

(1999) 07 PAT CK 0076

In the Patna High Court

Case No : C.W.J.C. No's. 9498 of 1997, C.W.J.C. No. 10948 of 1998 and
C.W.J.C. No. 2962 of 1999

Bhola Sah and Others etc.

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 16-07-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : AIR 2000 Patna 52 : (1999) 47 BLJR 1820 : (1999) 9 PLJR 851

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Advocate : A.C. Nirankar and S.S. Dwived, S.S. Singh, Sheema Ali Khan and S. Asfaque Ahmed, for the Appellant; S.A. Narayan, Gen., Sanjay Singh, SC. and Jitender Shankar Singh, JC to SC, for the Respondent

Judgement

Aftab Alam, J.

1.The petitioners in each of these three cases have come to this Court making the grievance that the revenue and/or the administrative authorities forcibly demolished their house, either completely or partially, on the alleged grounds that the petitioners' buildings/structures encroached upon some public land. It is averred by the petitioners in all the three cases that demolitions were forcibly carried out without giving any notice or prior information, without holding any proceeding under any law and even without taking any measurements in presence of the petitioners to show any encroachment over any public land.

2. It may be noted here that these three cases are not in isolation but of late similar cases are coming to this Court in a constant stream. A large number of cases are filed under the heading "demolition" or "removal of encroachment" making similar grievances that the houses, buildings, structures or shops constructed by and belonging to the respective petitioners were either forcibly demolished (wholly or in part) or were being threatened with demolition on the alleged grounds that the structure in question was unauthorisedly constructed or

it encroached upon some public land, road or the flanks of a road. A common feature in all these cases is that the respondent authorities proceeded to demolish the structure(s) or gave the threat of demolition (as the case may be) without initiating any legal proceeding or giving any notice to the house owner. The most that was done in some of the cases was that some markings were put by the authorities on the portions of the house in question. The markings indicated the extent of the alleged encroachment and hence, the extent to which the house was to be demolished. According to the respondent authorities the markings were put on the basis of measurements taken of the piece of land over which the structure was constructed along with adjoining lands. Hardly in any case, however, the authorities were able (or cared) to show that even the measurements were taken in presence of the house owner or his representative or at least after giving him prior intimation regarding the date and time when the measurements would be taken.

3. On the other hand in practically all the cases the house owners asserted that either no measurements were taken or in any event measurements were taken behind their back and without any intimation to them. Even in the face of strong denial by the house owner no measurement report was produced before this Court in most of the cases.

4. Cases with very little variation in the fact position as stated above keep coming to this Court not only from the urban centres which in any event are very few in this State, but mostly from the district and sub divisional level towns and even from block level Bazars in the remote rural areas. In some cases the respective petitioners made serious allegations of malfeasance against the respective respondent authorities, It was stated that the demolition was carried out or was being threatened for settling previous grudges of a personal nature or simply because the petitioners in those cases were unable to satisfy the respondents demand for money.

5. The manner in which the executive seems to have gone on demolition campaign was quite disquieting to this Court. What was of far graver concern was that the invariable plea taken by the respondent authorities in almost all the cases was that they were acting under the orders of this Court and were simply complying with the direction given by a bench this Court in a certain writ petition being C.W.J. No. 2290/ 90 (Arun Kumar Mukherjee v. State of Bihar). In other words, the executive actions which manifestly appeared to be highly unreasonable, arbitrary and illegal were being sought to be perpetrated under the name of this Court.

6. Faced with this situation this Court resolved to examine the matter in depth and took up these three writ petitions as the test case. The Advocate General was summoned and was apprised of the Court's anxiety in this matter. He was requested to assist the Court by appearing in these cases on behalf of the State and its officials. Thereafter, though the cases were twice adjourned to accommodate him and a date of hearing was finally fixed with his consent, the

Court, to its disappointment, did not receive the desired assistance from the Advocate General. He was very briefly present in Court when the cases were called out for hearing. However, when it was the turn of the State to reply to the submission made on behalf of the petitioners, the Advocate General, without giving any reason, was not present in Court and it was thus- left to Mr. Sanjay Singh, SCIX to defend the action of the State authorities in these cases and he did so quite commendably.

7. At this stage, it would be appropriate to briefly set out the facts of the three cases separately; CWJC No. 9498/97:

The petitioners in this case are three brothers. On 4-8-1996 large portion of their double storeyed pucca house, situate at Phulparas in the district of Madhubani was forcibly demolished by the respondent authorities, according to the petitioners, without any valid reason and without giving them any prior notice or intimation in this regard.

The controversy in this case revolves around the question of title over certain plots of land which are situate in the triangle formed at the junction of two roads, namely, the Bakri-Jhanjharpur-Phulparas-Khutauna Loukaha road (Jhanjharpur-Phulparas road for short) and the Phulparas-Ghoghardiha road. The Jhanjharpur-Phulparas road runs from east to west and the Phulparas-Ghoghardiha road comes diagonally downwards from north east and meets the former at or near Phulparas forming a large triangle between the two roads. The disputed plots are situate along with a number of other plots, in this triangle. The petitioners claim perfect title over the disputed plots but according to the respondents those plots were acquired by the State long ago for the improvement and widening of the two roads.

8. It is the case of the petitioners that they purchased plot Nos. 833 (areas 7 decimals) 834 (area 4 decimals), and 836 (area 4 decimals) under Khata No. 181, Plot No. 832 (area 2 decimals) under Khata No. 275 and Plot No. 830 (area 1 dhur, from east) under Khata No. 291 form their respective Khatiyani raiyats under different sale deeds between the years 1973 to 1980. It is stated in the writ petition that the Jhanjharpur-Phulparas road which earlier used to be under the District Board was later transferred to the Public Works Department, Road Division and in 1960 lands were acquired under a land acquisition proceeding for the development and widening of the road. It is further asserted that in that land acquisition proceedings a portion of plot No. 830 (other than the portion purchased by the petitioners) had gone into acquisition . It is further stated that no portion of the pieces of land purchased by the petitioners were ever acquired or formed the subject matter of any acquisition proceeding.

