

(2010) 01 PAT CK 0028
In the Patna High Court

Deepak Kumar sah

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 27-01-2010

Acts Referred:

Citation : (2010) 1 PLJR 715

Hon'ble Judges : Dipak Misra, C.J; Shiva Kirti Singh, J

Bench : Division Bench

Judgement

Dipak Misra, C.J.—In this public interest litigation, the petitioner, as pro bono publico, had approached this Court for issue of directions to the respondents to remove the encroachment from under and near Lohia bridge, which is a railway over-bridge, adjacent to Bhagalpur Railway Station and command them to take steps that the area under Lohia bridge is not encroached and to proceed against the encroachers in accordance with law. Various averments have been put forth and steps have been taken for removing the encroachments and how it has not been materialized because of indifferent attitude of the Railway Protection Force officers and the local state police personnel. That apart, allegations have been made that there has been connivance to encourage the encroachers.

2. Be it noted, the petitioner had approached this Court earlier in C.W.J.C. No. 9845 of 2008, wherein this Court had passed the following order:

After having perused the writ petition, we are satisfied that the diverse contentions raised in this writ petition do not require to be examined by us and the ends of justice shall be sub-served by the following order:

(i) The District Magistrate, Bhagalpur shall treat the memorandum of writ petition along with Annexures as a representation sent to him for redressal of the petitioner's grievance.

(ii) The District Magistrate shall objectively consider the grievance raised in the representation and take decision thereon as early as possible and in no case later than three months from today and communicate the reasoned order to the

petitioner.

(iii) If the petitioner is aggrieved by the order that may be passed by the District Magistrate, Bhagalpur and the grievance raised in the writ petition continues, he will be at liberty to approach this Court again.

3. As no proper attempt has been made to remove the encroachers and one Anand Bihari Yadav, who is indulged himself in selling off/letting off the area under the Lohia bridge to different persons on payment of money in connivance with the R.P.F. officials and the local state police, for protection of the railway property present petition has been filed.

4. A counter affidavit has been filed by respondent Nos. 4 to 11, contending, inter alia, that the encroachment near Lohiapul, Bhagalpur was removed on 21.11.2008 with the help of civil authorities and thereafter a bar fencing was done to protect the land from further encroachment but encroachers broke the fencing by passage of time. The said fact was reported to G.R.P. but no action was taken. It is put forth that the railway administration has started construction of the boundary wall to protect its land from encroachment but the outsiders stopped the work and the said aspect reported to the Inspector, R.P.F., Bhagalpur and Inspector, G.R.P., Bhagalpur by letter dated 12.1.2009 by the Sectional Engineer but no action was taken by the G.R.P., Bhagalpur. One opening from the platform side to the land in question was closed by the railway administration by constructing a wall but the same was broken by the miscreants. Various other aspects have been stated in the return how the railway officials have taken keen interest to remove the encroachment.

5. This Court on 24.4.2009 directed that no construction whether religious or otherwise shall be made on the public land. It was also directed that the respondents shall obey the order passed by this Court. On 8.5.2009 when the compliance report was not filed, a direction was issued to file the same. After the said order the compliance report was filed. On 18.5.2009, the following order was passed by this Court:

Perused the compliance report filed on behalf of respondent No. 7. Also perused the supplementary counter affidavit filed on behalf of the respondents today.

The order of this Court dated 24th April, 2009 is clear that no construction, whether religious or otherwise, shall be made on the public land concerned. It was also observed by this Court that according to respondents the earlier encroachments were removed as per order of this Court. By order dated 08th May, 2009 this Court was not satisfied with the stand of the Railway and, therefore, respondent No. 7, the Chief Security Commissioner (R.P.F.), Eastern Railways, was directed to file a compliance report failing which he was required to be personally present in Court on 18th May, 2009.

In the compliance report it has been admitted that unauthorized construction still exist on the public land and the Railway has planned to dismantle the said

construction but so far they could not remove the same.

Prima facie it appears that local Railway officials as well as the District authorities are not taking required steps to free the public land of encroachment. According to the learned Counsel for the petitioner, encroachment under the bridge is at times temporarily shifted on the public road and when this Court expresses satisfaction that the public land belonging to Railway has been made encroachment free, the same shops are permitted to shift again on the railway land. He suggests that concrete and effective steps are required to be taken both by the Railway Authorities and the District Administration of Bhagalpur to ensure that the public land of Railways is made and kept free of encroachment and the public thoroughfare is not permitted to be used by shop keepers and vendors so as to affect the utility of the road by vehicles and pedestrians.

We are of the view that some higher Authorities of Railways should look into the problem existing near the Bhagalpur railway station. For that purpose we direct respondent No. 4, General Manager, Eastern Railway, Kolkata, and the District Magistrate, Bhagalpur, respondent No. 2, to take effective steps in the matter. The Railways should plan suitable construction to ensure that the public land in question is not encroached by unscrupulous elements and they do not succeed in making fresh encroachments once such steps are taken. The availability of thoroughfare and road shall be ensured by the District Magistrate who will ensure that encroachment on the roads are not allowed to take place once they are removed.

Respondents No. 2 and 4 should submit a compliance report to this Court by 07th July, 2009.

Place this matter under the same heading on 07th July, 2009.

6. Thereafter the matter was adjourned and on 14.7.2009 the following order came to be passed:

Learned Counsel for the petitioner has placed reliance upon a rejoinder filed on behalf of the petitioner in respect of compliance report of respondent No. 9 and the counter affidavit of respondents No. 9 and 10, to submit that till date the railway authorities have not taken adequate steps to free the railway land from encroachment by traders who are stocking their goods to carry out wholesale business in vegetables and other trades from the railway land which in turn, is encouraging encroachment even on the adjacent public road. Recent photographs have been annexed in support of aforesaid contention.

The railway authorities have already taken a clear stand that they will free the railway land from any kind of encroachment by construction of a boundary wall on the spot. According to railways, encroachment from railway land had already been removed. If any fresh encroachment has been made, the same should be removed forthwith and the required boundary wall to free the railway land from any such kind of encroachment should be made ready within four months.

Let this matter be listed under the same heading after four months. It goes without saying that during the intervening period of four months, the local district authorities and municipal authorities shall ensure that public road is not allowed to be encroached so as to interfere with the public right of movement on the road.

7. The matter was taken-up on 18.1.2010 and upon perusal of aforesaid orders and the report that have been brought on record, we are inclined to issue the following directions:

(i) The railway administration shall take concrete steps to free the railway land from any kind of encroachment and if any fresh encroachment takes place shall immediately inform the Superintendent of Police, Bhagalpur and the concerned police station and all the authorities shall work in harmony to see that the encroachment is removed.

(ii) The railway administration shall constitute a Task Force to keep a watch that no railway land is encroached and none is allowed to deal with it in any manner.

(iii) The municipal authorities of Bhagalpur and the district administration shall extend the fullest cooperation to the railway administration so that the railway land, which is also a public land, is not encroached as a result of which the right of movement of public is not affected.

(iv) If any encroachment is there, it shall be removed forthwith and appropriate legal action be initiated against him, which would include launching of criminal prosecution as per law.

(v) The railway administration must bear in mind to protect its property, which is the national property, is its primary and no lackadaisical attitude is exhibited at any point of time.

(vi) If there would be any further grievance, liberty is granted to the petitioner to move this Court afresh.

8. The writ application is accordingly disposed of. There shall be no order as to costs.