

**(2004) 07 PAT CK 0078**  
**In the Patna High Court**  
**Case No : C.W.J.C. No. 11741 of 2003**

Shiw Kumar Jiloka

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

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**Date of Decision :** 16-07-2004

**Acts Referred:**

**Citation :** (2004) 07 PAT CK 0078

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## Judgement

1. This is one of the few recorded cases where the development, authority of the District (in the present case Bhagalpur) has frankly admitted that the set backs have been violated. Paragraph 8 of the affidavit filed on 17.11.2003 admits it.

2. Violation of a set back is an illegality which is incurable. It cannot be compounded. This is the law. The Supreme Court has settled this.

3. This Court of late has often noticed it and has to repeat the concern of the Hon"ble Prime Minister in his speech to the nation on 24th June 2004. An extract from it is reproduced:

A striking feature of development in our country has been the rapid increase in urbanization. There are now more than 30 cities with a population of more than one million. The rapid and unplanned growth of these cities has contributed to increased urban pollution, crime and absence of the required infrastructure like access to drinking water, sanitation, roads, footpaths for pedestrians and public spaces, parks and greenery is making life in urban India living hell for many. Most of the responsibility for this rests with States and Municipal Governments. It will be our effort to give special attention to policies that can encourage urban development and urban renewal. We will actively seek public-private partnership in building urban infrastructure in a planned manner.

4. This Court is of the opinion that now the time has come that in the face of proven illegalities which affect environment and ecology, illegal constructions destroy the habitat against the norms of the Constitution of India, which calls for (a) spatial planning, (b) integrated development and (c) infrastructure which

conforms with environmental conservation. The last three are Constitutional obligations. Any authority, any State, any Municipal Government which violates this is clearly violating the Constitution. The message of the Constitution is clear that offending structures which violate conforming uses have to be demolished and wiped out. There is no other alternative. The law does not permit impounding.

5. The time has come that such matters of habitat and urban planning be placed before a Division Bench lest the Constitution itself being disrespected.

6. Even the Supreme Court has held in *re Vellore Citizens Welfare Forum Vs. Union of India* and others, that there must be a Special Bench to give attention to the balance of ecology and environment matters. Urban degradation is the result of disrespect to environment and ecology.

7. Let there be a such Bench, to be nominated by the Chief Justice.

8. This case be put immediately after three weeks for a report of the Bhagalpur Regional Development Authority and the District Magistrate, Bhagalpur.