

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6332 of 2014

Chandra Kishore Parasar, Son of Late Ram Bahadur Singh, Resident of Senapati Bhawan, Parashar Colony, New Area Sikandarpur, P.S. Muzaffarpur Town, District- Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Urban Development and Housing Department, Government of Bihar, Patna
3. The Divisional Commissioner, Tirhut Division, Muzaffarpur
4. The District Magistrate, Muzaffarpur, District- Muzaffarpur
5. The Sub-Divisional Officer, East Muzaffarpur, District- Muzaffarpur
6. The Circle Officer, Mushahari, District- Muzaffarpur
7. The Muzaffarpur Municipal Corporation, Muzaffarpur through the Municipal Commissioner.
8. The Municipal Commissioner, Muzaffarpur Municipal Corporation, Muzaffarpur
9. Union of India through Secretary Railway
10. General Manager, East Central Railway, Hazipur

.... Respondent/s

With

Civil Writ Jurisdiction Case No. 7151 of 2012

1. Dharmendra Kumar, S/O Sri Daroga Singh, R/O Baishakhiram Lane, Motijheel, P.S.-Town, Town and District-Muzaffarpur
2. Nilam Devi, W/O Prakash Chandra Gupta, R/O Tilak Maidan Road, P.S.-Town, Town and District -Muzaffarpur
3. Jitendra Kumar, S/O Bikkunth Prasad Gupta, C/O Rahul Prakash, Back of Electricity Office, Tilak Maidan Road, P.S., Town, Town and District - Muzaffarpur
4. Raghav Prasad Gupta, S/O Late Rambaran Sah, R/O Kalyani Bara, Kalyani Chowk, P.S.-Town, Town and District -Muzaffarpur
5. Udai Prakash Gupta, S/O Late Mohanlal Gupta, R/O Naya Tola, Sarla Sadan, P.S.-Kazimohammadpur, Town and District-Muzaffarpur
6. Md. Amrul, S/O Md. Sadik, R/O Mehndi Hasan Chowk, Near Phulwari Market, Brahmpura, P.S.-Brahmpura, Town and District-Muzaffarpur
7. Afroj Aalam, S/O Md. Amrul, R/O Mehndi Hasan Chowk, Near Phulwari Market, Brahmpura, P.S.-Brahmpura, Town and District-Muzaffarpur
8. Md. Jamirul, S/O Md. Sadik, R/O Mehndi Hasan Chowk, Near Phulwari Market, Brahmpura, P.S.-Brahmpura, District and Town-Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Old Secretariat, Patna
2. The Principal Secretary, Urban Development Department, New Secretariat, Patna

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3. The Collector cum District Magistrate Muzaffarpur
 4. The Additional Collector, Muzaffarpur
 5. Sub Divisional Officer, Muzaffarpur
 6. Land Acquisition Officer, Muzaffarpur
 7. Deputy Collector Land Reforms (East), Muzaffarpur
 8. Circle Officer, Mushahari, Muzaffarpur
 9. Municipal Corporation through its Chief Municipal Commissioner, Muzaffarpur
 10. Additional Municipal Commissioner, Municipal Corporation, Muzaffarpur
 11. IRCON International Ltd. through its General Manager, Palika Bhawan, Sector XIII, R.K.Puram, New Delhi-110066
 12. Deputy General Manager, IRCON, Muzaffarpur having its office at Sone Bhawan, 1st Floor, Daroga Pd. Rai Path, Patna
 13. The Secretary, Road Construction Department, Govt. of Bihar, Patna

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 19053 of 2013

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1. Shiv Kumar Singh, S/O Late Rajmangal Singh, presently resident of Mohalla - Sri Nagar Colony, House No. 3/31, Gobarsahi, P.S. - Sadar, P.O. Bhagwanpur, Town & District - Muzaffarpur (Bihar)
2. Dinesh Thakur, S/O Late Merkhun Thakur, presently resident of Mohalla Mishra Tola, Gannipur, P.S. - Kazi Mohammadpur, P.O. + Town + District - Muzaffarpur (Bihar)
3. Abhishek Kumar, S/O Sri Dinesh Thakur, presently resident of Mohalla Mishra Tola, Gannipur, P.S. - Kazi Mohammadpur, P.O. + Town + District - Muzaffarpur (Bihar)