9. Following the purchase the petitioners came in possession over the aforementioned plots of land and constructed pucca houses including a cinema hall and five rooms out of which three were on the ground floor and two on the 1st floor; the three rooms on the ground floor were let out on rent. It is further

stated that no portion of the buildings constructed by the petitioners over the aforesaid plots purchased by them encroached upon any public land or road or road flanks.

10. In order to show that the buildings were constructed validly and within the full knowledge of the officials in the different Government departments, it is stated that the petitioners had taken steps for obtaining a licence to run a cinema hall. In support of their application the Executive Engineer, Building Construction and Housing Department, Housing Division, Madhubani, the Fire Extinguishing Officer of the Fire Brigade Department, the Assistant Commissioner, Commercial Taxes and the Sub divisional Officer, Phulparas had made, by their respective letters (Annexures 2 series), favourable recommendations before the licensing authority under the Cinemas (Regulation) Act.

11. It is further stated that all of a sudden on 4-8-1996 a number of respondents came to the house of the petitioners along with a demolition squad and started demolishing their two double storeyed buildings. All the petitioners' protests fell on deaf ears. No. attention was paid by the respondents when the petitioners tried to show them the revenue records and other documents to show that they had valid title over the land, and that the house were constructed without contravening any provision of law. According to the allegations some of the respondents even abused and threatened them. The petitioners then filed representations before the Chief Secretary, Government of Bihar, Patna and the Collector, Madhubani bringing to their notice the high handed action of the respondent authorities. The petitioners did not get any response to the representations filed by them. They then filed a petition before the Collector, Madhubani praying for a direction for taking proper measurements and making demarcation of their lands. On the petition filed by them a Pleader Commissioner was appointed who took measurements in presence of the officials of the various Government departments and on 19-1-1997 submitted his report (Annexure 6) to the Collector, Madhubani. According to this report, the petitioners' houses did not encroach upon any public land. After the submission of the Pleader Commissioner's report, the Collector passed an order dated 26-3-1997 in Appeal (Encroachment) Case No. 96 of 1996-97 remitting the matter to the Court below for reconsideration. Thereafter, according to the petitioners the records of the case were made traceless and no further proceeding was held in the matter by any authority subordinate to the Collector. Having thus denied justice, the petitioners finally came to this Court with this petition under Article 226 of the Constitution seeking a direction for payment of sum of Rs. 15 lakhs as compensation for the damages sustained by them by the illegal actions of the respondent authorities.

12. The respondents do not deny having forcibly demolished a portion of the double storeyed building constructed by the petitioners. It is also not disputed that no proceeding under any law was initiated and the petitioners were not even

given a prior notice or any sort of intimation in this matter. According to the respondents the petitioners' houses were constructed on road lands or lands belonging to road projects. It was stated that plot No. 830 fell on Phulparas Ghoghardiha road whereas the other plots being plot Nos. 830 (sic), 832, 833, 834 and 836 fell on Jhanjharpur-Phulparas road. Plot No. 830 was acquired for Phulparas-Ghoghardiha road around the year, 1960 whereas the acquisition of the other plots for Jhanjharpur-Phulparas road was made much earlier. It was further stated that encroachment was partially removed after measurements were taken by the local PWD Road Amin and other technical staff on the basis of the P.W.D. Map of 1957. (see paras 10, 11, 18 and 20 of the counter affidavit filed on 2-3-1998 on behalf of respondents 1 to 5). In support of the averments the only document enclosed is a photostat copy of the P.W.D. Map of 1957 which is so faint and illegible that it is of no help even to the State counsel appearing for the respondents.

13. More or less the same grounds are stated, though with greater clarity in the counter affidavit filed on 27-12-1998 on behalf of respondent 6 to 12. According to respondents 6 to 12, in village Phulparas portions of plot Nos. 830, 832, 834 and 836 were acquired by the Govt. The acquisition of these lands were made under two different projects, one being Sakri-Jhanjharpur Phulparas road project and the other Ghoghardiha-Phulparas road project. It is further stated that plot No. 830 mainly falls in Ghoghardiha-Phulparas road project and plot Nos. 832, 834 and 836 entirely fall in Sakri-Jhanjharpur-Phulparas road project. The lands thus acquired were taken possession of by the P.W.D. (Road Division) in 1957 and a road map was accordingly prepared showing the land required for road purpose. It was further stated that the petitioners did not derive any title on the basis of their sale deeds and they encroached upon road lands and made pucca constructions over those lands. It was further stated that the demolition was carried out after proper enquiry and measurements. Though no notice in writing was given to the petitioners, demolitions were carried out after making public announcement. It was preceded by public announcement in the area for removal of encroachments by all encroachers. The encroachment removal drive was speedily taken up as directed by the High Court. Along with this counter affidavit too the only document enclosed was the PWD map of 1957. On the basis of this map alone it is difficult to sustain the respondents' claim that the disputed plots were taken in acquisition and formed part of the two road projects.

14. The petitioners in their affidavit in reply to the counter affidavits filed on behalf of the respondents brought on record two letters, one is dated 5-8-1996 written by the S.D.O. Phulparas to the District Land Acquisition Officer, Madhubani and the other is dated 6-8-1996 written by the Assistant Engineer, Road Construction Division to the District Land Acquisition Officer, Madhubani (at Annexure 8 and 9 respectively). In both these letters a request was made for supplying a true copy of the road map showing the strip of land taken into acquisition in the year 1955-56 for widening the road going from Ghoghardiha railway station to Phulparas so that encroachments from there could be removed

as directed by the High Court. The land acquisition of officer by letter, dated 19-8-1996 asked for deputing some officials to find out the required map in the office records. Thus, according to the petitioners, their double storeyed house was demolished while the authorities themselves were in the dark and were still asking for a copy of the road map to find out of the encroachments over the road in question.

