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**(2012) 07 PAT CK 0112**

**Patna High Court**

**Case No:** CWJC No. 12794 of 2007

Anant Prasad Gupta

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision:** July 23, 2012

**Acts Referred:**

- Bengal Municipal Act, 1884 - Section 69, 69(1)

**Citation:** (2013) 3 PLJR 555

**Hon'ble Judges:** Ajay Kr. Tripathi, J

**Bench:** Single Bench

**Advocate:** Shashi Shekhar Dwivedi, for the Appellant; Anil Kumar Sinha for the N.E. Railways, SC-19 for the State of Bihar and Mr. Arvind Kumar Pandey for the District Board, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

Ajay Kr. Tripathi, J.

Anant Prasad Gupta is the only petitioner who has been now allowed to maintain the writ application as other petitioners were deleted in absence of payment of requisite court fee on their behalf. Writ was filed when the Estate Officer of N.E. Railway, Varanasi issued notice to show cause as to why they should not be evicted or ousted from the property in question because constructions of temporary or permanent nature have been made on the land belonging to the railways without due authority or permission issued in this regard. Instead of responding to the notice petitioner rushed to the High Court by filing writ application assailing the said notice on the ground that the railways have no business to issue such notice and they are not the competent authority who can exercise any power over the said land. Such submission is based on a notification which was issued by the erstwhile Lt. Governor of Bengal vide Notification No. 1917 T.M. dated 9th November, 1901 duly published in the Calcutta gazette on 18th November, 1901, which is Annexure-3

to the writ application.

2. By virtue of the said notification, according to the learned senior counsel for the petitioner, the road which is known as Bhagwan Bazar Railway Station Road, consisting of 450 feet in length, 150 feet wide and which fell within the municipal limit of Chapra Municipality, stood transferred to the Zila Parishad and the said authorities have decided to settle part of that flank of the road for construction of shops and other commercial establishments. Even agreements came to be entered by the parties in whose favour such settlements were made as would be evident from a look at Annexure-5 to the writ application. This arrangement started sometime in the year 1975 though Annexure-5 is dated 25.9.1996. It is the stand of the petitioner that he has been paying rent to the Zila Parishad and any action with regard to such settlement or annulment thereto has to emerge at the level of Zila Parishad and not railways. If the Zila Parishad had been in possession or occupation of the land or the road for almost a century now, the railway authorities have no business to disturb the arrangement so made by the Zila Parishad.

3. Some other contentions made at the bar by the learned senior counsel on behalf of the petitioner is that there is no clear indicator to show that the land belonged to the railways as it is Kaiser-e-Hind land, that the notification issued by the Lt. Governor is indicator of the fact of transfer of the land in favour of Zila Parishad. Till the notification in question subsists and is not revoked, railways cannot claim right over the property or take possession to oust certain persons who have been allowed to construct certain commercial establishments with due permission of the Zila Parishad. The petitioner is answerable to the Zila Parishad and the railways are unnecessarily creating nuisance by exercising power not vested in them, over the subject matter.

4. The stand of the railways in their counter affidavit is that mischief has been played by the Zila Parishad and a simple notification vesting power of repairs, maintenance, construction and improvement of the road known as Bhagwan Bazar Railway Station Road has been wrongly interpreted to mean transfer in their favour. Railways have been resisting and telling the authorities of the Zila Parishad not to allow construction and permit encroachment on the said road as it creates problems for all bona fide passengers approaching the Chapra Railway Station. Over a period of time this road has narrowed down to a substantial level which creates many a bottle-necks in smooth movement of traffic. Right of maintenance and repair cannot be read as a right of complete alienation and vesting of title in the Zila Parishad by virtue of the notification of 1901. The right of the railways over the road which is an approach road to Chapra Railway Station subsists with the railways. On a submission made by the learned senior counsel representing the petitioner that there is no clear evidence to show that this land belongs to the railways and Kaiser-e-Hind land automatically cannot be read to be a railways land, is sought to be rebutted by the counsel representing the railways that since railways was under

the Kaiser-e-Hind this land has always been treated as part and parcel for the use of railway and reading of the notification would surely show that the right which was transferred in favour of the Zila Parishad was for maintenance and upkeep of the road and not to be commercially exploited. When the notification was read and re-read by both sides and a reference was made to the provision of the Bengal Municipal Act, 1884 (Act No. 3 of 1884) especially Section 69(1), it is evident that since the property in question does not belong to municipal authorities they could not meet the expenses of upkeeps which have been provided for in Section 69, without proper authority and in derogation of the provisions. The section specifies the heads under which municipal funds have to be applied. That is the reason why Lt. Governor specifically mentioned in the notification that in exemption of Section 69(1) of the said Act, the expenses on the repairs and upkeep over the improvement of the road will be met by the concerned Zila Parishad or the Municipality. Such exemption would not have been required to be incorporated in the said notification if the land was being alienated or vested in favour of Zila Parishad.

5. The stand of the Zila Parishad is in support of the petitioner. According to them they have been in possession of the said land for many a years. They constructed shops on both the flanks of Station Road and let it out. Additional shops were further created in 1995 where 109 shops on the ground floor and 40 shops over the 1st floor under Self-Finance Scheme for the beautification of road and enhancement of revenue of the District Board was resorted to. They have been drawing rent from the allottees. However, the railways authorities have been unnecessarily harassing both the Zila Parishad as well as the allottees from time to time.

6. The reason for the Zila Parishad to come in support of the petitioner is well understood from the fact that they have embarked upon an exercise which was not authorized by law. The power of upkeep and maintenance of road in terms of 1901 Notification did not authorize them to claim the public road as their property, which would authorize commercially exploitation by making constructions of such kind and reducing the use of ingress and egress of the people approaching the railway station in question. Obviously the act of Zila Parishad in constructing shops on the flanks was beyond the ambit of notification of 1901 contained in Annexure-3 and therefore, the Court may not be able to come to the rescue of the petitioner by holding that they are answerable only to the Zila Parishad and none else.

7. Yet another submission on behalf of the petitioner is that at one point of time a suit filed by the railways against the Zila Parishad stood dismissed may be for default, which also is an indicator as to the right of the Zila Parishad to hold on to the property. The Court is not required to comment as to the reason why railways were advised to file a suit. In fact a better option would have been to go for revocation of the Notification of 1901 and take possession of the road in its entirety including maintenance and upkeep and divesting the Zila Parishad from such responsibility instead of filing suit etc.

8. It is now left open to the railways to do what is required to be done in this regard to get the Notification of 1901 revoked and assert their authority over the road in question.

9. However, one aspect has to be considered in favour of respondents that the petitioner had rushed to the Court against the notice or show cause which in the abovestated factual circumstance is not required to be looked into since an adjudication has already been made by the designated statutory authority i.e. Estate Officer a copy of the order of adjudication has been annexed as R/1 which has not been challenged in the present proceeding by filing any amendment or IA modifying the relief. The present writ application is dismissed with liberty to the petitioner to move the statutory forum of appeal provided under the Public Premises Act, 1971.

10. The appellate authority will take into consideration all these aspects of the matter while deciding the appeal. Some such facts are also reflected in the order of adjudication contained in Annexure-R/1 to the counter affidavit of the railways. This writ application is otherwise dismissed in the above stated circumstance.