

(2012) 09 PAT CK 0076
In the Patna High Court
Case No : CWJC No. 9618 of 2012

H.S. "Himkar" (Hargovind Singh "Himkar") APPELLANT
Vs
The State of Bihar and Others RESPONDENT

Date of Decision : 04-09-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Penal Code, 1860 (IPC) — Section 34, 353, 420, 447, 467

Citation : (2012) 4 PLJR 634

Hon'ble Judges : V.N. Sinha, J

Bench : Single Bench

Advocate : H.S. Himkar in person, for the Appellant; Rana Pratap Singh, Arun Kumar Tiwari, Arun Kumar, S.B. Narayan and Praveen Kumar for the Respondents No. 5 and 6 and Mr. Anisul Haque for the State, for the Respondent

Judgement

V.N. Sinha, J.—Petitioner is practicing in this Court since 1983. He has filed this writ petition for a direction to the respondent authorities to initiate disciplinary proceeding against respondent nos. 5, 6 the Officer-in-Charge, Sub-Inspector of Police, Rajiv Nagar, P.S.-Patna as they forcibly barged into Nepali Nagar, Patna residence of the petitioner on 10.5.2012 at 10 P.M. alongwith respondent no. 7 the Executive Engineer, Bihar State Housing Board (hereinafter referred to as the Board), abused him, his family members violating their right to life, liberty, privacy, peaceful enjoyment of residence including right to live with dignity as they threatened the petitioner and his family members with criminal action for extraneous consideration infracting Article 21 of the Constitution. Petitioner feeling insecure, threatened and unsafe by the police action called Senior Superintendent of Police, Patna on his mobile telephone no. 9431822967 informing him about the incident. At the intervention of the Senior Superintendent of Police, Patna during the night of 10.5.2012 petitioner, his family members were not taken in custody. In support of the aforesaid case petitioner relied on the video recording of the incident taken in his mobile camera, which was placed on record by way of DVD-R. Following morning also

threat was extended that petitioner, his family members may be arrested any moment. Petitioner having felt insecure filed the present petition on 11.5.2012 and mentioned the matter before Hon"ble the Chief Justice, whereafter the case was directed to be notified for urgent hearing on 14.5.2012 with direction to the petitioner to serve copy of the petition on the respondents through the office of the learned Advocate General with further direction to the Senior Superintendent of Police, Patna to extend adequate protection to the petitioner, his family members against any threat to their person and property. On 14.5.2012 formal notice was issued in the matter to respondent nos. 5, 6 through respondent no. 3 the Senior Superintendent of Police with direction to list the case as the first case on 19.6.2012. Matter was taken up on 3.7.2012 on which date both respondent nos. 5, 6 appeared in the proceeding but did not file any counter affidavit in compliance of the order of the High Court dated 14.5.2012, which default was noticed by this Court under order dated 3.7.2012 and last indulgence was granted to respondent nos. 5, 6 to serve a copy of their counter affidavit on the petitioner by 6.7.2012. In compliance of the directions of the High Court dated 3.7.2012 separate counter affidavit by respondent nos. 5, 6 was served on the petitioner on 6.7.2012 denying the allegation levelled by the petitioner against respondent nos. 5, 6. It is stated in the counter affidavit that petitioner has illegally and surreptitiously raised a house over 8-10 kathas land situate in Nepali Nagar, Patna on the western side of the Ashiana-Digha Road, which is part of 1024.52 acres of land acquired by the Government for the Board and the construction raised by the petitioner is without the knowledge of the Board. Reference in this connection is made to a joint order passed by the Managing Director of the Board, District Magistrate and Senior Superintendent of Police, Patna bearing Memo No. 2728 dated 7.4.2010, Annexure-R/A constituting a team of the Executive Magistrate, Patna Sadar, Dy. S.P. Law and Order, Patna, Executive Officer, New Capital Circle, Patna Municipal Corporation, General Manager, PESU or its authorized Executive Engineer and Executive Engineer, Divisions-II, III and Public Health Division of the Board for protecting the lands of the Board by ensuring no construction over 1024.52 acres of land acquired for the Board, any construction raised on the aforesaid land is demolished, First Information Report lodged and no transaction concerning the acquired land is registered. It is further stated in the counter affidavit that the Executive Engineer of the Board Sri Prabhunath Choudhary found on 29.4.2011 earth filling work in progress over the aforesaid land by means of J.C.B. Machine, whereafter Rajiv Nagar P.S. Case No. 64/11 dated 29.4.2011 for the offences under Sections 447, 420, 467 and 34 of the Penal Code was lodged, in which petitioner was granted bail on the assurance that he would not proceed with the construction any further. It is further stated in the counter affidavit with reference to entry no. 25 made in the station diary of Rajiv Nagar P.S. Case No. 47/12 dated 10.5.2012 that at 19.00 hours information was received in the P.S. that in Nepali Nagar H.S. Himkar (petitioner) was proceeding with illegal construction over the lands of the Board, which was recorded in the station diary and Executive Engineer of the Board was informed about the said illegal construction through mobile. It is

