

(1996) 09 PAT CK 0020
In the Patna High Court
Case No : C.W.J.C. No. 2290 of 1990

Arun Kumar Mukherjee and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 13-09-1996

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Citation : (1996) 09 PAT CK 0020

Hon'ble Judges : N.K. Sinha, J;B.P. Singh, J

Bench : Division Bench

Advocate : D.K. Singh, for the Appellant; Shashi Anugrah Narain, for State, Tarkeshwar Dayal, for the Biswas Board and Jitendra Singh, for the Corporation, for the Respondent

Judgement

1. Additional Advocate General No. 2 informs us that he has received a letter from the District Magistrate as to the actions taken pursuant to our order dated 19th August, 1996. We are informed that so far as widening of Bhattacharjee road is concerned, notification u/s 4 of the Land Acquisition Act has been issued for the acquisition of land, and the emergency provision under the Land Acquisition Act has been invoked. We are further informed that the small additional structure which was sought to be raised connecting two small temples near Sahitya Sammelan Bhawan has been removed without in any manner affecting the temples. He further informs that the District Magistrate has issued notices to all persons connected with the erection and running of places of worship on roads and public land in an unauthorised manner, and they have been called upon to explain under what authority the structures have been raised. The administration is awaiting response to such notices. We are also informed that reports have been received from twenty three districts as to the manner in which the encroachments are being removed and the extent to which they have been able to do so till date. Additional Advocate General informs us that he has not been instructed as to whether a notice has been placed in all police stations reminding the officer-in-charge of their duties and obligations under the orders of

this Court in regard to re-encroachment on public land. He assures us that he will furnish necessary information on the next date.

2. The police administration informs us that there are some difficulties which they face in the matter of removal of encroachments on public road. Many teashops etc. come up on the roads or on the flanks. Even if they are removed or the structures are demolished, they have no funds to transport the debris to be deposited at an appropriate place. We direct the Patna Municipal Corporation to provide the necessary assistance in this regard since it is the duty of the Patna Municipal Corporation to keep the city clean and removal of debris is their responsibility. There are certain misgivings about our orders and large number of writ petitions have been filed in this Court in connection with anti- encroachment drive. We take this opportunity of clarifying the position, so that there is no confusion in the mind of the authorities, and no misunderstanding of our orders by the authorities as well as the citizens.

3. We have from time to time passed orders for removal of encroachments primarily with a view to remove such encroachments as impede free flow of traffic. For this purpose the encroachments to be removed are those which are erected either on the road or on its flanks i.e., structures raised on the road or flanks which is State property and which tend to impede free flow of traffic. In such cases the encroachments must be removed forthwith, because no one has a right to raise any structure on the road and its flanks. The structures may be of temporary character or permanent character, that does not matter.

4. Secondly, structures raised unauthorisedly on private land abutting the road may at times cause traffic problems, because in such cases the customers who come to the establishments located in such unauthorised structures may park their vehicles on the road. However, in such cases the authorities must be cautious. If the structure is on private land, though abutting the road, and if the authorities find that the structure is unauthorised, they must give notice to the owner of the structure to remove the unauthorised structure within the time granted, and also call upon him to show cause. If no satisfactory explanation is forthcoming, then the authorities should take action for removal of such structures on private land abutting the road.

Thirdly, for the purpose of identifying the roads the authorities must refer to the latest survey maps available. They should not go by the actual constructions on either side of the road, because it may be that on one side of the road a person may have violating the rules, raised construction over that portion of the land which should have been left vacant; and on the other side of the road the person concerned may be a law abiding citizen, who may have constructed his house only on that portion where he was authorised to construct after leaving certain land by way of set off. In such a case if the authorities take the middle of the road and the flanks as the relevant point for measuring the road, it may cause injustice to the law abiding citizen, while it may benefit the person who has constructed upon the land which he should have left vacant. It is possible to

conceive that on one side of the road a person may have constructed his house in accordance with the relevant rules and byelaws and on the other side the structure may have been illegally raised by violating the building bye-laws. The road must, therefore, be identified by reference to the survey maps and thereafter its limit should be demarcated and the person found encroaching upon the land only should be asked to remove the encroachment.

5. Fourthly, wherever a citizen claims that he has raised the structure on the basis of a sanctioned plan, or where the structure was raised when there was no requirement of obtaining a sanctioned plan, the authorities must examine the claim of the owner of the structure before taking any action against them. In such a case a proper notice should be given to the person concerned and he should be called upon to produce all materials in his possession to satisfy the authorities that the structure is not unauthorised. If it is found that the structure is not unauthorised, the authorities will not touch such structures, and in case any action is to be taken, it must be done strictly in accordance with law.

