and it is made clear that at present there is no proposal at any level in the corporation for creation of vending zone in the K.P. Road, Gaya.

In view of the stand taken by the respondent State as also the Municipal Corporation, Gaya, we close the present proceedings with a further direction to the Senior Superintendent of Police, Gaya to ensure that all encroachments on K.P. Road, Gaya are removed forthwith. Also, liberty is reserved to the petitioner to invite attention of the authorities of any issue relating to the *lis* in question and/or file a fresh petition, should the need so arise subsequently.

The instant petition stands disposed of in the aforesaid terms.



Interlocutory Application(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Amrendra/PKP

AFR/NAFR	
CAV DATE	
Uploading Date	07.03.2022
Transmission Date	

