

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4129 of 2018

Manju Sinha Wife of Late Santosh Kumar Sinha, Resident of Harpur Lahori,
Ward No. 12, P.S. Ahiyapur, District-Muzaffarpur.

... .. Petitioner/s

Versus

1. Muzaffarpur Municipal Corporation Through Municipal Commissioner,
Muzaffarpur
2. Municipal Commissioner, Muzaffarpur Corporation, District- Muzaffarpur.
3. The State of Bihar through Collector, Muzaffarpur

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Naresh Chandra Verma, Adv. Mr. Natraj Verma, Adv.
For the State	:	Mr.Rajsh Kumar Sinha, AC to AAG-7
For the Corporation	:	Mr. Anurag Saurav, Adv.

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date : 29-08-2022

The present writ petition has been filed for directing the Respondent authorities to remove the road and nala constructed over the private raiyati land of the petitioner bearing plot no. 139, khata no. 26, mauza-Harpur Lahori now Sri Ram Nagar situated at ward no. 12 under the Ahiyar Pur police station, District-Muzaffarpur Town.

The brief facts of the case, according to the petitioner, is that the original writ petitioner had constructed his house over the aforesaid land in question and had left some vacant land around



his house for his convenience, whereafter in the year, 2011, the respondents had forcibly constructed road and nala over the aforesaid raiyati land of the petitioner whereupon he had filed an application / complaint before the District Magistrate, Muzaffarpur, but to no avail. It is the case of the original petitioner that he had purchased one katha of land through a registered sale deed on 20.5.1983, appertaining to plot no. 139, khata no. 26, mauza- Harpur Lahori in the name of his wife i.e. the present petitioner, which was then gifted by her to the original petitioner of this case on 27.4.1989.

Per contra, the learned counsel for the Respondent-State, by referring to the counter affidavit filed in the present case by the Circle Officer, Kanti, Muzaffarpur, has submitted that the District Magistrate, Muzaffarpur vide letter dated 16.8.2022 had called for a report from the Circle Officer, Kanti, who after enquiry and spot verification, had submitted his enquiry report vide letter dated 20.8.2022 from which it has transpired



that the road and drainage in question exist over eastern part of the land in question, which was obtained after plotting of a large chunk of land and the same is the only way for ingress and egress of the local residents. It is submitted that it has also been found, during the course of the enquiry and upon production of a sale deed dated 17.4.1987 by the neighbour of the petitioner that an 8 feet wide road is shown to be present within the boundary of the land purchased by the original petitioner, in the name of his wife. Thus, it is submitted that it is clear from perusal of the records that the land in question was sold, after a big chunk of land was plotted into smaller plots and a road was also carved out therein, which is also apparent from the sale deed of the petitioner herein. It is also submitted that all the persons of the locality have left some land for the purposes of road and nala and the road in question is not only being used by the petitioner, but also by other persons of the locality, nonetheless, the petitioner now wants to block / obstruct the right of



easement of the people residing near the house of the petitioner.

I have heard the learned counsel for the parties and gone through the materials on record and I find that not only disputed question of facts are involved in the present case, but right of easement of the people of the locality in question is also an issue, which is required to be determined, for which oral / documentary evidences may be required to be adduced, hence, admittedly, the present writ petition raises complex question of facts, thus, such disputes should not be tried in a writ petition by this Court under Article 226 of the Constitution of India. Reference in this connection be had to the judgments, rendered by the Hon'ble Apex Court in the case of Smt. Gunwant Kaur & Others vs. Municipal Committee, Bhatinda & Others, reported in 1969 (3) SCC 769, the one reported in AIR 1964 SC 1419 (Thansingh Nathmal & Others vs. The Superintendent of Taxes, Dhubi & Others) and the one reported in (2020) 6 SCC 256 (Punjab National



Bank & Others Vs. Atmanand Singh & Others).

Having regard to the facts and circumstances of the case and for the reasons mentioned hereinabove as also taking into account the well-settled principle of law laid down by the Hon'ble Apex Court in a catena of decisions, as referred to hereinabove, I find that the present writ petition is not maintainable, especially since the present case involves not only disputed question of facts but also involves determination of right of easement of the people of the locality in question, hence, the present writ petition stands dismissed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	03.09.2022
Transmission Date	NA

