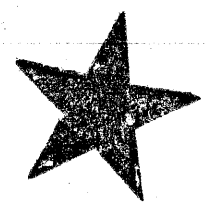


Patna
11/9/17
11/8/17



The Commissioner
Patna Nagar Nigam
Maurya Lok Complex
Dak Banglow Road
Patna-800001

Personal Attention of
Sri Abhishek Singh

PATNA

03.08.2017

Sub:-Patna Nagar Nigam vigilance case no-128B/96

Bihar Municipal Building Tribunal order dated 22/06/2017.

Appeal no. 5/13 submitted by Sri Saryug Paswan so called resident on Road No.

4 East Indira Nagar, Kankarbagh, Patna.

Removal of encroachment from road.

Sir,

In Connection with the above, I submit here-with brief facts that Sri Saryug Paswan, Appellant of the case has encroached upon the Road No. 4, East Indira Nagar in mohalla Shivaji Nagar Kankarbagh Patna-20. One resident of the mohalla filed complaint petition to P.R.D.A Patna in 1996 regarding encroachment on Road No. 4, East Indira Nagar, Kankarbagh, Patna. A team of PRDA officials visited the mohalla and found the encroachment by Sri Saryug Paswan and a vigilance case no- 128B/96 initiated against Sri Saryug Paswan. During the proceedings of case, Sri Saryug Paswan presented himself at one time and then never participated intentionally in the proceeding of the case. The vice chairman of PRDA lastly ordered on 10.04.2000 for removal of encroachment from the road as above. Thereafter a notice vide letter dated 22.10.1996 sent to Sri Saryug Paswan by special messenger but he refused to accept the notice and then the messenger pasted the notice on the wall of his house. There-after Nigam Amin visited the site of encroachment and measured the area of encroachment done by Sri Saryug Paswan (Annexure no-1, 1 page) and then two Nagar Nigam officials visited the site for red-marking to remove encroachment on 03.04.2013. Sri Saryug Paswan, then filed appeal to Nagar Nigam Tribunal and proceedings started there-on and lastly Tribunal ordered on 22.06.2017.

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Sri Saryug Paswan is increasing the area of encroachment and even made further houses on the road as well as a cow khatal in front of my housing plot no- 1084 blocking the main gate of the plot. Sri Saryug Paswan has encroached the plot no. 1086 (east of plot no- 1084 on the road side) but he mentioned regarding his plot as 1088 which area falls ^{pro lease} on the southern part of Patna Bypass and such claim appears wrong. Actually encroachment is on plot no 1086 ^{Plot} i.e. on Road no-4 not on plot no- 1088. Both the plots are Gairmajarua Aam land in Jaganpura mohalla under Circle Office, Phulwari-Sharif.

In the mean time, revenue Amin of Phulwari Sharif Anchal has measured the area of this place and submitted his report with a map plan to Circle Officer, Phulwari Sharif regarding encroachment on plot no. 1086 (Annexure no-2, 6 pages) and also confirmed about making houses/hutmants with a cow shed in front of gate of plot no 1084.

Sri Saryug Paswan has claimed in his appeal to Tribunal that the plot no. 1088 has already been allotted to his wife Smt Rajpati Devi on 22.01.1994 by Bihar Govt. which appears to be misleading, relative certificates is enclosed (Annexure no. 3, 1 pages) which appears totally wrong. The relative certificates has indicated Sabik Khata No. 26 and then Khata No. 22 of Thana No. 26 and not indicated Plot No. 1088 in the certificate ^{and} ~~but~~ Sri Saryug Paswan did not submit Title deed of allotted plot no. 1088 nor mutation paper and revenue receipt issued by Karamchari, Phulwari Sharif Anchal. Smt Rajpati Devi has applied to DCLR, Patna for allotment for the plot no 1086 of mohalla jaganpura vide letter in 2014 (Annexure no. 4, 1-page) i.e. where houses already constructed and encroached on Road no. 4 East Indira Nagar, Kankarbagh, Patna. This fresh application filed in 2014 was as a result of notification dated 13.12.2014 of Revenue and Land Reforms Department, Govt. Of Bihar, Patna (Annexure no.5, 2 pages) for allotment of Land to landless dalit families and she applied for allotment of the land i.e. plot no. 1086, but she never indicated

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that plot no. 1088 of Khata no. 26(22) previously allotted to her by Govt. Of Bihar which was as per her husband's information that the plot no 1088 allotted to his wife on 1994. But the case was held up as she, Smt Rajpati Devi W/o Sri Saryug Paswan has already purchased two plots of land in nearby village Udaini, South of Patna nearby Patna By-pass road, Patna, A copy of title deed of one plot already sent by local people to DCLR and Circle Officer, Phulwari Sharif and her claim for land held up as yet as she was not landless lady (Annexure no. 6, 6 page).

