

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12108 of 2000

Prem Prakash Pandey son of Late Ram Naresh Pandey resident of village Mahadeva, P.O. Siwan, P.S. Siwan in the district of Siwan.

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Aditya Sharan &
Mr. Prabhat Kumar Sharan, Adv.
For the Respondent/s : Mr. Dhananjay Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY
ORAL JUDGMENT
Date: 19-03-2015

Heard counsel for the petitioner and the respondents.

In this case, petitioner is seeking relief for issuance of writ in the nature of mandamus directing the respondents to pay the compensation amount proportionate to the damage e caused to the building of the petitioner as assessed by the District Engineer for Rs.50,000/-.

As per the claim of the petitioner, father of the petitioner had constructed the house in Mohalla Mahadeva, as detailed in Para-5 of the writ petition.

It appears from the record t hat an Imli tree was standing on the Government land in front of his house which was under the control of Zila Parishad and the same was likely to fall. As per claim of the petitioner, on 5th June 1996 petitioner wrote a letter to the District Magistrate, Siwan about the condition of the old tree with a request to remove the same as it was likely to fall and cause damage to the life and property of the petitioner but no action was taken. on 25th May 1998 the tree had fallen down over the house of the petitioner causing

extensive damage but by good luck all the inmates escaped the injury.

On 26th November 1998 petitioner wrote letter to the District Magistrate about the incident and damage caused to his house making demand of money for the purpose of repair of the house. The District Magistrate vide letter no. 4194 dated 27th November 1998 directed the District Engineer to enquire into the matter who in turn, submitted the report on getting it examined by the Junior Engineer, Gandak Pariyojana who inspected the spot and assessed the damage to the building and submitted report on 25th August 1998 showing damage to the tune of Rs.2,01,000/-.

On 24th June 1999 the District Engineer, Siwan wrote a letter to the District Magistrate, Siwan making a rough estimate of damage between 47,000/- and Rs.50,000/-. As has been stated that the petitioner was hopeful that he would get compensation amount for the purpose of repair of his house but to his utter dismay he was not paid even a penny. He moved from an office to another but without any fruitful result which compelled the petitioner to approach this Court.

Counsel for the Zila Parishad has refuted the submission of the petitioner and stated that the tree as well as the land was under the control of Municipal Corporation and the Zila Parishad was/is not liable to pay any compensation for the damage caused on account of falling of big tree. He has further submitted that it is wrong to say that the petitioner had earlier informed any authority about the bad condition of Imli tree rather for the first time he has made this statement so much so that the Imli tree had fallen down on account of strong wind on the previous night.

A citizen must be compensated on account of action or inaction on the part of the State or its instrumentality.

It is not in dispute that the Imli tree was standing on the public land,

may be under the control of Zila Parishad, the State Government or the Municipal Corporation.

It is also not in dispute that there was a fall of Imli tree over the house of petitioner which caused damage to the building but the estimate varies from one Engineer to another Engineer. That dispute cannot be resolved in the present proceeding.

In such view of the matter, this Court directs the petitioner to file a detailed representation before the District Magistrate annexing the report containing estimated cost of repair of the house and he will make enquiry into the matter about the ownership and control of the land over which Imli tree was standing and will pass suitable order in accordance with law so that the petitioner may get proper compensation in accordance with law.

With the above observation/direction, this petition is disposed of.

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(Shivaji Pandey, J)