15. After this case was selected for being heard as a test case, a supplementary counter affidavit was filed on behalf of respondents 2, 3 and 4. In the supplementary counter affidavit the same ground, as stated in the counter affidavits filed earlier was repeated, with the only difference that the supplementary counter-affidavit also enclosed as Annexure B a gazette notification, dated 13-10-1960. The notification appears to be made u/s 4 of the Land Acquisition Act declaring the Government's intention to acquire more or less 520 bighas and 6 kathas of land for the improvement of Sakri-Jhanjharpur-Phulparas road. At Mile No. 29 of the road, lands were also to be acquired in village Phulparas. It further appears that in village Phulparas the lands proposed to be acquired were consolidated in two blocks being block "C" and block "D" and the southern boundary of the block "D" lands comprised of, among others, portions of plot Nos. 836 and 833. From this notification also it does not appear that all the lands purchased by the petitioners had earlier gone into acquisition and the petitioners had constructed their houses over lands forming part of road or road projects. No other document was brought on record. On the basis of the documents brought on record, it is impossible to hold that the entire land of the petitioners had gone into acquisition and they had constructed their houses on portions of road.

16. From the above, it would appear that the core of the controversy in this case is whether or not the plots of land purchased by the petitioners had earlier gone into acquisition. The respondents are claiming acquisition and hence the onus is mainly upon them to establish it. They, however, only produced a P.W.D. map of 1957, which really does not show anything and a gazette notification issued u/s 4 of the Land Acquisition Act. The gazette notification also does not indicate clearly the lands which were proposed to be taken into acquisition.

17. In this dispute, however, the respondent authorities seem to take the attitude that so far as the controversy was concerned, their word was final and it was open to them to decide for themselves and behind the back of the petitioners whether the petitioners' houses were standing on their private land or on portions of road.

18. Leaving aside the merits of the case the question that arises is whether in the face of such disputed facts it was permissible and open to the respondents authorities to suddenly demolish the petitioners' house without so much as giving a prior notice to them and on the basis of an alleged measurement which was evidently taken without the respondents having any reliable record, document or map to ascertain the correct width of the road. The respondents

take the stand that they acted under the orders passed by the High Court. The validity of the respondents stand is to be examined later in this judgment.

CWJC No. 10948/98 :

19. In this case the portions of the petitioners' house was forcibly demolished by the respondent authorities on 21-11-1998. The house was constructed on a portion of plot No. 431 under Khata No. 6 of village Shikarpur in the district of West Champaran. From the Map (at Annexure 1) it appears that this plot is situate at a point where Dhoomnagar Maldahia road turns downwards toward south. The plot is so located that it is just out into the road and reduces its width at the point of its downwards bend almost to half and that would be understandably causing considerable obstruction in the flow of traffic on the road. It therefore, follows that if the plot was made part of the road the bottle neck would be removed and the road would be sufficiently widened. But this observation may be no more than a wishful speculation because in case the plot of land is private property, as claimed by the petitioners, it can be taken away from them only by the due process of law and not by wanton demolition of their house.

20. Coming back to the petitioners' case, it is stated that at the time of the cadastral survey the plot of land was recorded in the revenue records as Ghair Mazrua Malik with the Bettiah Raj being the landlord. it is further stated that in the 1920 the Bettiah Raj was promoting settlements of raiyats over its land in that area with the object of establishing a Bazar there. And in case someone constructed his house even without a formal settlement from the Raj no actions were taken as it suited their object. According to the petitioners their grand father Fazal Ahmad took possession of 22 decimals of land out of that plot which had a total area of 29 decimals. He constructed a big house there and the rest of the land was used as Sehan. He lived in the house till his death and thereafter his two sons, Fasi Ahmad, father of petitioner No. 1 and Faiyaz Ahmad, father of petitioners 2 and 3 continued to live in the house. The two sons of the original settlee constructed a few shops in the front portion of the house and let out those shops on rent. The petitioners and their ancestors have been living in the house constructed over plot No. 431 from 1923 in the full knowledge of the Bettiah Estate and later of the State of Bihar. According to the petitioners the land in question never vested in the State and no rent was fixed by the State as it contained only a residential house for which no rent is realisable by the State.

21. In the year 1966-67 a land acquisition proceeding was held under land acquisition case No. 2/1966-67 for acquiring land for the improvement and widening of Dhoomnagar Maldahia road. In that proceeding a total area of 1.05 acres of land was acquired which included 0.055 decimals of land of plot No. 431 being part of 22 decimals in the occupation of the petitioners in respect of the portion of plot No. 431 (0.055 decimals) award was prepared in the name of petitioner No. 1 and compensation for the land as also for the portion of the house standing on it was paid to the petitioners. The possession of the acquired

piece of land was taken over on 7-12-1995. The documents relating to the land acquisition proceeding are enclosed as Annexures 1 and 2 series which conclusively show that for acquiring a portion of plot No. 431 the State paid compensation to the petitioners and thus recognised them as persons interested in the land.

22. Recently with the creation of the Narkatiaganj Notified Area Committee, the name of the petitioner No. 1 was duly entered in its record with respect to the house and the petitioners paid the taxes to the Notified Area Committee as evidenced from the receipt dated 30-12-1996 (Annexure 3).