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Old Secretariat, Patna
2. The Secretary, Road Construction Deptt., Govt. Of Bihar, Patna
3. The Principal Secretary, Urban Development Department, New Secretariat, Patna
4. The Collector-Cum-District Magistrate, Muzaffarpur
5. The Additional Collector, Muzaffarpur
6. Sub Divisional Officer, Muzaffarpur
7. Land Acquisition Officer, Muzaffarpur
8. Deputy Collector, Land Reforms (East), Muzaffarpur
9. Circle Officer, Mushahari, Muzaffarpur
10. Municipal Corporation through its Chief Municipal Commissioner, Muzaffarpur
11. Additional Municipal Commissioner, Municipal Corporation, Muzaffarpur
12. IRCON International Ltd. through its General Manager, Palika Bhawan, Sector XIII, R.K. Puram, New Delhi 110066
13. Deputy General Manager, IRCON, Muzaffarpur having its office at Sone Bhawan, 1st Floor, Daroga Pd. Rai Path, Patna

.... Respondent/s

With

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Civil Writ Jurisdiction Case No. 8306 of 2014

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1. Sashi Nath Thakur, S/O Late Baleshwar Thakur of village - Mohammadpur Kazi, Bighanpura District - Muzaffarpur.
2. Jay Prakash Sharma, S/O Late Yadr Nath Sharma, Mohalla - Rasalpur Z Majhani Road, P.S. Kazi Mohammadpur, District - Muzaffarpur.
3. Khursid Alam, S/O Late Manjoor Alam, Mohalla - Mehendi Hasan Chauk Brahmpura, P.S. Brahampura, District - Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat, Patna.
2. The Secretary, Road Construction Department, Government of Bihar, Patna.
3. The Principal Secretary, Urban Development Department, New Secretariat, Patna.
4. The Collector-cum-District Magistrate, Muzaffarpur.
5. Land Acquisition Officer, Muzaffarpur.
6. Circle Officer, Mushahari, Muzaffarpur.
7. Municipal Corporation through its Chief Municipal Commissioner, Muzaffarpur.
8. IRCON International Ltd. through its General Manager, Palika Bhawan, Sector XIII, R.K. Puram, New Delhi 110066.
9. Deputy General Manager, IRCON, Muzaffarpur having its office at Sone Bhawan, 1st Floor, Daroga Pd. Rai Path, Patna.

.... Respondent/s

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Appearance :

(In CWJC No. 6332 of 2014)

- For the Petitioner/s : Mr. Vijay Kumar Singh, Advocate
- For the State : Mrs. Namrata Mishra, GA-13
Mr. Alok Ranjan, Advocate
- For the Corporation : Mr. Awadhesh Kumar, Advocate
- For Respondents 9, 10 : Mr. D.K. Sinha, Sr. Advocate
Mr. Sunil Kumar Ravi, Advocate
- For IRCON : Mr. Ranjan Kumar Sinha, Advocate
- For Intervener : Mr. Om Prakash, Advocate
Mr. Rabindra Kumar Ravi, Advocate

(In CWJC No. 7151 of 2012)

- For the Petitioner/s : Mr. Om Prakash, Advocate
Mr. Rabindra Kumar Ravi, Advocate
- For IRCON : Mr. Ranjan Kumar Sinha, Advocate
- For the Corporation : Mr. Awadhesh Kumar, Advocate

(In CWJC No. 19053 of 2013)

- For the Petitioner/s : Mr. Om Prakash, Advocate
- For IRCON : Mr. Ranjan Kumar Sinha, Advocate
- For the Corporation : Mr. Awadhesh Kumar, Advocate

(In CWJC No. 8306 of 2014)

For the Petitioner/s : Mr. Arvind Kumar, Advocate
Mr. Rajesh Kumar, Advocate
For the State : Mr. Rajeev Shekhar, AC to GP-24
For IRCON : Mr. Ranjan Kumar Sinha, Advocate
For the Corporation : Mr. Awadhesh Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA
and
HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE V.N. SINHA)
Date: 11 -02-2015

These four writ petitions have been heard together as common question of fact and law is involved in them. Petitioners in C.W.J.C. No. 7151 of 2012 has prayed for directing/ commanding the respondents to implement their own decision taken for rehabilitation of 49 displaced/ removed shopkeepers including the petitioners from Motijheel/ Chandralok-Shyamnandan Road locality of Muzaffarpur town necessitated on account of raising of Railway Overbridge in the said locality beneath the ROB vide resolution contained in Memo No. 230/ Bhu-Arjan Muz. Dated 09.04.2007, Annexure-5 and similar resolution taken by Muzaffarpur Municipal Corporation (hereinafter referred to as "Corporation") in the meeting of its Board on 05.04.2007 communicated under Memo No. 607 Mu Na Ni dated 12.04.2007, Annexure-6 and to deliver possession of one shop each to the 49 displaced persons including the petitioners.

