
(2013) 06 PAT CK 0019
In the Patna High Court
Case No : CWJC No. 10632 of 2013

Syed Ashraf Imam

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-06-2013

Acts Referred:

Citation : (2013) 3 PLJR 657

Hon'ble Judges : Vikash Jain, J;Navin Sinha, J

Bench : Division Bench

Judgement

Navin Sinha, J.—In this Public Interest Litigation the allegation is with regard to encroachment on the road encircling the Vinodanand Jha Park situated in Mohalla-Bhanwar Pokhar under Pirbahore Police Station. It is also alleged that illegal shops/liquor shops have come up causing great hardships to the residents, especially the women in the locality. Learned counsel for the petitioner submits that the Station House Officer in his report to the Superintendent of Police dated 7.3.2010 has acknowledged the encroachment requesting for allotment of force. The Senior Superintendent of Police has written to the District Magistrate, Patna on 13.3.2010 in that context requesting for deputation of Magistrate for the purpose. CWJC No. 15545 of 2011 was filed for removal of these encroachments which was disposed of with directions to the District Magistrate to consider the grievance. On 13.12.2011 the District Magistrate has written to the Sub-Divisional Officer and the In-charge Magistrate, District Control Room calling for a report. The Sub-Divisional Officer on 16.12.2011 wrote a letter to the District Magistrate that the encroachment had earlier been removed but have resurfaced. Counsel for the State submits that if encroachments had been removed and have resurfaced she may be given time to seek instructions.

2. What was observed and stated by the Court as far back as 30.9.1994 instead of being complied with by the respondents has come back to this Court. In CWJC No. 2290 of 1990 on 30.9.1994 a Division Bench of this Court has observed as follows:--

We have also noticed that in many cases attempts are being made by the encroachers to reoccupy the space from where they have been removed. Such attempts are being made all over the city and it is, therefore necessary that an effort is made to prevent them from undoing the good work done by the Superintendent of Police (Traffic) and his team, We, therefore, direct the Senior Superintendent of Police to issue instructions to all Station House Officers within his jurisdiction directing them to see to it that after removal of encroachment the encroachers do not reoccupy the lands and new encroachments do not come up. If it is found that new encroachments have been permitted within the jurisdiction of a particular S.H.O. or the old encroachers have come up and again occupied the said land, it will be the responsibility of that S.H.O. and he shall be answerable to this Court and also the State Administration. In a particular case if the S.H.O. finds difficulty in dealing with the situation on account of force or threat held out by encroachers, he should immediately report the matter to the Senior Superintendent of Police, who shall give him all necessary help so that the order of this Court is implemented. The Monitoring Committee appointed by this Court should also review the situation and in case it is found that any S.H.O. has permitted such encroachments to come up within his jurisdiction, appropriate action should be taken against the officer concerned.

3. The monitoring committee constituted by the Court comprises (i) The District Magistrate, (ii) The Senior Superintendent of Police, (iii) The Superintendent of Police (Traffic), Patna, and (iv) The Administrator Patna Municipal Corporation. The committee was mandated by the Court to meet once in a fortnight to review the situation and take appropriate steps.

4. The order dated 17.9.1996 notices as follows:--

The learned A.A.G.-II informs us that our order fixing the responsibilities on officers-in-charge to see to it that re-encroachments do not appear has been communicated to all the officers-in-charge of the police stations with an instruction to keep that order at a conspicuous place in the police station.

5. The order dated 19.5.1998 notices that on 12.7.1996 the entire order sheet of the case up to that date was directed to be photocopied and communicated to all the District Magistrates, who in turn were directed to communicate it to all the concerned authorities. The responsibilities of the S.H.Os. in the matter was reiterated.

6. On 16.10.1998 Reported in Arun Kumar Mukherjee and Others Vs. The State of Bihar and Others, it was observed as follows:--

We are sorry to notice that the orders of this court which are meant to be obeyed by the authorities that be, are observed only in their breach. We are constrained to say so because it is not any individual authority who is guilty of not obeying the orders of this Court. We say so because the entire governmental machinery has defied the orders of this Court and failed to implement the orders. We feel that a stage has been reached when we must sound a note of caution and

remind the authorities that be, that the State machinery has to function in accordance with the provisions of the Constitution and under the Constitution, orders passed by this court are to be obeyed by the authorities and where they affect private citizens, the authorities are expected to act in aid of the orders of this Court. If the authorities of the State of Bihar ignore the orders of this Court, or defy the same, it would be difficult to contend that the administration is being run in accordance with the provisions of the Constitution because there is a designed effort on the part of the State authorities to defy the orders of this Court. After a matter is decided by this court, this court is not expected to monitor the execution of the order day-to-day because the authorities are expected to act in accordance with the same without any interference by a court of law. Administration has to be run in accordance with the provisions of the Constitution by the Government of the State, and it is too much to expect this court to run the administration of the State, because this court is neither expected, nor equipped with the machinery, to enforce each and every order of this Court. If the authorities who are required to implement the orders of this court refuse or fail to implement the same, it would certainly amount to failure of the constitutional scheme and a break down of the administration.

7. On 12.2.1999 it was observed as follows:--

The officers-in-charge of the concerned police stations were made responsible to see to it that encroachments do not reappear. But despite this order these shops have appeared.

Rule of contempt is issued against the aforesaid officers-in-charge of the three police stations who are directed to be personally present in court on 19.2.99 to show cause why they should not be punished for contempt of court for breach of the order of this court inasmuch as they have not prevented the reappearance of encroachments from the roads and the flanks of the roads, particularly inasmuch as they relate to liquor shops.

It also appears to us that lot of other encroachments have reappeared at places from where they were removed. To begin with they are in the nature of very temporary structures but gradually the structures are converted into a temporary and thereafter a permanent structure. If the first encroacher is prevented from reappearing on the roads or the flanks of the roads, further encroachments may not take place, but it seems that the officers-in-charge of the police stations are not taking serious note of our orders.

If we find no improvement in the situation, we will call for complaints from the members of the public and every officers-in-charge of the police stations who are found guilty of dereliction of duty for non-compliance of the orders of this Court will be punished in accordance with law.

Let a copy of this order be communicated to the Sr. Superintendent of Police as well.

Summons to the officers-in-charge in the contempt proceedings shall be sent through special messenger at State expenses.

8. Compliance was then reported by the concerned S.H.O. on 2.4.1999.

9. We direct the District Magistrate, Patna, Senior Superintendent of Police, Patna, Superintendent of Police (Traffic), Patna, and the SHO of Pirbahore Police Station to answer why despite the earlier orders of the Court noticed hereinbefore we are still required to pass repeated orders on the same issue. We also require them to show cause why we should not invoke the contempt jurisdiction against them for willful neglect and disinclination for enforcing the orders of this Court, a constitutional obligation for them.

10. In Arun Mukherjee (supra) on 12.7.1996 Reported in Arun Kumar Mukherjee and Others Vs. State of Bihar and Others, it was ordered that the directions shall be implemented all over the State and not only in the town of Patna. Let a copy of this order be also sent by the Court through e-mail to all the District Magistrates for necessary action in collaboration with the Superintendents of Police. At the request of the State Counsel, list after four weeks.