
(2000) 04 PAT CK 0110

In the Patna High Court

Case No : C.W.J.C. No's. 400, 1005, 1082, 1094, 1099, 1171, 1338, 1357, 1394 and 1512 of 1999

Amrendra Narain Singh and Others,

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 18-04-2000

Acts Referred:

Bihar Public Land Encroachment Act, 1956 — Section 3

Citation : (2001) 1 BLJR 566

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Judgement

Aftab Alam, J.—This batch of writ petitioners relates to the matter of removal of encroachments in Lohanipur which is one of the most thickly congested quarters of this town where, over a long period of time, residential structures have been allowed to mushroom in a thoroughly unplanned and disorganized manner. There are no proper streets or lanes and there is no drainage system worth the name. During the monsoon months every year rain water with factual matter and all kinds of imaginable filth accumulates on lanes and by lanes and then enters into residential houses and stagnates there for days and weeks. People live there under sub human conditions. In fact, Lohanipur Mohalla is a glaring example of the Object failure of the agencies/bodies entrusted with the task of overseeing a planned and organized development of this town.

2. It was in this background that under directions given by this Court in some P.I L.S. the Patna Regional Development Authority took up the difficult exercise of removal of encroachments from the lanes and by-lanes of Lohanipur. As it was bound to happen, a number of cases came to this Court either trying to resist the action(s) of the Authority or seeking a direction to the Authority to expedite the procedure of removal of encroachments at Lohanipur. All those cases were consolidated together to make this batch and were heard together.

3. As the proposed removal of encroachments from the lanes, by-lanes of

Lohanipur presented a host of complex problems, involving a number of issues, this Court deemed it fit to constitute a committee consisting of three members of the Bar and two officers of the Authority to make a survey of the area and to submit a report giving suggestions as to the best manner for carrying out the task of removal of encroachments in Lohanipur. The committee was constituted by order, dated 4.8.1999 and on 28.9.1999, it submitted an interim report, dated 11.9.1999. In the interim report the committee mainly focused on the main road in Lohanipur called the Prithvi Raj Path and gave suggestions for removal of encroachments from that road. On the basis of the interim report submitted by the Committee, this Court passed an order dated 28.9.1999 which contains the necessary directions for removal of encroachments from Prithvi Raj Path in the Lohanipur area.

4. The Committee has now submitted its final report, dated 6.3.2000 and on a perusal of the report, this Court finds that it has done a satisfactory and commendable job.

5. In the final report, the Committee has identified, apart from Prithvi Raj Path two other main lanes in Lohanipur namely Kathpul Road and Hunder Road. In addition to these, there are seven by-lanes but the condition of those by-lanes is quite pathetic and the by-lanes appear to be almost beyond redemption. For the present, therefore, the Committee has discussed in its report the condition of the two main lanes namely, Kathpul Road and Hunder Road and some other allied problems in the area. This Court also proposes to leave aside the seven by-lanes for the present and to give necessary directions in connection with the two other main lanes (Kathpul Road and Hunder Road) and the other allied problems in the area as indicated in the Committee's final report.

Kathpul Road: This Road was identified by the Committee on the basis of the municipal map and it appears that in the municipal map itself it is shown as a rather narrow, meandering lane with varying widths at different points. For example, at one point its width is shown to be 37, but on a number of other points it narrows down to 18"-20" and at yet other points it further constricts to 9, 8" or even 7". This is according to the Municipal map. In reality, however, the width of Kathpul Road hardly conforms to what is shown in the map. At some points, it is, in fact, wider than its width as shown in the Municipal map but at many other points, it has a much reduced width than what is shown in the Municipal map. From the report, it appears that at no point, the road is wider than 20", at most of the points its width is about 14", 15" or 16" and at some points it narrows down to 8, 3" or 9".

6. Now, at the points at which the Kathpul road is actually wider than what is indicated in the Municipal map, nothing is required to be done because the road being already wider than what is shown in the Municipal map, the people on its either side may not easily agree for its further widening at the expense of the structures constructed on its two sides. But, at points where the Kathpul road is in reality narrower than what is shown in the Municipal map, it is clear that the

road has been encroached upon and it, therefore, follows that the encroachments must be removed and width of the road restored to what is shown in the Municipal map. In this regard, this Court issues the following directions and requires a strict compliance with these directions.

(i) The Patna Regional Development Authority will ascertain the points at which the width of Kathpul road is less than what is shown in the Municipal map. For ascertaining the correct width of the road, the Municipal map shall form the basis and by taking actual measurements and comparing them with the Municipal map, the Patna Regional Development Authority will ascertain all the points where the road, as it exists today, has narrowed down and has a lesser width than what is shown in the Municipal map for those points.

(ii) Unless shown otherwise, the Patna Regional Development Authority will presume that the encroachment on the road is equal from both the sides and taking the centre point on the road, it will give notice to people on either side asking them to move back from the road equally.