23. It is the case of the petitioners that on 20-11-1998 the respondents came with a posse of policemen and forcibly demolished the front portion of their house up to the extent of 21" x 50" which consisted of four shop rooms as well as four shops constructed up to plinth level. On petitioners' protest they were threatened that the remaining portion of the house would also be demolished. It is stated by the petitioners and not denied by the respondents that no proceeding under any law was initiated for the purpose and the petitioners were not given any prior notice asking them to show cause in this matter.

24. According to the respondents" the petitioners" occupation over plot No. 431 was unauthorised because the plot was recorded as Chair Mazrui Malik and the petitioners were, therefore, to be treated as encroachers. It was further stated that the house of the petitioners, portions of which were demolished, encroached upon the road. It is further stated that prior to demolition proper measurements were taken by the respondent No. 6 in presence of the petitioners and a part of the house which was standing on road was demolished by respondent No. 4, the Circle Officer who was authorised by the District Magistrate to remove the encroachment.

25. The petitioners strongly deny that any measurements were taken in their presence or in fact any measurements were taken at all. The petitioners bring on record a letter, dated 4-12-1998 written by the B.D.O., Narkatiaganj to the S.D.O. Narkatiaganj stating that despite requests made by him, the Executive Engineer, Road Construction Division was not supplying to him a copy of the measurement report and was not deputing a Junior Engineer, Amin and a Mazdoor and this was creating difficulties in the removal of encroachment. According to the petitioners, therefore, their house was forcibly demolished on 20-11-1998 even without ascertaining whether or not it was causing any encroachment.

26. In this case though the respondents admitted having demolished portions of the house, there appears to be some dispute regarding the extent of demolition. According to the petitioners demolition was made to the extent of 21" x 50-" and in course of demolition four shop rooms and four shops constructed up to the plinth level in the front portion of the house were demolished.

27. In the supplementary counter affidavit the respondents slightly changed their

stand and stated that the petitioners had encroached upon the strip of plot No. 431 which was earlier taken into acquisition and had constructed four shop rooms and platform over it. As regards the extent of demolition it was stated that only a Pucca platform, stairs and the front Chhajjas of the shops which were encroaching upon the road were (sic) demolished. Both the parties have filed photographs in support of their contention regarding the extent of demolition.

CWJC No. 2962/99

28. In this case it is to be stated at the outset that the only statement that the Advocate General made during his brief appearance in these cases was that he did not propose to defend this case and that the action of the respondent authorities in demolishing the house of the petitioner in this case could not be said to be in accordance with the directions given by this Court in C.W.J.C. No. 2290/90.

29. It is an admitted position that the petitioner had his house constructed on Plot No. 726 and 727 of Khata no. 572 at Mauza Dagarua in the district of Purnea. According to the counter affidavit filed on behalf of respondents 1 and 4 and 5 the two plots were recorded in the Khatian as Gairmazarua of Bihar Sarkar. In the remarks column, however, those were shown as under adverse possession (Ghasban Kabja) of the petitioner. According to the respondents this was sufficient to show that the petitioner was in unauthorised occupation of the disputed land and this alone justified their action in demolishing the petitioner's house in pursuance of the order passed by the High Court in C.W.J.C. No. 2290/90 and in larger public interest. It also appears from the counter affidavit that the Dasgarua was a newly created block which did not have the proper facilities of block office etc. and the disputed land along with others was required for constructing block office and other allied officers.

30. However, it is an admitted position that no proceeding under any law was initiated and the petitioner was not given any notice or intimation before his house was forcibly demolished by the authorities. It is also undeniable that the disputed plots were no where near any road and the house of the petitioner, even if assumed to be unauthorised was not causing any obstruction on any road or Hanks of a road and it was for this reason that the Advocate General conceded, and in my opinion rightly, that in the facts of this case the direction given by this Court in C.W.J.C. No. 2290/90 had no application in fact there was clear and repeated direction in that case itself that the unauthorised construction of the type as in this case could be dealt with only in accordance with law.

31. Mr. Sanjay Singh, S.C. IX appearing for the respondents in each of the three cases tried to justify their actions by submitting that the respondent authorities were simply carrying out the directions given by this court. Mr. Singh stated that this Court, from time to time, had passed a number of orders in a pending writ petition being C.W.J.C. No. 2290/90 and the directions given in those orders formed the basis of the actions of the respondents in these cases.

32. But before placing the orders passed in C.W.J.C. No. 2290/90 (primarily relied upon for defending the respondents' actions) Mr. Singh brought to my notice orders earlier passed by this Court in two other cases, one is an unreported order passed in a writ petition being C.W.J.C. No. 8175/92 and the other order was passed in Srikrishnapuri Boring Road Vyapari Sangh and Another Vs. State of Bihar and Others .

33. C.W.J.C. No. 8175 of 1992 was a writ petition filed in public interest and in this case a bench of tills Court directed the authorities to take necessary steps for removal of illegal occupants, trespassers, en-croachers and squatters from public land, particularly those who had erected hutments etc. whether temporary or permanent on the flanks of roads, streets, lanes etc. That order was expressly passed in the context of large scale encroachments over the roads, streets, and lanes in the city of Patna. And that order directed the authorities only to remove encroachments made over the roads (and not from any other kind of public land).

In a later decision the Hon"ble Judge who had passed the order in C.W.J.C. No. 8175/ 92 made the following observations referring to the order passed in that case :

"So far as the order of this Court is concerned, it is quite apparent that this Court was concerned primarily with the removal of encroachments on the roads, streets and bye-laws which hamper free flow of traffic and it was in that context that the authorities were commanded to take necessary steps under the Act and to perform the duties enjoined on them by the relevant law, which authorised removal of such encroachments."

