
(2022) 06 PAT CK 0002

Patna High Court

Case No: Letters Patent Appeal No. 263 Of 2020 In Civil Writ Jurisdiction Case No. 20239 Of 2019

Md. Ashraf Imam

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: June 20, 2022

Hon'ble Judges: Ashutosh Kumar, J; Jitendra Kumar, J

Bench: Division Bench

Advocate: Nasrul Hoda, Md. Harun Quareshi, Nutan Sahay, Vinayak Kumar Srivastava

Final Decision: Disposed Of

Judgement

Heard Mr. Nasrul Hoda, learned Advocate for the appellants and Mr. Vinayak Kumar Srivastava for the private respondent no. 5. The State is

represented by Ms. Nutan Sahay. The appellants have challenged the order dated 14.10.2019 passed by the learned Single Judge in CWJC No. 20239

of 2019, whereby the learned Single Judge has disposed of the writ petition with a direction to the private respondent no. 5 to file a petition before the

DCLR, Paliganj, Patna to execute the order dated 28.05.2015 passed in BLDR Case No. 109/14-15 within one month from the date of passing of the

order whereafter the DCLR shall pass an order in accordance with law within two months thereafter.

The private respondent no. 5 had preferred an application, giving rise to the BLDR Case No. 109/14-15. In the aforementioned case, it was found by the

authorities that the appellants and others had encroached upon the land of the mosque which was located in Mauza- Amirabad, Thana No. -38, Khata

No. 290, Plot No. 1116 corresponding to 51 decimals of land in Bikram, Paliganj circle.

In the aforementioned BLDR Case, the DCLR, Paliganj had issued notice to one Eshrat Jahan and ultimately found that the land over which construction

had been put-up was a Gairmazarua Aam Masjid land. Aforesaid Eshrat Jahan was found to be an encroacher of the Masjid land. The DCLR,

Paliganj vide order dated 28.05.2015 thus directed the Circle Officer, Bikram to initiate an encroachment case against the encroachers and take

necessary action for removing the encroachment from the said land.

Consequently, an encroachment case also was initiated vide Encroachment Case No. 05/2015-16 and the Circle Amin was asked to make

measurement of the land in question and submit a report in that regard. Later, such report by the Circle Amin was also submitted and the name of

such persons who have illegally occupied the land of the masjid was also intimated to the authorities.

Thereafter, it appears from the pleadings of the parties, that the Circle Office, Bikram issued notice dated 02.04.2016 to approximately eleven persons,

asking them to remove the encroachment from the land in question.

When nothing was being done pursuant to the aforementioned developments in the case, the private respondent no. 5 approached this Court vide CWJC

No. 20239 of 2019, referred to above, for a direction to the DCLR, Paliganj to comply with his own order dated 28.05.2015. It was in the aforesaid

circumstance that private respondent no. 5 was asked to file a petition before the DCLR, Paliganj to have the order dated 28.05.2015 executed and a

time frame was set for the DCLR, Paliganj for the needful.

The aforesaid order of the learned Single Judge dated 14.10.2019 has been challenged in the present petition on various grounds; the primary one

being that when the aforesaid order was passed, the appellant was never noticed. In fact, in the first instance, it is the contention of Mr. Nasrul Hoda,

learned Advocate for the appellant that only Eshrat Jahan was noticed but no specific statement has been made by the appellants with respect to the

notice issued to all the eleven encroachers, the appellants being one of them, by the Circle Officer for the implementation of the order passed by the

DCLR.

It is the case of the appellants that they had purchased the land from the Masjid Committee, way back in the year 1962. The Masjid Committee had

decided to sell of the land of the mosque for the purposes of garnering funds for the up-keep of the mosque. The aforesaid sale was with the

permission and approval of the Waqf Board. After about 50 years, the private respondent no. 5 has chosen to agitate the issue before the DCLR that

the appellants are not the purchasers but are the encroachers of the Masjid land.

However, from the records of this case, we find that the appellants were never heard before the order dated 28.05.2015 was passed.

The aforesaid order dated 28.05.2015 of the DCLR, Paliganj has not yet been challenged by the appellants in any forum whatsoever.

Considering the aforementioned circumstances, this Court deems it appropriate to direct that if the appellants approach the District Magistrate, Patna

within a period of two weeks from today along with a copy of this order, their claim of having purchased the land sixty years ago and that also with

the approval of the Waqf Board, shall be scrutinized by him and after hearing all the parties, including the private respondent no. 5, who actually

initiated the action against the appellants, and after being satisfied, he shall pass necessary orders.

If it is found that the appellants have encroached upon the property and that there is no valid ground for being in possession of the property which

actually belongs to the mosque, the appellants or for that matter any other encroacher shall be removed from the mosque premises, after affording

them reasonable opportunity to contest their case in accordance with law and the order of the DCLR shall be implemented. In case it is found that the

appellants are not encroachers, necessary and sequel action shall be taken by the District Magistrate, Patna.

It is expected that the District Magistrate, Patna shall dispose of the matter within a period of eight weeks of the receipt of the application by the appellants.

Till final order is passed by the District Magistrate, Patna, the status quo shall be maintained.

With the aforesaid directions/observations, this appeal stands disposed off.