

**(1980) 12 PAT CK 0024**  
**In the Patna High Court**  
**Case No : S.A. No. 340 of 1976**

Patna Municipal Corporations

APPELLANT

Vs

Ram Raj Dhobi and Others

RESPONDENT

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**Date of Decision :** 15-12-1980

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 144

**Citation :** (1981) 29 BLJR 176

**Hon'ble Judges :** S. Ali Ahmad, J

**Bench :** Single Bench

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## Judgement

S. Ali Ahmad, J.—This second appeal by the defendant arises out of suit filed by the respondents for declaration that the notification dated 30-9-1958 issued by the defendant - corporation declaring a portion of plot No. 182 as public lane. The suit was dismissed by the trial Court, but on appeal the same has been allowed. Thereafter, this second appeal has been filed by the defendant - corporation.

2. Admittedly, plot No. 182 belongs to the plaintiffs, leaving aside unnecessary details, the plaintiff's case is that with a view to construct a house, they Sled a draft plan for sanction by the Patna Improvement Trust. It is said that after the Patna Improvement Trust gave its sanction on 23-8-1950, the plaintiffs submitted the same to the defendant for its approval. The plan, according to the plaintiffs, was passed by the Patna Municipal Corporation on 18-11-1960. Thereafter the, plaintiffs say that they started constructing the house over the suit land, but on account of certain unavoidable reasons con-struction could not be completed within three years. As such, the plan was submitted as required by rules on 22-11-1962 for renewal by the Corporation authorities. The matter remained pending before the Municipal authorities for full nine months. Thereafter, an application was filed before the Mayor on 17-5-1963 praying to expedite the renewal of the plan. Thereafter on 17-8-1963 the plan was returned with a note that the same had already been revoked by the Deputy Chief

Executive Officer by his order dated 12-12-1960 Further, according to the plaintiffs, when they went to put roof over the structure, they found that the eastern portion of the wall had been removed. This led to a proceeding u/s 144 of the Code of Criminal Procedure. In that case it transpired that the Corporation had already issued a notification u/s 270 of the Patna Municipal Corporation Act on 30-9-1958 declaring a portion of this plot to be public lane. This notification, according to the plaintiffs, was without jurisdiction.

3. The suit was contested by the Patna Municipal Corporation. Its defence, inter alia, was that the suit was barred by limitation and that the notification issued on 30-9-1958 was legal and valid. The trial Court on appreciation of the evidence held that the suit was barred by the provisions of Section 508 of the Patna Municipal Corporation Act, It also held that the suit land was being used as passage by the public and as such the Corporation acted within its jurisdiction in making the notification dated 30-9-1958 by which it has been declared to be a public lane. On appeal, the findings have been reversed and it has been held that the suit is not barred u/s 508 of the Patna Municipal Corporation Act and that the notification dated 30-9-1958 was illegal and without jurisdiction, inasmuch as the suit land was never used as passage by the public. Thereafter, this second appeal has been filed.

4. Mr. Roy Shivaji Nath argued the appeal with great skill and at one stage persuaded by his advocacy I was inclined to allow the appeal: but on deeper analysis I find that the appeal has no merit. I however, proceed to consider his submissions.

5. Sub-section (2) of Section 508 of the Patna Municipal Corporation Act, 1951, prescribes a period of limitation which is within six months next after the accrual of the cause of action. Mr. Roy Shivaji Nath on the basis of this provision urged that the notification was made on 30th September, 1958, whereas the suit was filed on 18-3-1964. According to him, therefore, the suit was clearly barred under Sub-section (2) of Section 508 of the Patna Municipal Corporation Act, because the prayer was to declare the notification, issued u/s 270 of the Patna Municipal Corporation Act, was without jurisdiction. *prima facie*, as I have said, this argument is quite attractive, but as has been noticed, the prayer was for a declaration that the notification was without jurisdiction. Therefore the special law of limitation as prescribed under the Act will not be attracted. This special law of limitation applies to such cases where an act is done under the provisions of the Act. The allegation in the plaint is that the notification was without jurisdiction. That means that the notification was not made in accordance with the provisions of the Act. In that view of the matter, in my view that suit cannot be said to be barred by limitation. To support the view that I have taken, I may only refer a decision in *Bihar State Board of Religious Trusts v. Raj Ratan Gir and Ors.* 1969 B.L.J.R. 63. The crucial question, therefore, is as to whether the notification has been issued in accordance with the provisions of the Act. Sub-section (2) of Section 270 of the Patna Municipal Corporation Act gives authority

to the Chief Executive Officer to give intimation of his intention to declare any street or part of a street not maintained by the Corporation to be a public street. Street has been defined u/s (4)(vv) of the Patna Municipal Corporation Act as follows-

Street means any road, lane, gully, alley, passage, pathway, square or court, whether a thoroughfare or not which is accessible to the public whether permanently or temporarily and includes every vacant space, notwithstanding that it may be private property and obstructed wholly or partly by any gate, post, chain or other barrier, if houses, shops, or the buildings about thereon and if it is used by any person whether occupier of such buildings or not as a means of access to or from any public place or thoroughfare, but shall not include any part of such vacant space which the occupier of any buildings has a right at all hours to prevent all other persons from using as aforesaid.

A perusal of this definition makes it quite clear that it means any road, lane gully, alley passage, pathway, square or Court, whether a thoroughfare or not which is accessible to the public whether permanently or temporarily, it also includes every vacant space used by the public as a matter of right. It is manifest, therefore, that the condition precedent for issuing a notification u/s 270 of the Patna Municipal Corporation Act is that the land in respect of which the notification has been issued was a street within the meaning of Section 4(w) of the Act. The finding as recorded by the Court of appeal below is that the lane was not a street and as such the notification issued u/s 270 of the Act was without jurisdiction. Mr. Roy Shivaji Nath urged that the view taken by the Court of appeal below that the land in question was not a street within the meaning of the Act is erroneous and against the evidence. I am not impressed by this argument. As to whether a particular piece of land has been used as a passage or gully by the public as a matter of right is purely a question of fact. The Court of appeal below after considering the reasonings given by the trial Court recorded a finding in disagreement with the findings of the trial Court which is binding on me. The position, therefore, is that the suit land was not a street and as such the authorities had no jurisdiction to declare it to be a public lane. The notification dated 30-9-1958 declaring the suit land to be public land is, therefore, illegal and without jurisdiction. The Court of appeal below was right in allowing the appeal and decreeing the suit.

6. For these reasons, I do not find any merit in the appeal which is dismissed, but without costs.