

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18446 of 2017

1. Seema Devi @ Rekha Gupta Daughter of Late Bahadur Prasad, Resident of Sardar Vallabhbhai Patel Path, Chowk Road, Gaya, Police Station- Kotawali, District- Gaya.
2. Naresh Kumar, Son of Late Bahadur Prasad, Resident of Sardar Vallabhbhai Patel Path, Chowk Road, Gaya, Police Station- Kotawali, District- Gaya.

.. ... Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Land Reforms and Revenue Department, Government of Bihar, Patna.
3. The Collector-cum-District Magistrate, Gaya.
4. The Senior Superintendent of Police, Gaya.
5. The Officer in Charge, Kotawali, Gaya.
6. The Additional Collector, Gaya.
7. The Sub Divisional Officer, Gaya Sadar, Gaya.
8. The Gaya Municipal Corporation, Gaya through its Commissioner, Gaya.
9. The Municipal Commissioner, Gaya Municipal Corporation, Gaya.
10. The Assistant Engineer, Municipal Corporation, Gaya.
11. The Junior Engineer, Municipal Corporation, Gaya.
12. The Circle Officer, Chandauti, Gaya.
13. Dipak Chaddha, Son of Late Puran Kumar Chaddha, Resident of Shahid Road, Punjab Store, P.S.- Kotawali, District- Gaya.
14. Vivek Chaddha, Son of Late Puran Kumar Chaddha, Resident of Shahid Road, Punjab Store, P.S.- Kotawali, District- Gaya.

... ... Respondent/s

Appearance :

For the Petitioner/s : Mr. Mritunjay Kumar, Advocate
For the Respondent/s : Mr. Sajid Salim Khan, SC-25

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

6 09-05-2023 Heard learned counsel for the petitioners, learned counsel for the State, learned counsel for the Municipal Corporation, Gaya and learned counsel appearing for the private respondents.



Initially, the Court was of the view that the case requires serious consideration for the reason that a lavatory which was there on the land of the petitioners since 1886 was demolished by the authorities of the Municipality, but after perusal of the pleadings made in the counter affidavit along with the *Annexures* appended thereto, it appears that the case is frivolous and an attempt was made to mislead the Court for obtaining a favourable order by the petitioners.

The learned counsel for the Municipal Corporation, Gaya draws the attention of the Court to *Annexure-1* of the counter affidavit to submit that it was the petitioners who had petitioned the Municipal Corporation, Gaya seeking permission for constructing the lavatory which had fallen. It is next submitted that the representation of the petitioners in itself reflects that the lavatory in question was not demolished rather it had fallen for which the petitioners had sought permission from the Municipal Authorities for reconstructing the same.

The learned counsel for the Municipal Corporation next submits that it absolutely does not stand to



reason that if the land was private land of the petitioners, where was the occasion for the petitioners to seek permission from the Municipal Authorities for getting the lavatory in question re-constructed. It is thus submitted that the petitioners were aware that the land does not belong to them and that perhaps explain why they had approached the authorities of the Municipality for getting the lavatory re-constructed.

The learned counsel for the Municipal Corporation next submits that the petitioners in the writ application have pleaded that the lavatory in question was demolished when from perusal of *Annexure-1* to the counter affidavit, it would manifest that they themselves accept that the lavatory was old and it fell. It is thus submitted that the petitioners were trying to take sympathy of the Court by making false pleading. It is further submitted that from perusal of *Annexure-2* to the counter affidavit, it would manifest that the permission sought by the petitioners for constructing the lavatory was rejected by the Municipal Commissioner, Gaya by his order contained in Memo No. 1909 Dated 01.08.2017 on the ground that the land in



question belongs to Gaya Municipal Corporation.

The learned counsel next submits that this fact was also concealed in the writ application. It is submitted that the Corporation is claiming that the land belongs to the Corporation while the petitioners are claiming that the land belongs to them and as such, such disputed question of fact cannot be gone into by this Court in exercise of its power under Article 226 of the Constitution of India.

The learned counsel for the petitioners seeks time for filing reply to the counter affidavit on the ground that it was served upon him only yesterday, but on query of the Court that since the counter affidavit was already served on the learned counsel for the petitioners on 08.05.2023, why even oral instruction was not sought from the petitioners with regard to *Annexures-1 & 2* of the counter affidavit filed on behalf of the Corporation, to which learned counsel for the petitioners did not reply.

Be that as it may, since there is no reason to disbelieve the counter affidavit filed on behalf of the Municipal Commissioner, Gaya and from perusal of the pleadings made in the counter affidavit, it manifest that the



facts are disputed, as such the Court is not inclined to proceed with the writ application.

Accordingly, the present writ application is dismissed.

However, the dismissal of the writ application will not preclude the petitioners from availing their remedy in accordance with law before an appropriate forum.

(Satyavrat Verma, J)

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