

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.1585 of 2012

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1. Rama Shankar Prasad S/O Late Mussaddi Lal Residing At Village & Post-
Bhakurahr, Police Station- Abirganiya, Distt.- Sitamarhi (Bihar)

.... Petitioner/s

Versus

1. The State Of Bihar Through The Secretary Urban Development Department,
Govt. Of Bihar, Patna-1
2. The Collector Cum District Magistrate, Sitamarhi, Bihar
3. The Deputy Development Commissioner Cum Executive Officer Sitamarhi,
District Board, Sitamarhi (Bihar)
4. The Chairman, Nagar Panchayat, Bairganiya, Distt.- Sitamarhi (Bihar)
5. The Executive Officer, Nagar Panchayat, Bairganiya, Distt.- Sitamarhi (Bihar)
6. The Assistant Engineer, Nagar Panchayat, Bairganiya, Distt.- Sitamarhi (Bihar)
7. The Junior Engineer Nagar Panchayat, Bairganiya, Distt.- Sitamarhi (Bihar)

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. SURESH PD SINGH NO.1

For the Respondent/s : Mr. GAUTAM BOSE AAG8

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 30-11-2015

Heard Mr. Suresh Prasad Singh no. 1 for the petitioner and the
Counsel for the State. In spite of notice, the respondent Nagar
Panchayat, Bairganiya (Sitamarhi) has not entered appearance to
oppose the writ petition.

The petitioner prays for a direction restraining the respondents,
particularly, the Nagar Panchayat from executing the construction of
the road contained in Item No. 2 under the Notice Inviting Tender
(NIT) No. 2011-12 issued by the Executive Officer of the Nagar
Panchayat, Bairganiya (respondent no. 5). According to the petitioner,
the proposed PCC road and drainage are being constructed on the



private plot(s) of the petitioner appertaining to Khata no. 288, plot no. 3803 and 3810 and Khata no. 452 and plot no. 3809. The respondents did not acquire the land after adopting procedure therefor and by the impugned NIT proceeded to construct the road and the drainage in which some of the land of the petitioners shall be used.

In course of hearing, Mr. Singh has produced an order passed by the Executive Officer of the Nagar Panchayat, Bairganiya contained in Memo No. 68 dated 7.3.2012 whereby the Executive Officer restrained the agency or the Nagar Panchayat from making construction of the said PCC road/drainage which would utilize the aforesaid land of the petitioner measuring a total area of 52 decimals. It appears that the respondents have not initiated any step for acquiring the land of the petitioner for the construction of the said PCC road or drainage, if the same is utilized. It goes without saying that if the respondents propose to construct a public road or drainage, the land of those persons which shall be utilized for the said purpose should be first acquired after giving compensation or a written consent is obtained from those land owners/holders. It does not appear from the record that any of these two options were undergone by the respondents.

Counsel for the State also submits that the State or agency of the State can either acquire the land for the construction of the public



road if no written consent is obtained from the land holders. Since the respondents have already stopped the proposed construction of PCC road, in my view, the application, as such, has become infructuous. It is, however made clear that if in future, the respondents propose to construct the public road or the drainage in which the land of the petitioner is likely to be used/utilized and take steps therefor, it would be incumbent upon them to either acquire the land after giving adequate compensation therefor and/or obtain written consent of the land holder before proceeding to construct such road. This Court would also grant the petitioner liberty to file an objection in this regard before the Executive Officer of the Nagar Panchayat if they initiate a fresh process/proceeding for construction of the road/drainage in question which shall be considered and disposed of by the appropriate/competent authority by a reasoned order.

The writ application is disposed of.

(Kishore Kumar Mandal, J)

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