further stated in the counter affidavit with reference to the entries made in the station diary that Sri Ataur Rahman, Executive Engineer of the Board alongwith Assistant Engineer, Rameshwar Singh and staff Sachidanand Pandey arrived at the police station. It is also stated in the counter affidavit that at 20.30 P.M. the Officer-in-Charge alongwith Sub-Inspector, R.S. Singh and Assistant Sub-Inspector, Nagina Sao together with armed force as also Executive Engineer, Ataur Rahman, Junior Engineer Rameshwar Singh and staff Sachidanand Pandey proceeded for conducting raid in Nepali Nagar handing over charge of the station diary to Sub-Inspector Prabhu Das. It is also stated in the counter affidavit that police party, the officers and the staff of the Board arrived at the house of the petitioner in Nepali Nagar at 9 P.M. and while the raiding party was taking round of the place of occurrence petitioner came out of his house and invited the Officer-in-Charge, respondent no. 5 and the Executive Engineer, respondent no. 7 to come inside asking others constituting the raiding party to wait outside. It is further stated in the counter affidavit that it was the petitioner who shouted at respondent no. 5 but respondent no. 5 neither uttered a word nor misbehaved with petitioner and his family members. It is further stated in the counter affidavit that the police party had come to the house of the petitioner as per instructions of the Executive Engineer of the Board in compliance of the joint order dated 7.4.2010. About the compact disc it has been stated in the counter affidavit that the same does not support the version of the petitioner set out in the writ petition as from the disc it appears that respondent no. 5 was sitting quietly on the chair offered to him by the petitioner. It is further stated in the counter affidavit that after the incident was over respondents 5, 6 and 7 alongwith other staffs came back to the police station at 23.30 hours and Rameshwar Singh, Assistant Engineer lodged Rajiv Nagar P.S. Case No. 47/12 dated 10.5.2012 against the petitioner and his family members for the offence under Sections 420, 467, 468, 353, 504, 506, 34 of the Penal Code which was registered by respondent no. 5 on the basis of written typed report bearing letter no. 56 dated 10.5.2012 for illegal construction (shuttering for roof casting), obstructing the police party from seizing the building materials kept for roof casting as also for the obstruction caused by the petitioner and his family members in due discharge of duty by the officers of the raiding party. Perusal of letter dated 10.5.2012, however, indicates that shuttering work for roof casting was in progress (almost complete), mason and labourer who were engaged in shuttering work could not be apprehended as they managed to escape. It is further stated in the counter affidavit that petitioner was allowed bail in Rajiv Nagar P.S. Case No. 64/11 dated 29.4.2011 on his assurance that he would not proceed with the construction of his house but it is astonishing as to how petitioner completed his house in the year 2012. It is denied in the counter affidavit that petitioner was spared from being arrested in the night of 10.5.2012 on the intervention of the Senior Superintendent of Police, Patna.

2. By filing common reply to the separate counter affidavit filed on behalf of respondent nos. 5, 6 petitioner disputed the version of the occurrence given by