34. Then came the Division Bench decision in Srikrishnapuri Boring Road Vyapari Sangh and Another Vs. State of Bihar and Others . In that case a loose Association of Shopkeepers, traders and businessmen who were occupying, as tenants, a number of buildings on the Boring road, Boring Canal Road and S.K. Puri came to this Court assailing the action of the Patna Regional Development Authority in demolishing/proposing to demolish parts of the tenanted buildings on the grounds that those were constructed without any sanctioned plan or in material deviation from the sanctioned plan and further that their demolition was required in terms of the draft master plan which provided for a road 90 fit. In width in front of the buildings in question. It is highly significant to note here that the action of the Authorities in demolishing/ proposing to demolish portions of those buildings was not objected to by the owners of those buildings. None of the house owner raised any objection against the demolition of parts of their buildings. In the absence of any objection being raised by the house owners the tenants in occupation of those buildings failed to get any protection and this court dismissed the writ petition holding that though it was filed in a representative capacity on behalf of the traders, shopkeepers etc. It could not be regarded as a public interest litigation. It was further observed that as all the structures were unauthorised and were raised without a sanctioned plan this Court did not feel persuaded to exercise its writ jurisdiction for protecting such

illegal structures. The challenge of the petitioners in that case appears to have failed mainly because they were tenants and it was held that they had no right whatsoever under the law and notwithstanding their tenancy right it was not open to them to object to the demolition of the buildings in question on the ground that those were unauthorised structures. The challenge to the Authority's action on the ground of non issuance of any notice was also rejected holding that Section 54 of the Regional Development Authorities Act provided for a notice only to the owner and builders of the houses and having regard to the nature of offending action a mere tenant could have no say in the matter. .

35. Now it is time to examine the orders passed in C.W.J.C. No. 2 290/90 with which we are directly concerned in this case, as according to Mr. Singh it was guided by those orders that the respondent authorities proceeded to demolish the house of the petitioners.

36. C.W.J.C. No. 2290/90 seems to be this Court's omnibus in public interest litigation. During the nine years of its pendency it has acquired a voluminous order sheet, recording numerous orders passed from time to time. Mr. Singh however placed before me only five orders passed in C.W.J.C. No. 2290/90 and in this case we are concerned with those orders only. I now proceed to take up one by one those five orders passed in C.W.J.C. No. 2290/90. Order No. 64 : dated, 12-7-1996 : (1996) 2 Pat LJR 614

37. This order touches upon a number of issues and gives directions concerning several civics problems besetting Patna. Relevant for the present purpose, however, is paragraph 8 of the order where it was stated that the direction given for removal of encroachments from roads were meant for implementation all over the State. Further the District Magistrates were asked to submit reports stating about the actions taken by them in compliance with the Court's directions. Paragraph 8 of the order is as follows :

"The directions that we have been making in this public interest litigation are meant for implementation all over the State. May be that the directions are issued in relation to the city of Patna but the same directions must apply to all cities in the State of Bihar. We, therefore, direct the Registrar General of this Court to prepare photo copy of the entire order sheet of this case and send one copy to the Chief Secretary, Government of Bihar, for communication to all the District Magistrate who shall communicate the orders to the concerned district authorities who are hereby commanded to comply with the orders and directions as soon as possible. Encroachments from public land, roads and flanks of throad must be removed in the first instance followed by removal of unauthorised structures wherever they are by the competent authorities. This should be followed by cleaning up of the drainage system, sewage system. We direct all the District Magistrates to submit a report as to the action taken by them on or before 26th August. 1996."

38. From this order Mr. Singh pointed out a single sentence in paragraph 10 of

the order. In paragraph 10 of the order it was observed that having regard to the financial constraints being faced by the administration, this Court would not insist that certain roads of Patna be immediately widened to 90 ft in accordance with the draft master plan. Further, referring to the earlier order passed in S.K. Puri Boring Road Vyapari Sangh it was observed that the legal position concerning the draft master plan has already been explained in that case and that did not require any further elucidation. This order has no application to the facts of this case and there is, therefore, no need to reproduce here any portion of this order.

Order No. 66 : dated, 19-8-96 (unreported)

39. Paragraphs 1 to 5 of the order deal with the problem of unauthorised structures and encroachments in different mohallas and localities of Patna. Paragraph 6 is then devoted to clarifying and elaborating the earlier direction given for the removal of encroachments from the road and road flanks. The relevant portions of the order are as follows :--

"xxxxx xxxxx

With regard to removal of encroachments there are certain misgivings which we would like to clarify. Firstly, we have directed the removal of encroachments from the roads and its flanks, which are of such nature as tend to interfere with the free flow of traffic. This is the dominant consideration. Secondly, whenever we have referred to un-authorised structure it should be understood to mean an unsanctioned structure raised at any place. If the structure is authorised in the sense that the structure was sanctioned by the competent authority at the relevant time, the authorities must satisfy themselves about the sanction granted to such structures and only thereafter take appropriate action. Counsel for the P.R.D.A. states that this is always done and whenever any person pleads that the structure is an authorised structure , the papers are examined by the authorities before taking any action. This consideration must be kept in mind by the authorities all over the State so that if a person claims to have erected a sanctioned structure, he should be called upon to produce necessary documents before the structure is demolished. The demolition of any structure which does not prevent free flow of traffic, must be done in accordance with law, our direction are mainly for removal of those encroachments which impede, free flow of traffic on the road, and this may include unauthorised structures on private land which abut the road, because such structures also hamper free flow of traffic as they attract customers who park their vehicles on the road, blocking a part thereof. The authorities, we believe, will execute our orders in their true spirit and to achieve the objective for which such orders are passed. The action of the authorities must be fair and must not smack of authoritarian approach dehors the law, and in no case must they execute the orders on selective basis. Equal treatment under the law is a guaranteed right and we impress upon the authorities that this cardinal principle must be kept in mind."

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"By our order dated 12 -7-1996 reports had been called for from all the District Magistrates as to what action has been taken by them, on or before 26th August, 1996 . We are of the view that aspect of the matter should be considered after reports are received and for that purpose this matter may be placed before us on 13th Sept. 1996."

