

## Sucheta Yadav Vs Commissioner, Patna Municipal Corporation

**Court:** Patna High Court

**Date of Decision:** April 26, 2023

**Hon'ble Judges:** Satyavrat Verma, J

**Bench:** Single Bench

**Advocate:** Daya Nand Singh, Jawed Gaffar Khan, Santosh Bharti, Anu Priyadarshni, Lakshmi Kant Tiwary

**Final Decision:** Allowed

### Judgement

Heard learned counsel for the petitioner, learned counsel appearing for the private respondent, learned counsel for the Patna Municipal

Corporation and learned counsel appearing for the respondent no.2.

What is not in dispute rather is admitted by the petitioner and the private respondent is that the boundary wall, which has been constructed by the

petitioner is on her own land.

The learned counsel for the petitioner submits that the dispute in the present case relates to a piece of land pertaining to Plot No.1151, Khata No.62,

Area 04 Kattha situated at Ward No.33 under the Patna Municipal Corporation.

The learned counsel for the petitioner submits that the petitioner and the private respondent are own sister and brother. The learned counsel for the

petitioner fairly submits that out of 04 katthas of land, 02 kattha of land belonged to the petitioner and rest 02 kattha belonged to the private

respondent. It is next submitted that both the petitioner and the private respondent got their respective map sanctioned for constructing the house vide

Sanction Plan Case No.363/72 and Sanction Plan Case No.387/83 respectively.

It is next submitted that the petitioner in pursuance of Sanction Plan Case No.363/72 got her house constructed on the plot, which was in her share i.e.

02 katthas. It is further submitted that the private respondent, despite having a sanctioned plan, did not get his house constructed on the rest of the 02

katthas of the land.

The learned counsel for the petitioner next submits that the house of the petitioner was constructed in its entirety in the Year 1974 in consonance with

the Sanction Plan Case No.363/72.

The learned counsel next submits that the petitioner has two brothers, namely, Yogendra Prasad Yadav (Respondent No.2) and Rajendra Prasad

Yadav. It is next submitted that Rajendra Prasad Yadav relinquished his share in 02 kattha of land in favour of his brother Yogendra Prasad Yadav by

a deed of Ladavi (deed of relinquishment) dated 13.02.1978.

The learned counsel next submits that the petitioner in the Year 1974 had already constructed her house as recorded herein above on her portion of

the land ad-measuring 02 kattha. It is further submitted that since respondent no.2 was a government servant and his brother Rajendra Prasad Yadav

had already relinquished his share in the land in his favour, as such, the respondent no.2 in the Year 1995, considering the economic condition of the

petitioner gifted his share of 02 katthas of land in her favour by a gift deed dated 15.10.1995 (Annexure-4, reply to the counter-affidavit).

The learned counsel for the petitioner next submits that from the facts stated herein above, it becomes clear that the parents of the petitioner and the

respondent no.2 had purchased 04 katthas of land pertaining to Khata no.62, out of which 02 katthas of land was purchased in name of the petitioner

and rest 02 katthas were purchased in the name of the brothers by two separate sale deeds.

The learned counsel for the petitioner next submits that since one of the sale deeds also contained the name of Rajendra Prasad Yadav, as such, he

relinquished his share in favour of the respondent no.2, as aforesaid. The learned counsel next submits that in pursuance of the gift deed executed by

respondent no.2 in favour of the petitioner, the petitioner applied for mutation of the plot in question by filing Mutation Case No.343/2/2014-15 before

the Circle Officer, Patna Sadar.

It is submitted that notices were issued upon the respondent no.2, but for reasons best known, he chose not to appear and thereafter, the Circle

Officer, Patna Sadar by order dated 06.05.2014, mutated the name of the petitioner on the land, which was gifted to her by respondent no.2 after

recording that earlier the Jamabandi was in name of Yogendra Prasad Yadav.

The learned counsel at the cost of repetition submits that the construction of the house along with the boundary constructed by the petitioner was on

her share of land only. It is further submitted that after 1995, the respondent no.2 never came on the land which forms subject matter of the dispute in

the present case and the possession remained with the petitioner.

The learned counsel for the petitioner submits that the respondent no.2 in the Year 2011 had approached this Court by filing C.W.J.C. No.12857 of

2011 with a prayer that the Patna Municipal Corporation be directed to ensure that the respondent no.4 (petitioner herein) should construct her house

in accordance with the provisions of the Municipal Act.

Further, a complaint dated 08.02.2011 was filed before the Municipal Commissioner, Patna Municipal Corporation, but the same was not attended,

necessitating filing of C.W.J.C. No.12857 of 2011. The learned counsel next submits that C.W.J.C. No.12857 of 2011 was disposed of with a

direction that it would be open for the Municipal Commissioner to pursue the application of the respondent no.2 and if he finds any merit in the matter,

then only notices be issued to the respondent no.4 therein.

The learned counsel next submits that in pursuance of the order dated 14.02.2012 in C.W.J.C. No.12857 of 2011, the complaint filed by the

respondent no.2 i.e. complaint dated 08.02.2011 was converted into Vigilance Case No.7B/2014.

The learned counsel for the petitioner, at this stage, submits that it absolutely does not stand to reason that the sanction plan of the petitioner for

constructing the house was granted by the Municipal Commissioner in the Year 1972 in pursuance whereof, the construction of the house along with

the boundary was completed in the Year 1974 and thereafter, in the Year 2011, the respondent no.2 filed a complaint before the Municipal

Commissioner, Patna Municipal Corporation requesting him to ensure that the construction of the petitioner be made in accordance with the Municipal

Act.

