

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.1712 of 2012

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Gopal Narayan Singh, S/O Late Dev Narayan Singh, Resident of Village- Jamuar,
P.S- Dehri, District- Rohtas.

.... Petitioner.

Versus

1. The State of Bihar, through Mr. Anupam Kumar, the Collector, Rohtas.
2. The Divisional Engineer (Works), East Central Railway, Dehri On- Sone.
3. Mr. Shailesh Kumar, the Assistant Engineer, East Central Railway, Dehri On Sone.
4. M/S Arrah Sasaram Light Railway (Involve Liquidation) Through The Manager, Merchantile Building, 2nd Floor, Mariabal Bazar Street, Kolkata.
5. Mr. Anil Prakash, Senior Divisional Engineer-I, East Central Railway Division, Munghalsarai.

.... Respondents.

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Appearance :

For the Petitioner	:	Mr. Chitranjan Sinha, Sr. Advocate Mr. Amish Kumar, Advocate
For the State	:	Mr. Parmeshwar Vishwakarma, AC to GP-28
For the Railway	:	Mr. Devendra Kumar Sinha, Sr. Advocate Mr. Abhinay Raj, Advocate

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

ORAL JUDGMENT

Date: 20-04-2016

1. The petitioner seeks initiation of contempt proceedings against the opposite parties for willful disobedience and non-compliance of the order, date 02.12.2011, passed in C.W.J.C. No. 19763 of 2011 and order, dated 16.01.2012, passed in modification application bearing, M.J.C. No. 5979 of 2011.

2. The facts of the case in short, require to be noticed. The petitioner filed C.W.J.C. No. 19763 of 2011,



against notice, dated 27.08.2011, issued by Divisional Engineer (Works), East Central Railway, Dehri-on-Sone, (Respondent no. 2), whereby he was asked to vacate the lands situated near Railway Bridge at Sasaram Railway Station within a week, otherwise necessary action would be taken under Public Premises (Eviction of Unauthorized Occupation) Act, 1971.

3. One of the points urged by the petitioners was that the impugned order has been passed directing him to vacate the premises without giving sufficient notice to explain his case. It was the case of the petitioner before the Writ Court that the land in dispute belongs to Ara Sasaram Light Railways Co. Ltd. On his request, the land was leased to him for six months for storing materials used in construction of bridge. He regularly paid rent of the premises and lease was extended from time to time. As such, in short, he asserted that he is not in unauthorized occupation and notice under the provisions of Public Premises (Eviction of Unauthorized Occupation) Act, 1971, would not be applicable.

4. The Railways submitted before the Writ Court that the lease was temporary for only six months and at present the petitioner is in unauthorized occupation over the Railway's land. In support of his submission, the

Railways referred to Clause (a) and (b) of the Agreement.

5. After hearing the parties, the writ application was disposed of, on 02.12.2011, with direction to the petitioner to treat notice, dated 27.08.2011, as Show-Cause Notice, to which the petitioner would be entitled to file reply within three weeks, which would be disposed of within three weeks thereafter. *Status quo* was directed to be maintained for six weeks. Copy of order was directed to be communicated to the Collector, Rohtas, as well as to the Divisional Engineer (Works), East Central Railways, Dehri-on-Sone.

6. According to the petitioner, he approached Respondent No. 2 (Opposite Party No. 2 herein) along with his show-cause reply and order, dated 02.12.2011, but the latter did not accept the same and directed him to submit the same before the Senior Divisional Engineer-I, East Central Railway, Mughalsarai, as the address has been changed. The petitioner, thereafter, filed M.J.C. No. 5979 of 2011, for modifying the last portion of order, dated 02.12.2011, passed in C.W.J.C. No. 19763 of 2011, by substituting "*the Senior Divisional Engineer-I, East Central Railway, Mughalsarai*", as respondent no. 2, in place of "*the Divisional Engineer (Works), East Central Railways, Dehri-on-Sone*", as address of respondent no. 2 has been changed.



The M.J.C. application was allowed. The Senior Divisional Engineer-I, East Central Railway, Mughalsarai, was added as "Respondent No. 5" and the petitioner was directed to file his reply to the show-cause notice, 27.08.2011, before him, within three weeks, which would be disposed of within further three weeks thereafter. *Status quo* was to be maintained for further eight weeks. While disposing of the M.J.C. application, the Court directed that the order to be communicated to the Collector, Rohtas; the Divisional Engineer (Works), East Central Railways, Dehri-on-Sone; and the Senior Divisional Engineer-I, East Central Railway, Mughalsarai. The petitioner filed his detailed representation before the respondent no. 5.

