

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10944 of 2018

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Pankaj Kumar Son of Uma Shankar Prasad Sah, Resident of Ward No.39,
Bishnupur, Mirzapur Banduar, Cheria Bariarpur, Police Station- Nagar,
District- Begusarai.

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Urban Development Department, Bihar, Patna.
2. The Municipal Commissioner, Nagar Nigam, Begusarai.
3. Krishnadeo Prasad Yadav, Son of Anik Yadav, Resident of Mohalla- Ram Nagar, Bishnupur, Ward No.3, Police Station- Nagar, District- Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjeev Ranjan, Advocate
For the State	:	Mr. Kinkar Kumar- SC-9 Ms. Dipika Sharma, AC to SC-9
For the Nagar Nigam	:	Mr. Ravi Bhushan Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 31-07-2023

1. The present writ petition has been filed for quashing a part of the order dated 24.02.2018, passed in Case No.59 of 2016, by the Municipal Commissioner, Nagar Nigam Begusarai, i.e. the



respondent no.2 herein, whereby and whereunder the respondent-authorities have directed the petitioner to remove 18 feet of encroachment made over government tubewell.

2. The brief facts of the case, according to the petitioner, are that the grandfather of the petitioner, namely, Ram Gulam Sahu along with his brother Gandhari Sahu had purchased 11 katha, 8 dhur of land by a registered sale deed dated 03.02.1953 from Baijnath Jha, appertaining to Khata No.353, Khesra No.102, Thana No.342, Tauzi No.766, situated at Mauza-Mirjapur Bandwar, Anchal Begusarai, District-Begusarai. The aforesaid land had fallen in the share of the father of the petitioner, whereafter the father of the petitioner had become exclusive owner thereof. Subsequently, a portion of the land to the extent of 5 katha, 16 dhur, 5 dhurki was sold by the father of the petitioner in the year 2000 by a registered sale deed, however, the land admeasuring 5 katha, 11 dhur, 5 dhurki was retained by the family. It appears that on account of complaint filed by the



private respondent before the Municipal Commissioner, Nagar Nigam, Begusarai, alleging therein that the petitioner is constructing a boundary wall on the land of Nala, which belongs to the irrigation department, the respondent no.2 had directed for a spot inquiry, whereafter a notice dated 02.11.2015 was issued by the respondent no.2 to the petitioner regarding illegal construction being made by him on the land of the tubewell without approval of the respondent-authorities, as also directed the petitioner to stop construction and appear before the respondent no.2 on 06.11.2015 along with relevant documents, whereupon the petitioner had appeared before the respondent no. 2 on 06.11.2015 and had submitted a detailed reply stating therein that he had not encroached on any Government land and only to protect his land, he was erecting a boundary wall for which no permission is required. Thereafter, the respondent no.2 had issued a letter dated 18.02.2017, directing the Amin to measure the land in question. The petitioner had then produced



the sale deed/title deed and other relevant documents before the Amin, who had arrived at the spot on 28.02.2017, and then the Amin had demarcated 18 feet land of Nala, However, subsequently, the measurement report and consent letter were prepared behind the back of the petitioner regarding encroachment made by the petitioner.

3. The further case of the petitioner is that he had filed his written statement on 05.03.2018 in the aforesaid Case No.59 of 2015, whereafter the respondent no.2 has passed the impugned order dated 24.02.2018, directing the parties to vacate the encroachment made over 18 feet Nala and not to make any construction without approval of the Nagar Nigam, Begusarai.

4. The learned counsel for the petitioner has submitted that the Nala in question belongs to the irrigation department and in case the respondent-authorities so decide to remove unauthorised occupation made over public land, the only recourse is to initiate appropriate



proceedings under the provisions of the Bihar Public Land Encroachment Act, 1956, hence the respondent no.2 has transgressed his jurisdiction and illegally passed the impugned order dated 24.02.2018 directing the petitioner to remove encroachment from the Nala in question. The learned counsel for the petitioner has further submitted that the Amin has circumspectly recorded consent of the parties to the effect that Nala is 18 feet and is situated on government land and starts from the ridge of the private respondent without ascertaining the location of the ridge of the private respondent, with reference to the sale deed in question, inasmuch as the sale deed of the private respondent shows that he had only purchased only 5 katha 11 dhur of land whereas the Amin has marked his land to the extent of 5 katha 17 dhur and 11 dhurki, which clearly shows that the report of the Amin is incorrect. The learned counsel for the petitioner has also submitted by referring to Section 323 of the Municipal Act, 2007 that in case any building has



