

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.10857 of 2020**

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Dharambir Prasad Singh, Son of Late Naresh Chandra Singh, Resident of  
Gola Road, Gajadharchak, P.S.- Danapur, District-Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Housing and Urban Development Department, Government of Bihar, Patna
3. The Principal Secretary, Revenue and Land Reforms Department, Govt. of Bihar, Patna
4. The Collector, Patna
5. The Nagar Parishad Danapur Nizamat, through its Executive Officer, Danapur, Patna
6. The City Executive Officer, Nagar Parishad, Danapur Nizamat, Patna, Bihar
7. The Circle Officer, Danapur Circle Officer, Patna
8. The M/s Singh Developers represented through his partner Pankaj Kumar, S/o Sri Vijay Kumar Sing Officer cum resident Gandhi Nagar Danapur, P.s.- Danapur, P.S.- Digha, District- Patna
9. M/s Surya Developers and Planner Pvt. Ltd. represented through Managing Director Ramesh Prasad Singh, S/o Sri Jagat Narayan Singh, office at Shivganga Vihar Ambednar Path Bailey Road, Patna
10. Sanjay Kumar, Son of Late Girish Singh, Resident of Mohalla- Bhikhana Pahari, P.S.- Pirbahore, District- Patna

... .. Respondent/s

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**Appearance :**

For the Petitioner	:	Mr.Karandeep Kumar, Advocate
For the S t a t e	:	Mr.Zaki Haider, A.C. to A.G.
For Respondent Nos.8 & 9:		Mr. Sandeep Kumar, Advocate with Mr. Jai Ram Singh, Advocate
For Respondent No.10	:	Mr. K.N. Chaubey, Sr. Advocate with Mr. Ambuj Nayan Chaubey, Advocate

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**CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD**  
**ORAL JUDGMENT**

**Date : 26-03-2021**

The petitioner seeks quashing of the order dated 04.09.2020, bearing Memo No.1674, passed in Miscellaneous Case No.04 of 2019 (Building Construction) by the City Executive



Officer, Nagar Parishad, Danapur Nijamat, Patna (Respondent No.6), disposing of the case filed by Sanjay Kumar (Respondent No.10). By the said order, the Executive Officer has issued a direction to stop the petitioner's building construction work till adjudication of title by a Civil Court of competent jurisdiction.

2. The brief facts of this case is that the petitioner claims to be maternal grandson of one Ramcharitra Singh, who held 9.73 acres of land by virtue of a family partition through a registered partition deed executed in the year 1969. 2.53 acres of land was gifted by Ramcharitra Singh to his wife through a registered gift deed in the year 1975. He also gifted 28 decimals of land to his one and only daughter Shakuntala Devi by a registered deed of gift in 1975 itself. In 1984, said Ramcharitra Singh gifted 1.63 acre of land to his only daughter Shakuntala Devi, the petitioner and his brother, namely, Gopal Prasad Singh, both sons of Shakuntala Devi, through a registered gift deed. The same includes land of Plot No.1077, which is the subject-matter for the present, besides other plots.

3. It is the petitioner's case that subsequently their mother Shakuntala Devi gave her 1/3rd share in the aforesaid gifted land in favour of the petitioner and his brother Gopal Prasad Singh, whereafter they became absolute owner of the properties.



Later, by a family arrangement, inherited property was divided between the petitioner and his brother, whereafter they continue to hold and possess the land with absolute right, title, interest and peaceful possession. The lands have duly been mutated and rent is also being paid to the State of the Bihar. In support of such contention, rent/revenue receipts have been placed on record by way of Annexure 1 to the writ petition.

