
(2014) 04 PAT CK 0085

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No.191 of 2013

Sidheshwar Prasad Singh

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 18-04-2014

Acts Referred:

Citation : (2014) 3 BBCJ 497 : (2014) 3 BLJud 201

Hon'ble Judges : Mr. Kishore Kumar Mandal, J.

Bench : Single Bench

Advocate : Mr. N.K. Agrawal, Sr. Advocate and Mr. Vikram Singh, Advocate, for the Petitioner; Mr. Avinash Kumar, Advocate, for the Respondent No.4; Mr. Praveen Kumar, Advocate, for the Respondent No.5; Kamlesh Kumar Sharma, A.C. to S.C. 27, for the State

Final Decision : Dismissed

Judgement

Mr. Kishore Kumar Mandal, J.—Heard Mr. Vikram Singh for the petitioner, counsel for private respondent no.5 as well as the State.

2. Parties have exchanged pleadings.

3. The petitioner is aggrieved by the order dated 04.05.2012/19.05.2012/02.07.2012 passed by the Executive Officer, Lakhisarai in Case No.01 of 2011-12. By the said order, the petitioner (the second party to the proceeding) was found to have encroached upon the land which was utilized as road on being registered in the name of the Hon'ble Governor of Bihar. The said road exists on khesra no.274/ 276 of khata no.70 within ward old no.7 of the Nagar Prishad Lakhisarai. It appears, on perusal of the pleadings on record, the said matter remained pending for disposal since 1997 after a notice in this regard (Annexure-3) having been issued to the petitioner on 19.11.1997. The protraction/procrastination of the proceeding propelled both the parties to approach this Court seeking appropriate relief. The private respondent no.5 herein filed a writ petition vide CWJC No. 817 of 1998 which was disposed of on

20.07.1999 by the following order:-

"Without going into the correctness of the notice, the writ petition is disposed of with liberty to the petitioners to approach the concerned authority either under the provisions of Bihar Public Land Encroachment Act or under the Bihar and Orissa Municipal Act, 1922 for removal of encroachment, if any, over the aforementioned plot where after the authority shall proceed in the matter and dispose it of with all promptness in accordance with law."

4. The petitioner also approached this Court against continuance of the proceeding on the file of the Executive Officer of the Nagar Parishad, Lakhisarai in CWJC No. 17924 of 2009. The writ application was disposed of on 17.01.2011 (Annexure-13). The order passed on the said writ petition is extracted herein below which reads thus:-

"It is submitted that the petitioner has already moved the appropriate Civil Court and therefore prays for leave to withdraw the application. The writ petition is dismissed as withdrawn with the liberty aforesaid."

5. In the light of the order of this Court, the said proceeding was finally disposed of by the impugned order wherein the petitioner was found to have encroached on certain part/portion of the land which was used as the public land/road.

6. Learned counsel for the petitioner made diverse submissions to criticize the said order. It has been submitted that the road/land which has been held to have been encroached by the petitioner was never declared as a road of the Municipality. The measurement of the road was made on several occasions. In some of those measurements the petitioner was not found to have encroached on the part/portion of the said road. It has also been submitted that parallel proceeding was continued by the private respondent before the Sub divisional Officer Lakhisari. The result thereof is, however, not known to the petitioner.

7. Counsel for the private respondent, on the other hand, submitted that the road which is the subject matter of the present case was vended and registered in the name of the Hon'ble Governor of Bihar. The said road, therefore, is a public road which is being utilized by the inhabitants of the said locality including the petitioner. The sale deed(s) executed by the same vendor in favour of the purchasers including the writ petitioner and the private respondent herein depict the aforesaid fact. It is next contended that in the light of the order passed on the writ petition preferred by the writ petitioner (Annexure-13) a suit was filed by the petitioner against one of the purchasers of the land having access on the same road which has already been dismissed. It is also urged that there is nothing on record to suggest that parallel proceeding was initiated and continued with respect to the subject matter in question in which any order prejudicial to the petitioner has been passed.

8. Learned counsel for the Nagar Parishad, on the other hand, supporting the order submits that the proceeding was taken up and decided against the

petitioner in the light of the order passed by this Court. Both the parties were afforded adequate opportunity inasmuch the subject land was also got measured on few occasions before passing the impugned order wherein the petitioner was found to have encroached on a small part/portion of the road in question. He next submitted that this Court may not delve into the merit of the contention of the petitioner as the petitioner has a statutory forum to ventilate his grievance against the impugned order. He submits that the impugned order can be assailed before the Building Tribunal constituted under section 329 of the Bihar Municipal Act, 2007. Even prior to coming into force of the Municipal Act such provision(s) existed under the Bihar and Orissa Municipal Act, 1922.

9. A serious dispute pertaining to encroachment over the road has been raised in this writ application. The matter was carried before this Court on diverse occasions. It appears that aggrieved by the continuance of the present proceeding the petitioner had approached this Court in CWJC No. 17924 of 2009. This Court vide order dated 17.01.2011 did not grant the petitioner any relief. The petitioner sought permission of the Court to withdraw the application in order to approach the appropriate forum/authority for the resolution of the disputes. In other words, the proceeding which was continued on the file of the Executive Officer of the Nagar Parishad/Panchayat was not interfered with. On perusal of the order assailed in the present writ application it appears that adequate opportunity of hearing was granted to both the parties inasmuch as the physical feature existing on the subject land was got measured at least for more than one occasions. The order impugned, therefore, cannot be assailed on the ground of non observance of either the rules of natural justice or the provisions of the Act and a decision on the merit in the light of the facts appearing from the records has been rendered by the Executive Officer of the Nagar Panchayat/Parishad. The Act itself provides a remedy to the petitioner by filing appeal there against before the Building Tribunal which has been constituted under section 329 of the Municipal Act.

10. Regard being had to above, this Court is not inclined to invoke its extraordinary and discretionary writ jurisdiction to grant the relief prayed for in this writ application. The petitioner if so advised may file an appeal there against before the appropriate forum/authority/Tribunal after seeking condonation of delay, if any, to assail the said order.

11. Considering the fact that the order impugned directs for demolition of the part of the boundary wall of the petitioner found as an encroachment and the interim order passed in this case, I direct that the status quo with regard to the offending structure of the petitioner shall be maintained for a period of four weeks from today.

12. The application is dismissed with the aforesaid observation(s).