been erected by any person without obtaining sanction under Section 314 of the Municipal Act, 2007 or in contravention of any of the provisions of the Municipal Act, 2007 and rules or regulations made thereunder, the Chief Municipal Officer can take action for demolition of illegally erected building, however, only after formal registration of vigilance case. In this regard, the learned counsel for the petitioner has relied upon an order dated 22.09.2014, passed by a co-ordinate Bench of this Court, in CWJC No.25447 of 2013 (**Shiv Devi vs. The Darbhanga Municipal Corporation & Anr.**)

5. *Per contra*, the learned counsel for the respondent no.2 has submitted by referring to the counter affidavit filed in the present case that the petitioner was illegally constructing a wall by encroaching a portion of the Nala and road without approval of the respondent no.2, hence he was directed to stop construction and appear before the respondent no.2, and to that effect, notices were also issued to the petitioner. It is also submitted that the Amin had gone to the spot on



28.02.2017, where the parties, including the petitioner had appeared, and then a measurement report and a consent letter was prepared in their presence on which some members of the parties and panches had put their signature. It is further submitted that as far as the impugned order dated 24.02.2018 is concerned, there is no infirmity in the same, inasmuch as the same has been passed only after considering the documents produced by the parties and after hearing them, apart from the same being a just, legal, reasoned and a speaking order.

6. The learned counsel for the State-respondent has further submitted that in case the petitioner is aggrieved by the order passed by the respondent no.2, he can approach the Municipal Building Tribunal.

7. Having heard the learned counsel for the parties and having perused the materials on record, this Court finds that the first issue, which has been raised by the learned counsel for the petitioner in the present case is that for removal of



encroachment made over public land, the respondent-authorities have to take recourse to the procedure prescribed under the Bihar Public Land Encroachment Act, 1956 and the Municipal Commissioner, Nagar Nigam, Begusarai has got no authority, under the law to direct for removal of encroachment made over a public land.

8. In this regard, it would be relevant to state that Section 435 of the Bihar Municipal Act, 2007 provides that no person shall cause any encroachment or obstruction on any municipal property, without specific permission of an officer of the Municipality duly authorized to grant such permission and any person causing such encroachment or obstruction on any municipal property as aforesaid shall, on conviction, be punishable with fine which may extend to one thousand rupees.

9. At this juncture, this Court would refer to a letter dated 08.04.2021, issued by the Urban Development and Housing Department, Government of Bihar, Patna, wherein it has been



mentioned that Section 435 of the Municipal Act, 2007 has been amended vide Bihar Municipal (Amendment) Act, 2021, which now reads as follows:-

"धारा-435-मार्ग का अतिक्रमण (1) कोई भी व्यक्ति नगरपालिका पदाधिकारी या ऐसे अन्य पदाधिकारी, जिसे राज्य सरकार द्वारा प्राधिकृत किया गया हो, की लिखित अनुमति के बिना नगरपालिका क्षेत्र के अन्तर्गत सार्वजनिक मार्ग, पगडंडी, ड्रेनेज, सिवरेज एवं पार्क पर स्थायी या अस्थायी संरचना द्वारा अतिक्रमण एवं अवरोध नहीं करेगा।

व्याख्या- स्थायी अतिक्रमण से अभिप्रेत है ईंट, सिमेन्ट, कंक्रीट द्वारा निर्मित संरचना द्वारा अतिक्रमण या अवरोध तथा इसके अतिरिक्त सभी अतिक्रमण या अवरोध को अस्थायी अतिक्रमण एवं अवरोध माना जायेगा।

(2) कोई व्यक्ति जो यथापूर्वोक्त तरीके से नगरपालिका की किसी सम्पत्ति का ऐसा स्थायी या अस्थायी अतिक्रमण या अवरोध करेगा, दोष सिद्ध होने पर स्थायी अतिक्रमण के मामले में बीस हजार रुपये तक तथा अस्थायी अतिक्रमण के मामले में



