

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5085 of 2014

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Tripurari Prasad Singh, S/O Late Yamuna Prasa Singh, resident of Village-
Jaitpur, P.S- Barahiya, District- Lakhisarai.

.... Petitioner/s

Versus

1. The State of Bihar through Collector, Lakhisarai.
2. The Collector/ District Magistrate, Lakhisarai.
3. The Sub- Divisional Magistrate, Lakhisarai.
4. Circle Officer, Barahiya, Lakhisarai.
5. Chief Engineer, Gramin Karya Vibhag, Patna.
6. Secretary, Gramin Karya Vibhag, Vishwasaraiya Bhawan, Bailey Road, Patna.
7. Superintending Engineer, Gramin Karya Vibhag, Munger Anchal, Munger.
8. Executive Engineer, Gramin Karya Vibhag, Karya Pramandal Sheikhpora, Sheikhpora.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pramod Kumar Singh

For the Respondent/s : Mr. Anisul Haque, AC to AAG-9

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

2 13-02-2015 Heard Mr. Pramod Kumar Singh, learned counsel

appearing for the petitioner and Mr. Anisul Haque, learned

Assisting Counsel Additional Advocate General no.9 for the

State.

The petitioner has approached this Court through the
present writ petition complaining of intrusion over his *raiya*
land bearing Khata no.91, Khesra no.998 admeasuring 2.35
Acres in Mauza Nathanpur in the district of Lakhisarai. It is the
complaint of the petitioner that neither any written consent was
taken by the respondents from the petitioner in utilizing the land
in question for the purpose of construction of public road under

the Prime Minister Gramin Sadak Yojana nor have they taken any steps for acquisition of the land as mandated under the Land Acquisition Act.

Mr. Pramod Kumar Singh, learned counsel appearing for the petitioner with reference to a Bench decision of this Court on an identical issue arising from CWJC No.2490 of 2010 (Asaiser Sah vs. The State of Bihar) and analogous cases submits that even when the modalities was set out by this Court in context with the implementation of the Prime Minister Gramin Sadar Yojana as well as National Rural Employment Guarantee Scheme on similar complaints being made by *raiyats* before this Court and when this Court had issued directions which are binding on the respondents and to be followed in every case of construction of a public road under such scheme but the authorities have remained blindfolded and such construction on *raiyati* lands have not stopped thereafter.

Mr. Singh with reference to a representation filed by the petitioner dated 11.2.2012 before the District Magistrate, Lakhisarai submits that even when the petitioner raised his grievance at the stage of beginning of the construction complaining of intrusion on his *raiyati* land in 2012 itself but the District Magistrate did not find time to take notice of the grievance of the petitioner.

A counter affidavit has been filed and in paragraph 11 thereof the respondents do admit that the land in question of the petitioner has been used for construction of the road but an attempt is made to justify the construction on grounds of absence of objection by the petitioner.

Mr. Anisul Haque, learned counsel appearing for the State while contesting the argument, has submitted that though the road was constructed way back in 2011 but no grievance was raised by the petitioner at any stage.

I have heard learned counsel for the parties and I have perused the materials on record.

The judgment relied upon by Mr. Pramod Kumar Singh arising from CWJC No.2490 of 2010 (Asaiser Sah vs. The State of Bihar) and analogous cases relates to intrusion on *raiyyati* land in the matter of implementation of the Government Schemes and this Court considering the grievance of the landholders in the backdrop of the Constitutional guarantee as well as the obligations cast upon the respondents, has issued several directions to be followed by the respondents in the matter of construction of public road. Apart from granting liberty to the aggrieved to represent before the District Magistrate concerned, a duty is also cast on the District Magistrate to pay heed to such representation.



In the present case though the grievance was raised by the petitioner way back in 2012 when he complained of intrusion on his *raiyati* land at the start of the construction but his grievance fell on deaf ear and the respondents in paragraph 11 of the counter affidavit have shamelessly admitted to the constructions. Paragraph 11 of the counter affidavit runs as follows:

“11. That the Executive Engineer, Lakhisarai after receiving such information made request to the Circle Officer vide letter no.987 dated 23.7.2014 for measurement of the land in question. The Circle Officer has reported that 2.35 decimal land of the petitioner has been taken in road vide letter no.779 dated 05.08.2014 issued by the Circle Officer, Barahiya.”

The position thus is admitted. The respondent District Engineer while admitting to the intrusion has stated that since there is no provision for payment of compensation under the Prime Minister Gramin Sadak Yojana hence there is no question of its payment. No doubt the scheme does not provide for payment of compensation but then the respondents have become oblivious to the other provisions of the scheme which prescribes that a road can only be constructed on a *raiyati* land with the consent of the land owner and which is completely missing in the present case. There is nothing on record to show that consent of the petitioner was obtained before the

constructions. On the contrary Annexures 2 to 4 are objection filed by the petitioner before the Circle Officer, Sub-Divisional Officer and the District Magistrate, to such construction. In fact until such time that a written consent could be obtained from the land owner in respect of any proposed construction of public road on his *raiyati* land, the State would be acting contrary to the Constitutional guarantee in entrenching upon the property of any citizen without sanction of law.

In view of the admitted position where the intrusion is admitted, the writ petition is allowed with a direction to the District Magistrate, Lakhisarai to take steps for removal of the road from the land of the petitioner within a period of three months from today unless within the same period the respondents initiate any proceeding for acquiring the land in question by resorting to the provisions of the Land Acquisition Act and for payment of compensation to the petitioner or they obtain a written consent from the petitioner for utilizing the land on such terms and conditions which are agreeable to the petitioner.

SKPathak/-

(Jyoti Saran, J)

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