

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10735 of 2014

Iqbal Ahmad Saba, son of late Shamim Ahmad, resident of mohalla - Azad Nagar
(Ward No. 19), P.S. Arariya, District - Arariya

.... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Department of Road Construction, Govt. of Bihar, Patna
3. The District Magistrate, Arariya
4. The Executive Engineer, L.A.E.O. Work Division, Arariya
5. The Assistant Engineer, L.A.E.O. Work Division, Arariya

.... Respondents

Appearance :

For the Petitioner/s : Mr. Onkar Nath
For the Respondent/s : Mr. Anshuman Singh, GP 24
Mr. Rajeev Shekhar, AC to GP 24

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 09-02-2015

The construction of road is a long-drawn process. Initially, earthen road is formed at a required place and once it is got consolidated, on account of use, for some time, the metal road is formed. Thereafter the road is capped with bitumen or cement concrete, depending on the nature of the traffic. It is only through a continuous process that the conditions of the road can be kept proper.

The State of Bihar has certain technical problems on account of its nature of the soil and logging of water in certain areas, particularly in residential localities. Indiscriminate raising of the height of the roads, not followed by proper drainage system results into accumulation of water, in the residential areas.

One such matter, pertaining to a locality in Patna, was dealt with by a Division Bench of this Court in **Deepak Mukherjee vs. State of Bihar [2010 (3) PLJR 998]**. After asserting the views of the

experts and the views of the Government, numerous directions were given. The gist of the directions is that the height of the roads must not be increased and that inconvenience to the inhabitants of the area, must not be caused.

The petitioner claims to be a resident of Village Azad Nagar in the district of Araria. He filed this writ petition by way of public interest litigation, complaining that the respondents are proposing to laying a road from Rahmani Maszid to Hira Samiti Chowk, in violation of the order issued by this Court by raising its height which would in turn result in accumulation of water, in the neighbouring houses. This Court issued notices to the respondents and counter affidavit has been filed. The respondents state that the height of the road is maintained to the minimum possible level. It is stated that the petitioner initially made an attempt to extort money from the contractors to whom work order was awarded and in this behalf an FIR was lodged against him. It is also mentioned that once he failed in his attempt, he has taken recourse of this writ petition in the guise of public interest litigation.

Heard Sri Onkar Nath, learned counsel for the petitioner, and Sri Anshuman Singh, learned Govt. Pleader on behalf of the State.

A perusal of the counter affidavit filed on behalf of respondent nos. 4 and 5 would only indicate the level to which the facility of Public Interest Litigation has been reduced. It is stated that the petitioners and certain others made an effort to extort money from the contractors, to whom the work was assigned and once they did not succeed in their attempt, they have filed the present writ petition in the nature of public interest litigation. At one stage, this Court issued a general direction that under no circumstances the respondents shall increase the heights of the roads in the State. That, however, has been withdrawn, at a later stage.

The manner in which the road must be constructed and what must be the height of the road, are left to the experts to address. Much would depend upon the nature of vehicles to be plied on the road, level of the neighbouring area, intensity of traffic, the extent of rain fall, as well as accumulation of the water in the area. In certain areas, increase of the level of the road becomes inevitable.

Incidentally, today itself, a newspaper report was published in a Daily which is to the effect that about five to six kilometers of a national highway is under water, making it impossible for the vehicles to move. If the respondents are restrained from increasing the height of the road, the same situation must continue. It is not difficult to imagine that very purpose of construction of the road would be defeated unless it is properly maintained. In case any road is being laid in the residential localities, mostly by the local authorities, such as Gram Panchayat/Municipality, it must be ensured that height of the road is maintained at such level that the rain water does not enter into the houses of the inhabitants of the either side of the road. There again, the matter needs to be left to the experts, to examine.

We, therefore, dismiss the writ petition as devoid of merits.

There shall be no order as to costs.

Interlocutory Application, if any, shall stand disposed of.

(L. Narasimha Reddy,CJ)

(Vikash Jain, J)

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