
(2016) 01 PAT CK 0114

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 2098 of 2013

Vinay Kumar Daruka

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 28-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Criminal Procedure Code, 1973 (CrPC) — Section 147

Citation : (2016) 167 AIC 772 : (2016) 3 PLJR 378

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

Bench : Single Bench

Advocate : Mr. Rama Kant Sharma, Advocate, for the Appellant; Mr. S.A. Alam, S.C.3, for the Respondent

Final Decision : Disposed Off

Judgement

Mr. Kishore Kumar Mandal, J.(Oral)—This application filed under Articles 226 and 227 of the Constitution of India seeks a direction to the respondents not to raise boundary wall over plot no. 1196 (area 6 decimals) and plot no 1209 (area 1/4 decimals) lying in front of the house of the petitioner and other several residents.

2. Heard Mr. Rama Kant Sharma, Senior Counsel for the petitioner and Mr. Syed Arshad Alam, S.C.3 for the State.

3. Parties have exchanged their pleadings.

4. It has been submitted by the counsel for the petitioner that the flank of the G.T. Road cannot be used for pucca construction obstructing the egress and ingress of the residents abutting the Highway. The Government in the Department of Road Construction, however, can temporarily use the land on the flank of the road for the purpose of maintaining the road. No pucca structure obstructing the view of the adjoining residents and/or obstructing their egress and ingress to the Highway can be made. Since the Government in the Road

Construction Department was going with the construction of pucca structure over the land in the flank of the road, in question, the petitioner approached the Executive Magistrate who initiated a proceeding under Section 147 Cr.P.C. Parties were given opportunity. The police also submitted the report. The Court vide order dated 13.08.1990 (Annexure 1) restrained the respondent-State from erecting pucca structure and directed for removal of the wall or structure from plot nos.1196 and 1209 as the petitioner had been held to have the right of easement which cannot be obstructed.

5. Aggrieved by the said order the respondent-State filed a criminal revision application being Cr.Rev. No. 109 of 1990. The learned Additional Sessions Judge under order dated 7.12.2007 upheld the order of the learned Executive Magistrate and dismissed the revision application. It has been submitted on behalf of the petitioner that in spite of the said order passed by the Executive Magistrate and affirmed by the 1st Additional Sessions Judge, the respondents are going with construction. They should be restrained from doing so. In order to buttress his submission he has referred to AIR 1972 Madras 386 (Damodara Naidu and others v. Thirupurasundari Ammal and another) and AIR 1951 Orissa 124 (Chairman, District Board, Puri & ors v. C.H. Achaya). In an identical case like the present one, the Madras High Court in the case of Damodara Naidu case (supra) held in para 10, as under:

"I am, therefore, of opinion that the plaintiffs are entitled to have access to the public road abutting item 1 free of any obstruction and for a mandatory injunction directing the defendants to remove the wall put up on item 2 above AB blocking the entry of item 1. The judgment and decree of the courts below are correct."

6. Again in the case of District Board, Puri (supra) the court considered in some detail presumes of the English law and observed that prima facie the lands on either side of the road, which are not the private property of the abutting owners, are held by the local authority as part of the road itself. A flank of the road is the land of the State in the same way as the right and therefore subject to the condition.

7. Mr. S.A. Alam, learned S.C.3 has not disputed that at the instance of the petitioner, the Executive Magistrate passed an order under Section 147 Cr.P.C., which got affirmed in Criminal Revision No. 109 of 1990, which remain unchallenged. He, however, points out that the petitioner has access to the road/highway even after the existing construction. The petitioner representing the residents of the area has got right to use the Highway in outgoing and incoming which cannot be obstructed. He has right to use the Highway or passage without obstruction. In the case at hand, there is an order passed by the Court in a proceeding decided in presence of the petitioner as well as the State. The order was affirmed by the learned Additional Sessions Judge which has not been altered by any higher authority. In the circumstances the respondents would not be allowed to act contrary to the order of the Court.

8. In view of the above, the writ petition stands allowed and the respondents are restrained from undertaking further construction permanent in nature on the plots, in question, obstructing the road or passage as well as the view of the petitioner.

9. The application stands disposed of.