respondent nos. 5, 6 and stated that respondent nos. 5, 6 though admitted the incident dated 10.5.2012 but have given a distorted version of the occurrence, which is denied by the petitioner. In this connection, petitioner again reiterated that he and his family members including ladies were abused by respondent nos. 5, 6 by forcibly barging into his house on 10.5.2011 at about 10 P.M. in the night with a view to pressurize the petitioner to succumb to the illegal demands of respondent nos. 5, 6. In this connection, it is pointed out that initially petitioner was not made accused in Rajiv Nagar P.S. Case No. 64/11 dated 29.4.2011, as would appear from column no. 7 of the said First Information Report, in which 13 persons are named as accused but the name of the petitioner is mentioned in the said column only with a view to identify accused no. 13 Md. Rajauddin. Notwithstanding the aforesaid fact petitioner was informed on 30.4.2011 at 6.16 A.M. by Sri R.N.P. Singh suspended Officer-in-Charge of Rajiv Nagar P.S. through mobile no. 9431820408 the official mobile of Rajiv Nagar P.S. over mobile no. 9334111999 of the petitioner that he has been made accused in Rajiv Nagar P.S. Case No. 64/11 dated 29.4.2011 for a non-bailable offence and he may be arrested. On 17.5.2011 at about 8.18 P.M. petitioner called Rajiv Nagar P.S. over official mobile no. 9431820408 requesting the P.S. authorities to make available patrolling party in his area, respondent no. 6 while responding to the request informed the petitioner that he is wanted in connection with Rajiv Nagar P.S. Case No. 64/11 dated 29.4.2011 he should obtain bail otherwise he may be arrested as his arrest has been ordered by superior police authorities. It is submitted that aforesaid information was also furnished to the petitioner only by way of pressure tactics. With reference to written information dated 18.5.2011, Annexure-4 furnished by respondent no. 6 in the capacity of information officer of Rajiv Nagar P.S. it is submitted that petitioner herein was not accused in Rajiv Nagar P.S. Case No. 64/11 dated 29.4.2011 till the date of issue of the said information. Highlighting the pressure tactics applied on the petitioner on 30.4.2011, 17.5.2011 together with the fact that name of the other house owners in whose house the 13 accused persons of Rajiv Nagar P.S. Case No. 64/11 dated 29.4.2011 were found working was not mentioned in column no. 7 so as to identify those accused the petitioner through his application dated 11.6.2011 informed the Home Commissioner, Bihar, D.I.G., Central Range, Senior Superintendent of Police, Patna sent through speed post that he is being subjected to pressure and differently treated than the other house owners of Rajeev/Nepali Nagar as he was not ready to oblige the police officers serving in the Rajiv Nagar P.S. and is under constant threat of being arrested by respondent no. 6. Even after petitioner submitted application dated 11.6.2011 to the Home Commissioner, Bihar, D.I.G., Central Range, Senior Superintendent of Police, Patna threat of further police action did not recede as officers of Rajiv Nagar P.S. continued to mount pressure on the petitioner to grease their palm, otherwise he may be arrested at any time. In order to avoid such threat petitioner appeared in the Court of C.J.M., Patna on 16.6.2011 and applied for grant of bail by the C.J.M. in Rajiv Nagar P.S. Case No. 64/11 dated 29.4.2011, which was allowed and petitioner was released on bail under order dated 16.6.2011 in Rajiv Nagar

P.S. Case No. 64/11 dated 29.4.2011. Having obtained bail in Rajiv Nagar P.S. Case No. 64/11 dated 29.4.2011 petitioner filed petition dated 16.6.2011 before the C.J.M., Patna informing learned C.J.M. also about the pressure tactics applied by Rajiv Nagar P.S. on him together with the fact that he was being discriminated vis-a-vis the other house owners in whose house the 13 accused persons were found doing construction work but the name of those house owners was not mentioned in column no. 7 of the First Information Report of Rajiv Nagar P.S. Case No. 64/11 dated 29.4.2011. C.J.M., Patna having appreciated the contents of petition dated 16.6.2011, Annexure-7 called for a report from Rajiv Nagar P.S., which was submitted by respondent no. 6 on 25.9.2011, Annexure-5 stating that during investigation and supervision of Rajiv Nagar P.S. Case No. 64/11 dated 29.4.2011 the case has been found true not only against the F.I.R. named accused but also against the house owners, namely, Guptaji, Jhaji, Rakesh Babu, Nityanand Singh and H.S. Himkar (petitioner) and the J.C.B. owner Dhananjay Singh. In the report respondent no. 6 further admitted that on 17.5.2011 at 8.18 P.M. he did inform the petitioner on his mobile phone that he has been made accused in the case during supervision by the Dy. S.P. Law and Order Report further states that instructions have been received from the City Superintendent of Police, Patna also to arrest the petitioner, as would appear from report-02 dated 27.5.2011 submitted in connection with Rajiv Nagar P.S. Case No. 64/11 dated 29.4.2011. In the concluding paragraph of the report, it is submitted that the statement made by the petitioner in his petition dated 16.6.2011 is only self-serving statement, which is wholly incorrect and should not be relied upon.

3. It is submitted that Rajiv Nagar P.S. Case No. 64/11 dated 29.4.2011 was supervised by the Dy. S.P. Law and order on 17.5.2011 who submitted supervision note bearing Memo No. 2021 dated 24.5.2011, Annexure-9 giving direction to the Investigating Officer of the case that the house owners in whose house 13 accused persons named in column no. 7 of the F.I.R. were engaged in construction work alongwith the J.C.B. owner be also made accused and steps for apprehending them be taken. Similar direction was also issued by City Superintendent of Police under report-02 bearing Memo No. 652 dated 27.5.2011, Annexure-10. With reference to memo dated 24, 27.5.2011, Annexures-9, 10 it is submitted that instruction of the superior police officer to arraign the petitioner and other house owner as accused in Rajiv Nagar P.S. Case No. 64/11 dated 29.4.2011 was issued on 24, 27.5.2011 but Sri R.N.P. Singh the suspended Officer-in-Charge of Rajiv Nagar P.S. through official mobile no. 9431820408 of Rajiv Nagar P.S. informed the petitioner on his mobile phone on 30.4.2011 at 6.16 A.M. that he is accused in the said case and the same information was given by respondent no. 6 from official mobile of Rajiv Nagar P.S. on his mobile phone on 17.5.2011 at 8.18 P.M., although by that date neither the supervision note nor report-02 was issued in connection with Rajiv Nagar P.S. 64/11. It is submitted that the officers of Rajiv Nagar P.S. misusing the confidence reposed on them by the superior police officers resorted to illegal collection from the house owners of Rajiv/Nepali Nagar, although there is hardly

