

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Review No.325 of 2014**

**IN**

**LPA 142 of 2014**

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Awdhesh Singh, son of late Mathura Singh, resident of Village-Basher, Police Station-Atri, Post Office-Atri, District-Gaya.

.... .... **Writ Petitioner-Respondent No.1-Petitioner**  
**Versus**

1. Md. Nayyer Iqbal, son of Late M.A.Wadood, Resident of Mohalla-Khanquah, Police Station-Laheri, Post Office-Biharsharif, District-Nalanda at present as Sadar Sub Divisional Officer-cum-Magistrate, Barh, District-Patna.

.... .... **Respondent No.2-Appellant -**  
**Respondent 1<sup>st</sup> Set-Opposite Party.**

2. The State of Bihar  
3. The Sub Divisional Officer, Neemchak Bathani, District-Gaya.  
4. The Anchal Adhikari, Anchal Atri, District-Gaya.

.... .... **Respondent-Respondents-**  
**Respondent 2<sup>nd</sup> Set-Opposite Party**

5. Umesh Singh, son of Murari Singh, resident of Village-Basar, Police Station-Atri, Post Office-Atri, District-Gaya.

.... .... **Intervenor Respondent-Respondent**  
**Respondent 3<sup>rd</sup> Set-Opposite Party**

6. Bankey Singh, son of late Mathura Singh, resident of Village-Basher, Police Station-Atri, Post Office-Atri, District-Gaya.

.... .... **Petitioner No.2-Respondent**  
**Respondent 4<sup>th</sup> Set-Opposite Party**

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**Appearance :**

For the Petitioner : Mr. Vijay Kumar Bhagat, Advocate  
For the Respondent No.1 : Mr. S. D. Sanjay, Senior Advocate  
Mr. Alok Kumar Agrawal, Advocate  
For the Respondent Nos.2 to 4: Mr. Patanjali Rishi, A.C. to AAG-10

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**CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI**

**AND**

**HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH**

CAV JUDGMENT

**(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)**

**Date: 18-03-2015**

With the help of this review petition, the  
petitioner of CWJC No. 2965 of 2009, which arose out of an

application having been made under Article 226 of the Constitution of India, has sought for review of the order, dated 03.09.2014, passed in L.P.A. No. 142 of 2014.

**2.** By the order, dated 03.09.2014, aforementioned, the appeal has been allowed by setting aside the order, dated 09.10.2013, passed in CWJC No. 2965 of 2009, whereby a learned single Judge of this Court had directed the Principal Secretary, Department of General Administration, Government of Bihar, to initiate a departmental proceeding against the appellant, Md. Nayyer Iqbal, for major punishment. The learned single Judge, while making the aforesaid direction, had observed that the appellant (respondent No.2 in the writ petition), knowingly and intentionally, violated the interim order, dated 04.08.2009, whereby the authorities were restrained from taking any coercive measures for demolition of the writ petitioner's building. By the order, dated 09.10.2013, aforementioned, the learned single Judge had also directed that the departmental proceeding must be initiated within a period of one month from the date of receipt of a copy of the order and that the proceeding, so initiated, shall be concluded within six months from the date of framing of charge. The learned single Judge had further directed that in case a suit was filed by the writ petitioners and if they succeeded in

obtaining a decree in the suit to the effect that they had right, title and possession over the portion of the building constructed over Plot No. 3065, which was demolished, then, the writ petitioner would be entitled to claim compensation from the appellant herein and others equally responsible.

**3.** The facts, giving rise to CWJC No. 2965 of 2009, have been described in the order, dated 03.09.2014, in the following words:

**"2.** *The case has a chequered history. On an application filed by one Bindeshwar Singh, an Encroachment Case was initiated, in the year 1996, alleging that the one of the writ petitioners, namely, Awadhesh Singh (i.e., respondent No. 2 herein), who was owner of Plot No. 3065, situated in village Basher, taking advantage of his position, encroached upon the land covered by plot No. 3066, which was a public road. The Anchal Amin, in his report, dated 03.10.1996, stated that the writ petitioner, namely, Awadhesh Singh, had encroached upon 'Aam Rasta' (i.e., public road). The writ petitioner, namely, Awadhesh Singh, expressed his grievances in an application addressed to the Collector, Gaya, which was rejected on 29.11.1999. The revision, bearing Revision Case No. 2 of 2000, preferred before the Divisional Commissioner, also met the same fate on 13.07.2000. The writ petitioners, then, moved this Court, in C.W.J.C. No.6837 of 2000, which was dismissed for want of prosecution*

*vide order, dated 08.08.2003. Thereafter, a restoration application bearing M.J.C. No.1698 of 2003 was also dismissed on 13.10.2003.*

**3.** *It appears that the matter was not further pursued by the local administration. However, the villagers, again, raked up the matter, which led to registration of Misc. Case No.2 of 2007-08, in the Office of the Circle Officer, Atri, Gaya, wherein a notice was issued to the petitioner no.1, namely, Awadhesh Singh. Again, a notice, dated 17.03.2008, was sent to the writ petitioners directing them to remove the encroachment. However, on failure of the writ petitioners to remove the encroachment, the Circle Officer, vide letter, dated 20.02.2009, wrote to the Sub- Divisional Officer to depute a Magistrate for the purpose of removing the encroachment. The Sub-Divisional Officer, Neemchak Bathani, vide his letter, dated 21.02.2009, granted permission for removal of encroachment with a copy to all officials; yet, for some reason or the other, the removal of encroachment from public road, bearing Plot No.3066, could not be carried out. Being aggrieved, the writ petitioners moved this Court in C.W.J.C. No.2965 of 2009 against order, dated 21.02.2009. The interim order of status quo was passed, on 05.03.2009, by a learned single Judge of this Court. On 04.12.2010, a portion of the building of writ petitioners was demolished in presence of the Anchal Amin and the appellant herein.*