4. The petitioner entered into a Development Agreement for construction of multi storeyed building with Respondent Nos.8 and 9 on 03.03.2011 with regard to part of the land appertaining to Khata No.885, Survey Plot No.1077 having a total area of 79½ decimals situated in Revenue Thana No.21. In furtherance of the Development Agreement, the petitioner submitted an application for approval/sanction of the map/plan. The Office of the Respondent No.6-the City Executive Officer, Nagar Parishad, Danapur Nijamat, Patna sanctioned the building map/plan, vide Building Plan No.82/16-17 on 15.06.2016. Construction thereafter has been undertaken in compliance with all other legal and statutory obligations.

5. Respondent No.10 has sent a legal notice dated 30.03.2019 claiming to be the purchaser of the lands in question from the petitioner's maternal grandfather, namely, Ramcharitra



Singh, by two sale deeds dated 11.12.1971 and 13.12.2071, allegedly registered in Kolkata Registry Office in the State of West Bengal. By reply dated 04.04.2019 through his Advocate, the petitioner denied the claim and assertions of the Respondent No.10. Respondent No.10 has thereafter approached the Real Estate Regulatory Authority, (RERA),Bihar, vide Complaint Case No.376 of 2019 under Section 7 of the Real Estate (Regulation and Development) Act, 2016 for revoking registration of petitioner's project. He also filed Miscellaneous Case No.04 of 2019 before the Nagar Parishad, Danapur Nijamat under Section 323 of the Bihar Municipal Act, 2007 (hereinafter referred to as "the Act").

6. In the said proceedings, the instant petitioner appeared and has denied and disputed the claims set forth by Respondent No.10. His stand is that the claim of Respondent No.10 is based on falsehood and fraud and that the Respondent No.10 has no *locus* in the matter. The construction work had started on the basis of a sanction plan/map way back on 15.06.2016, and the construction of the building is nearly complete.

7. The Respondent No.10, based on extraneous considerations, has lodged a complaint abusing the scope of Section 323 of the Act. There is no assertion or allegation that the plan is not in accordance with the sanction accorded or that it is in



contravention of any of the provisions of the Act or the Rules or the Regulations made thereunder. The complaint has been made asserting that the petitioner has no valid title to the lands in question, Respondent No.10 has claimed legal and valid title to the lands in question.

8. Respondent No.6, after hearing the parties, in its order dated 04.09.2020, has recorded a finding that the issue is one of the disputed claim to title. He has directed that the parties may approach the court of competent jurisdiction. He further goes on to direct that till passing of an order by the court of competent jurisdiction, the construction work of the building in question shall remain closed. This order has been passed by the Respondent No.6 in a proceedings under Section 323 of the Act, which reads as follows :

**“323. Order of demolition and stoppage of buildings or works in certain cases and appeal.** - (1) Where the erection of any building or the execution of any work has been commenced, or is being carried on, or has been completed without, or contrary to, the sanction referred to in Section 314 or in contravention of any of the provisions of this Act or the Rules or the Regulations made thereunder, the Chief Municipal Officer may, in addition to any other action that may be taken under this Act, make an order directing that such erection or work shall be demolished by the person at whose instance the erection or the work has been commenced or is being carried on or has been completed, within such period, not being less than five days and more than fifteen days from the date on which a copy of the order of demolition with a brief statement of the reasons therefor has been delivered to such person, as may be specified in the order:

Provided that no order of demolition shall be made unless such person has been given, by means of a notice served in such manner as the



Chief Municipal Officer may think fit, an opportunity of showing cause why such order shall not be made:

Provided further that where the erection of any work has not been completed, the Chief Municipal Officer may, by the same order or by a separate order, whether made at the time of the issue of the notice under the first proviso or at any other time, direct such person to stop the erection of such building or the execution of such work until the expiry of the period within which an appeal against the order of demolition, if made, may be preferred under sub-section (3).

**Explanation.** - In this chapter, "the person at whose instance" shall mean the owner, or the occupier, or any other person who causes the erection of any building or the execution of any work, including alterations or additions, if any, to be done, or does it by himself.

(2) The Chief Municipal Officer may make an order under sub-section (1), notwithstanding the fact that the assessment of such building has been made for the levy of the property tax on lands and buildings.

