
(1998) 04 PAT CK 0037
In the Patna High Court
Case No : C.W.J.C. No. 91 of 1986

Gunder Sao @ Ganga Sao

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 23-04-1998

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1998) 3 BLJR 2137

Hon'ble Judges : S.N. Mishra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.N. Mishra, J.—In this writ application under icles 226 and 227 of the Constitution of India the petitioner has challenged the order dated 21.12.1985 passed by respondent Executive Officer, Sitamarhi, Municipality, by which he has intimated the petitioner that the sanction accorded by the Sitamarhi Municipality vide letter dated 22.8.1985 for construction of the house has been cancelled by the Sitamarhi Municipality vide its resolution dated 21.12.85, copy of the said resolution of the Municipal Committee is made Annexure 1 to this writ application.

2. Briefly stated. the case of the petitioner is that father or the petitioner purchased the house situated over an area of 2 kathas 3-3/4 dhurs through registered sale-deed dated 11.8.42 for a sum of Rs. 9900/- and since then father of the petitioner came in possession over the house, in question. It is alleged that in 1983 an application has been filed by father of the petitioner before the Sitamarhi Municipality for sanction of map and plan for reconstruction of the building, in question, in terms of Section 186 of the Bihar and Orissa Municipal Act, 1922 (hereinafter referred to as the "Act"). Along with the application father of the petitioner has filed requisite fee for sanction of the map and plan. The Municipal authority vide letter dated 22.8.1985 accorded sanction for reconstruction of the building on the purchased land, copy of the said sanction letter is made Annexure-2 to this writ application. On 3.12.1985 notice was

issued by the respondent Executive Officer, Sitamarhi Municipality, alleging therein that the petitioner had dismantled the statue of Bapoo installed on the roof of his house while making construction over the purchased land, as a result of which there was great resentment among the public and, accordingly, the petitioner was asked to show cause. Meanwhile, the petitioner was directed to stop further construction. Pursuant to the notice, the petitioner filed his show cause on 5.12.1985, copy of which is made Annexure-4 to this writ application, alleging, inter alia, therein that the petitioner had great respect of Bapoo and the allegation that the petitioner had dismantled the statue of Bapoo is not correct. The statue has been removed from the original place and will be replaced after construction of the building. On filing of the show cause the matter was enquired into by the Executive Officer and from the enquiry report it appears that he was satisfied that the allegation made against the petitioner was frivolous and unfounded and, accordingly, by letter dated 10.12.1985 allowed the petitioner to proceed with the construction work and, thereafter, the petitioner started construction. Copy of the said letter is made Annexure-5 to this writ application. All on a sudden the respondent Executive Officer on the basis of the resolution of the Municipal Committee, has passed the order dated 21.12.1985 cancelling the earlier sanction order dated 22.8.1985, on the basis of which the construction was being made by the petitioner.

3. In this case, a counter-affidavit has been filed on behalf of respondent Municipality wherein purchase of the house by the father of the petitioner in the year 1942 and the application filed by the petitioner for sanction of map and plan in 1983 has not been denied. It is, however, stated that while filing application for sanction of map and plan it is alleged that area was mentioned from east to west 121 ft. 9 inches and from north to south 34 ft. 2 inches. The Municipal Commissioner in exercise of power u/s 188 of the Act has accorded sanction for reconstruction as per site measurement and conditions incorporated in the site plan, copy of the site plan is made Annexure-B to the counter-affidavit. According to the respondents, permission was accorded for reconstruction on a lesser area. It is alleged that the petitioner has encroached the municipal land which is being used as a road by the general public while constructing the building. It is alleged that admittedly the house, which was purchased by father of the petitioner, belongs to the municipality and over a said portion of the building statue of Mahatma Gandhi was there. The installation of the statue of Mahatma Gandhi by the petitioner was totally denied. It is alleged that because of the great resentment of the general public the impugned order has been passed by the respondent. Sum and substance of the stand taken in the counter affidavit including the supplementary counter affidavit that the petitioner while constructing the house on the basis of the alleged sanction plan has encroached the public land and, as such, he is not entitled for the reliefs in terms of the prayer made in this writ application.

4. Heard learned Counsel for the parties and perused the materials on record including the order under challenge in this writ application. Admittedly father of

the petitioner has purchased the building from the Municipality wherein the petitioner including his family members were residing. It is further admitted position that the construction has been made after sanction of the map and plan by the Municipality. Only reason assigned while passing the impugned order is that the petitioner has dismantled the statue of Mahatma Gandhi installed in the roof of the building except there is no allegation that the petitioner has encroached the public land, as it appears from the order under challenge. The stand taken by the petitioner in the show cause and also during the course of hearing of the case that after construction of the building the statue of Mahatma Gandhi shall be installed in the same very place where it was originally placed. As regards encroachment of the public road belonging to the Municipality, no allegation has been made by the respondent authority either to initiate an appropriate proceeding and/or get the alleged encroachment measured by a competent person. In that view of the matter, this Court is unable to express any opinion on the allegation that the petitioner has encroached public land while making construction. As has been stated above, the construction has been made and are being made according to the plan and map sanctioned by the municipal authority. It is well settled principle of law that the Executive Officer of the Municipality is the competent authority to accord sanction for construction of the house in terms of the plan and map sanctioned by him. That apart, the subsequent resolution alleged to have been passed by the Municipal Commissioner, no opportunity was given to the petitioner to explain the position. Particularly, having regard to the fact that the construction in terms of sanction plan has already been started and completed. Accordingly, I am of the view that the order dated 21.12.1985 passed by respondent Executive Officer on the basis of the alleged resolution of the Municipal Commissioner, is wholly illegal, arbitrary and uncalled for. Accordingly, the same is quashed. Consequently, the writ application is allowed but without costs. It is made clear that if there is any encroachment of public land by the petitioner, it will be open for the respondent Municipality to proceed in accordance with law for removal of such encroachment, without being prejudiced by the order of this Court.