

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6953 of 2023

=====

Deepak Kumar Jaiswal S/o Mahindra Kumar Jaiswal, R/o Ward No. 12,
N.A.C. Road, P.O. and P.S.- Khagaria, District- Khagaria.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue and land Reforms Department, Government of Bihar, Patna.
2. The Principal Secretary, Revenue and land Reforms Department, Government of Bihar, Patna.
3. The Divisional Commissioner, Patna.
4. The District Magistrate, Khagaria.
5. The Sub-Divisional-Officer, Sadar- Khagaria, District- Khagaria.
6. The Executive Officer, Nagar Parishad, Khagaria, District- Khagaria.
7. Smt. Shanti Devi, W/o Late Ramesh Choudhary, R/o Ward No. 19, P.O. Road, P.O. and PS- Khagaria, Bihar- 851204
8. Sunil Kumar, S/o Mahesh Prasad Sah, R/o Thana Road, Ward No. 18, PO and PS- Khagaria, District- Khagaria Bihar- 851204.
9. Shanti Singh, W/o Shri Sudhanshu Mohan Singh, R/o- Western Boring Canal Road, Patna. (Vendor)
10. The Architect, Nagar Parishad, Khagaria, District- Khagaria.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Alok Ranjan, Advocate
For the State	:	Mr.Asif Kalim, AC to AAG 12
For respondent no.8	:	Mr. Ajay Kumar, Advocate
For Nagar Parishad	:	Mr. Krishna Chandra, Advocate
		Ms. Prakritita Sharma, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 18-12-2023

Counter affidavit filed on behalf of the respondent
no.6 is directed to be kept on record.

2. Heard Mr. Alok Ranjan, learned counsel appearing



on behalf of the petitioner; Mr. Asif Kalim, learned AC to AAG 12 for the State, Mr. Ajay Kumar, learned counsel for respondent no.8 and Mr. Krishna Chandra along with Ms. Prakritita Sharma, learned counsels for the Nagar Parishad, Khagaria. .

3. Petitioner has filed the writ petition for following reliefs:-

(i) For quashing of the order as contained in order dated 11.04.2023 issued under the signature of Divisional Commissioner, Munger, passed in case No.421110112205622/1A as 1st Appellate authority, whereby and whereunder a direction has been issued to demolish the part of the building of the petitioner and to recover fine from the petitioner.

(ii) For restraining and commanding the respondent authorities from taking any coercive action as against the petitioner (from demolishing the part of the building of the petitioner).

(iii) For holding that the order passed by the respondent authority and the entire process issued by the authority (Divisional Commissioner, Munger) is abuse of process of law, wholly without jurisdiction and in contravention of principles of Natural Justice.

(iv) For directing and commanding the respondent authorities pass final order in accordance with law after taking into consideration the reply filed on behalf of the petitioner, in this behalf, that the passage of 8 feet is private property of the vendor of the petitioner and permanent construction has already been made from more than 50 years back.

(v) For any other appropriate relief/reliefs



to which the petitioner is found entitled in the facts and circumstances of this case.”

4. Learned counsel appearing on behalf of the petitioner submits that dispute relates to a small piece of land situated in Mauja-Hajipur, Khata No.87, Khesra No.156, measuring an area of 725 square feet, which he had purchased from respondent no.9 in the year 2013 and at the time of purchase, already construction was existing over the land and a covered private path for entering into the rest land was already there which is mentioned in the recital of the sale deed also. Soon after purchasing the said piece of land, the petitioner got the land mutated in his name and started paying rent to the State Government. Since the construction on said piece of land was very old, petitioner started with renovating the same and respondent no.8, who is an anti-social element, demanded an amount of Rs. 5 lakhs as ransom, else he had threatened that he will not allow him to make construction work. Since the illegal demand raised by respondent no.8 was not fulfilled by the petitioner, respondent no.8 made several complaints before many of the authorities, pursuant to which the petitioner was asked to file his reply and the petitioner filed his reply on 21.12.2022 in the office of Executive Officer, Nagar Parishad, Khagaria. Thereafter again pursuant to order passed by the



Divisional Commissioner dated 21.03.2023, the Executive Officer, Nagar Parisahd, Khagaria had proceeded to prepare a detailed report and after visiting the site informed the petitioner vide memo no.439 dated 31.03.2023 to remove the deviation and also file his reply. Thereafter, petitioner filed his reply on 26.04.2023 and no action has been taken on the reply of the petitioner and in the meantime, finally the order was passed on 11.04.2023 by the Divisional Commissioner, Munger directing for demolition of the construction made by the petitioner.

5. The case of the petitioner is that he was not afforded any opportunity of hearing and without allowing the petitioner to place his case, order of demolition has been passed. Petitioner is aggrieved with the said order.

6. *Per contra*, Ms. Prakritita Sharma, assisted with Mr. Krishna Chandara, panel counsel submits that after holding proper inquiry at the spot, an order for demolition was passed against the petitioner, who had constructed two more floors than what was sanctioned.

7. Having considered the rival submissions of the parties as well as the fact that pursuant to the order passed by the Divisional Commissioner dated 21.03.2023, the Executive Officer, Nagar Parishad had proceeded to prepare a detailed



report and after making technical and physical inquiry, informed the petitioner vide memo no. 439 dated 31.03.2023 to remove the deviation or file his reply and pursuant to which, the petitioner filed his reply on 26.04.2023 and no action has been taken on the reply of the petitioner. In the meantime, the petitioner also did not seek it proper to approach the Executive Officer of any of the authority of Nagar Parisahd and finally the order was passed on 11.04.2023 by the Divisional Commissioner, Munger, who has not issued any notice to the petitioner.

8. The order passed by the Divisional Commissioner, Munger is held to be in operative, as the same has been passed without issuing any notice to the petitioner.

9. The petitioner may approach the Divisional Commissioner or he may, in the meantime, proceed to file his application before the Executive Officer, Nagar Parishad, Khagaria for compounding of any deviation which is permissible in accordance with law.

10. It is made clear that till the Divisional Commissioner passes a fresh order by modifying his earlier order, the Municipal Commissioner will not take any action till he finally decides the case of the petitioner.



11. With aforesaid observations and directions, the writ petition stands disposed of.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.12.2023
Transmission Date	NA

