

(2008) 08 JH CK 0062

Jharkhand High Court

Case No: None

Dwarika Prasad
Jaiswal and Others

APPELLANT

Vs

State of Jharkhand
and Others

RESPONDENT

Date of Decision: Aug. 21, 2008

Citation: (2008) 4 JCR 436

Hon'ble Judges: Ajit Kumar Sinha, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Ajit Kumar Sinha, J.

The present Writ Petition (Civil) No. 6485/2002 has been preferred against an order dated 3.10.2002 passed by the Town Planning Authority, Dumka in T.P. Case No. 7/2001-02 whereby the petitioners have been restrained from fixing doors/shutters of their constructed room and latrine opening towards private Gully measuring 2" 10" situated adjacent East of the lands and house measuring 5 dhur 10 dhurki of plot No. 629 of Dumka Town No. 7.

2. The facts in brief as stated by the petitioner is set out as under:

The petitioner purchased the aforesaid house vide, a registered sale deed No. 196/97 from one Mr. Anil Kumar Jaiswal. Before the respondent Town Planning Authority, Dumka a case was registered which was numbered as Town Planning Case No. 7/2001- 02. According to him in the sale deed there was a condition that the Gully, 2"10" situated adjacent to East of the said land shall remain vacant and can be used for egress and ingress of both the parties. This also stipulated that if the purchasers want to construct any building he can do so only after 10 feet above the height of the said Gully, which will be kept lying vacant for all times to come. The

complaint was made on the ground that the petitioner defied the terms and conditions of the sale deed by encroaching the Gulli, The same was against the Building Bye laws. Prayer was made to stop the construction. Pursuant thereto summons were issued and the petitioners filed its show cause stating that the proceeding was not maintainable and the allegations are false. He also stated that by opening the door towards Gulli, it does not amount to enforcement of Gulli, and he had a legal right to open the door of their room and latrine towards the Gulli. He also contended that the same was not prohibited by the sale deed and that the petition filed the O.Ps. being frivolous was liable to be dismissed.

3. The Town Planning Authority conducted an enquiry through Special Officer of Dumka Municipality who submitted its report vide letter No. 1237 dated 4.7.2002 based on local inspection in presence of both the parties. In the enquiry report it was stated that there was Illegal construction and the petitioner had constructed a latrine and bathroom and staircase on the ground floor. He further stated that the construction on the first floor over the old purchased house was made without a sanctioned map. Accordingly respondent No. 2 vide its order dated 3.10.2002 imposed fine of Rs. 250/- against the petitioner for making construction on the first floor without getting the map sanctioned as required under law and he further restrained the petitioner from fixing any door/shutter of the room facing the Gulli vide, its impugned order dated 3.10.2002 which is sought to be challenged. The respondents have submitted that the writ petition was not maintainable in view of the fact that a Title Suit bearing No. 56 of 2002 was pending in the Court of learned Subordinate Judge No. 1, Dumka. The aforesaid Title Suit No. 56/02 has been filed by the petitioner who is the plaintiff therein for the same relief and thus the writ petition was liable to be rejected on this ground alone. The second contention raised by the respondents is that the learned Court below vide its case No. 7/02 after full compliance of principles of natural justice conducted an enquiry and personal inspection by an authorized officer in presence of both the parties and thereafter afforded full opportunity and based on the record and the facts, stated therein passed the impugned order dated 3.10.2002. The respondents have also submitted that even in the registered sale deed bearing No. 196/97 dated 30.1.1997 at page 7 it has specifically been agreed that a Gulli, of 2" 10" situated has to be kept vacant by both the parties and can be used for the purpose of ingress or egress and none of the parties will make any construction over the same and the construction can be made only 10 feet above but the writ petitioner has completely violated the terms and conditions of the sale deed and further made construction without the sanctioned map and has also violated Rule 26 of the Bihar Buildings Bye-laws.

4. I have considered the submissions and the arguments advanced on behalf of the parties concerned. The admitted fact remains that Title Suit No. 56/02 has been filed by the plaintiff with respect to the same land in question and thus the present writ petition is not maintainable. The second admitted fact remains that the registered sale deed dated 30.1.1997 specifically lays down the terms and conditions to be

followed by both the parties wherein it has been specifically agreed that street (Gulli), of 2"10" should be kept vacant between the holdings of both the seller and purchaser vacant for common use and no construction was to be made on it either by the seller or the purchaser. It was further agreed in the registered sale deed that none of the parties will make any construction over the same and the construction can be made only after 10 feet above and the same has also been violated by the petitioner. In any event the Special Officer was appointed who made a site inspection in presence of both the parties and after detailed enquiry gave its report. After perusal of the report by the Special Officer, Dumka Municipality and the show cause reply and after hearing both the sides the Town Planning Authority, Additional Collector, Dumka vide its impugned order dated 3.10.2002 rightly came to the conclusion that as per Rule 26 of the Bihar Building Bye-laws no door, gate bar shall be placed so as to open outwards in any street and hence the writ petitioner has rightly been restrained from opening doors or shutters outwards in the aforesaid Gulli. Further the illegal construction without a sanctioned map was in any case not only in violation of the Building Bye-laws but was also against the terms and conditions of the registered sale deed. Thus the Town Planning Authority, Additional Collector was fully justified in issuing the impugned order dated 3.10.2002. The main contention of the petitioner is that Rule 26 is not at all applicable. Rule 26 is quoted as under:

All exits shall provide continuous means of egress to the exterior of building or to an exterior open space leading to street.

As per the dictionary meaning Street and Gulli, are synonymous and in Hindi language street is also called as Gulli, and there is no difference between Gulli and street and thus the distinction sought to be made is wholly erroneous and unsustainable in the eyes of law. In any case the petitioner cannot be allowed to raise such contention which is against the terms and conditions as agreed in the sale deed and estoppel by conduct will apply.

5. Under the aforesaid background this writ petition is devoid of any merit and is even otherwise not maintainable in view of the pendency of title suit and the same is accordingly dismissed without any order as to cost.