any trace of the joint order bearing Memo No. 2728 dated 7.4.2010 issued with signature of Managing Director of the Board, Senior Superintendent of Police, District Magistrate, Patna in the office of the Board. It is further stated that action against the petitioner is also contrary to the instructions of the Dy. S.P. Law and Order bearing memo No. 2465 dated 23.4.2010, Annexure-R/E3 whereunder raid to contain illegal construction in Rajeev/Nepali Nagar area is to be effected with information to two senior officers, i.e. M/s Binod Kumar Verma, Naresh Prasad Singh on their mobile nos. 9334297915 and 9934624848 respectively, but in the instant case, no such information was ever given to the two senior officers. It is submitted that the entire action was taken against the petitioner pursuant to lodging of Rajiv Nagar P.S. Case No. 64/11 dated 29.4.2011 only with a view to pressurize him to fulfil the illegal demand of Rajiv Nagar Police. Even after petitioner obtained bail in Rajiv Nagar P.S. Case No. 64/11 dated 29.4.2011 under order dated 16.6.2011 Rajiv Nagar Police continued to mount pressure on him to satisfy their illegal demand, failing which he may be made accused in another case, as according to Rajiv Nagar Police grant of bail in Rajiv Nagar P.S. Case No. 64/11 dated 29.4.2011 may not save the petitioner from being made accused in any subsequent case, which the police is always empowered to register. It is submitted that in order to further pressurize the petitioner to succumb to the illegal demand of respondent nos. 5, 6, respondent nos. 5, 6 alongwith respondent no. 7 together with armed force arrived at Nepali Nagar house of the petitioner on 10.5.2012 at 10 P.M. and forcibly barged into the residential portion of the house, abused him, his family members including ladies on the pretext that construction activity i.e. shuttering for casting of the roof was in progress which was almost complete and building materials for casting the roof was available but neither the carpenter nor mason performing the shuttering work or engaged for roof casting were apprehended at the spot. Petitioner feeling insecure and unsafe that he and his family members may be arrested called Senior Superintendent of Police on his mobile number 9431822967 and on his intervention respondent nos. 5, 6 retreated back without arresting the petitioner and his family members but lodged Rajiv Nagar P.S. Case No. 47/12 dated 10.5.2012 at 23.30 hours on the basis of typed written report of Rameshwar Singh, Junior Engineer in the office of the Assistant Engineer of the Board, Patna Division-II, Patna letter no. 56 dated 10.5.2012. It is submitted that the typed written report has been antedated as no such report was made available by the informant Junior Engineer, Rameshwar Singh soon after the incident on 10.5.2012 between 10-11.30 P.M. which was procured by respondent no. 5 on 11.5.2012 but antedated F.I.R. was registered indicating 10.5.2012 at 23.30 hours as the date and time of registration, which fact is also evident from the record of Rajiv Nagar P.S. Case No. 47/12 dated 10.5.2012 available in the office of the C.J.M., Patna as First Information Report of Rajiv Nagar P.S. Case No. 47/12 dated 10.5.2012 was received by the C.J.M. on 12.5.2012 and there is interpolation beneath the signature of the informant over the written report dated 10.5.2012 which is the basis of the F.I.R. of Rajiv Nagar P.S. Case No. 47/12. It is submitted that the aforesaid ante-dating of Rajiv Nagar P.S. Case No.