Now you can imagine and think how Sri Saryug Paswan has tried to mislead the Tribunal Court to get sympathy from Judges/Members.

The allotment of plot no 1086 to Smt Rajpati Devi W/o Sri Saryug Paswan in 1994 is totally wrong as settlement officer (Sahayak Bandobasta Padadhikari, Mukhyalaya, Punaichak, Patna) has replied to RTI query vide letter no 352/2 dated 21.07.2014(Annexure no.7,1page) by a High Court Advocate Sri. Anil Kumar Singh that plot no 1086,1087 of Mauja- Jaganpura, Thana no 26, Anchal- Phulwari Sharif falling under Patna Nagar Nigam area and not yet under process of settlement due to lack of notification by the Government so not allotted to anybody. So claim of Sri Saryug Paswan for allotment of land in 1994 is totally wrong and fictitious. Sri Saryug Paswan is befooling with local residents that the plot no 1086 had already been allotted to him by the Government appeared to be misleading. The above false certificate i.e. allotment letter of 1994 was referred to vigilance officer of your office on 21.07.2015 to stop process of removal of encroachment ordered by you and published on local Dainik news-paper vide newspaper cutting(Annexure no. 8, 1 page) was total misleading.

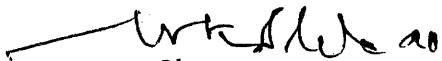
Keeping the facts in view, I request you ~~to get~~ to remove the encroachment from Road No. 4, East Indira Nagar, Kankarbagh, Patna which was previously Wide Nala to let out rain water standing in the area. The removal of encroachment can help the local residents to approach the Patna

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by-pass Road as out of 35-40 feet road only 15-20 feet road are useable and blockings of road are hindrance to cross-over by general public as well as myself cannot connect let out of water and waste through pipe to underground Nala from my plot to a running underground Nala along the adjoining encroached plot by Sri Saryug Paswan. Sri Saryug Paswan only produced Patna Nagar Nigam Tax receipt for the illegal portion of house constructed as encroachment on the road i.e. plot no. 1086 not yet allotted to him by the Bihar Govt. I request you kindly to order for removing encroachment on public road i.e. Road No. 4, East Indira Nagar, Kankarbagh, Patna as the earliest.

Encl.- Photocopies of 8 letters/documents attached as above ✓

Yous Faithfully,


U.K. Sharan
Presently Residing at
Road No. 3B, Ashok Nagar,
Kankarbagh ,Patna-20
Mobile no. 9430906159

Senior
cl/3/21

Municipal Building Tribunal, Bihar, Patna

Date of Application	Fee			Date on which certified copy was ready for delivery	Date of d of certifie
	M. R. No.	Date	Amount		
03.07.17	15029	03.07.17	Rs 71/-	04.07.2017	04.07.2017
Certified copy of the Appeal/Misc. Appeal no.-			05	of the Year - 2013.	

Municipal Building Tribunal-II

Appeal no.- 05 of 2013

{Arising out of Vig. Case no.-128B/1996}

Shri Saryug Paswan,
S/o Late Mahabir Paswan,
Shivaji Nagar, Road no.4,
East Indira Nagar, New Bye Pass Road
Kankarbagh, Patna.

... Appellant.

V/s

1. The Patna Municipal Corporation,
through its Municipal Commissioner,
Patna.
2. The Executive Engineer,
Kankarbagh Division, Patna.
3. The Vigilance Officer,
All office at Maurya Lok, Patna.
4. Ashna Singh, V Shivajee Nagar,
East Ashok Nagar, Patna.

... Respondents

Present:

1. Sri Niranjn Singh, Chairman, Municipal Building-Tribunal-II.
2. Sri Shyam Sunder Pathak, Member, Municipal Building Tribunal-II.
3. Sri Umakant Thakur, Member, Municipal Building Tribunal-II.

