
(2009) 01 PAT CK 0047
In the Patna High Court

Alok Mohan Das

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 12-01-2009

Acts Referred:

Constitution of India, 1950 — Article 300A

Citation : AIR 2009 Patna 64 : (2009) 2 PLJR 564 : (2010) 8 RCR(Civil) 2690

Hon'ble Judges : Navaniti Prasad Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navaniti Prasad Singh, J.—Heard learned Counsel for the parties.

2. The petitioner is a resident of Ward No. 20 in Madhepura Nagar Parishad. The land in question being appertaining to Khesra No. 678J is admittedly recorded in the name of the Sudhir Nath Das, the father of the petitioner. Petitioner's grievance is that there have been notices issued by the Nagar Parishad not to deal with those lands and/or sell those lands, as those lands are being used by public as a Kachha public road.

3. Submission of learned Counsel for the Petitioner is that these facts are admitted in the impugned notices as contained in Annexure-2 Series itself which further stated that the said lands are enclosed within the boundary of the petitioner already constructed, but as per municipal survey it is shown as road. Petitioner asserts and rightly shows in my view that the notice itself accepts the title to the land being that of the petitioner. If the impugned notice itself accepts that, then it is for the petitioner to decide as to what is to be done with the said lands. If as asserted by the Nagar Parishad, it was being used as a road or a public pathway then it is the people who are obstructed by any act of petitioner, who have a right to object and the objection would be decided in a duly constituted suit wherein individual right, title and interest could be adjudicated upon. But in my view, so long as it is admitted that the title vests with the

petitioner, he cannot be legally restrained from dealing with his property by either the Nagar Parishad or the people who must establish their right in a court of law to use it as a public way or pathway or the Nagar Parishad must acquire the same as envisaged under the Bihar Municipal Act, 2007 for the purpose of use as a public pathway or persuade the petitioner to donate the same, but having taken no such action, the impugned notices cannot be sustained as they are direct inroad into the right of the petitioner.

4. Petitioner admittedly being the title holder to the land till the time he is dispossessed in accordance with the procedure established by the law cannot be denied to enjoy the same in a peaceful manner. The enjoyment of property in a peaceful manner cannot be nuisance to others, but it is the legality that has to be seen and not convenience or inconvenience. The action taken by the Nagar Parishad, thus are clearly violative of Article 300A of the Constitution, whereby the petitioner is being deprived of his property or right in his property without following the due procedure in law.

5. The writ application is thus allowed and Annexure-2 Series being notices issued by Nagar Parishad to the petitioner dated 12-9-2007 and 20-8-2007, respectively are quashed.

6. This judgment by this Court shall not be taken as an adjudication upon rights of different parties because it has proceeded on the admitted finding in the impugned notices itself that the land stands recorded in the name of petitioner's father. As to the rights of individuals, the same requires adjudication in a competent civil proceedings before competent Court which liberty is there with people aggrieved by petitioner's actions.

The writ application thus, stands allowed.