पाँच हजार रुपये तक के जुर्माना से दंडनीय होगा।

(3) नगरपालिका पदाधिकारी या प्राधिकृत पदाधिकारी ऐसे स्थायी अतिक्रमण एवं अवरोध को हटाने हेतु पन्द्रह दिन पूर्व नोटिस निर्गत करेगा। पन्द्रह दिनों के अन्दर ऐसे स्थायी अतिक्रमण या अवरोध के संबंध में नगरपालिका पदाधिकारी या प्राधिकृत पदाधिकारी को कारण सहित संतुष्ट करने में विफल रहने पर नगरपालिका पदाधिकारी या प्राधिकृत पदाधिकारी द्वारा संबंधित व्यक्ति को जुर्माना से दंडित कर सकेगा अथवा ऐसे व्यक्ति से होल्डिंग के बकाया के रूप में वसूली कर सकेगी।

परन्तु यह कि नगरपालिका पदाधिकारी या प्राधिकृत पदाधिकारी द्वारा अस्थायी प्रकार के अतिक्रमण एवं अवरोध को चौबीस घंटे की नोटिस देकर हटा सकेंगी।"

Thus, this Court finds that the officials of the Municipality, i.e. the Municipal Commissioner, Nagar Nigam, its Executive Officer/authorised officer, are fully authorised to initiate proceedings and remove the encroachment made over the municipal property, hence the said issue raised by the petitioner is answered against him and it is held that the officials of the Municipalities are



empowered to remove encroachments and impose fine on the encroachers.

10. The other issue raised by the petitioner is absolutely factual in nature and upon measurement having been made by the Amin in presence of the petitioner and others, it has been found that certain portion of the land/road/Nala of the State Tubewell Department has been encroached by the petitioner, hence the parties, including the petitioner have been directed to keep the land of the government tubewell, i.e. Nala in question admeasuring 18 feet, free from any encroachment. Thus, this Court does not find any infirmity in the aforesaid order dated 24.02.2018, passed by the respondent no.2, so as to warrant any interference. In case the petitioner is sanguine about his claim, he can take recourse to such other alternative remedies, as are otherwise available under the law, including that of filing a civil suit before the learned Civil Court having competent jurisdiction, inasmuch as disputed question of facts cannot be decided in a writ jurisdiction under



Article 226 of the Constitution of India. Reference in this connection be had to the judgments rendered by the Hon'ble Apex Court in the following cases :-

- (i) In the case of ***Shri Sohan Lal vs. Union of India & Another***, reported in ***AIR 1957 SC 529***;
- (ii) In the case of ***Punjab National Bank & Others vs. Atmanand Singh & Others***, reported in ***2020 SCC Online SC 433***;
- (iii) In the case of ***Thansingh Nathmal and Ors. Vs. Superintendent of Taxes, Dhubri and Ors.***, reported in ***AIR 1964 SC 1419***;
- (iv) In the case of ***Babubhai Muljibhai Patel v. Nandlal Khodidas Barot***, reported in ***(1974) 2 SCC 706 at page 715***;
- (v) In the case of ***Government of Andhra Pradesh vs. Thummala Krishna Rao & Anr.***, reported in ***(1982) 2 SCC 134***.

11. The last issue raised by the petitioner in the present case is that no formal vigilance case has been registered, hence the impugned order



dated 24.02.2018 is illegal. In this regard, it is stated that Section 315 and Section 323 of the Bihar Municipal Act, 2007 pertains to erection of building etc., in contravention of the provisions contained in the Municipal Act, 2007 and the rules made thereunder as also regarding construction made without the sanction required under Section 314 of the Municipal Act, 2007, whereas the present case is not a case concerning construction/erection of illegal building without sanction, but the present case appertains to encroachment of government/public land, which is governed by Section 435 of the Bihar Municipal Act, 2007, hence the aforesaid submission of the learned counsel for the petitioner is misplaced and baseless, thus is fit to be rejected. Consequently, the order dated 22.09.2014 passed by a co-ordinate Bench of this Court in the case of **Shiv Devi** (supra) is not applicable in the present case, inasmuch as in the said case the petitioner of that case had been held guilty of violation of the provisions underlying Sections 315 and 323 of the



Bihar Municipal Act, 2007.

12. Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove, I do not find any merit in the present writ petition, hence the present writ petition stands dismissed.

(Mohit Kumar Shah, J)

Kanchan/-

AFR/NAFR	AFR
CAV DATE	17.11.2022
Uploading Date	31.07.2023
Transmission Date	NA