47/12 dated 10.5.2012 was possible only because the station diary in Rajiv Nagar P.S. is not maintained, as is required to be maintained under Rule 116 of the Police Manual, which inter alia provides that officers deputed for any duty shall put his signature in the station diary ordering his deputation. In the instant case, respondent no. 5 Officer-in-charge Rajiv Nagar P.S. was holding the charge of diary before he proceeded for conducting raid in the house of the petitioner on 10.5.2012 at 20.30 hours handing over charge of the diary to Sub-Inspector Prabhu Das who deputed A.S.I., Birendra Upadhyay as O.D. in the third shift at 22 hours but neither S.I., Prabhu Das nor A.S.I., Birendra Upadhyay nor any other officer put their signature on the deputation ordered to them and it was the Officer-in-Charge who having come back to the P.S. at 23.30 hours lodged Rajiv Nagar P.S. Case No. 47/12 dated 10.5.2012 at 23.30 hours against the petitioner and his family members in his own handwriting. Petitioner submitted that respondent nos. 5, 6 are not only responsible for lodging false Rajiv Nagar P.S. Case No. 47/12 dated 10.5.2012 against the petitioner and his family members but they are also responsible for abusing him and his family members during the night of 10.5.2012 after they barged into his residential premises at 10 P.M. It is submitted that respondent nos. 5, 6 are also responsible for not complying the directions of the Dy. S.P. Law and Order and the City Superintendent of Police, Patna contained in supervision note and report-02 dated 24, 27.5.2011 submitted in connection with Rajiv Nagar P.S. Case No. 64/11 dated 29.4.2011 instructing the Rajiv Nagar Police as also the Investigating Officer, respondent no. 6 to arraign the house owners in whose house 13 accused persons named in column no. 7 of First Information Report were found working as mason/labourer on 29.4.2011 but in spite of such direction Rajiv Nagar police/ Investigating Officer, respondent no. 6 did not take any action against the house owners Guptaji, Jhaji, Rakesh Babu, Nityanand Singh in whose house 13 accused named in column no. 7 of F.I.R. of Rajiv Nagar P.S. Case No. 64/11 dated 29.4.2011 were found working as mason/labourer but only harassed the petitioner during the period between 29.4.2011 and 10.5.2012 the date of lodging of Rajiv Nagar P.S. Case No. 64/11 and 47/12, as petitioner did not oblige them by greasing their palm and applied for bail in Rajiv Nagar P.S. Case No. 64/11, which was granted by the learned C.J.M. under order dated 16.6.2011.

4. To confirm the aforesaid fact whether other house owners, namely, Guptaji, Jhaji, Rakesh Babu, Nityanand Singh in whose house accused persons named in column no. 7 of F.I.R. of Rajiv Nagar P.S. Case No. 64/11 dated 29.4.2011 were found working on 29.4.2011 were proceeded against by Rajiv Nagar Police/ Investigating Officer, respondent no. 6, as was directed by the Supervising Authority i.e. Dy. S.P. Law and Order and City Superintendent of Police in supervision note/report-02 dated 24, 27.5.2011 respectively and there was attempt to antedate the lodging of Rajiv Nagar P.S. Case No. 47/12, records of both the case i.e. Rajiv Nagar P.S. Case Nos. 64/11, 47/12 was called for by this Court from the Court of C.J.M., Patna under order dated 13.8.2012 and examined but from the records of Case No. 64/11, it does not appear that any step to

arraign the house owners in whose house accused named in column no. 7 of the First Information Report of Rajiv Nagar P.S. Case No. 64/11 were found working on 29.4.2011 was taken, except for Nityanand Singh and petitioner herein who were forced to apply for bail which was granted under orders dated 11.5.2011 and 16.6.2011 by the Sessions Judge and C.J.M., Patna respectively. It is thus, quite evident that Rajiv Nagar Police is taking discriminatory, selective police action against the petitioner right from the date Rajiv Nagar P.S. Case No. 64/11 was registered i.e. 29.4.2011 and thereby interfering with the petitioner's peaceful enjoyment of his residence as other house owners against whom similar action was recommended by the Dy. S.P. Law and Order and City Superintendent of Police, Patna in the supervision note, report-02 dated 24, 27.5.2011 respectively are not being proceeded against but petitioner is being harassed by giving him repeated telephonic information on 30.4.2011, 17.5.2011 that he is accused in the said case, although by that date he was neither arraigned as an accused in column no. 7 of F.I.R. nor supervision note/report-02 was issued to the Investigating Officer for compliance. Even after petitioner obtained bail in Rajiv Nagar P.S. Case No. 64/11 dated 29.4.2011 on 16.6.2011 the authorities of Rajiv Nagar P.S. continued to mount pressure and when he refused to succumb Rajiv Nagar P.S. Case No. 47/12 dated 10.5.2012 was lodged. Perusal of records of Rajiv Nagar P.S. Case No. 47/12 dated 10.5.2012 indicates that said case was registered against the petitioner and his family members for an occurrence which took place on 10.5.2012 at 21.00 hours, case, however, was registered at 23.30 hours on the basis of report dated 10.5.2012 of the Junior Engineer, Rameshwar Singh but beneath the signature of the informant there appears to be an interpolation as attempt has been made to interpolate 11 as 10 and the First Information Report of the said case was received by the C.J.M. on 12.5.2012. Having appreciated the aforesaid anomalies in the record of the aforesaid two cases this Court called upon respondent nos. 5, 6 to file further affidavit in the matter. In compliance of the order of the High Court respondent nos. 5, 6 having examined the record filed separate reply affidavit on 24.8.2012. Respondent No. 5 in the said affidavit did not dispute the assertion of the petitioner that no action was taken against the other house owners as per the directions given by the superior police officers in the supervision note and report-02 but stated in paragraph-10 of the said affidavit that Investigating Officer of the case is the sole master of the investigation, the Officer-in-charge of the P.S. does not control the investigation as he is not authorized to ask for and to see what further steps have been taken by the I.O. in compliance of the directions of the superior police officer given in the supervision note or report-02. In paragraph-11 of the said affidavit respondent no. 5 disputed any interpolation in the written re-port dated 10.5.2012 at his stage on the basis of which Rajiv Nagar P.S. Case No. 47/12 was registered. He, however, neither disputed the delay in dispatch of F.I.R. of Rajiv Nagar P.S. Case No. 47/12 dated 10.5.2012, which was received by the C.J.M., Patna on 12.5.2012 nor attempted to explain the delay. Respondent No. 6, I.O. of Rajiv Nagar P.S. Case No. 64/11 dated 29.4.2011 also did not state in his affidavit dated 24.8.2012 that he has complied with the direction of the