For the appellants : Sri Lal Babu Akela, Advocate.
For the PMC-respondents : Sri Ajit Kumar, Advocate.

Order

36/22.06.2017 1. The present appeal has been preferred against the impugned order dated 10.04.2000 passed in vigilance case no. 128B/1996 for setting aside on the grounds mentioned in the memo of appeal.

The case of the appellant in brief is that a complaint was filed by respondent no.4 against the constructed building of appellant for his personal grievances with the appellant.

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04/7/17

Further the case of the appellant, as mentioned in the memo of appeal, is that the appellant belongs to scheduled cast and resides in the said land before 1960 and constructed a mud house measure area 7.30m x 5.15mtrs vide Sabik khata no. 27 and Khata no.22 which was allotted by the government on 22.1.1994 measuring area 4 decimals, Thana-Phulwarishariff, Thana No. 27, Anchal – Phulwarishariff , District -Patna in the name of his wife Rajmati Devi and thereafter constructed a small house without obtaining the sanction from any competent authority, because he has no knowledge about the law that before constructing any structure it is necessary to obtain the sanction. He was residing with his family peacefully. Copy of the allotment certificate is annexed as annexure-2 of this memo of appeal.



Further the case of the appellant is that in the year 1996 respondent no.4 filed a complaint petition against the residential house of the appellant and therefore vigilance case no. 128B/1996 was initiated against the appellant but till 03.04.2013 the appellant had no knowledge, either initiation of the vigilance case or order impugned.

Further the case of the appellant is that all of a sudden on 03.04.2013; the officer of the Patna Municipal Corporation has done red marking at only house of the appellant for demolition of the house of as compliance of the order impugned.

Further case of the appellant is that on 03.04.2013 when the officer P.M.C. came to the spot to demolish the house of the appellant, the appellant came to know about the impugned order. Thereafter appellant filed application for obtaining the certified copy of the impugned order and which was received on 05.04.2013 and thus the impugned order is ex-parte

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without the knowledge of the appellant and appellant was debarred from putting his claim before the learned Lower Court in vigilance case no. 128B/1996 and on this ground alone the impugned order is not sound and legal and the same may kindly be quashed.

2. Heard the learned counsel for PMC-respondents and perused the written argument filed on behalf of the P.M.C. The contents mentioned in the written argument are as follows:

That the appeal is devoid of merit and fit to be dismissed.

Further it has been submitted that a vigilance case no. 128B/1996 was initiated on the basis of report, (which is based on a complaint petition which is annexed as annexure-3 of the memo of appeal) of the officials of P.R.D.A. on 30.07.1996.

Further it has been submitted that in the said enquiry shows that the building in question measures 7.30mets x 5.15mtrs with a ground floor building with sheet roofing and also constructed a thatched room. It was found that for this composite construction the O.P. has neither secured the requisite sanction from the P.R.D.A. nor deposited any map plan in course of the last four years during which this proceeding has been pending for disposal.

That the inspection report also reveals that the construction in question appears to have been encroached over Road no-4 of East Indira Nagar.

Further it has been submitted that during the course of argument the appellant submitted the said impugned order was passed ex-parte but upon perusal of L.C.R. it transpires that after getting knowledge, the appellant appears and filed his attendance on 18.11.1996 and after that he



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left the pairavi in the said case without filing any show cause and thus the case was finally heard ex-parte and order was passed on 10.04.2000.

Further it has been submitted that the appellant has submitted during the course of hearing that his house is situated on plot no. 1088 but the notice was issued against the encroachment made in the eastern side of the plot no. 1084 on the road. It is pertinent to mention here that the plot no. 1086 which is Gair Majorua Aam and there is an encroachment on the said plot by the appellant.

It has further been submitted that from above it is clear that the appellant's land is situated elsewhere and he has encroached the plot on 1086 which is the road, which was confirmed by the report dated 24.04.2013, which is placed at page no. 38 of the Lower Court record.

It has also been submitted that in the memo of appeal nowhere it is mentioned that on which plot the house of the appellant is situated nor any document was filed by the appellant regarding title of the appellant.

Further it has been submitted that the said enquiry report was done in presence of the appellants family and it was found that the construction is without any map and also there is no any paper submitted till date regarding title of the appellant.

