

(1999) 09 PAT CK 0009
In the Patna High Court
Case No : C.W.J.C. No. 5390 of 1999

Farzan Ahmad and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 10-09-1999

Acts Referred:

Citation : (2000) 1 PLJR 631

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Judgement

Aftab Alam, J.—This is a case of threatened demolition of portion(s) of the petitioners house/structure. According to the respondent authorities, they are acting in compliance with the directions given by this court in orders passed from time to time in CWJC No. 2290 of 1990 : Arun Kumar Mukherjee vs. State of Bihar and others. In a recent decision in Bhola San and others vs. State of Bihar and others, 1999 (2) PLJR 851, this Court examined the orders passed in the case of Arun Kumar Mukherjee in some detail and then it came to light that in a large number of cases the officials in the district administration were acting without clearly following the true import and scope of those directions. It, therefore, becomes necessary to clearly state the true import of the directions given in the case of Arun Kumar Mukherjee. In the first place, it must be borne in mind that those directions do not relate to all kinds of encroachments, but only to encroachments made on roads and road flanks causing obstruction in the free flow of traffic (or such unauthorised structures which though standing on a private piece of land abutting on a road, are constructed in a manner so as to cause obstruction in the free flow of traffic). Any other kind of encroachments on a public land will not attract the directions given by this court in the case of Arun Kumar Mukherjee and those encroachments could be removed only in accordance with law. Secondly, even while acting in compliance with the directions given in the case of Arun Kumar Mukherjee, it was imperative to take some necessary steps before the executive authorities could forcibly demolish a structure causing obstruction in the free flow of traffic.

2. From the records of this case, it is manifest that no such steps were taken by the respondent authorities in this case. They are accordingly restrained from carrying out the threat of demolition on the basis of public announcement made and/or on the basis of the marks put on the petitioners house without following the requirements in terms of the directions of this court as enumerated in paragraph 51 of the decision in the case of Bhola Sah.

3. In case the respondent authorities have reasons to believe that the petitioners house/structure is built in an unauthorised manner so as to cause obstruction in the free flow of traffic, it will be open to them to proceed against the petitioners either under the provisions of the Public Land Encroachment Act or if the facts so warrant under the directions given in the case of Arun Kumar Mukherjee and as further explained in the case of Bhola Sah. This writ petition, thus, stands disposed of subject to the above observations.