6. Lastly, if the authorities find that the unauthorised structures have been raised on public land or private land at any place not impeding free flow of traffic, they must take action in accordance with law and follow the rule of giving notice and taking action after appropriate hearing of the matter. We may clarify that if there is a sanctioned plan, and the construction has been raised strictly in accordance with the sanctioned plan, and the authorities require the owner of such structure to remove his boundary wall for the purpose of widening of the road to the required extent, this should be done only after giving notice to the person concerned. We have clarified this in our order dated 4.5.1995 where we reiterated that if a building has been constructed in accordance with a sanctioned plan, no part of the structure should be demolished, even if the width of the road in front of such structures is less than 20 ft. In such cases, if need be, the land may have to be acquired before any demolition takes place, or it may be done with the consent of the owner of the property. We do hope that these clarifications will serve the purpose for which we have made them so that there is no misgiving and all are treated equally.

7. We have also noticed that the removal of illegal structures is not being done in a fair manner in the sense that it is being done on selective basis, and it is not difficult for us to guess what are the reasons why some unauthorised structures which greatly impede free flow of traffic have been left untouched, whereas the other structures which do not impede free flow of traffic have been removed. We have also noticed that in some areas, in particular Patrakar Nagar, the residents of the locality had enclosed a portion of the land in front of their houses for planting trees and has actually planted trees and flowers in the enclosed portion of the land. That has been demolished but shops right on the road in the same colony have been left untouched. The officers-in-charge of various police stations, who had been called earlier, are present in Court. A lot of complaints have been received from the localities within their jurisdiction that

encroachments have reappeared, and they have not taken steps to remove them we do not wish to initiate contempt proceeding today, because we give them one further opportunity to see that all the encroachments wherever they have reappeared are removed within next seven days. If after that it is found that encroachments have reappeared at any place within the jurisdiction of their police station, we shall take appropriate action against them and in the first instance direct the State Government to transfer them or place them under suspension.

8. P.R.D.A. was required to give us scheme block-wise covering the entire city so that we could fix dates on which removal of encroachments could be done within a specified period, with prior notice to the residents of the locality, so that such of them who wish to voluntarily remove the encroachments may do so.

Counsel for the P.R.D.A. is not present. We direct the Vice Chairman of the P.R.D.A. to give us such a scheme before 27th September, 1996. In the meantime, the P.R.D.A. is directed to carry out the anti encroachment drive in the Kankarbag and Patrakar Nagar area and remove authorised structures which impede free flow of traffic, which includes temporary shops and Khatalas.

9. We have noticed that in the matter of becon lights, the notification issued by the Government has, perhaps, by inadvertence omitted to mention the District Judge as one of the persons authorised to use orange becon light on his vehicle. Since the District Magistrate and the Superintendent of Police are authorised to affix becon lights on their official vehicles, a similar provision should be made for becon light on the official vehicle of the District Judge. A.A.G. 2 assures us that he will take up the matter with the Government, so that appropriate corrigendum is issued. In the meantime, we direct that orange becon lights on the official vehicles of the District Judges shall not be removed.

10. We have before us counsel for the BISWAS Board and the Patna Municipal Corporation. The Administrator, Patna Municipal Corporation is also present. Both the organisations are directed to submit before this Court a scheme to provide a proper drainage system to the city of Patna and for disposal of the sewerage and rain water. They will also indicate what are the major problems, and what measures they intend to take to remedy the situation. They will also bring to the notice of the Court any scheme which may be under consideration for the purpose.

11. The Municipal Corporation Act casts a duty on the citizen to pay taxes. The same also imposes a duty on the Municipal Corporation to provide certain services to the citizens. Obviously, both the obligations must be enforced with usual vigour. A tax payer should not be told by the Municipal Corporation that on account of certain difficulties services cannot be rendered. The obligation is cast upon the Municipal Corporation by law and such an obligation can be enforced by issuance of a writ of mandamus. We, therefore, direct the Patna Municipal Corporation to see to it that the sewerage system and the rain water disposal

system function in the city of Patna, and we should not be told that after every shower the roads have been submerged under knee-deep water. It is for the Corporation to find out ways and means to remedy the situation, and it is not for us to advise them in this matter. We can only insist that they must show results. However, we shall consider these matters further on the next date.

12. It is stated by Mr. B.K. Singh that certain settlements have been made by the Corporation for auto-rickshaw stands which have the effect of blocking the road itself and obstructs free flow of traffic. We fail to understand why this has been done. The Administrator, Patna Municipal Corporation, is directed to look into the matter and take necessary action.

13. On the next date of hearing we direct the Secretary, Urban Development Department to be present, as also the Managing Director of Biswas Board. The Administrator, Patna Municipal Corporation is present in Court and she undertakes to be present on the next date.

14. Put up on 27th September, 1996.

15. Let a copy of this order be given to the counsel for the Patna Municipal Corporation, BISWAS Board, A.A.G.2 and P.R.D.A.