

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1292 of 2016

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Sri Binod Kumar Sinha S/o Sri Ramprasad Sinha, Resident of Mohalla -
Maharajganj, P.S. - Alamganj, District - Patna.

... .. Petitioner/s

Versus

1. The Patna Municipal Corporation and Anr
2. Saroj Devi, W/o Sri Bharat Mishra, Resident of Mohalla - Pakari Near India
Oil Gass Agency, Pakari, P.S. - Nawada, District - Bhojpur Ara.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ranjan Kumar Dubey
For the Respondent/s	:	Mr. Hargovind Singh Himkar
For the PMC	:	Mr. Sanjay Prakash Verma

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

9 10-04-2023 Heard learned counsel for the petitioner and learned
counsel for the State along with learned counsel for the
Municipal Corporation and learned counsel for the private
respondent.

Learned counsel for the petitioner submits that survey
plot No. 405 pertaining to khata No. 143, tohi No. 26, at Umrail,
P.S. Sultanganj, District Patna was acquired by two different
housing co-operative societies namely Alpa Aay Varigiya
Sarkari Grih Nirman Samiti Limited (herein after referred as
Samiti No. 1) and Chetan Alaya Sahkari Grih Nirman Samiti
Limited, Patna (herein after referred as Samiti No. 2). It is next
submitted that the father and mother of the petitioner's wife
acquired total 4804 sq. ft. of land from Samiti No. 2, whereas



Saroj Devi (respondent No. 2) acquired land from Samiti No. 1 measuring above 2178 sq. ft., further, adjacent to the land of respondent No. 2 is a road running east to west in length left by her society. It is next submitted that the aforesaid land were acquired/purchased through registered sale deed executed by their society in their favour. It is further submitted that adjacent west to the land purchased by parents of the petitioner's wife, there is also a road running north to south. It is next submitted that after the death of petitioner's in-laws, his wife and sister-in-law (i.e. sister of his wife) inherited the said land along with other properties and on basis of family partition, the aforesaid land came in exclusive possession of his wife and the land in question was also mutated in his wife's name.

It is further submitted that adjacent west of the land acquired by his wife, there is also a road running north to south in length and adjacent east of the said land, there is a land of Dinesh Chandra Shrivastav who also had acquired land from Samiti No. 2 and he has constructed his house encroaching the eastern portion of the land of his wife, which led to acrimony between the petitioner and Dinesh Chandra Shrivastav. It is next submitted that the main gate of Dinesh Chandra Shrivastav opened towards east on the road which runs north to south in



length, further, he has also encroached the northern portion of the road by making a concrete route. It is next submitted that the house of respondent No. 2 is not of the house of Dinesh Chandra Shrivastav.

It is further submitted that there is no road adjacent east to the land of the wife of the petitioner, rather, there is society plot No. 3 and 5. Society plot No. 3 is of Dinesh Chandra Shrivastav and plot No. 5 is of Narendra Singh. It is next submitted that Dinesh Chandra Shrivastav has encroached the northern portion of society plot No. 5 of Narendra Singh. It is submitted that Narendra Singh filed title suit before the Learned Civil Court, Patna for removing the encroachment.

Learned counsel for the petitioner, at this stage, submits that he does not have instructions, as to whether, the title suit filed by Narendra Singh for removing the encroachment is still pending or the matter has been adjudicated.

It is next submitted that wife of the petitioner made a pakka construction on the western portion of her land and remaining eastern portion of the land is parti (vacant), over which she got a temporary shape hatched with corrugated iron sheet for protecting from rain.



On query of the Court that on what area of the land, the construction has been made, the learned counsel for the petitioner was not in a position to make a specific submission, further, gate of her house opened towards west on the main road running north to south, at this stage, the learned counsel for the petitioner vehemently submits that no godown ever existed on the said plot of land.

It is next submitted that Dinesh Chandra Shrivastav filed case No. 270 of 2007 in the Court of S.D.O., Patna City, against the wife of the petitioner for initiating a proceeding under Section 144 CrPC, the said proceeding was converted into a proceeding under Section 145 CrPC.

At this stage, the learned counsel for the private respondent submits that the case which was converted under Section 145 CrPC, in that the S.D.O., Patna City had given specific direction for initiating a proceeding under Section 188 of the CrPC.

Learned counsel for the petitioner submitted that the case was filed with a view to grab the eastern side of the lane of his wife's land, further, Dinesh Chandra Shrivastav got CWJC No. 15770 of 2009 filed by the respondent No. 2 before this Court for removing the encroachment without impleading his



wife as party respondent. The CWJC No. 15770 of 2009 was disposed of by order dated 02.08.2010 (Annexure No. 3 to the writ application) with a direction to the respondent No. 2 to approach the Collector for removal of godown constructed in the residential area, under the land Encroachment Act.

Learned counsel for the petitioner further submits that the encroachment proceeding was dropped by order dated 12.09.2012 passed by the Circle Officer in encroachment case No. 12/10-11.

The respondent No. 2 being aggrieved by the aforesaid order dated 12.09.2012 filed CWJC No. 23664 of 2012, the CWJC No. 23664 of 2012 was dismissed by an order dated 26.02.2013 (Annexure 5 to the writ application) and the L.P.A. No. 815 of 2013 preferred against the order dated 26.02.2013 in CWJC No. 23664 of 2012 was also dismissed.