(3) Any person aggrieved by an order of the Chief Municipal Officer under sub-section (1) may, within thirty days from the date of the order, prefer an appeal against the order to the Municipal Building Tribunal appointed under Section 329.

(4) Where an appeal is preferred under sub-section (3) against an order under sub-section (1), the Municipal Building Tribunal may stay the enforcement of the order on such terms, if any, and for such period, as it may think fit:

Provided that where the erection of any building or the execution of any work has not been completed at the time of the order under sub-section (1), no order staying the enforcement of the order under that sub-section shall be made by the Municipal Building Tribunal unless a surety, sufficient in the opinion of that Tribunal, has been given by the appellant for not proceeding with such erection or work pending the disposal of the appeal.

(5) Save as provided in this Section, no Court shall entertain any suit, application or other proceeding for injunction or other relief against the Chief Municipal Officer to restrain him from taking any action, or making any order, in pursuance of the provisions of this Section.

(6) Every order made by the Municipal Building Tribunal on appeal and, subject to such order, every order made by the Chief Municipal Officer under sub-section (1), shall be final and conclusive.



(7) Where no appeal has been preferred against an order made by the Chief Municipal Officer under sub-section (1) or where an order under that sub-section has been confirmed on appeal, whether with or without modification, the person against whom the order has been made shall comply with the order within the period specified therein or, as the case may be, within the period, if any, fixed by the Municipal Building Tribunal on appeal, and, on the failure of such person to comply with the order within such period, the Chief Municipal Officer may himself cause the building or the work to which the order relates to be demolished, and the expenses of such demolition shall be recoverable from such person as an arrear of tax under this Act.

(8) Notwithstanding anything contained in this Chapter, if the Empowered Standing Committee is of the opinion that immediate action is called for in relation to a building or a work being carried on in contravention of the provisions of this Act, it may for reasons to be recorded in writing, cause such building or work to be demolished forthwith.”

9. It is submitted by the petitioner’s counsel that Respondent No.6 could have exercised its power under Section 323 of the Act only if the construction was without or contrary to the sanction granted under Case No.04/16-17 or in contravention of any of the provisions of the Act or Rules/ Regulations made thereunder. No such finding has been recorded in the order of Respondent No.6 and, therefore, there was no scope for the Respondent No.6 to pass any order, much less the order closing the construction work. It is submitted by the petitioner’s counsel that the impugned order is without jurisdiction, still the petitioner is suffering on account of stoppage of construction work of the project. The same is causing great prejudice to the petitioner.



10. Against the impugned order, the petitioner had preferred an appeal before the Municipal Building Tribunal. The same has been numbered as Appeal No.6(5)/2020.

11. The specific case of the petitioner in the writ petition is that the Tribunal, which is to hear such appeal has since been non-functional. The Court put specific query to the counsel for the petitioner today also in this proceedings whether the Tribunal is now functional as much time has elapsed since filing of the writ petition on 31.12.2020 and today. The specific answer of the petitioner is in the negative. This fact is also not denied or disputed by the learned counsel representing the Respondent No.10.

12. It is submitted by Mr. Chaubey, learned Senior Counsel for Respondent No.10 that the order of the Executive Officer dated 04.09.2020 is sustainable, in view of the provisions contained in Sections 323 and 324 of the Act. The said two provisions are the source of power for issuing an order in restraint of further construction of a building. The second submission is that Section 327 of the Act contemplates handing over possession of flats, subject to issuance of a Completion Certificate in respect of the building in question. No such Completion Certificate has been issued in respect of the building. The petitioner, however, has



asserted that he has handed over possession to allottees of their respective flats. If such statement is true, the petitioner has committed an illegality.

