
(2012) 09 JH CK 0008
In the Jharkhand High Court
Case No : CWJC No. 5021 of 2000

Jai Prakash Mallik and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 12-09-2012

Acts Referred:

Citation : (2013) 2 AJR 54 : (2013) 1 JLJR 509

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Mahesh Tiwari and Sunil Kr. Sinha, for the Appellant;

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—Heard learned counsel for the parties. In this writ petition, petitioner has approached this Court for restraining the respondents from constructing shop on the public road as according to the petitioner it was not only arbitrary and illegal, but would have amounted to restraint in the egress and ingress of the petitioner from his house to road i.e. Plot No. 38, Mauja-Parasi, Godda. Learned counsel for the petitioner by referring to the Annexure-3 and 6 submits that these issues were also considered by the Deputy Commissioner-cum-Deputy Development Commissioner as well as Circle Officer, Godda, but still the respondents proceeded to construct the shopping complex over the said piece of land in question.

2. However, learned counsel for the respondents-State submits by referring the averments made in their counter affidavit that the shopping complex has been made in the interest of public at large and has not been constructed on the private land, rather Plot No. 38, Mauza-Parasi is a Government Land and Plot No. 37 is also a Government Land and after construction of the shopping complex there exists pucca/metalled road passing through over to plot No. 38. The east of the road is boundary by plot No. 37, which is also a khas Government land and its total area is two bigha fourteen kathas and ten dhurs and is running parallel

side by side to the road i.e. Plot No. 38. Hence, road's flanks also consists of plot No. 37 and as such, there is no dearth of land for road and its flanks. It is submitted that there used to be by weekly haat, regularly held there i.e. in the vicinity of already constructed shopping complex, area. It is submitted that in the interest of the public, it was being felt that there is need for a shop-ping-cum-marketing centre for the regulation of marketing needs of the people. It is further submitted that after construction of shopping complex, there is sufficient space for road and the road is running very well because its flank is also being supported by the adjoining Government plot No. 37. It is also submitted on behalf of the respondent on the basis of the averments made in their supplementary counter affidavit that there is no house in that vicinity in plot No. 43 since last 50 years or more as claimed by the petitioner.

3. Based on the aforesaid facts and circumstances also brought on record by way of counter affidavit and supplementary counter affidavit, it is stated that the said mouza in question is Bechiragi in the Gantzer Khatiyani of 1924-25 of the area which also corroborates that there stands no house of the petitioners and problem of Rasta/Gali as such claimed is false and frivolous. After hearing to the counsel for the parties and after going through the relevant materials, it is apparent that the shopping complex has been constructed in due course of time during the pendency of the writ petition on the Government piece of land and the concern of the petitioner is not correct since the approach of his plot is not restricted as sufficient width has already been left after the construction of the shopping complex. It is not a case that shopping complex has been constructed on the petitioner land but the land itself is a Government land. In that view of the matter, the action of the respondents in construction of shopping complex is in public interest. Moreover, the construction has already been completed and the complex is functional and there is no interim order to restrain the respondent for construction of the complex either in the present writ petition. In the facts and circumstances of the case, I do not find any reason to grant relief to the petitioner, which is accordingly, dismissed.