Further it has been submitted that after perusing the records the learned Vice Chairman passed the order on 10.04.2000 and directed the P.R.D.A. to ensure that the said construction, particularly those parts of which are encroached on the public road, should be removed between 18.04.2000 and 19.04.2000 and also given liberty to submit a map plan in

respect of those portions of his construction which are not on



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encroachment on public land before the aforementioned date so that the same could be disposed off in accordance with the law.

3. Heard the learned counsel for the appellant who submitted that learned Lower Court has passed the order by which it has been directed that "in view of the matter in-charge of road widening-cum-demolition team, P.R.D.A. is directed to ensure that the said construction, particularly those parts of it which are encroachment on the public land, should be removed between 18.04.2000 and 19.04.2000" and thus by this order itself shows that the learned Lower Court has passed the order to remove the encroachment on the public land without considering and deciding the factor that whether that land is public or not and thus the order of the learned Lower Court is bad in the eye of law and thus the Municipal Commissioner has no power to declare that land encroached is private land or public land and thus on this ground alone the impugned order if fit to be set aside.

4. Heard the learned counsel for PMC-respondents, who submitted that the order is not ex-parte as mentioned in the ground of written argument because the appellant appeared in the Lower Court and filed attendance on 11.08.1996 and thereafter he left pairavi. It shows that he had knowledge about the proceeding of the case and the appellant intentionally left pairavi. The learned counsel for the PMC also submitted that the appellants advocate, in the open court, has admitted that his house is situated on plot no. 1088 but the notice was issued against the encroachment made in the eastern side of the plot no. 1084 on the road and thus there is encroachment, as admitted by the appellant, on the plot no. 1084 and the plot of the appellant is 1088. It is therefore the appellant



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सच्ची अभिप्रमाणित प्रति
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has no concern about the plot no. 1088: As per the submission of the learned counsel for PMC-respondent plot no. 1088 is Gair Majarua Aar land and there is encroachment on the said plot by the appellant. Since the land is recorded as Gair Majarua Aam hence no further proceeding required to determine that the plot number 1086 is public land or not.

5. Perused the record and the impugned order dated 10.04.2000 and find that learned Lower Court has ordered on the basis of official report of the spot on 30.07.1996 that P.R.D.A. is directed to ensure that the said construction, particularly those parts of which are encroached on the public road, should be removed between 18.04.2000 and 19.04.2000. However, the O.P. would be at liberty to submit a map plan in respect of those portions of his construction which are not an encroachment on the public land before the aforementioned dates.

Thus from the order itself shows that the learned Lower Court has given opportunity and time to present the map before the Lower Court and to show as to how and which construction is on his own land but the appellant has failed to approach the Lower Court and not showed any map.

Although from the perusal of the impugned order it appears that the encroachment made by the appellant on public land which required to be demolished, an opportunity may be given to the appellant to show that the construction made by the appellant is not on the public land rather on his own land.

Considering the submissions of the appellant and perusing the impugned order and contentions of the learned counsel for PM respondents it is found and held that appellant must be given opportunity to show that the construction made on the alleged land is not on the public land rather on his own land.

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पटना प्रमण्डल, पटना

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प्रधान सहायक
मालिका भवन न्यायाधिकरण



whether there is encroachment on the public land or the encroached land is the land of the appellant or not? As such the Lower Court is directed to re-hear the matter afresh and consider the ground as pleaded in the ground of appeal.

6. It is therefore with this observation this case is remanded back for fresh hearing giving an opportunity to the appellant and the appellant is directed to appear before the Lower Court and put his claim in respect of his land as mentioned in the vigilance case no. 128B/1996. Further it is held that this Tribunal is not competent to hear the matter relating to the

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7. Accordingly this appeal is disposed of with above directions.

Dictated & corrected

By me:

Mishra Singh
22.06.2017

Chairman,

Appellate Tribunal

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पटना प्रमण्डल, पटना

Mishra Singh

22.06.20

Chairman

नगरपालिका भवन न्यायाधिकरण
पटना प्रमण्डल, पटना

V. K.

सदस्य

नगरपालिका भवन न्यायाधिकरण
पटना, प्रमण्डल, पटना

Member

नगरपालिका भवन न्यायाधिकरण
पटना, प्रमण्डल, पटना



सर्वो अतिप्रमाणित प्रति

प्रधान न्यायाधिक

पालिका भवन न्यायाधिकरण

पटना