superior police officer given in the supervision note and report-02 dated 24, 27.5.2011 to take action against other house owners, in paragraph-11 of the said affidavit respondent no. 6 only stated that as per the direction given by the City S.P. and Dy. S.P. Patna in the supervision note/report-02 appropriate action against all accused persons is being taken without indicating the action taken against any of them. He, however, stated in paragraphs-3, 4, 6 and 7 of the said affidavit that petitioner never produced the sale deed of the land over which he has raised his house, which was vacant when petitioner captured the same. The constructions are recent which can be ascertained by seeking opinion from the experts of Building Construction Department. The age of bricks and mortar used in the construction of the house by the petitioner as also the electric connection will prove that his house is just few months old structure. In paragraph 8 of the affidavit respondent no. 6 stated that petitioner is a man of turbulent nature which is proved from the facts that on 30.11.2011 petitioner in presence of the Chairman, Municipal Building Tribunal, Patna abused an old lawyer in filthy language and also threatened to kill him. Reference in this connection, was made to letter no. 63/NUT dated 7.12.2011, Annexure-R/6. In paragraph-10 of the said affidavit respondent no. 6 stated that Rajiv Nagar P.S. Case No. 47/12 was registered on 10.5.2012 at 11.30 P.M., as such, there is no delay in the transmission of the same to the Court of C.J.M., Patna. In the same paragraph respondent no. 6 further stated that from perusal of F.I.R. of Rajiv Nagar P.S. Case No. 47/12 it will appear that the same has been sent to the police station by informant under letter no. 56 dated 10.5.2012, as such, there is no interpolation in the same, at least at the level of the police station.

5. It is submitted by the petitioner that entire police action of lodging the Rajiv Nagar P.S. Case No. 64/11 dated 29.4.2011, Rajiv Nagar P.S. Case No. 47/12 dated 10.5.2012, joint order bearing Memo No. 2728 dated 7.4.2010, Annexure-R/A the performa notice, Annexure-6 issued on the basis of the joint order as also the subsequent instruction of the Senior Superintendent of Police contained in letter no. 52 dated 5.1.2012 and 791 dated 13.2.2012, Annexures-R/E2 and R/E1 are non est in view of the provisions of Digha Acquired Land Settlement Act, 2010 published in the Bihar Gazette dated 26.4.2010, taking note whereof Division Bench of this Court under orders dated 12.7.2011 disposed of C.W.J.C. No. 3991 in 1987 in which earlier restraint order was passed from raising construction over 1024.52 acres of land acquired for the Board observing that efficacy of the said writ petition has been lost after enactment of the Digha Acquired Land Settlement Act, 2010 providing for regularization of house and structure raised over the acquired land of the Board.