13. It is submitted that by two registered sale deeds executed at Kolkata on 11.12.1971 and 13.12.1971 in favour of the father of Respondent No.10, the lands in question had already been sold by the petitioner's grandfather. Petitioner's grandfather thereafter stood denuded of his option or right to issue the alleged gift deed in favour of the writ petitioner's father in the year 1984. The petitioner has obtained sanction for the plan to construct on the lands in question by suppressing the fact of execution of the two sale deeds in 1971 in favour of the father of respondent No.10. By resorting to such suppression, he has sought sanction based on a subsequent gift deed of the year 1984, which the petitioner's grandfather had no right to issue as he had already stood denuded of his title to the land in question. The gift deed was, therefore, void *ab initio*. Based on such suppression and fraud, the writ petitioner obtained the sanction, having indulged in such falsehood. This Court, exercising equitable jurisdiction under Article 226 of the Constitution of India, may not invoke its jurisdiction in favour of such person.



14. It is also submitted that as per the petitioner's own statement made in the writ petition, he has already preferred an appeal before the Tribunal. Having preferred an appeal, he waited four months. Thereafter, instead of approaching the Court for constitution of a Tribunal and taking a plea that the Tribunal does not exist, he has approached this Court under its extraordinary discretionary jurisdiction. Since the petitioner has already elected a Forum, he is estopped from approaching this Court in writ jurisdiction.

15. The learned Senior Counsel has placed reliance on *Halsbury's Law of England, 4<sup>th</sup> Edition Vol.16, Para 1302 and 1305*. Reliance was also placed by the learned Senior Counsel on paragraph 1504 to submit that in the instant case in view of registered sale deed of the year 1971 "estoppel by deed" also arises. In support of this submission, he has also relied upon *AIR 1956 SC 44*. Another submission is that this Court may not pass any order, the effect of which would be to grant any benefit to the writ petitioner, based on a sanction plan, obtained by resorting to falsehood, suppression and fraud. Paragraph 20 to 24 of decision of the Apex Court in the case of *Ritesh Tewari & Anr. v. State of U.P. & Ors.*, reported in *AIR 2010 Supreme Court 3823*, is relied upon. It is submitted that since the writ petitioner has indulged in



fraud and falsehood, this Court should not exercise its discretionary jurisdiction in favour of the petitioner.

16. Submissions have also been advanced with reference to the provisions of the Transfer of Property Act (hereinafter referred to as 'the T.P.Act') It is submitted that in view of Section 3 of the T.P. Act, the petitioner is not permitted legally to take a stand that he is not aware of the transfer of the property, which was effected by way of registered deed in the year 1971 in favour of Respondent No.10 by the petitioner's grandfather. Relying upon the decision of the Apex Court in the case of *Suraj Lamp & Industries (P) Ltd. v. State of Haryana & Anr., reported in (2009) 7 SCC 363*, he submits that registration of the sale deed at Kolkata in the year 1971 by the petitioner's grandfather gave notice to the world of such documents having been executed. Specific reliance is placed on paragraphs 17, 18 and 19 of the said judgment.

17. Lastly, it is submitted that if this Court is of the opinion that the Executive Officer has committed any error in passing the order in question, then this Court should remand the matter to the authority for re-consideration in accordance with the scope and ambit of Section 323 and 324 of the Act. This Court made specific query from the learned Senior Counsel whether



having obtained the order dated 04.09.2020, the petitioner has approached the Civil Court, in terms of the said order, the answer is in the negative. It is, however, submitted that the petitioner still has the option to approach the Civil Court, for which liberty may be granted to the petitioner, in terms of the order dated 04.09.2020 passed by the Executive Officer, Nagar Parisahd, Danapur Nijamat, Patna, which is impugned in the instant writ proceedings.