**4.** *The case of the appellant herein is that*



*the order, dated 05.03.2009, of this Court, granting status quo with respect to the plots, was never communicated to his office nor did the writ petitioners ever produce a copy of the order before the appellant herein. On the other hand, a Public Interest Litigation was filed by one Bindeshwar Singh giving rise to C.W.J.C. No.16414 of 2010 alleging therein that the Sub-Divisional Officer, Neemchak Bathani, had failed to perform his duty by not removing the encroachment from public road. In the writ petition, so filed, namely, CWJC No. 16414 of 2010, notice was issued to the appellant herein, vide order, dated 29.09.2010, which was made returnable on 08.12.2010. A communiqué was also received from the office of the Additional Advocate General for necessary instructions. It is the case of the appellant herein that being unaware of the order, dated 05.03.2009, passed in C.W.J.C. No. 2965 of 2009, a portion of the building of the writ petitioners was demolished in their presence and in presence of Circle Officer and others.*

**5.** *However, the case of the writ petitioners-private respondents herein is that they had not made any encroachment upon plot No. 3066, which is a public road, and the construction, raised by the writ petitioners, was on plot No. 3065. The writ petitioners, thus, submit that the appellant, in utter disregard of the interim order of this Court, had demolished a portion of the building standing over plot No.3065."*



**4.** While this Court allowed the appeal and set aside the direction given by the learned single Judge, on 09.10.2013, in CWJC No. 2965 of 2009, to initiate a departmental proceeding against Md. Nayyer Iqbal (i.e., appellant in L.P.A. No. 142 of 2014), who is opposite party in the present review petition, the reasons were recorded in the appellate order, dated 03.09.2014. The relevant observations made, and directions given, in this regard, at paragraph Nos. 6, 7 and 8, are produced hereinbelow:

**"6.** *We have heard learned counsel for the parties and perused the materials on record. The writ petitioners have not brought any material on record to establish that the interim order passed by this Court was ever received in the office of the appellant herein or that the same was ever brought to the knowledge of the appellant herein. There is no averment, on their behalf, that they ever brought such an order to the notice of the appellant herein. The District Magistrate, in her affidavit, stated that no communication, with regard to any order granting status quo, in the matter, was ever received in her office.*

**7.** *Situated thus, it is not reasonably possible for us to hold that the appellant herein, willfully and knowingly, violated the interim order, granting status quo, passed by the Court on 05.03.2009. Consequently, the follow up order of the learned single Judge directing initiation of a departmental proceeding against*

*the appellant herein is not sustainable in the face of the facts of the case and is, therefore, hereby set aside. However, if the writ petitioners establish that the portion of the said building demolished was constructed on plot No. 3065, it would be remain open to them to claim damages from the appellant herein, if, otherwise, permissible in law.*

**8.** *With the aforesaid liberty to the writ petitioners-private respondents herein, this appeal is allowed."*

**5.** While seeking the review, although it has been submitted, in the review petition, that the order, dated 03.09.2014, aforementioned needs review even on the question as to whether the interim order, dated 05.03.2009, was knowingly and willfully violated by the appellant-Opposite Party or not, we must place on record that in his usual fairness, Mr. Vijay Kumar Bhagat, learned Counsel, appearing on behalf of the review petitioner, has submitted that the review petitioner's grievance would be met if this Court gives the liberty to the writ petitioners to institute a civil suit for damages and if the suit is instituted, the same be disposed of within the specified period of one year from the date of institution of the suit. When, statutorily, there is no mandatory period fixed for disposal of a suit, it would not be proper, on the part of this Court, to lay down a fix period for disposal of any suit. In a given case, however, the High Court, depending

upon the nature of the facts of the case and the issues involved, may direct disposal of a suit preferably within a reasonable time frame, which may be fixed by the High Court. To this proposition of law, no objection has, in fact, been raised by either party.

**6.** We are of the view that since we have already left it open to the review petitioner to claim damages from the Opposite Party if, otherwise, permissible in law, it would not be inappropriate or contrary to law if we clarify that the claim for damages may be made by way of institution of the appropriate suit in a civil court of competent jurisdiction and that if such a suit is instituted, the same shall be disposed of, by holding day-to-day hearing, within a period of, preferably, one year from the date of its institution, which, to our mind, is a reasonable period unless for reasons to be recorded, in writing, the Court, where the suit comes to be instituted, finds it impossible to do so in order to meet the ends of justice.

**7.** Taking, therefore, all aspects into account, we clarify that it will remain open to the review petitioner to claim damages from the appellant-Opposite Party for any injury caused to the review petitioner or damage to the writ petitioner's property if, otherwise, permissible in law, by instituting a suit in a civil court of competent jurisdiction.

**8.** We also make it clear that if such a suit, as

indicated above, comes to be instituted by the review petitioner, the Court, where the suit is filed or the Court, which comes in seisin of the suit, shall, preferably dispose of the suit within a period of one year from the date of institution thereof, by resorting to day-to-day hearing of the suit and shall not adjourn the same unless, for reasons to be recorded in writing, such adjournment becomes indispensable.

**9.** With the above observations and directions, the order, dated 03.09.2014, which is under review, shall stand modified.

**10.** In the result and for the foregoing reasons, the review petition shall stand disposed of accordingly.

**11.** No order as to costs.

**(I. A. Ansari, J.)**

**Samarendra Pratap Singh, J.:** I agree.

**(Samarendra Pratap Singh, J.)**

Prabhakar Anand/NAFR

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