2. Similar prayer has been made in C.W.J.C. Nos. 19053 of 2013 and 8306 of 2014. In C.W.J.C. No. 6332 of 2014 prayer

is to direct the State and its authorities to restrain the Corporation from raising shops as also to remove the shops already raised beneath Railway Overbridge, Motijheel and to use the space below the ROB for parking purpose or for park/ covered green area.

3. In the light of the pleadings made in the writ petitions counter affidavit has been filed on behalf of the State and other respondents in C.W.J.C. Nos. 7151 of 2012 and 6332 of 2014. We shall first deal with the counter affidavit and other pleadings filed in C.W.J.C. No. 7151 of 2012. From the counter affidavit filed on behalf of respondent nos. 9, 10 i.e. Corporation and its Municipal Commissioner, it appears that petitioners and others had earlier raised their shops at their own cost as per direction of the then Administrator of the Corporation in the year 2007. Shops of the petitioners, which were creating obstruction in raising the Overbridge were later removed by the District Administration, Muzaffarpur. In this connection, letter of D.G.M., IRCON, Muzaffarpur dated 01.02.2007, Annexure-4 is referred to suggest that the shops of the petitioners and others were removed to facilitate raising of the Overbridge with clear stipulation that the space below the Bridge portion, specially from the Railway Crossing to Town Police Station the vertical clearance whereof from road to top i.e. the open space available below the Bridge portion can be earmarked for the displaced shop owners. In the light of the



aforesaid instructions of IRCON District Magistrate, Muzaffarpur and authorities of the Corporation passed resolution dated 09.04.2007, Annexure-5 stating in paragraphs 1 to 6 of the minutes that IRCON would build 49 shops for the displaced shopkeepers beneath the Overbridge and the compensation in lieu of the shops would be given to the Corporation, which would be deposited in a separate account in the office of District Land Acquisition Officer, out of which the expenditure would be made by the Municipal Commissioner for building the shops beneath the Overbridge. It is further stated in the said counter affidavit that till date of the counter affidavit neither any amount has been handed over to the Corporation nor any shops have been raised by IRCON, as such, the shops have not been settled with the petitioners. In Paragraph 10 of the counter affidavit the authorities of the Corporation undertook to take steps for allotment of shops to the petitioners as soon as the same is raised as also to pay them the compensation amount no sooner the same is made available in the light of the decision taken by the District Administration under Memo No. 09.04.2007, Annexure-5.

4. From the counter affidavit filed on behalf of respondent nos. 11, 12 the authorities of IRCON International Ltd., it appears that while raising the Railway Overbridge, Motijheel the authorities of IRCON realized that without removing the 49 shops of



the petitioners and others situate in the alignment of the Overbridge raising of the Overbridge may not be possible and accordingly, requested the District Administration to get the shops removed in order to facilitate raising of Railway Overbridge. In the light of the request made by IRCON authorities, District Magistrate, Muzaffarpur convened a meeting of the parties concerned on 09.04.2007 in which it was unanimously decided that IRCON would proceed with the foundation work for raising 49 shops below Railway Overbridge, as would appear from the minutes of the meeting, Annexure-5. In Paragraph 6 the authorities of IRCON stated that raising of Railway Overbridge, Motijheel has not only been completed but the said Overbridge has also been commissioned and is operational. The authorities of IRCON further stated that they have completed the foundational work for raising the 49 shops in the light of the resolution of the meeting dated 09.04.2007, Annexure-5. In Paragraph 7 of the counter affidavit authorities of IRCON stated that it is clear from perusal of Annexure-5 that the compensation amount for the shops so given by the District Administration to the Corporation was to be deposited in the separate account of Land Acquisition Officer, Muzaffarpur and would be spent by the Municipal Commissioner for raising the shops. In Paragraph 8 the authorities of IRCON referred to letter of the Land Acquisition Officer, Muzaffarpur bearing No. 589