18. The submission of the learned Senior Counsel for the Respondent No.10, however, are unacceptable to this Court. The submission to the extent that the Respondent No.6 under Sections 323 and 324 of the Act has the power to order stoppage of construction is undeniable. But before Respondent No.6 could have exercised the power under these provisions of the Act, the conditions required for exercise of such power was also required to be fulfilled. Only if Respondent No.6 found that the construction had commenced, was being carried on, or has been completed without or contrary to the sanction or in contravention of any of the provisions of this Act, or any rules and regulations made thereunder, the power under Section 323 of the Act could have been exercised to stop the construction work in question. There is no such finding of Respondent No.6 as contemplated under Section 323 of the Act.



19. The other submission on behalf of Respondent No.10 regarding the petitioner having obtained sanction by suppressing the fact of execution of the two sale deeds of 1971 in favour of the father of Respondent No.10, this Court would observe that the petitioner was not a party to the alleged sale deeds executed on 11.12.1971 and 13.12.1971. The petitioner has, in fact, denied the existence of the so-called sale deeds and alleged the same to be a fraudulent, fabricated and manipulated documents. The entire claim in respect of the *Jamabandi* being created in favour of Respondent No.10 and other statement asserting right and title over the lands in question, based on such document, has been stated by the petitioner to be fraudulent. In fact, the consistent stand of the petitioner before the Respondent No.6, in the appeal filed by the petitioner before the Tribunal as well as before this Court, is that the Respondent No.10 has no legally valid claim to the lands.

20. While the Respondent No.10 is asserting petitioner's claim to be fraudulent and based on falsehood and suppression, the petitioner is also asserting that the claim of Respondent No.10 is based on fraud, fabricated and manipulated documents. Whose claim is based on fraud, forgery or falsehood ?, is an issue, which is to be decided in a duly constituted civil



proceedings, based on evidence by a court of competent jurisdiction.

21. This Court, in these proceedings under Article 226 of the Constitution, would refrain from entering into the claim based on disputed facts and documents, touching upon the issue of title. There is no adjudication by any competent Civil Court as to whose claim to the lands in question is based on equity, or whose claim is based on falsehood or fraud or forgery.

22. The Respondent No.10 has also not approached the Civil Court of competent jurisdiction for a declaration that the petitioner does not have right, title or interest in the lands based on the gift deed of 1984. Till date there is no declaration by any court of competent jurisdiction regarding Respondent No.10's right, title or interest. The Respondent No.10 till date has not availed any remedy for settling his claim to title over the lands in question. In fact, he has filed a complaint under Section 323 of the Act.

23. As noticed above, the scope of Section 323 of the Act is to order for demolition or stoppage of construction of building. Jurisdiction under Section 323 can be exercised, only if the construction in question has commenced, is being carried on, or has been completed contrary to the sanction accorded for construction or in contravention of the Act and/or Rules and



Regulations made thereunder. There is no such finding by the Respondent No.6 in Miscellaneous Case No.04 of 2019 filed by Respondent No.10 against the construction project of the petitioner.

24. In the final order dated 04.09.2020 passed in Miscellaneous Case No.04 of 2019, Respondent No.6 has held that issue raised by Respondent No.10 in the said proceedings is a land dispute for which parties may approach a Civil Court of competent jurisdiction. The order reads as follows:

“कार्यालय नगर परिषद दानापुर निजामत

आदेश-पत्रक

विविध वाद सं०-04/19 (भवन निर्माण)

श्री संजय कुमार एवं अन्य बनाम मेसर्स सिंह डेभलपर्स एवं अन्य

श्री संजय कुमार एवं अन्य द्वारा कार्यालय में दिनांक 18.06.2019 को आवेदन दिया गया। इनके द्वारा आवेदन में जमीन से संबंधित आरोप मेसर्स सिंह डेभलपर्स एवं पर लगाया गया है।

उक्त आवेदन के आलोक में वाद की प्रक्रिया प्रारम्भ की गई तथा दोनों पक्षों को सुनवाई में उपस्थित होने हेतु सुनवाई की तिथि निर्धारित की गई।

