

(2007) 11 PAT CK 0108
In the Patna High Court
Case No : CWJC No. 11412 of 2001

Md. Rizwan

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 07-11-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 1 PLJR 444

Hon'ble Judges : Mihir Kr. Jha, J; Chandramauli Kr. Pd., J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Petitioner is the resident of Mohalla Andheribag situated on the Bhinda of Mirza Khan Talab, Laheriasarai in the town of Darbhanga and has filed this application for issuance of writ in the nature of mandamus commanding the respondents to provide adequate civic amenities, such as, roads and streets, to remove the water logging and such other civic amenities. Mr. Durga Nand Jha appears on behalf of the petitioner. He submits that the inhabitants of Mohalla Andheribag in the adjoining area of Bhinda Mirza Khan Talab have both their right as well as legitimate expectations from the State and its authorities that they would be provided adequate facility for roads/streets. In this context, he has stated that in fact there was already an old road as shown in the survey map of Darbhanga town connecting the area of Mohalla Andheribag and its adjacent Bhinda of Mirza Khan Talab, Laheriasarai through the roads of Darbhanga Medical College Hospital (D.M.C.H.). It has, however, been alleged that such facility of existing road and their access have been illegally obstructed by the Superintendent of D.M.C.H. who had suddenly closed the outlet road connecting the said Mohalla through the roads of the D.M.C.H. It has, therefore, been submitted by Mr. Jha that this Court should issue a direction to the respondents including the Superintendent of the D.M.C.H. to remove the wall in order to restore facility of the Jd road to the people of the Mohalla.

2. Mr. Satyabir Bharti, Junior Counsel to learned Additional Advocate General No. III has appeared on behalf of the State and has referred to the counter affidavit filed on behalf of the Superintendent of D.M.C.H. (respondent No. 5) wherein it has been denied that the roads of the D.M.C.H. within its campus are the roads as shown in the survey map. In this regard, it has been specifically asserted in paragraph No. 4 of the counter affidavit that roads within the campus of the D.M.C.H. is the property of the D.M.C.H. and has been constructed for the use of the doctors, students and the patients of the D.M.C.H. and the same has also been well surrounded by a boundary wall for their safety. In the said counter affidavit, it has been stated that ever since the inception, when the D.M.C.H. came to be established in the year 1925, it was well protected by a boundary wall surrounding the entire D.M.C.H. building. It is only later on that unauthorized colony had sprung up in the vicinity of the D.M.C.H. and Andheribag Mohalla is one of them where residential buildings have been constructed without sanctioned plan and/ or without making any provision for proper road/street. It has been alleged that the residents of the said Mohalla Andheribag infact in the year 1982 had demolished the boundary wall of D.M.C.H. to avail the facility of the roads of D.M.C.H. and the authorities of the D.M.C.H. including the then Superintendent of the D.M.C.H. had brought this fact to the notice of the law & order authorities. It has been claimed that a Committee of senior officials including the District Magistrate and the Superintendent of Police, Darbhanga and the then Chief Engineer, P.W.D., Darbhanga had inspected the spo and had found that the wall has been demolished by the inhabitants of the said Mohalla Andheribag in an unauthorized manner. It has been further stated in the counter affidavit that the demolished boundary wall was reconstructed in the year 1983 and the access of the public residing in Mohalla Andheribag through the inside road of the D.M.C.H. was stopped in the years 1983-84. It has been further submitted that the said action of denial of access to the residents of Mohalla Andheribag through the campus of the D.M.C.H. and its roads was assailed by one of the resident of that mohalla, namely, Shri Shivjee Ram who had filed a Title Suit bearing No. 80 of 1984 in the Court of the 1st Additional Munsif, Darbhanga for removal of the boundary wall of the D.M.C.H. but the said suit was ultimately dismissed as not pressed on 5.12.1986.

3. Mr. Bharti has also drawn our attention towards the fact that allowing access to the inhabitants of Mohalla Andheribag through the roads of the D.M.C.H. within its campus would be against the public interest as well as the interest of the institution because these roads cover the Women's Hostel, Gynaecological Ward, Girls' Hostel and Eye Ward of the D.M.C.H. He has also referred to that part of affidavit of the Superintendent of D.M.C.H. explaining that there would be threat to life and property of the doctors, nurses and patients of the D.M.C.H. in case the prayer made in the writ application with regard to providing access to the residents of the Mohalla Andheribag through the roads of D.M.C.H. is allowed by this Court.

4. Though a rejoinder to the counter affidavit on behalf of the respondent No. 5 has been filed by the petitioner but he has not denied either the facts regarding demolition of the boundary wall by the residents of Mohalla Andheribag in the year 1982 or filing of a suit for declaration of their easementary right and removal of the boundary wall which as noticed above was also dismissed as not pressed.

5. In such a situation, when a properly constituted civil suit has been dismissed due to want of prosecution, which in our opinion was the best remedy for the inhabitants of Mohalla Andheribag to establish their alleged easementary right or the right with regard to the alleged public road as shown in the survey map, this Court in exercise of its power under Article 226 of the Constitution of India would not like to come to the aid of such persons including the petitioner who had chosen to make construction of the house without any sanctioned plan by the competent authority and that too in a Mohalla where no provision were made for civic amenities including roads. We cannot loose sight of the fact that a welfare State may definitely look into the grievances of its citizens who abide by the law but in the background of the aforesaid facts, it is difficult for us to issue any direction to the respondents that the petitioner should be allowed free access through the internal roads of the D.M.C.H. In absence of any right, the petitioner cannot seek a writ in the nature of mandamus for being provided those civic amenities including road through the D.M.C.H. In any event the better competing public interest of D.M.C.H. including its patients, Doctors and students requiring safety from unauthorized people residing in unplanned and unsanctioned colony must prevail. This Court at least cannot be a party to perpetuate the illegality as is being sought by way of relief in the present writ application, strangely labeled as a Public Interest Litigation.

6. Thus, we are left with no option but to dismiss this writ application. We do it accordingly. It is, however, observed that the dismissal of this writ application shall not stand in the way of the petitioner to avail any other appropriate remedy in accordance with law including approaching the functionaries of the State for redressal of their grievances. In the result, this writ application is dismissed with the aforesaid observations.