dated 07.06.2011, Annexure-A and submitted with reference to its contents that the estimated cost for raising the shops has been received in the office of the Land Acquisition Officer, Muzaffarpur and proposal for the departmental transfer of Government land has already been sent by the District Land Acquisition Officer. In Paragraph 9 of the counter affidavit the authorities of IRCON stated with reference to Annexure-5 that it is manifestly clear that the said 49 shops is required to be raised by the Corporation on the map, model prepared by IRCON. In the same paragraph it is further stated that it is for the Corporation to decide the Agency from whom it wishes to get the said shops build but the authorities of IRCON are always ready to give suggestions and to prepare map and model for the proposed shops as per resolution taken in the meeting, Annexure-5. In Paragraph 10 IRCON authorities stated that it is erroneous on the part of the Corporation authorities to assert in their counter affidavit that IRCON would build 49 shops as it was only authorized to lay foundation of the proposed 49 shops which has already been laid. In the same paragraph, it is further asserted that it is for the District Administration and the Corporation to choose the Agency from whom they wish to get the said shops raised. In Paragraph 11 of the counter affidavit IRCON authorities referred to the Memorandum of Understanding dated 27.05.2005, Annexure-B arrived at by and between the Ministry of Railways, Government of Bihar and



IRCON wherefrom it is apparent that it was the responsibility of the State Government to make available the land free from encroachment/ structures for raising the Overbridge and to hand over the same to IRCON. It was also the responsibility of the State Government to arrange rehabilitation of the encroachers/ structures.

5. Corporation having received the counter affidavit of IRCON filed supplementary counter affidavit in the light of the inspection report dated 10.07.2013, Annexure-A stating in Paragraph 6 thereof that IRCON has not laid the foundation for raising the 49 shops but has only laid 14 ft. wide concrete road and has further covered the open drain on both the flanks of Motijheel Road. Besides road and the cover provided over the drain a concrete floor has also been raised by IRCON beneath the Railway Overbridge in six spans which is 46 ft. in length and 24 ft. in width. In Paragraphs 8, 9 of the said supplementary counter affidavit authorities of the Corporation with reference to Clause 2 of the minutes dated 09.04.2007 stated that the compensation amount provided to the Corporation is required to be deposited in a separate account of the District Land Acquisition Officer to be spent by the Municipal Commissioner for raising the shops but the compensation amount has not been made available to the Corporation for raising the shops beneath the Overbridge and also referred to letter no. 1522 dated 18.07.2013, Annexure-B issued by the Municipal



Commissioner addressed to the District Land Acquisition Officer. In Paragraph 10 of the said supplementary counter affidavit, it is stated that neither IRCON has raised the foundation for the shops nor compensation amount has been made available to the Corporation and in the circumstances it is not possible for the Corporation to hand over the shops to the petitioners. In Paragraph 11 statement has been made by the Corporation that no sooner foundation of the shops is raised by IRCON and the compensation amount is made available to the Corporation by the District Administration in the account of the District Land Acquisition Officer, Muzaffarpur the Corporation shall undertake building of the shops and hand over the same to the petitioners and others within a reasonable time of raising of foundation and the payment of compensation amount.

6. In the light of the averments made in the writ petition, counter affidavit filed on behalf of the Corporation, IRCON Land Acquisition Officer, Muzaffarpur filed counter affidavit on behalf of respondent nos. 3, 4 stating in Paragraph 5 thereof that letters dated 29.06.2009, 16.08.2013, Annexures-A, B have been issued to the Executive Engineer, Road Construction, Department Division No. 1, Muzaffarpur for inter-departmental transfer of land but the process of land transfer could not be completed and consequently neither due compensation has been paid to the Corporation nor shops have been



raised. In Paragraph 7 of the counter affidavit Land Acquisition Officer stated that in the light of the direction of the High Court matter was discussed in the meeting convened of the officers of the District Administration represented by Additional Collector, Muzaffarpur, Municipal Commissioner including Land Acquisition Officer, Executive Engineer, Road Construction Department, Division No. 1, Muzaffarpur, officials of IRCON and direction was issued to inspect the spot and submit report. It is further stated in the same paragraph that under report dated 16.08.2013, Annexure-B series it was found that no infrastructure/ foundation laying work has been done by IRCON for raising 49 shops. The road beneath the Railway Overbridge is being shown by IRCON as infrastructure. It has also been submitted in the report that a slip road laid by IRCON is being projected as foundation for raising the shops. Two RCC pillars have been raised beneath the Railway Overbridge, which is part of raised Railway Overbridge. There are two narrow streets besides the Railway Overbridge on both sides which is very congested due to heavy traffic almost throughout the day. Proposed raising of 49 shops is not practically feasible beneath the Overbridge in view of traffic movement as the place is located in a densely populated area of the town. In the same paragraph, it is stated that Municipal Commissioner has given his oral acceptance that as and when he receives the compensation amount



