

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10741 of 2015

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1. Lakhan Kumar son of late Ram Sundar Mandal, resident of village Alauli, Police Station Alauli, District Khagaria.

.... Petitioner

Versus

1. The State of Bihar.
2. The District Magistrate, Khagaria.
3. The Sub Divisional Officer, Khagaria
4. The Superintendent of Police, Khagaria,
5. The Officer-in-charge, Alauli Police Station, District Khagaria.
6. The Circle Officer, Alauli, District Khagaria.

.... Respondents

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Appearance :

For the Petitioner : Ms. Mahasweta Chatterjee
Mr. Madheshwar Singh

For the Respondents : Mr. P. K. Verma, AAG 5
Mr. Mankeshwar Tiwari, AC to AAG 5

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CORAM: HONOURABLE THE CHIEF JUSTICE

AND

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

JUDGMENT AND ORDER

ORAL

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 05-09-2016

This application, in the shape of Public Interest Litigation, under Article 226 of the Constitution of India, has been filed seeking direction upon the respondents to take necessary steps to remove the encroachments over the public well, situated in village Alauli, in the district of Khagaria, over Plot No. 2288, in compliance of the order, dated 23.12.2010, passed by the Sub Divisional Officer, Khagaria, in Case No.

07(M)/2010. The petitioner has also sought for a direction to the District Magistrate, Khagaria, or any other competent authority, to initiated action against respondent Nos. 5 and 6, namely, the Officer-in-Charge, Alauli Police Station, and the Circle Officer of Alauli block on the charge of dereliction of official duty.

2. We have heard Ms. Mahasweta Chatterjee, learned Counsel for the petitioner, and Mr. P. K. Verma, learned Additional Advocate General No. 5, appearing on behalf of the respondents.

3. It is the case of the petitioner that the well, in question, was dug in a tax free land for the use of villagers, nearly 100 years ago, which is being used for various social purposes, including religious rituals.

4. It is alleged that Up-Mukhiya of the concerned Gram Panchayat started encroaching upon the land around the said public well in order to convert it into his own property. He is said to have blocked the well by way of covering it with a concrete beam and has also constructed wall from two sides of the well with an intention to open his own shop for the purpose of his personal business.

5. It appears from the pleadings on record that earlier, one Pramod Kumar had approached this Court by filing CWJC No. 17793 of 2009, complaining encroachment over the



said public well and seeking direction for removal of the encroachment. The said application came to be disposed of by an order of this Court, dated 17.12.2009, with a liberty to the petitioner and other co-villagers to approach the Sub Divisional Officer, Khagaria for the said purpose. It also appears that the Sub Divisional Officer, Khagaria, had held, vide his order, dated 25.12.2010 that the well, in question, was located over a public land and some attempt was being made to make encroachment over the said public well. The Sub Divisional Officer, Khagaria, by the said order, has asked the Circle Officer, Alauli, to take appropriate steps for removal of the encroachment, if any encroachment takes place near or over the said public well.

6. We have noticed, in our recent decision, in the case of **Sanjay Jha v. The State of Bihar and Others**, reported in **2016 (1) PLJR 248**, that the authorities, under Section 133 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code), have stopped exercising their jurisdiction conferred on them, under the said provision of the Code. The said provisions confers wide powers on the District Magistrate and the Sub Divisional Officer, for removal of any unlawful obstruction or nuisance from any public place by issuing necessary orders in the manner prescribed under Chapter X of the Code.

7. Considering the various provisions of the Code

and the decision of the Supreme Court, in the case of **Municipal Council, Ratlam v. Vardhichand and Others (AIR 1980 SC 1622)**, we had issued general directions, in the case of **Sanjay Jha** (supra), at paragraph 25, which read thus:-

"**25.** We, accordingly, issue general directions to be followed by all concerned, in the State of Bihar, in following terms:-

(i) Once a District Magistrate or Sub-Divisional Magistrate or any other Executive Magistrate, specially empowered in this regard by the State Government, receives an information, on the basis of a report of a police officer or otherwise, that condition precedent for exercise of power under sub-Section (i) of Section 133 of the Code are present, the Magistrate shall at once make a conditional order for removal of obstruction or nuisance from public place and it will be the bounden duty of the person--who may be a natural person or a juristic person, such as, a Municipal Body or a Gram Panchayat--to either comply with the order or appear in the proceeding and, upon appearance of the proceedee, the Magistrate shall be duty bound to ask the proceedee if he (the proceedee) wishes to deny the existence of facts leading to the conditional order and if the proceedee denies existence of any unlawful



obstruction or nuisance on any public place or from any way, river or channel, which is or may be lawfully used by the public, and gives reliable evidence in support of such denial, the Magistrate shall stay further proceedings until a competent court decides; but if the proceedee fails to give any reliable evidence in respect of denial of the existence of the facts leading to making of conditional order, the Magistrate shall order the proceedee to comply with the conditional order and, if the conditional order is not complied with and obeyed, penal consequences, as embodied in Section 188 of the Penal Code, shall follow.

(ii) It will be the duty of the Chief Executive Officer or any other Officer, specially authorized by him/Head of the local body, by whatever name he may be called, to inform or cause to be informed the District Magistrate, Sub-Divisional Magistrate or any other Magistrate, specially empowered in this behalf by the State Government, as regards existence of obstruction/nuisance and other factors, enumerated under Section 133(1) of the Code. The Officer-In-Charge of the concerned police station shall also have similar duty to inform the Magistrate concerned under Section 133 of the Code. In the event, any public nuisance or unlawful obstruction of the nature, as provided under Section 133(1) of the Code,

is found to be existing without any information to the concerned Magistrate, the Officer-in-Charge of the concerned police station and the Chief Executive Officer or any other Officer, authorized on his behalf of the local body, shall be jointly responsible for inaction and will be liable for disciplinary action accordingly.

(iii) The Magistrate, upon receiving information, in the manner as aforesaid, shall proceed at once in accordance with Section 133(1) of the Code and pass appropriate order as required of him under the said provision. Any inaction or dereliction of duty by the Magistrate in this regard shall make him liable for disciplinary action.

(iv) A conditional order, if not objected to, or an order, which has been made absolute, shall have to be obeyed by all concerned and any disobedience of the order shall attract penal provisions of Section 188 of the Indian Penal Code.

(v) This order must be followed with utmost scruples and without any demur. Any person, who is found to be not complying with the present order, shall be liable for disciplinary/criminal action apart from contempt of this Court."

8. The said decision, in the case of **Sanjay Jha** (supra), fully applies to the facts and circumstances of the

present case.

9. We, accordingly, dispose of the present application with a direction to the respondents, particularly, respondents 2 and 3, to proceed strictly in accordance with the direction issued by this Court, in the case of **Sanjay Jha** (supra), so as to ensure that encroachments/public nuisance are removed. Any slackness on the part of the Officers, in this regard, shall be viewed seriously by this Court.

10. This application stands disposed of with a liberty to the petitioner to approach this Court again, in the event the directions given in the present order are not implemented in letters and spirit.

(I. A. Ansari, CJ.)

(Chakradhari Sharan Singh, J.)

Prabhakar Anand/-c

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.