7. It is further case of the petitioner that the order, dated 16.01.2012, passed in M.J.C. No. 5979 of 2011, was communicated by the High Court Registry, on 30.01.2012 itself. It is the grievance of the petitioner that the Opposite Parties have demolished his structure, on 02.02.2012, when they were to maintain *status quo* till 10.03.2012. In support of his submission, the petitioner submits that the Railways have not denied that they have received any representation filed by the petitioner, 23.01.2012 (Annexure-3) and order, dated 02.12.2011 and 16.01.2012, were passed after due service of notice and in



presence of their Counsel. Learned Counsel submits that it is well settled principles of law that an order passed by the Court of Law in presence of Counsel/ Lawyer of the parties, is a valid communication of the order to the litigant himself and no excuse, whatsoever, can be put-forth by the party that he was not personally communicated the order passed by the Court of Law. It is not in dispute in the instant case, that both the orders, dated 02.12.2011 and 16.01.2012, were passed in presence of Counsel for the Railways. On the basis of the aforesaid submissions, learned counsel for the petitioner submits that there is willful disobedience of the order of this Court.

8. A show-cause has been filed by the Opposite Party Nos. 2, 3 and 5 on 28.08.2012 and another supplementary show-cause was filed on 18.02.2014. The Opposite Parties have tendered unconditional and unqualified apologies for the inconvenience caused to this Hon'ble Court. They reiterate that the petitioner was initially granted temporary lease for six months. However, he continued after expiry of the period of lease and failed to vacate the same. A show-cause notice was issued to him on 27.08.2011 with reminders on 22.11.2011 and 24.11.2011. Ultimately, the Railway's Authority with the help of GRP/RPF and local Magistrate began to remove/ vacate the Railway's land on

30.11.2011, but, the petitioner appeared on the spot and gave a petition that he would vacate the land by 05.12.2011, and if he fails to do so, the Railway Administration would be free to remove the structure on the Railway's land on 06.12.2011. The petitioner still failed to vacate the land.

9. The petitioner, in the meantime, moved the Court in C.W.J.C. No. 19763 of 2011, for quashing the notice, dated 27.08.2011. This Court vide order, dated 02.12.2011, directed that notice, dated 27.08.2011, be treated as Show-Cause Notice, to which the petitioner would be entitled to file reply within three weeks, which would be disposed of within three weeks thereafter. *Status quo* was directed to be maintained for six weeks, for example, till 12.01.2012.

10. As the competent authority before whom representation was to be filed was the Senior Divisional Engineer-I, East Central Railway, Mughalsarai, this Court vide order, dated 16.01.2012, passed in M.J.C. No. 5979 of 2011, granted liberty to the petitioner to file representation, within three weeks and directed that *status quo* would be maintained for eight weeks.

11. Learned counsel of the Railways submits that the order of *status quo*, dated 02.12.2011, stood vacated on 12.01.2012 and as such, the structure was



demolished on 02.02.2012. The mainstay of the Opposite Parties is that the order, dated 16.01.2012, granting further *status quo* for eight weeks was never communicated either to the Senior Divisional Engineer-I, East Central Railway, Mughalsarai nor to the Assistant Engineer, East Central Railway, Dehri-on-Sone, till the date of removal of structure on 02.02.2012. They submit that only an internet print of order of *status quo* was received by the Senior Divisional Engineer-I, East Central Railway, Mughalsarai, on 06.02.2012. The claim of the Railways was resisted by the petitioner stating that the order, dated 16.01.2012, extending *status quo*, of this Court was communicated by High Court Registry.

12. The Court, in the facts of case, directed the counsel for the Railways to produce the record. On receipt of record, learned counsel for the petitioner was given an opportunity to satisfy himself whether respondent had knowledge of the order prior to date of demolition i.e. 02.02.2012.

13. Mr. D.K. Sinha, learned Senior Counsel appearing for the Opposite Parties, submits that on perusal of the record, it nowhere appears that the order of the Court, dated 16.01.2012, was either communicated to the Senior Divisional Engineer-I, East Central Railway,

Mughalsarai or to the Assistant Engineer, East Central Railway, Dehri-on-Sone. Learned counsel submits that there would be some latches on the part of the Office of the Counsel for the Railways in not communicating the order to the Authorities, but the petitioner was equally responsible for not producing the same before the Authorities concerned. It is not the case of the petitioner that he produced the order of *status quo* to the Authorities prior to the date of demolition i.e., on 02.02.2012 and even annexed it with his representation.

14. In this view of the matter, the petitioner has failed to make out a case that there was willful and deliberate attempt on the part of the Railway's Authorities in disobeying the order of this Court.

15. The contempt application is dismissed with liberty to the petitioner to take recourse of filing suit for damages.

(Samarendra Pratap Singh, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	09.05.2016
Transmission Date	