

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.113 of 2024

Mostt. Shanti Devi Wife of Late Devendra Sharma, Resident of mohalla - Mungroura, Sikandarpur, Ward no. 05, P.O. Jamalpur, P.S. East Colony Jamalpur, District - Munger.

... .. Petitioner/s

Versus

1. The Executive Officer Nagar Parishad Jamalpur, P.S-Jamalpur, District Munger.
2. Balmukund Sahai, Son of Late Sri Krishna Prasad, resident of village/Mohalla Basudeopur Kayasth tola, P.S. - Kotwali, District - Munger. At present Resident of village/Mohalla - Mungroura, Sikandarpur, ward no. 05, P.O. - Jamalpur, P.S. East Colony Jamalpur, District - Munger.

... .. Respondent/s

Appearance :

For the Petitioner/s :	Mr. Sheo Nandan Prasad, Advocate
For the Respondent no.2 :	Mr. Yogendra Kumar, Advocate
	Mr. R.N. Ray, Advocate

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

4 15-04-2025 Heard learned counsel for the petitioner as well as learned counsel for the respondent no.2. Though notices was issued upon respondent no.1 and counter affidavit has been filed on behalf of respondent no.1, however, no one appears on behalf of respondent no.1.

2. The petitioner is aggrieved by the order dated 01.11.2023 passed by learned District Judge, Munger in Misc. Civil Appeal No. 05 of 2022 whereby and whereunder the learned appellate court set aside the order dated 10.08.2022 passed by learned Munsif-1st, Munger in Title Suit No. 17 of 2022 and the learned appellate court restrained the respondent



no.1, the Municipality from removing the septic tank of the plaintiff/appellant/respondent no.2 till disposal of Title Suit No. 17 of 2022.

3. Learned counsel appearing on behalf of the petitioner submits that the impugned order is not sustainable and the same needs to be set aside. The learned trial court, after consideration of all the material, did not find any case in favour of the petitioner for grant of injunction and rejected the prayer for injunction. The learned trial court took into consideration the report of the Nagar Parishad, Jamalpur about seepage from the septic tank towards the land of the petitioner. The Executive Officer of the Nagar Parishad has also reported that the septic tank was not constructed according to the map. But these facts were not considered by the learned 1st appellate court and for this reason, the impugned order is not sustainable.

4. Learned counsel appearing on behalf of respondent no.2 submits that there is no infirmity in the impugned order and the same does not require any interference by this Court. Learned counsel further submits that the impugned order passed by the learned District Judge, Munger is a detailed order and each and every contention of the petitioner has been taken into consideration and thereafter the learned appellate court passed



its order. Learned counsel further submits that in the map approved for the house of respondent no.2, there is no earmarked place for construction of septic tank. Respondent no.2 has constructed the septic tank leaving a distance of one and half feet from his boundary wall and the same is permissible under the municipal laws. Learned counsel further submits that no documents were produced before the learned trial court and merely on the basis of a collusive report from the officials of the Nagar Parishad, the learned trial court passed the orders without appreciating all the facts and circumstances and the said order has been set aside by the learned appellate court and the order of the learned appellate court is legal and correct.

5. I have given my thoughtful consideration to the rival submission of the parties and perused the record. Bare perusal of record shows the learned appellate has passed a detailed orders considering all the submission of the parties. It is pertinent to take note here that the learned appellate court has mentioned that neither defendant no.1 nor defendant no.2/respondent nos. 1 and 2 herein, have produced any document on the record that any permission was granted for construction of septic tank by the Nagar Parishad. Though a map of the proposed house was furnished before the learned 1st



appellate court and there was no denial of the permission to construct the house by the Nagar Parishad. The learned appellate court also considered the point of seepage and decided the issue against the petitioner. Thereafter, the learned appellate court considered the guidelines regarding existence of *prima facie* case, balance of convenience and irreparable loss in favour of respondent no.2 and came to a finding that all the ingredients for grant of injunction are in favour of respondent no.2 and allowed the injunction application and set aside the order of the learned trial court. Therefore, I do not find any infirmity in the impugned order dated 01.11.2023 passed by learned District Judge, Munger in Misc. Civil Appeal No. 05 of 2022 and hence, the same is affirmed.

6. Accordingly, the present petition stands dismissed.

(Arun Kumar Jha, J)

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