Order No. 67, dated 13-9-96 (Unreported)

40. In this order the direction for removal of encroachments from road and road flanks was further clarified as follows :

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 3(sic). Secondly, structures raised unauthorisedly on private land abutting the road may at time 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 bye-laws 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.

4. 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. the authorities will not touch such structure, and in case any action is to be taken, it must be done strictly in accordance with law.

5. Lastly, if the authorities find that 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.

6. 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 a 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 had 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 has been left untouched. The Officer-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.

Order No. 88 : dated 27-11-1998 : (1999) 1 Pat LJR 254

41. This is the last order in the series placed before me by Mr. Singh. This order

indicates some guidelines concerning the procedure to be followed in carrying out the Courts' direction for removal of encroachments from roads and road flanks. This order needs to be reproduced here almost in its entirety

"In this application the applicant prays that clear directions/guidelines may be given, so that the authorities concerned, who are engaged in the removal of encroachments from public land etc. act in conformity with the law and not in an arbitrary fashion. Having regard to the number of objections being filed before this Court, we feel that though we have clarified the matter in the past, we may once again state the guidelines at one place.

2. The first question is whether if the width of the road at a particular spot tallies with the width of road shown in the revisional survey map, boundary of the adjoining plots of landholders. Since we are concerned in this case with public lands which include not only the metalled portion of the road but even the Kuchha road on the flanks of the metalled portion, the authorities are strictly concerned with the encroachments made on the road which includes the flanks. We may clarify that the flanks may include not only the land, which is immediately adjacent to the metalled portion, but also the land which may have been kept reserved for future widening of the road and in that sense forms a part of the road. If on measurement, it is found that the width of the road in its comprehensive sense tallies with the width of the road, as shown in the concerned official map including R.S. map, there is no need to ask the landholders of the adjoining lands to correct their boundaries.

3. The next question is whether in the event of measurement of width of the road falling short of the width shown on the map, flanks on both sides have to be marked for removal, or the road has first to be correctly located and thereafter the encroachment has to be demarcated. We may clarify that the direction we are issuing is not with regard to the areas falling within the P.R.D.A. and other Regional Development Authorities which are governed by bye-laws framed by the Authority. In the absence of such bye-laws or rules that may have been framed by the Government, the rational approach is first to locate the road by reference to official documents and thereafter to demarcate the encroached portion of the road and ask the persons concerned to remove the encroachment. It would be unfair to equally divide the blame of encroachment on two landholders, one of whom may not have encroached at all while the entire encroachment may be the handiwork of the other landholder.

4. After the authorities take measurement and mark the offending structure which they find to be in the nature of encroachment, the authorities may give a written notice to the land-holder indicating therein the width of the road, and the nature and extent of encroachment and requiring the land-holder/encroacher to remove the encroachment within 72 hours. If the landholder fails, to remove the encroachment within 72 hours at his own cost, the same may be removed by the authorities at the cost of the landholder.

5. Where a notice has been served upon a landholder informing him of the nature and extent of encroachment made by him on public road/land, if the measurement has not been done in presence of the said landholder, and he makes a request within 72 hours of receiving such notice for measurement of the alleged encroached portion of the road, the authorities should normally accede to this request. However, where a measurement is done in presence of the landholder, the landholder will not be justified in making such request for remeasurement. If for any reason the notice cannot be served upon the landholder by reason of his refusal to accept, or by reason of his absence, or by reason of anyone else accepting such notice, the notice will be deemed to have been validly served, if the same is affixed at some prominent part of the offending structure. We may only impress the authorities the fact that it would be advisable, if possible, to associate the land holder with the measurement of the road encroachment etc. so as to avoid future objections. It is sometimes found that the residents of the area are not aware of the specification/ width of the road, and it may be that some times unwittingly they encroach upon the road. We would request the authorities to find ways and means of making the extent of the roads including the metalled portions of the road, flanks and the lands meant for future broadening of the road. We are told by counsel for the P.R.D.A. that some pillars have been erected at many places to demarcate the roads. We direct that wherever such demarcation is absent, the authorities may take appropriate steps, as indicated above. We may further clarify that the above direction is in relation to areas and matters which are not governed by any rules, bye-laws etc. framed by the Regional Development Authorities or by the Government. In those cases the bye-laws, rules etc. framed by the Regional Development Authorities shall prevail."

42. Mr. Sanjay Singh relied upon the above quoted orders and submitted that in demolishing portions of the petitioners' houses the concerned authorities were simply following and carrying out the directions issued by this Court.

43. From a perusal of the four orders passed in C.W.J.C. No. 2290/90 as quoted above it is evident that by order dated 12-7-1996 this Court made applicable for the entire State the directions issued earlier for the removal of encroachments from the roads of Patna.

44. In the order, dated 19-8-1996 it was said that the dominant consideration behind the directions was the removal of encroachments which were in the nature of unauthorised structures causing obstruction in the free flow of traffic. "Unauthorised structure" was said to mean a structure constructed without obtaining sanction or in deviation from the plan sanctioned by the concerned statutory authority. This order further said that removal of encroachments which did not cause obstruction in the free flow of traffic must be done in accordance with law.

45. In the order, dated 13-9-1996 encroachments/unauthorised structures were classified under two heads. One being structures raised on roads and road flanks.