It is submitted that the complaint was absolutely frivolous for the reason that the same was filed after more than 37 years of the construction of the

house of the petitioner in pursuance of the sanction plan bearing No.363/72. It is next submitted that in the Vigilance Case before the Municipal

commissioner, what was argued by the respondent no.2 was not about the construction of the house being in breach of the sanction plan, but the fact

that the boundary wall, which was constructed by the petitioner on her land should be demolished for the reason that in the Year 1983, the petitioner

had executed an affidavit recording that she will leave 10 feet passage in East portion of the house situated on Plot No.1151, Khata No.62, Ward

No.33 in East Boring Road, Patna-1.

It is thus submitted that the case of the respondent no.2 was that the petitioner in breach of her affidavit had constructed the said boundary wall when

she had already executed an affidavit in the Year 1983 that she will leave 10 feet passage in East Portion of the house, which was not made.

The learned counsel for the petitioner submits that it is not the case of the respondent no.2, even now that the said boundary wall which has been

constructed by the petitioner is not on her land or in share rather what the respondent no.2 is disputing is that the petitioner had breached her affidavit

executed in 1983.

On query of the Court from the learned counsel appearing on behalf of the respondent no.2 that as to whether he disputes that the boundary wall

constructed by the petitioner is not within her share, to which the learned counsel for the respondent no.2 very fairly submits that respondent no.2 is

not disputing the said fact.

The learned counsel for the petitioner next submits that the Municipal Commissioner got swayed by the fact that petitioner had executed an affidavit in

the Year 1983 wherein it was recorded that 10 feet passage in East Portion of the house shall be left, but without leaving the 10 feet passage, the

boundary wall was constructed, as such, the Municipal Commissioner came to a considered conclusion that after examining the documents on record

that the said boundary be demolished.

The learned counsel next submits that against the order of the Municipal Commissioner dated 13.11.2017 in Vigilance Case No.7B/2014, the petitioner

preferred an appeal before the learned Municipal Tribunal by filing Appeal No.09(N) of 2017, but since the Municipal Tribunal was not functional, as

such, the petitioner had no remedy but to approach this Court by filing instant writ petition.

The learned counsel next submits that the writ application was heard and learned Co-ordinate Bench by order dated 18.01.2018 had stayed the

operation of the order passed by the Municipal Commissioner, Patna Municipal Corporation and had issued notice to the respondent no.2. It is further

submitted that thereafter, the respondent no.2 appeared and in the meantime, the Municipal Tribunal also became functional.

The learned counsel for the petitioner further submits when the matter was taken before the learned Municipal Tribunal, the Municipal Tribunal

refused to exercise its jurisdiction adjudicating the case on merit on the ground that the writ application was pending before this Court in which stay

was operating and thus, dismissed the appeal without adjudicating the same on merits.

The learned counsel for the petitioner next submits that from the facts stated herein above, what can be culled out is that the petitioner and respondent

no.2 are own brother and sister. Two katthas of land was purchased by the father of the petitioner in her name by a registered sale deed and rest 02

katthas of land was purchased in name of the brothers of the petitioner by another registered sale deed pertaining to the same plot, as such, the total

land purchased was 04 katthas. Further, the petitioner was in possession of her share of 02 katthas of land, while the other two brothers were in

possession of their respective share. Further, Rajendra Prasad Yadav executed a deed of relinquishment in favour of the respondent no.2 in the Year

1978, thereafter the respondent no.2 executed a gift deed in the Year 1995 in favour of the petitioner leading to mutation of her name on the plot in

question.

At this stage, the learned counsel for the respondent no.2 interjects and submits that this fact is being disputed by the respondent no.2 that

no gift deed was ever executed in favour of the petitioner by him. Further, that the said gift deed is nothing but a sham transaction being forged and

fabricated documents.

The learned counsel for the petitioner rebuts the submission of the learned counsel for the respondent no.2 and submits that the entire case hinges

around the fact that as to whether the gift deed executed in favour of the petitioner by the respondent no.2 was genuine/valid or forged/fabricated.

It is next submitted that the such disputed question of fact can neither be adjudicated by this Court, nor by any Tribunal. It is further submitted that

what the respondent no.2 could not achieve directly is trying to achieve it indirectly by resorting to a proceeding before an Administrative Authority

based on which, he intends to take possession back of his land, when if the respondent no.2 was really aggrieved by the fact that the gift deed was a

sham transaction, then he ought to have moved before the learned Civil Court for getting a declaration of title over the land with a prayer for recovery

of possession, but the same was not done.

The learned counsel for the petitioner next submits that the respondent no.2 has also not challenged the order of mutation of the land made in favour

of the petitioner as recorded herein above.

The learned counsel for the petitioner at the cost of repetition submits that such disputed question of facts cannot be adjudicated by this Court or by

any Tribunal and the remedy for the respondent no.2 for contesting such a contentious issue is to move before the Court of competent jurisdiction i.e.

the Civil Court.

The learned counsel for the respondent no.2 does not dispute the facts which has been submitted by the learned counsel for the petitioner except to

the extent that it is submitted that the gift deed was never executed by the respondent no.2 in favour of the petitioner and the petitioner in breach of

her own undertaking given in the affidavit of 1983 had made construction of the boundary wall.

After hearing the learned counsel for the parties, the Court comes to a considered conclusion that such disputed question of facts could not be

adjudicated either by this Court or by the Tribunal, as such, the parties are free to approach the Court of competent jurisdiction for seeking relief.

Further, in the nature of dispute as recorded hereinabove, the order dated 13.11.2017 in Vigilance Case No.7B/2014 passed by the Municipal

Commissioner, Patna Municipal Corporation is hereby quashed, the Court refrains from interfering in the order passed by the learned Municipal

Tribunal as the matter was not adjudicated on merits and thus does not merit consideration.

The writ application is accordingly allowed.