6. Petitioner with reference to the judgment of the Hon''ble Supreme Court in the case of D.K. Basu Vs. State of West Bengal, , Joginder Kumar Vs. State of U.P. and others, , Arvinder Singh Bagga Vs. State of U.P. and Others, , Vishwanath Agrawal Vs. Sau. Sarla Vishwanath Agrawal, and order dated 3.8.2012 passed in the case of Dr. Mehmood Nayyar Azam vs. State of Chattisgarh and Ors. (Civil Appeal No. 5703/2012) submitted that the entire police action commencing from

lodging of Rajiv Nagar P.S. Case No. 64/11 dated 29.4.2011, telephonic message given to the petitioner by suspended Officer-in-charge Sri R.N.P. Singh from the official mobile of Rajiv Nagar P.S. on 30.4.2011 at 6.16 A.M., further telephonic information given to the petitioner over his mobile phone by respondent no. 6 on 17.5.2011 at 8.18 P.M. asking the petitioner to obtain bail in Rajiv Nagar P.S. Case No. 64/11 dated 29.4.2011 which petitioner obtained on 16.6.2011, even thereafter respondent nos. 5, 6 continued to mount pressure on the petitioner to succumb to their illegal demand but on refusal of the petitioner to concede the illegal demand the residence of the petitioner was raided on 10.5.2012 at 10 P.M. by forcibly entering into the residential premises of the petitioner when he alongwith family members including ladies were abused. Such police action emanating from lodging of Rajiv Nagar P.S. Case No. 64/11 on 29.4.2011 with constant threat of arrest which finally reached its zenith during the raid in the night of 10.5.2012 about 10 P.M. is nothing but constant torture, harassment and loss of reputation suffered by the petitioner which he earned after sincerely practicing in the High Court as an Advocate for over 28 years and for such assault on his right to life enshrined under Article 21 of the Constitution petitioner is entitled to compensation under public law in view of the law laid down by the Hon"ble Supreme Court in the case of Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, as by the aforesaid arbitrary police action fundamental right to life of the petitioner to lead his life and enjoy the property with dignity has been compromised by the action of respondent nos. 5, 6 who knowingly violated the instruction of their superior contained in memo no. 2465 dated 23.4.2010, Annexure-R/E3 to take police action for containing unauthorized construction over the acquired lands of the Board with information to two senior officers (Magistrates) on their mobile but without such information and disobeying instruction given by the superior police officer in the supervision note and report-02 dated 24, 27.5.2011 to take action against other house owners in whose house accused named in column no. 7 of the F.I.R. of Rajiv Nagar P.S. Case No. 64/11 dated 29.4.2011 were found working on 29.4.2011 the officers of Rajiv Nagar P.S. including respondent nos. 5, 6 took action against the petitioner for reasons best known to them, perhaps the other house owners had greased their palm. Petitioner, having not obliged respondent nos. 5 and 6, has been singled out for unwarranted, arbitrary police action causing torture, harassment and loss of reputation violating his right under Articles 14, 21 of the Constitution available to an individual even during investigation, interrogation or otherwise. It is further submitted that after the incident dated 10.5.2012 in which petitioner and his family members suffered abuse, torture, harassment and loss of reputation, respondent no. 5 was conscious that petitioner is going to agitate the matter in the High Court, as such, even without forwarding the First Information Report of Rajiv Nagar P.S. Case No. 47/12 dated 10.5.2012 said to have been lodged at 23.30 hours on 10.5.2012 to the C.J.M., Patna on 11.5.2012 respondent no. 5 came to the office of the Advocate General on 11.5.2012 on his own to receive copy of the writ petition but did not forward the First Information Report to the C.J.M. on that date as the same was received by the C.J.M. on

12.5.2012. This delay of one day coupled with interpolation beneath the signature of the Junior Engineer, Sri Rameshwar Singh who submitted written report bearing letter no. 56 dated 10.5.2012 on the basis of which Rajiv Nagar P.S. Case No. 47/12 was lodged confirms the assertion of the petitioner that written report being letter no. 56 dated 10.5.2012 was not received on 10.5.2012 till 23.30 hours, the date and time of registration of Rajiv Nagar P.S. Case No. 47/12.