Those were to be removed "forthwith". The other category was of unauthorised structures on private lands abutting on the road with the structure so raised as to cause obstruction in the free flow of traffic. In such cases the authorities were asked to act cautiously. It was directed that, in such cases the owner should be first given a show cause notice and on his failure to furnish satisfactory reply, action should be taken for the removal of the unauthorised structure. It is important to note here that in the mufassl areas, of which this State is mainly comprised, a structure raised on a private piece of land abutting on the road though causing obstruction in the free flow of traffic, may still not be unauthorised and therefore, not liable to be forcibly removed because there would not be any legal requirement of sanction for construction. This order further directed that for finding encroachments on a road, it (the road) must be identified and demarcated with reference to the latest survey maps available. It was next directed that in case it was claimed that the structure in question was constructed in accordance with the sanctioned plan or was constructed at a time when no sanction was required, the authorities would not touch the structure without first giving the land holder a notice and affording him an opportunity of hearing, strictly in accordance with law. It was further observed that the directions issued did not relate to unauthorised structures on public land which did not come in the way of free flow of traffic and their removal, therefore, could take place only in accordance with law. It was lastly said in this order that if a house constructed legally stood on a road that required widening in view of the increased flow of traffic the only course open was to acquire the land either with the consent of the owner or in accordance with law.

46. In the order, dated 27-11-1998 "road" was given an inclusive meaning, holding that road included not only the metalled portion and the Kutcha flanks on the two sides but also the strips of land, if any, kept in reserve for future development and widening of the road and encroachments were to be removed from the road having regard to its inclusive meaning. This order also gave the guidelines for the procedure to be followed for the removal of encroachments from roads in areas falling beyond the purview of the different Regional Development Authorities and which were not covered by the rules and bye-laws framed by the Authorities. The procedure envisaged in this order is of the simplest and of the most summary kind. It asks the authorities to first identify the road and ascertain its width on the basis of official records and the latest survey maps available and then to find out, by taking measurements, whether the width of the road was actually the same as shown in the official records. In case the width of the road was found reduced, the structures responsible for narrowing down the road were to be removed in order to restore the width of the road as shown in the official records.

47. Counsel appearing for the petitioners tried to assail the aforementioned directions given by this Court for removal of encroachments from the roads in this State. There is no need to set out in detail the submissions advanced for assailing the directions but for the sake of record it would be proper to note the

bare outline of those submissions. It is submitted that this Court had no justification for laying down a set of highly summary procedure and insisting of removal of encroachments on that basis as there was already a complete legislation on the subject of removal of encroachments from public land in existence in this State. It was further submitted that some of the directions contained in orders reproduced above were contrary to legal provisions, some were at variance with pronouncements of the Supreme Court and this Court and same would fail to satisfy the test of fairness and reasonableness. It was pointed out that the directions of this Court made "official documents" and survey map conclusive for the purpose of demolishing a building or structure constructed by any one, though in law a survey map had only presumptive value and "official documents" did not even have that much evidentiary value. Counsel further submitted that making the official documents and the survey map the basis for identifying the road and ascertaining its width presupposes the ready availability of accurate, up to date and highly reliable official records concerning roads in the mufassil areas of this State. In reality, however no such reliable documents were readily available in (sic) offices and as the facts of the cases in hand would show in the name of removal of encroachments the local authorities were committing excesses without making reference to any reliable official documents. It was further pointed out that the directions showed not the least respect for "settled possession" but according to the pronouncements of the Supreme court a person in settled possession of property even on the assumption that he had no right to remain on that property could not be dispossessed by the owner except by recourse to law. It was also submitted that the directions (contained in the order dated 27-11-1998) in so far as they made it only "advisable, if possible, to associate the land holder with the measurement of the road encroachment" and the directions (contained in the same order) regarding service of notice could hardly be said to fair and reasonable.

48. I have broadly indicated the submissions made by the counsel in connection with the orders passed by this Court in C.W.J.C. No. 2290/90. But I propose to go no further because sitting singly I am bound by the orders passed by the Division Bench and I am obliged to examine the action taken by the respondent authorities in the light of the orders passed by this Court in C.W.J.C. No. 2290/90. I now proceed to do so.

49. It may be noted at the outset that in the orders passed in C. WJC. No. 2290/90, it was expressly and repeatedly said that the directions contained therein did not relate to an unauthorised structure constructed on a public land other than road and road flanks and which did not cause any obstruction in the flow of traffic. It was further made clear that unauthorised structure other than those standing on road and road flanks could be removed only in accordance with law, that is to say by following the provisions of the Bihar Public Land Encroachment Act or any other relevant provisions. The direction of this Court in C.W.J.C, No. 2290/90 therefore, did not apply to the facts of C.W.J.C. No. 2962/99 as the piece of land in that case was nowhere near any road or road

flanks. The action of the respondent authorities in that case in demolishing the petitioners house without initiating a proceeding under any law, therefore, was not in accordance with this Court's direction but plainly in violation of those directions, It was for that reason that the Advocate General said that he would not like to defend this case on behalf of the State.

50. Coming now to the other two cases in which the dispute was in respect of pieces of land which according to the respondent authorities were portions of road/road flanks and according to the petitioners private lands abutting on the road, it is to be seen how far the authorities followed the directions of this Court.

51. From the orders passed in C.W.J.C.No. 2290/90, it is evident that the procedure indicated by this Court consisted of three parts which may be enumerated as follows :

i) The authorities were to first identify the road (inclusive of the metalled portion, the Kutcha flanks and the strips of land, if any kept in reserve for its future widening) and to ascertain its exact width on the basis of the official records and the latest survey map available.

ii) The authorities were next required to take measurements of the road and its adjoining lands to find out whether or not the width of the road in actuality tallied with its width as shown in the official records and survey map etc.

iii) In case it was found that the width of the road was in actuality less than its width as shown in the official records then the encroachments responsible for the reduction in the road's width were to be removed.

iv) But before forcibly removing the unauthorised structures/encroachments the authorities were required to give a notice in writing to the land holder. In this regard it was directed as follows in the order dated 27-11-1998 :

Para- 4 "After the authorities take measurement and mark the offending structures which they find to be in the nature of encroachment the authorities may give a written notice to the land holder indicating therein the width of the road, and the nature and extent of encroachment and requiring the land holder/encroacher to remove the encroachment within 72 hours. If the landholder fails to remove the encroachment within 72 hours at his own cost the same may be removed by the authorities at the cost of the land holder.

