

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1109 of 2019

In
Civil Writ Jurisdiction Case No.7312 of 2015

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1. The State of Bihar
 2. The Collector, Khagaria.
 3. The Sub- Divisional Officer, Khagaria.
 4. The Deputy Collector Land Reforms, Khagaria.
 5. The Circle Officer, Khagaria.
 6. The Principal, Kosi College, Khagaria.
 7. The Khagaria Municipal Council through its Executive Officer, Khagaria, P.S. and District- Khagaria.

... .. Appellant/s

Versus

Shailesh Kumar, Son of Laxmi Yadav, resident of Mohalla- Rajendra Nagar (Ashok Nagar), P.S.- Chitraguptanagar, Town and District- Khagaria as well as practising Advocate of Khagaria Civil Court.

... .. Respondent

Appearance :

For the Appellant/s	:	Mr. Ajay, Advocate Mr. Pratik Kumar Sinha (AC To GA 5)
For the Respondent/s	:	Mr. Dronacharya, Sr. Advocate Mr. Arghesh Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 10-10-2022

1. Heard Mr. Ajay, learned Advocate for the
State/Appellant and Mr. Dronacharya, learned Sr.
Advocate for the grieving Respondent.



2. The boundary wall of the respondent was demolished as it was found to be an encroachment on public road. Notice dated 09.04.2015 with respect to demolition was given to the respondent on 14.04.2015, to which he could not reply on merits but only wanted adjournment. However, a final order was passed on 15.04.2015, whereafter the demolition was carried out on 17.04.2015.

3. The State contends that the boundary wall was causing hindrance to approximately three thousand people. There was no reason why it should have been allowed to remain where it was erected, especially when this encroachment was continuing since 2008. It was further contended that a final order was passed on 15.04.2015, which order could have been appealed against by the respondent, which provision of law, the respondent never availed of. Had the respondent even intimated the authorities that he intended to challenge the order, the demolition process could have awaited the result of the



order in appeal. Since there was no indication to the authorities that the order shall be appealed against, the execution of the order was carried out on 17.04.2015 ostensibly on the ground of such encroachment on public land continuing for a long time. Lastly, it has been contended that the learned Single Judge had over-assessed the quantum of damage without any quantification and the same should not be allowed to be continued. He further submits that since by order dated 07.07.2022, the issue of correctness of the order directing for demolition has already been decided by the learned Single Judge and which stands affirmed by the observations of this Bench on 07.07.2022, the limited argument in this appeal is only with respect to quantum of the compensation which was directed by the learned Single Judge.

4. As opposed to the aforesaid contentions of the appellant/State, Mr. Dronacharya, learned Sr. Advocate for the respondent has urged that under Section 3 of the Bihar Public Land Encroachment Act, 1956, the authorities are



under an obligation to fix a date after 15 days to enable the noticee to explain his cause. Bypassing such mandate of Law, the Respondent/State gave only one week's time to explain and within two days thereafter, the order of demolition was carried out. He further submits that the contention of the State that the boundary wall was causing disturbance for ingress and egress of local residents, numbering about three thousand, does not appear to be correct as the same, according to the contention of the State only, was since 2008. Thus, it has been argued that there was no pressing urgency to execute the order of demolition within two days of such order having been passed and without giving reasonable opportunity to the respondent to explain his cause. He further submits that in cases where a Writ Court grants compensation, it is on the basis of providing a remedy to the aggrieved person in Public Law which is based on strict liability for contravention of the fundamental right of a citizen. Such compensation is distinct from principles of tortious liability.



5. While taking note of the distinction between awarding a compensation under private law or on finding the tortious liability of the faltering party, the Hon'ble Supreme Court, times without number, has explained that though the provisions contained in Articles 32 and 226 of the Constitution of India, as it may be, cannot be used as a substitute for enforcement of rights and obligations, which can be enforced efficaciously through ordinary process of Courts, Civil and Criminal, but in exercise of the extraordinary powers under Articles 32 and 226 of the Constitution of India, Courts can pass an order for payment of money, if such an order is in the nature of compensation, which is consequential upon the deprivation of any Fundamental Right.

6. The Right to Property, though is a Constitutional Right, but the Right to Legal Remedies is undoubtedly a Fundamental Right.



7. For upholding the Constitutional Right to Property, the respondent was not allowed sufficient time to explain his cause.

8. The aforesaid legal injury can only be remedied by award of compensation.

9. Since, the learned Single Judge found that undue haste was shown by the State, which opinion we too have ratified, we are only addressing ourselves to the quantum of compensation which was awarded by the learned Single Judge.

10. The argument of Mr. Ajay that Courts are ill-equipped to quantify the damages, does not appeal to us. While awarding damage in a case of this kind, one does not look for exact quantification but only a ballpark figure which would be in the nature of damages for deprivation of a right of an individual.

11. Under such circumstances, exact quantification of the losses or the liability of the faltering party cannot be done nor is it expected. However, under



no circumstance, unless situation so demands, any exemplary damage, in a case of this kind, can be awarded.

12. We do take into account the argument of Mr. Ajay that the respondent was never taken by surprise as he had been served with a notice, giving him a week's time to explain his cause which he did not. The order so passed by the authority on 15.04.2015 was never appealed against nor were the authorities informed of the intention of the respondent to challenge such order.

13. Apart from this, Mr. Ajay has vehemently contended that the claim of the respondent that the demolished boundary wall stood on his *raiya* rights is not correct and the authorities are ready to provide further opportunity to the respondent to explain as to how it is being urged on their behalf that the demolished boundary wall stood on his *raiya* land. In case it is found that the action of the State was incorrect, necessary consequential order shall be passed permitting the respondent to erect the boundary wall.



14. Mr. Dronacharya, learned Sr. Advocate, however, on the other hand, has submitted that once the learned Single Judge found that the State was liable to pay Rs. 5,00,000/- as compensation for not allowing full say to the respondent in the matter before his property was demolished, anything less than the amount so directed to be paid to the respondent, would tantamount to looking at the injury of the respondent in a very casual and cavalier manner; which would have the potency of bolstering up the State to further take such action against hapless citizens.

15. Mr. Dronacharya has also shown to this Court a case decided by a learned Single Judge of this Court where on account of deprivation of a Right of Property by a wrong reading of the lease-deed, Rs. 5,00,000/- compensation was awarded and which order remained inviolate.

16. After having heard the learned counsel for the parties, we are, so far as the quantum of compensation is



concerned, of the view that Rs. 5,00,000/- is not appropriate, especially when the State has undertaken to provide one further opportunity to the respondent to explain his cause and then pass a final order.

17. In case it is found that the decision of the authorities with respect to the property demolished is that it is not an encroachment, necessary consequential permission shall be granted to the respondent to reconstruct the wall.

18. Apart from this, we have also taken into account that the respondent may not have been taken by surprise but the State has faltered by showing undue haste. This in our opinion, is a good ground for the learned Single Judge to direct for payment of compensation but we reduce such amount, for the reasons noted above, to Rs. 2,00,000/-. While reducing such amount of compensation, we have taken into account various factors, viz, notice to the respondent, the respondent not appealing against the aforesaid order till date and the contention of the State



that a post decisional hearing with an open mind is a good indicator of the genuine intention of the State to re-compensate the respondent in case decision is ultimately found to be wrong.

19. The amount of compensation of Rs 2,00,000/- shall be paid to the respondent before a fresh proceeding is initiated, giving ample opportunity to the respondent to respond.

20. With the aforesaid modification in the order of the learned Single Judge, this appeal stands partially allowed and is disposed of accordingly.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

Skm/ashishkr/-

AFR/NAFR	AFR
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