
(2005) 10 PAT CK 0010
In the Patna High Court
Case No : LPA No. 1167 of 2005

Kartik Lal

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 26-10-2005

Acts Referred:

Bihar and Orissa Municipal Act, 1922 — Section 186, 195

Citation : (2006) 1 PLJR 106

Hon'ble Judges : J.N. Bhatt, C.J;R.N. Prasad, J

Bench : Division Bench

Advocate : M.S. Madhup, for the Appellant; Jitendra Singh and A. Pratap for the Resopndent Corporation, M/s Ratnesh Nandan Sinha and Purushottam Prasad, for the Respondent

Judgement

1. This appeal has been preferred against the judgment and order dated 4th of October 2005 passed in C.W.J.C. No. 9484/ 2004 Ed.--Reported in Kaushal Kishore Prasad Singh Vs. The State of Bihar and Others, and Civil Review Nos. 161 and 162 of 2005, whereby the appellant was directed to remove the part of the construction, which had not been authorised or sanctioned, within 18th of October 2005, with a direction upon the respondent Municipality to have the building of the respondent No. 4-appellant inspected on 19th of October 2005 and to ascertain whether the offending part of the building has been removed by the appellant or not, and if not, to remove the same on 20th of October 2005. The Superintendent of Police, Begusarai was directed to provide adequate armed force to the officers of the Municipality on 19th October 2005 and on 20th October 2005 for the purpose of carrying out the directions as above. The undisputed fact is that the appellant's land is adjacent to the house of respondent No. 4. The appellant made construction on his land without leaving any open space between his house and the house of respondent No. 4. The appellant also opened big windows towards the house of respondent No. 4 and those windows open in the land belonging to respondent No. 4. The respondent No. 4 approached the Municipality and complained that the appellant has made

construction of house in violation of the Bihar & Orissa Municipal Act, 1922, in short "the Act", and requested to take appropriate action in accordance with law on which a case was registered but no action was taken and, as such, respondent No. 4-the writ petitioner, filed the abovementioned writ petition for removal of the constructions, which are contrary to the sanction granted by the Municipality.

2. The appellant, who was respondent No. 4 in the writ petition, appeared and filed counter affidavit stating that he had purchased the disputed land measuring 7 dhur 17 dhurki adjacent to the house of the writ-petitioner-respondent No. 4 and it has been mutated in his name. The writ petitioner filed Title Suit No. 65/92 which is pending before the Subordinate Judge III, Begusaria. He applied for approval of the map for the purpose of construction of a house, which was approved vide memo No. 1799 dated 27th December, 2003. Copy of the approved map/plan was also annexed with the counter affidavit, in which details have been mentioned. The stand of the appellant in the counter affidavit was that he has constructed his house on sanctioned/approved map and, as such, there is no question of removal of construction.

3. There is no dispute that in the back of the house constructed by the appellant, there is land and house of the respondent-writ petitioner. The appellant, against the interim order dated 21.7.2005, preferred L.P.A. No. 805/2005. The said L.P.A. was dismissed on 3.8.2005. Thereafter two review petitions were filed before the learned Single Judge. The learned Single Judge heard the writ petition and the two civil review petitions together and disposed of all the cases together by the order impugned.

4. The learned Single Judge has recorded a finding that the appellant has made construction contrary to the sanctioned plan. He has not left any open space in between his house and the house of the writ petitioner-respondent No. 4 as required by the sanctioned plan and, as such, issued order as indicated above for removal of the offending construction/construction contrary to the sanctioned plan.

5. The submission of the learned counsel for the appellant is that there are no bye-laws and, as such, there is no question of construction contrary to the sanctioned map. In support of his submission he drew our attention to Section 195 of the Act. It deals with the power to make bye-laws regulating building meaning thereby that it is an enabling clause to make bye-laws. It has nothing to do with the illegal construction/construction contrary to the sanctioned plan. Section 186 of the Act deals with the notice of intention to erect building or make well and it says that a person shall give notice to the Commissioners before beginning, within the limits of the municipality, (a) to effect a new building or new part of building; or (b) to erect, or make a material alteration in building; or (c) to make or enlarge a well; that is before initiating the aforesaid work the person is required to give notice of intention to the Commissioners of the municipality. Section 188 of the Act deals with the sanction of work by Commissioners and it says that subject to the provisions of any bye-laws the

Commissioner may either refuse to sanction any work of which notice has been given u/s 186 or may sanction it absolutely or subject to-.... Therefore, it is evident that the person must give notice of intention to construct as required under the law and the Commissioner has power to sanction or refuse to sanction such work. In the case in hand it is the case of the appellant itself that he applied for sanction of the map and it was sanctioned by the municipality. The plan has been annexed with the counter affidavit. The submission of the counsel that there is no bye-laws, therefore, there is no need of construction after obtaining sanction of the map, has no leg to stand. The law is very much clear that in any event the sanction of map is necessary for construction of building within the area of the municipality. Before the learned Single Judge his specific case was that he applied for sanction of the map and the same had been sanctioned and the construction has been made only after sanction of the map. Furthermore, the learned Single Judge has recorded a finding that the appellant has made construction beyond the sanctioned map and the said finding has not been challenged by the appellant during the course of argument. This Court, in such a situation cannot pass order contrary to the provisions of law. There is no provision that the offending construction/ construction contrary to the sanctioned map shall be allowed to exist and the appellant shall be allowed to enjoy unauthorised construction. The sanction of map is a statutory provision and no one can be allowed to construct a house without sanction of the map/contrary to sanctioned plan within the municipal area and if any person has made any construction without sanction of the map/contrary to sanctioned plan the Court in such a situation has right to issue writ to enforce the law as required. In nutshell the Court is justified in issuing rule to enforce the law/rectify the mistake committed by the appellant.

6. Counsel for the appellant further pointed out that his wife is also owner of the half property and in her absence no writ can be issued. However, it appears from the materials on record/order impugned itself that in the counter affidavit itself specific averment of the appellant is that he purchased the land in question and he applied for sanction of the map which was sanctioned by the municipality and made construction accordingly. There is no whisper in the counter affidavit with respect to claim of his wife. Therefore, the appellant cannot be allowed to change his version from stage to stage. Title Suit No. 65/92 as disclosed by the parties was for declaration of title and has no concern with the issue involved in the case. Thus, on consideration as discussed above, we find no merit in this appeal to interfere with the judgment and order impugned. Accordingly, the Letters Patent Appeal is dismissed. The respondent-municipality is bound to comply with the order passed by the learned Single Judge within two weeks. There shall be no order as to cost.