52. Now it is manifest that in neither of the two cases (C.W.J.C. No. 9498/97 and 10948/98) any of the above directions were duly complied with. In neither of the two cases any official records or survey maps have been brought to the notice of this Court on the basis of which the roads in question could be identified and their correct width reliably ascertained. In C.W.J.C. No. 9498/ 97 a P.W.D. map of 1957 is produced as an annexure. This map, prepared in a government department, has no statutory sanction behind it. But even disregarding its non-statutory character it is impossible to ascertain on its basis the correct width of the road for two simple reasons that it is totally illegible and that it does not

indicate the dimensions of the road.

53. Further, even though it is claimed by the respondent authorities in both the cases that measurements were taken of the roads in question, it is difficult to accept their claim inasmuch as no measurement reports have been brought before this Court. Moreover, taking measurements of the road without first ascertaining its correct width according to the official records would be quite meaningless and of no purpose. Finally, in neither of the two cases any written notice was admittedly given to the petitioners indicating therein the width of the road and the nature and extent of encroachment and requiring them to remove the encroachments within 72 hours.

54. I have, therefore, no hesitation in holding that the action of the respondent authorities in all the three cases was wholly illegal, arbitrary and high handed. Further, the demolition of the petitioners' houses was not in accordance with the directions given by this Court and therefore the respondents' action cannot be defended or justified on the plea that they were carrying out the directions of this Court. It follows as a consequence that, in case the petitioners were dispossessed from the respective pieces of land following the demolition of the structures standing there, their possession must be restored forthwith and they be allowed to continue in possession till they are removed from the disputed lands in accordance with law.

55. At this stage I must clarify that the findings and directions made above are not to be understood to mean that according to this Court the petitioners' in these three cases had perfect title over the disputed plots of land and that the constructions made by them over their respective pieces of land were authorised in law or were in exercise of their lawful right. All that this Court intends to say is that the respondent authorities had no material to assume that the disputed plots of land were portions of road or road flanks; they neither had the necessary jurisdiction to make any such assumption unilaterally and further that their action in demolishing the petitioners' houses on that assumption was not in accordance with the High Court's directions and their action was, therefore, brazenly illegal and arbitrary. It must also be deprecated that such brazenly illegal acts were done in the name of this Court. In my considered view therefore, the respondent authorities are liable to be saddled with costs and after due consideration I impose a cost of Rs. 15,000/- against the District Magistrate, Purnea (respondent No. 2 in C.W.J.C. No. 2962/99) and of Rs. 10,000/- each against the District Magistrate, West Champaran at Bettiah (respondent No. 2 in C.W.J.C. No. 10948 of 1998) and the District Magistrate, Madhubani (respondent No. 2 in C.W.J.C. No. 9498/97). The amount of cost must be paid to the Bihar State Legal Services Authority and receipt showing payment must be filed in this Court within one month from today.

56. Now remains the question of payment of compensation or damages to the petitioners in each of the three cases. This would require an investigation of fact on two issues. One relates to the extent of damage and loss suffered by the

petitioners as a result of the demolition of their houses. As noted above, the parties take quite divergent stands on this issue. According to the petitioners, large portions of their houses were demolished causing substantial loss and damage. But according to the respondents only projections, platforms etc. were demolished which would cause very little loss to the petitioners. A proper assessment in this regard will have to be made on a consideration of evidence produced by the parties.

57. The second important issue on which a finding is required is whether or not the houses of the petitioners in C.W.J.C. Nos. 9498/97 and 10949/98 were liable to be removed either wholly or in part in terms of the orders passed by this Court in C.W.J.C. No. 2290/90. From the long discussion made hereinabove, it is evident that the houses of the petitioners (in C.W.J.C. No. 9499/97 and 10948/98) were demolished without properly ascertaining whether those houses were standing on roads or road flanks and it was precisely for that reason that the action of the respondent authorities was held to be grossly illegal. However they may still be given a chance to show that in any event those houses were liable to be removed in accordance with the directions given by this Court and that may be a relevant consideration to be taken into account on the question of payment of damages/compensations to the petitioners.

58. The second issue would not arise in C.W.J.C./No. 2962/99 because as noted above the orders passed by this Court in C.W.J.C. No. 2290/90 do not apply to the facts of this case. In this case, therefore, only the first issue would be relevant and this case would only require an assessment to be made of the damage and loss suffered by the petitioner.

59. Thus the question of payment of compensation/damages to the petitioners would require arriving at findings of fact in the light of the evidences led by the parties. In exercise of writ jurisdiction it would be hardly proper to undertake such an exercise. I will, therefore, leave the petitioners to seek their relief of compensation/damages by filing proper suits before Civil Courts of competent jurisdiction. If such suits are filed, the validity of the action of the respondents in demolishing the houses of the petitioners (wholly or in part) will no longer be an issue as their action has been held to be completely illegal by this Court by this Judgment. The petitioners' claim for compensation/damages will be decided in the light of the observations and directions made in paragraphs 56 to 59 of this judgment.

60. It is further directed that in case suits are filed by the petitioners those suits, in the attending facts and circumstances, would merit most expeditious disposal and the concerned Court will make all endeavours to see that the suit is finally disposed of within one year from the date of its filing. In case the suit is not concluded within this period the concerned Court will submit a report to this Court stating the reasons for the delay in the disposal of the suit. If such a report comes from the trial Court the registry will bring it to my notice without delay.

61. These three cases thus stand disposed of with the aforesaid findings, declarations, observations and directions.