1. उभय पक्षों को सुनवाई हेतु कार्यालय ज्ञापांक 2079 दिनांक 26.07.2019 द्वारा दिनांक 16.08.2019 को सुनवाई की तिथि निर्धारित की गयी, जिसमें उभय पक्ष सुनवाई की निर्धारित तिथि पर उपस्थित हुए एवं अपने दावे के समर्थन में इनके द्वारा अपना-अपना पक्ष रखा गया।

2. पुनः सुनवाई हेतु कार्यालय ज्ञापांक 3047 दिनांक 20.11.2019 द्वारा दिनांक 29.11.2019 को सुनवाई की तिथि निर्धारित की गयी, जिसमें दोनों पक्ष उक्त निर्धारित तिथि को उपस्थित हुए एवं अपने दावे के समर्थन में इनके द्वारा अपना-अपना पक्ष रखा गया।

3. उक्त दो तिथियों को सुनवाई के उपरांत पुनः अंतिम सुनवाई की तिथि कार्यालय ज्ञापांक 2906 दिनांक 29.08.2020 द्वारा दिनांक 04.09.2020 को दोनों पक्षों की सुनवाई में उपस्थित होने के लिए



तिथि निर्धारित की गई। उक्त निर्धारित तिथि को दोनों पक्ष सुनवाई में उपस्थित हुए एवं अपने दावे के समर्थन में अपना-अपना पक्ष इनके द्वारा रखा गया।

उक्त दोनों पक्षों का पक्ष सुनने एवं उभय पक्षों द्वारा समर्पित दस्तावेज का अवलोकन करने से यह पाया गया कि यह भूमिविवाद से संबंधित मामला है।

अतः आदेश दिया जाता है कि चूंकि मामला भूमिविवाद से संबंधित है। फलस्वरूप भूमि विवाद के निराकरण हेतु उभय पक्ष सक्षम न्यायालय में जा सकते हैं। सक्षम न्यायालय द्वारा आदेश पारित होने तक भवन निर्माण कार्य बन्द रखना सुनिश्चित करें।

आदेश की प्रति सभी पक्षों को दें।

लेखापित एवं संशोधित

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नगर कार्यपालक पदाधिकारी

नगर परिषद दानापुर निजामत

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नगर कार्यपालक पदाधिकारी

नगर परिषद दानापुर निजामत”

25. From perusal of the order dated 04.09.2020 passed by Respondent No.6, it is more than obvious that Respondent No.6 has not found the case to be one justifying exercise of jurisdiction in favour of the Respondent No.10. He has therefore directed the parties to approach the Civil Court of competent jurisdiction for settlement of the land dispute raised by the Respondent No.10. The obvious reason apparent from the impugned order dated 04.09.2020 is that the dispute of title which has been raised is not within the scope and jurisdiction of Section 323 of the Act. Having held so, the Respondent No.6 has proceeded to order stoppage of



petitioner's construction work, which is clearly without jurisdiction and legally unsustainable.

26. The sanctioned plan/map is in favour of the petitioner and there is no declaration by a competent Civil Court regarding his claim being based on fabricated or fraudulent documents. There is no basis for this Court to conclude that the petitioner's claim is based on fraud or fabricated documents and refuse to exercise jurisdiction under Article 226 of the Constitution in favour of the petitioner on equitable considerations.

27. The construction based on a valid sanction plan/map has been interfered with by the Respondent No.6 without giving any finding in respect of the construction being illegal for any of the grounds mentioned in Section 323 of the Act. On the contrary, he himself has concluded that the issues raised by the Respondent No.10 before him is an issue of rival claim to title of the lands in question by the petitioner and Respondent No.10 based on documents in their possession and denial of the legal claim of one another by alleging the documents of the other to be fabricated, fraudulent and manipulated.