(iii) If on notice being given any one is able to show on the basis of any sanctioned plan for construction, or otherwise, that he was not responsible for any encroachment then in that event, the encroachment will have to be removed fully at the expense of the person on the other side of the road. Otherwise, as noted above, the Authority will proceed on the basis that there is equal encroachment from both the sides and will accordingly give notice to people on either side of the road for moving back from the edge of the road equally.

(iv) After giving such a notice, and after giving an opportunity of hearing, the Authority will give 72 hours' time for removal of encroachments and on failure to comply with the notice, the Authority will remove the encroachments in order to restore the correct width of the road in accordance with the Municipal map. The removal of encroachments from the Kathpul Road is expected to be within 15 days from the date of receipt/production of a copy of this order and is expected to be completed within two months from the date of its commencement.

(v) If the Authority finds that any new construction/extension has been made on some old construction after coming into existence of the statutory requirement of obtaining prior sanction for construction either from the Municipal Corporation or from the Patna Regional Development Authority, the Authority will also give notice in respect of such new construction/extension to the old construction and if it is found that new construction/extension are also causing encroachments either on the road or on a Public piece of land, the Authority will proceed to remove the encroachments in accordance with law after given due notice and opportunity of hearing to the affected person.

Hunder Road: The condition of this road appears to be peculiar. This road is shown on the map which comprises municipal survey plot No. 1238 but in reality, no lane exists on this plot and constructions have come up all over it. What is in existence is a lane which is on a different municipal survey plot altogether which

is plot No. 1192. Mercifully, the width of the Municipal map. Therefore, nothing much can be done so far as Hunder road is concerned.

7. Coming now to some other problems as indicated in the report, the first that needs to be taken in to account is the construction of projection. Chhajas, Platforms and stairs in a manner so as to spill over from a private land to some public piece of land. Form the report it appears that there are numerous such platforms, Chhajjas projections and stairs which are actually constructed on public lanes, and by-lanes. The Authority will take immediate steps for the demolition/remove; of such projection, chhajas, platforms, stairs etc. which are constructed by public lane by-lane or any public of land. Before proceeding the Authority will give a notice to the affected person asking to show cause why such construction(s) may not the offending structure(s) is standing on public piece of land owner or accupier will be given 72 hours fours for its removal after which the Authority will remove the offending structure by force.

8. The report also indicates the manner in which the electricity poles have been installed in that area. It is stated in the stated in the report that all the electricity poles in the area are fixed in the centre of the lanes and are causing obstruction in the free flow of traffic. It is suggested that after the encroachments are removed and the Kathpul road is restored to its width as shown in the Municipal map and similarly constructions making making encroachments on Hunder road are removed the electricity poles in the areas may be streamlined in a manner so as not to cause obstruction in the free flow of traffic. The recommendation made in the report is quite correct and fit to be accepted. It is accordingly directed that having removed the encroachments from the lanes and the bye-lanes of the area, the Patna Municipal Corporation will make a formal request to the Patna Electric Supply Undertaking for streamlining its electricity poles in the area so as to cause least disturbance in the free movement of people within three month from the date of written request from the Municipal Corporation.

9. The next important aspect aspect in the report relates to the extent of encroachment over the public land in the area. It is reported that large pices of public land in the area are being subjected to increasing encroachment and no steps are being taken to check the encroachment. The encroachers are making all kind of construction over public land and if it were left unchecked, it will soon become an unmanageable problem. This is an important problem indicated in the report and it calls for immediate remedial measures. The Department of Revenue. Government of Bihar and the Dristict Magistrate, Patna are accordingly directed to pay immediate special attention to the problem of encroachment over public land in Lohanipur area. It is directed that the State Government will depute an officer of the rank of Dy. Collector. Land Reforms for instituting cases of encroachment over public land Lohanipur area. The officer so deputed will make a survey and initiate proceedings u/s 3 of the Bihar Public Land Encroachment Act, 1956 against all persons making encroachment over public land in Lohanipur area. It is expected that notices in terms of Section 3 of the

Act will be issued within a month from the date of receipt/production of a copy of this order and proceedings will be completed and final order will be passed within three months from institution of the proceeding.

10. After having freed the public lands from unauthorized encroachment, the State Government may consider it for being used for some Housing scheme for the poor and/or for any public utility purpose such as development of parks, play ground, etc.

11. Before parting with the records of this case, this Court would like to put on record its appreciation for the good work done by the members of the Committee namely Mr. Ram Suresh Roy, Sr. Advocate, Mr. H.S. Himker and Mr. Sanjay Singh, Advocates and Mr. B.K. Singh and Mr. Kumar Sarvanand, officers from the Patna Regional Development Authority. The report submitted by the committee has been of invaluable assistance to the Court in disposing of these cases.

12. No further order needs to be passed in these cases and the Registry is directed to close the records of these cases.

13. Let a copy of this order be given each to the committee constituted by this Court, Mr. Mihir Kumar Jha, counsel appearing for the Electricity Board, Mr. Jitendra Singh, counsel for the Patna Municipal Corporation and Mr. H.S. Himkar, counsel appearing for the P.R.D.A. for onwards communication to the authorities concerned.