7. Counsel for private respondent nos. 5, 6 has, however, supported the police action in view of the joint order dated 7.4.2010, Annexure-R/A and submitted that the two cases were lodged against the petitioner as he was raising construction over 8-10 kathas of land which is part of 1024.52 acres of land acquired for the Board and this Court should not interfere in the matter as petitioner has raised his house over the lands of Board. Learned counsel, however, did not dispute the contents of supervision note and report-02 dated 24, 27.5.2011 whereunder instructions were given to take action even against the other house owners. Learned counsel also could not dispute that First Information Report of Rajiv Nagar P.S. Case No. 47/12 dated 10.5.2012 was received in the office of the C.J.M., Patna on 12.5.2012. He only disputed the version of the petitioner that no construction activity was going on in the house of the petitioner on 10.5.2012 as also the fact that petitioner and his family members were abused by respondent nos. 5, 6 during the police action on 10.5.2012. Petitioner having been singled out for police action for raising the house in Nepali Nagar in spite of clear direction of the superior police officer in the supervision note, report-02 dated 24, 27.5.2011 to take action against other house owners in whose house the accused named in column no. 7 of F.I.R. of Rajiv Nagar P.S. Case No. 64/11 dated 29.4.2011 were found working on 29.4.2011 is a clear pointer to the fact that petitioner having resisted the illegal demand of Rajiv Nagar police to make payment of premium amount for raising the house has been subjected to police action not once but twice. In column no. 7 of F.I.R. dated 29.4.2011 name of the petitioner has been entered only with a view to identify accused no. 13 Md. Rajauddin but even then on 30.4.2011 at 6.16 A.M. the suspended Officer-in-Charge of Rajiv Nagar P.S. informed him that he has been made accused in the said case, although he was not accused in the case till that date. On 17.5.2011 respondent no. 6 through official mobile of Rajiv Nagar P.S. also informed the petitioner on his mobile that he has been made accused in Rajiv Nagar P.S. Case No. 64/11 during supervision of the occurrence, which is admitted by respondent no. 6 in his report dated 25.9.2011, Annexure-5 submitted to C.J.M., Patna, although by 17.5.2011 supervision note was not issued as the same was issued on 24.5.2011. Even after petitioner obtained bail in Rajiv Nagar P.S. Case No. 64/11 dated 29.4.2011 on 16.6.2011 petitioner was continuously vexed by the authorities of Rajiv Nagar P.S. including respondent nos. 5, 6 that he should comply their demand to pay the premium amount for raising the house over 8-10 kathas of land in Nepali Nagar but petitioner continued to resist, result being that his house was raided by respondent nos. 5,

6 alongwith armed police force and the Executive Engineer of the Board, respondent no. 7 and Junior Engineer on 10.5.2012 at 10 P.M. on the pretext that shuttering for casting of roof was almost complete and building materials were stacked at the site for proceeding ahead with the roof casting but during the raid neither any labourer nor mason nor anyone connected with the construction was either apprehended at the site or made accused alongwith the petitioner and his family member, petitioner, however, contacted Senior Superintendent of Police on his mobile phone no. 9431822967, whereafter respondent nos. 5, 6 alongwith police party retreated relieving the petitioner and his family members of the predicament of eminent arrest. The entire police action commencing from lodging of Rajiv Nagar P.S. Case No. 64/11 dated 29.4.2011, telephonic information given to the petitioner by suspended Officer-in-Charge of Rajiv Nagar P.S. on 30.4.2011 at 6.16 A.M., telephonic information given by respondent no. 6 from the official mobile of Rajiv Nagar P.S. to the petitioner on 17.5.2011 at 8.18 P.M. as admitted by him in his report dated 25.9.2011, Annexure-5 submitted to the C.J.M., Patna together with the fact that no action has been taken against other house owners of Rajiv, Nepali Nagar including those named in body of F.I.R. of Rajiv Nagar (sic--P.S.?) violating the direction of the superior police officer contained in memo no. 2465 dated 23.4.2010, Annexure-R/E3 to take action after giving information to the named Magistrates in the order on their mobile number also indicated in the order, supervision note, report-02 dated 24, 27.5.2012 as also the circumstance that respondent nos. 5, 6 entered the residential premises of the petitioner during night of 10.5.2012 without taking any precaution, which is required to be taken by them under law as also the delayed dispatch/receipt of First Information Report of Rajiv Nagar P.S. Case No. 47/12 dated 10.5.2012 by the C.J.M. on 12.5.2012 makes it abundantly clear that Rajiv Nagar Police earlier under the charge of the then Officer-in-Charge Sri R.N.P. Singh and after his suspension through respondent nos. 5, 6 were bent upon to extract illegal premium from the petitioner for having raised the construction in question. Petitioner having not obliged Sri R.N.P. Singh, respondent nos. 5, 6 has been subjected to constant threat and harassment, which is not only torture but also tantamounts to loss of reputation as raid organized in the house of any individual during the night is bound to cause loss of reputation to an individual of ordinary means. In such circumstances, I am persuaded to allow the writ petition in discharge of my public law jurisdiction with direction to the State of Bihar and its Home Commissioner to pay compensation of Rs. 1 lac to the petitioner, which amount should be recovered from respondent Nos. 5, 6 and other officers of Rajiv Nagar P.S. after subjecting them to a departmental proceeding. Respondent nos. 5, 6 have violated the orders of their superior to take action against the other house owners including the mandate of Legislature that is the provisions of the Digha Acquired Land Settlement Act, 2010 and the orders of the Division Bench dated 12.7.2011 passed in C.W.J.C. No. 3991 of 1987, as such, during the proceeding they should be either placed under suspension or reverted to police fine. Necessary compliance of this order be made within reasonable time not

exceeding two months from the date of receipt/production of copy of this order before the Home Commissioner, Director General-cum-Inspector General of Police, Bihar, Patna.