28. The law by now is well settled that merely because there exists an alternative remedy, the writ Court is not precluded from exercise of jurisdiction. The refusal to exercise discretionary



jurisdiction under Article 226 when alternative remedy exists, is a rule of discretion and not an absolute bar. In this connection, recent judgment of this Court in the case of ***Nagendra Prasad Gupta Vs. The State of Bihar & others (CWJC No.8769 of 2020,*** disposed of on 13.01.2021), has reiterated the settled law in this regard based on decisions of the Apex Court. The extract of the order passed in CWJC No.8769 of 2020 is worth reproducing in the instant case, which reads as follows:

*“By now the law is well settled by decisions of the Apex Court that in at least four circumstances, which this Court is referring to hereinafter, the Constitutional Courts under Article 226, may exercise its discretion to invoke its writ jurisdiction in favour of the petitioner before it, namely:*

*(i) where the writ petition seeks enforcement of fundamental rights*

*(ii) where there is violation of the principles of natural justice*

*(iii) where the order or proceedings against which the writ petition has been filed is without jurisdiction, or*

*(iv) where the vires of an Act is the subject of the writ proceedings.*

*Some precedents of the Apex court laying down this settled legal position and reiterating the same are to be found in **Union of India Vs. Tania Construction (P) Ltd. (2011) 5 SCC 697, M P State Agro Industries Development Corporation Ltd. vs. Jahan Khan (2007)10 SCC 88, L.K. Verma vs. H.M.T. Ltd. (2006) 2 SCC 269.**”*



29. Submission of the learned Senior Counsel for Respondent No.10 regarding the petitioner being estopped from approaching this Court under Article 226 of the Constitution of India, due to the fact that he has already filed an appeal before the Tribunal also does not appeal to this Court for the simple reason that the fact that the petitioner has assailed the order before the Tribunal is a clear manifestation of the disagreement with the impugned order passed by the respondent no.6. It is not that the petitioner has accepted the order by conduct or by any omission to assail the same, so as to give rise to an estoppel against the petitioner. It also does not appeal to the Court that the petitioner, because he has approached the Tribunal, should be compelled to wait endlessly and suffer the consequences of the impugned order passed by Respondent No.6, which is without jurisdiction and has no legal basis, merely because the Tribunal is not functional.

30. Having considered the rival submissions, this Court is of the opinion that the submission of the petitioner as regards the impugned order dated 04.09.2020 being without jurisdiction is correct. In fact, the conclusion in the impugned order is arrived at after hearing both the parties and examining the documents that the dispute is one regarding title. Prior to recording of such findings in the impugned order dated 04.09.2020, the Respondent



No.6 has merely taken note of various dates, prior thereto on which the matter was fixed for hearing of the parties. In the entire impugned order there is not even a whisper regarding any allegation or finding that the construction being carried on by the petitioner has commenced, is being carried on or has been completed without, or contrary to the sanction. Also there is no whisper in the impugned order that the petitioner's construction is in contravention of any of the provisions of the Act, Rules or Regulations made thereunder. In absence of any such finding, which is a *sine qua non* for exercise of power under Section 323 of the Act, the Respondent No.6 could not have assumed jurisdiction to pass any order stopping the construction work, as has been done by the impugned order dated 04.09.2020. The order is clearly without jurisdiction.

31. Having arrived at a conclusion that the order being without jurisdiction, this Court therefore has no hesitation whatsoever in setting aside the impugned order dated 04.09.2020, bearing Memo No.1674, issued under the signature of Respondent No.6 in Miscellaneous Case No.04 of 2019 (Building Construction). The same is hereby quashed. This Court has quashed the order merely on a finding that the same is without jurisdiction and legally unsustainable.



32. This Court has not expressed any opinion in respect of the allegations levelled by the petitioner and Respondent No.10 against one other regarding the claim to lands in question being based on fabricated, fraudulent and manipulated documents; as also based on falsehood or suppression. The parties therefore are still free to raise these issues and assert their rights and claims before the Civil Court of competent jurisdiction.

33. The writ petition stands allowed in the aforesaid terms.

**(Madhuresh Prasad, J)**

PNM

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	26.03.2021
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