

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.741 of 2016

Arising out of

Civil Writ Jurisdiction Case No.17154 of 2015

Subodh Kumar Son of late Narain Prasad resident of Muhalla Bharaopar, Near Machhali Market Police Station- Laheri, District- Nalanda, at present Lecturer, Department of Chemistry, Purbottar Railway College, Sonapur, Police Station Sonapur, District- Saran.

... .. Petitioner/s

Versus

1. The State Of Bihar Through Amrit Lal Mina, The Principal Secretary Urban Development Department Govt.
2. Kaushal Kumar, Town Commissioner, Biharsarif Municipal Corporation, Biharsarif, Nalanda.
3. Girish Narain Singh, Contractor Father 's Name and Address not known to the Petitioner, through kaushal Kumar Town Com
4. Sudhir Kumar, Mayor, Bihar Municipal corporation Biharsharif, Nalanda.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Santosh Kumar Sinha -2, Advocate
For the State	:	Mr. Gopal Krishna, AC to GA 7
For the Municipal Corp.	:	Mr. Gyan Prakash Ojha, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 14-08-2019

Heard learned counsel for the petitioner; learned AC to GA 7 for the State and learned counsel for the Biharsharif Municipal Corporation (hereinafter referred to as the ‘Corporation’).

2. The petitioner has moved the Court for initiating contempt proceeding against the opposite parties for not having complied with the order dated 09.11.2015 passed in CWJC No. 17154 of 2015.



3. The Writ Court had passed the following order:

“Since the grievance of the petitioner is that none of the aforesaid steps have been taken by the authorities and the land is being utilized forcibly, this Court is inclined to dispose of this writ application granting liberty to the petitioner to approach the respondent no.6 by filing a detailed representation along with a copy of this order raising all the aspects and along with copies of necessary documents in support of his claim. On such representation having been filed, let the Town Commissioner, Biharsarif Municipal Corporation examine the matter and take a final decision. It is made clear that if he comes to the conclusion that ancestral land of the petitioner which has been allotted to his share is to be utilized in construction of a road then the same can only be done after its acquisition in accordance with law and payment of compensation to him. However, if he comes to the conclusion that the petitioner’s land is not to be utilized or the land in question does not belong to the petitioner then a reasoned order should be passed by him which should immediately be communicated to the petitioner.

Till a final decision is taken, let status quo as existing today over any part of the petitioner’s claimed boundary wall or house or plot should be maintained.”

4. Show cause has been filed on behalf of the Corporation in which copy of the ordersheet pertaining to



Miscellaneous Case No. 1 of 2015 has been brought on record to indicate that the petitioner had appeared in the said proceeding and finally by order dated 07.12.2015 the Municipal Commissioner of the Corporation has held that as per measurement done in the presence of the petitioner and his counsel it was found that there was encroachment by the petitioner and accordingly the Anchal Adhikari, Biharsharif was asked to remove the same.

5. Learned counsel for the petitioner submitted that a road has been built on the private land of the petitioner.

6. Having considered the matter, the Court in its present jurisdiction cannot go behind the order passed by the Writ Court or into disputed questions of fact. Once the authorities have got the land measured in the presence of the petitioner and his counsel, this Court would not disbelieve the same. Further, when the petitioner had been appearing regularly in the proceeding, it cannot be expected that he is unaware of the final order passed on 07.12.2015 by which the direction was issued to the Anchal Adhikari, Biharsharif to clear the encroachment by the petitioner.

7. Be that as it may, the conduct of the authorities cannot be termed as contemptuous.

8. Accordingly, the application stands disposed off with the liberty to the petitioner to approach the appropriate forum, in



accordance with law, with regard to any grievance he may have of his private land being still used for constructing the public road.

9. Before parting, the Court would indicate that the show cause on behalf of the Corporation was filed on 22.08.2016 without service of copy on learned counsel for the petitioner. The Court deprecates such conduct. It is the duty of the party which files any pleading to ensure service on all the other parties. Non-service of show cause till date, i.e, for almost three years on learned counsel for the petitioner cannot be condoned for the reason that on the *vakalatnama*, the mobile number of learned counsel for the petitioner is also given and the same is there on the notice attached to the copy of the application.

10. In such view of the matter, the Court deems it appropriate to impose cost of Rs. 1000/- for such conduct. It is ordered accordingly. The same be deposited in the Juvenile Justice Fund of the State Social Welfare Department and receipt filed within two weeks, failing which Registry shall place the matter before the Bench pointing out such non-compliance.

(Ahsanuddin Amanullah, J)

Anjani/-

AFR/NAFR	
U	