Learned counsel, thereafter, submits that the respondent No. 2 in view of the observations of this Court in CWJC No. 15770 of 2009, as recorded herein above, had also filed an application before the Municipal Commissioner, Patna Municipal Corporation, for removal of the alleged godown, which gave rise to vigilance case No. 15B of 2011. The Municipal Commissioner, Patna Municipal Corporation,



accordingly, called for a report with regard to the allegations from the Junior Engineer who submitted his report after holding an inquiry (Annexure 6 to the writ application) recording that the godown is towards east of the main road running north to south passing through Bhagwat Milan Mandir to the NH-30 bypass road and the proposed road according to Master plan is 90 ft. (27.33 meters) but at present, at the spot, only 17.33 meters of land is left from the land in question. It is next submitted that the vigilance case i.e., vigilance case No. 15B of 2011 in pursuance of the complaint filed by the respondent No. 2 was decided ex-parte by an order dated 02.07.2011 (Annexure 7 to the writ application) passed by the Municipal Commissioner holding that the alleged godown constructed on plot No. 405 pertaining to khata No. 143, ward No. 55 at Mohalla Bhagwat Nagar is illegal and thus directed to demolish it.

Learned counsel submits that the petitioner, thereafter, filed CWJC No. 7531 of 2013, the CWJC No. 7531 of 2013 was disposed of by order dated 12.04.2013, directing the petitioner to appear before the Municipal Commissioner on 15.04.2013 and on his appearance, one week time was granted to file pleadings and supporting documents and the Municipal Commissioner was directed to pass fresh orders.



At this stage, the learned counsel appearing for the Patna Municipal Corporation, Mr. Sanjay Prakash Verma submits that the order dated 12.04.2013 in CWJC No. 7531 of 2013, clearly recorded that a chance was granted to the petitioner for moving before the Municipal Commissioner, Patna Municipal Corporation with a direction to file proper pleadings and documents in support of his contention.

Learned counsel submits that this submission has been made only for the reason that it has bearing on the case. It is next submitted that though the petitioner appeared before the Municipal Commissioner in pursuance of the orders passed by this Court in CWJC No. 7531 of 2013 but did not annex any supporting documents to support his contention that the alleged construction on the land was in accordance with the sanctioned plan.

Learned counsel for the petitioner replying the contention of the learned counsel for the Municipality submits that the Municipal Commissioner passed order dated 03.01.2015 (Annexure 2) holding that despite adjournments, no document with regard to title and sanctioned map was filed by the petitioner nor he filed his written argument, as such, held the construction to be illegal and passed order for demolishing the



same.

Learned counsel submits that the Municipal Commissioner ought to have given an opportunity to the petitioner to bring all the relevant documents on record to substantiate his plea.

Learned counsel next submits that the petitioner accordingly filed appeal No. 14 of 2015 before the Municipal Tribunal and the Municipal Tribunal by order dated 19/30.11.2015 (Annexure 1) upheld the order of Municipal Commissioner dated 03.01.2015 passed in vigilance case No. 15B of 2011 recording that the issue involved in the case is whether the construction in question have been made in terms of the provisions of the Bihar Municipal Act, 2007 and as per the building by law or not, it is next submitted that the Tribunal also dismissed the appeal on the ground that the alleged godown was constructed without any sanctioned plan and is being used as a marriage hall for commercial purpose when the deed of the land executed by samiti No. 2 in favour of the parents of the wife of the petitioner, clearly records that the land is to be used for residential purpose only, further, the Municipal Tribunal also by assigning reason held that Section 313 and Section 314 of the Bihar Municipal Act, 2007 was thus breached. Further, the order



passed by the Municipal Tribunal also take into consideration the report of the Junior Engineer which was submitted in the earlier round of proceeding in pursuance of the order passed by the Municipal Commissioner, Patna Municipal Corporation.

In the background of the facts and submissions recorded herein above, the present writ application has been filed seeking quashing of the order dated 19/30.11.2015 passed by the Municipal Tribunal in appeal No. 14 of 2015 affirming the order dated 03.01.2015 passed by the Municipal Commissioner in vigilance case No. 15B of 2011.

Learned counsel for the petitioner assails the order on a very short ground that it is not in dispute that the land in question came in the share of the wife of the petitioner after the death of her parents by way of an amicable partition, it is thus submitted that the wife of the petitioner being owner of the land was never noticed either by the Municipal Commissioner or by the Tribunal, as such, the order is construed to be passed behind the back of the wife of the petitioner.

Learned counsel for the Municipal Corporation submits that it is an argument of frustration, it is next submitted that the proceeding were initiated from the stage of the S.D.O. travelled upto this Court and thereafter, before the Corporation



and the Tribunal but at no point of time, the petitioner ever raised this issue. This amply demonstrates that the petitioner was aware that in the event if he does not succeed before the Municipal Commissioner or the Tribunal or before this Court then this plea can come to his rescue.

Learned counsel thus submits that the petitioner cannot approbate and reprobate at the same time i.e., he contest, but does not raise the issue and then argues that the order is passed behind the back of his wife.

Learned counsel for the Municipal Corporation further submits that what is not in dispute, rather, admitted is that there is a construction on the land and the report of the Junior Engineer testifies the same, and the same has not been rebutted and disputed by the learned counsel for the petitioner except to the fact that the building in question is not being used for any commercial purpose but then it is also admitted as it has been submitted by the learned counsel for the petitioner that the construction was made without any sanctioned plan and thus submits that the construction on the land was made in breach of Section 313 and 314 of the Bihar Municipal Act, 2007.

After hearing the parties and considering the submissions of the learned counsel for the parties and the



learned counsel appearing for the Municipality, the Court does not feel inclined to interfere in the order passed by the Municipal Commissioner and the order in appeal by the Municipal Tribunal upholding the order of the Municipal Commissioner.

The present writ application is thus dismissed.

(Satyavrat Verma, J)

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