

(2012) 01 JH CK 0061
In the Jharkhand High Court
Case No : M.J.C. No. 429 of 1998 R

Shila Singh

APPELLANT

Vs

The State of Bihar now Jharkhand and Others

RESPONDENT

Date of Decision : 19-01-2012

Acts Referred:

Bihar State Housing Board Act, 1982 — Section 59

Citation : (2012) 4 JCR 279 : (2012) 3 JLJR 139

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : A.K. Das, for the Appellant; B.N. Tiwary, J.C. to G.P.II, for the Respondent

Judgement

Narendra Nath Tiwari

1. It has been alleged that the said opposite party demolished the petitioner's structure without following the procedure laid down u/s 59 of the Bihar State Housing Board Act. It is submitted that the said order was passed on 14.8.1997 and the said opposite parties had full-knowledge of the order which was handed-over to Respondent No. 2 on 5.7.1998. This order was duly acknowledged by the office, but in spite of receipt of the order, the opposite party Nos.2 and 3 got the petitioner's structure demolished in a gross violation of the order of this Court and they are liable to be punished for committing Contempt of this Court.

The opposite parties have denied the allegation and stated, inter alia, that they are law abiding persons and they have not disobeyed and violated the order of this Court. They have acted in accordance with the order passed in CWJC No. 2290 of 1990 [R]. The said order was passed in the P.I.L. and direction was issued to remove the encroachment from the land belonging to P.W.D. Road which was acquired for the purpose of widening of the Kandra-Adityapur Road. In compliance of the said order passed in CWJC No. 2290 of 1990[R], the administration through out the State removed the encroachment from the public land. The petitioner was also found occupying some portion of public land.

Encroached area was measured and marked in presence of the petitioner. Notice was also issued vide Letter No. 420 dated 25.6.1998 and sufficient opportunity was given to the petitioner and other persons to remove their encroachment from the public land. When the encroachment was not removed, it was got removed by the P.W.D. Authorities. The opposite parties were deputed to assist the authorities of the P.W.D. in removing the encroachments..

2. It has been submitted that the opposite parties have not acted in violation of the order passed by this Court and has not committed Contempt of Court.

3. Mr. A.K. Das, learned counsel appearing on behalf of the petitioner submitted that the statement made in the show cause reply is factually false and baseless. The opposite parties were in full-knowledge about the order of this Court, whereby the said authorities of the Housing Board were restrained from demolishing the structure without following the procedure, provided u/s 59 of the Act, but the opposite party in defiance of the said order deliberately and knowingly got the structure removed by usual force. In view of the said admitted position the said opposite parties have rendered themselves liable for suitable punishment for committing Contempt of this Court.

4. Heard learned counsel for the parties and considered the facts and materials on record, I also perused the show cause reply of the opposite parties. It has been stated by the petitioner that an order was passed in the P.I.L.-CWJC No. 2290 of 1990[R] to remove the encroachment from the public road belonging to the P.W.D. In obedience of the said order, measurement was taken and area of encroachment was marked. Persons were identified and notice was published giving the names of the persons including the petitioner. The said notice was challenged in the CWJC No. 2644 of 1996(R). The said writ petition was heard by this Court and finally disposed of, directing the authorities concerned including the Housing Board not to demolish the structure in question without following the procedure laid down u/s 59 of the Act.

5. The opposite parties, on the other hand, have stated that an order was passed in aforesaid PIL, directing to remove the encroachment from the P.W.D. Road and the Public Land. In obedience of the order, measurement was taken in presence of the interested persons and it was found that P.W.D. Road, Public Lands were encroached by several persons including the petitioner. The encroached area was marked and notice was published in the names of those persons including the petitioner. The opposite parties were then deputed to assist the PWD in remeasuring the encroachments. They were not directly involved and they had no role in declaring the encroached area. They have never disobeyed the order passed by this Court or that passed in CWJC No. 2644 of 1996(R).

6. Having considered the above, I find that admittedly there was an order of Division Bench of this Court for removing encroachment from P.W.D. Road /public land, passed in CWJC (PIL) No. 2290 of 1990(R). The explanation of the opposite parties that they acted in compliance of the said order, is not without any basis.

It appears that the opposite party did not cautiously examined the order dated 14.08.1997. It cannot be said that the subsequent order was not within their knowledge. At the same time their plea of confusion in presence of two orders, who were not the legal experts, cannot be discarded.

7. There is thus, no clearcut/sufficient material on record to conclude that the opposite parties deliberately and wilfully and with full-knowledge of the effect, disobeyed the order of this Court.

8. It is well-established that provision of law prescribing penalty be strictly construed. For awarding punishment to a person, there must be weighty and cogent material on record to come to a definite findings and holding the person guilty, in this case, I find no sufficient material to hold the opposite parties guilty of committing Contempt of this Court rendering them liable for punishment.

9. This case is pending since 1996 for more than 13 years and the opposite parties have already suffered mental agony of pendency of this case for a long time. In that view also the proceeding is fit to be dropped.

10. In the result the contempt proceeding against the opposite parties is dropped. The contempt petition is accordingly disposed of.