the shops shall be raised at a convenient alternative place. Land Acquisition Officer further stated in the counter affidavit that steps are being taken for inter-departmental transfer of land to the Executive Engineer, Road Division No. 1, Muzaffarpur with intimation to the Urban Development Department.

7. Land Acquisition Officer, Muzaffarpur filed supplementary counter affidavit on behalf of respondent nos. 4 to 6 in compliance of the order of the High Court dated 20.08.2013 stating that resolution to raise 49 shops beneath the Overbridge is not practically feasible in view of traffic movement as the place beneath the Railway Overbridge is located in a densely populated market area of the town. Municipal Commissioner is ready for inter-departmental transfer of the said land to the Road Construction Department and after getting compensation amount he will get the shops raised at a convenient alternative place. In this connection, he also referred to letter dated 31.08.2013, Annexure-E of the Municipal Commissioner.

8. Respondent nos. 9, 10 filed 2nd supplementary counter affidavit stating in Paragraph 4 thereof that in compliance of the order dated 25.07.2013 the Engineers of the Corporation met the Engineers of IRCON informing them that so far foundation for raising the shops has not been raised. Outcome of the meeting was apprised to the Municipal Commissioner under letter no. 437 dated 26.08.2013,



Annexure-C that a temporary structure of 10” wall can be made by IRCON for raising the shops with corrugated sheet roof as it would not be proper to cut or dig 1 ft. wide concrete slip road and there was no requirement for raising an anchorage and further submitted that shortly a plan for raising the aforesaid shops would be prepared and submitted before the District Magistrate and that shops would be raised below five spans, one of the span would remain untouched for free traffic movement.

9. Secretary, Road Construction Department, Government of Bihar, Patna, respondent no. 13 also filed counter affidavit stating that as per Clause IId of the Memorandum of Undertaking (perhaps wrongly typed for Understanding) dated 27.05.2005 entered by and between the State Government, Ministry of Railways and IRCON, the Government shall arrange rehabilitation of encroaching structures, if any, coming in the way of raising of Railway Overbridge. In the same paragraph he further stated that the District Magistrate, Muzaffarpur vide letter no. 05 dated 16.08.2013 has directed the Executive Engineer, Road Division No. 1, Muzaffarpur to send requisition for inter-departmental transfer of land utilized for Railway Overbridge. Requisition made by Executive Engineer under letter no. 1257 dated 24.08.2013 has already been sent to the District Land Acquisition Officer, Muzaffarpur for processing the inter-



departmental transfer of land over which Railway Overbridge is to be raised. The land shall be transferred to the Road Construction Department through Land Reforms Department. It is also stated in the same counter affidavit that after the process of land transfer is over the District Administration, Muzaffarpur will demand from Road Construction Department the cost required for rehabilitation of the displaced 49 shopkeepers. He further stated in the counter affidavit that department will transfer the amount demanded by the District Administration for rehabilitation of the shopkeepers and prayed for three months' time to complete inter-departmental transfer of land.

10. In the light of the pleadings filed by the answering respondents petitioners filed supplementary affidavit/ rejoinder. In Paragraph 2 of the rejoinder statement has been made that the road which turns south from the main road of Motijheel, Muzaffarpur east to west at about 90 degree angle near Town Police Station up to railway line is approximately 511 ft. in length from north to south up to railway line and is known as Shyamnandan Road which is now blocked after raising of Railway Overbridge and closure of railway crossing. In Paragraph 3, it is stated that at Shyamnandan Road the petitioners were promised or assured by the respondents vide Annexure-5 that they shall be allotted 49 shops and in view of the promise petitioners allowed their shops raised under Self Financing Scheme to be demolished. In



Paragraph 4 of the said affidavit petitioners asserted that the signatory to Annexure-B of the counter affidavit dated 20.08.2013 i.e. Collector, Land Acquisition Officer, Additional Collector, Muzaffarpur were present and parties to the resolution dated 09.04.2007, Annexure-5 but they have now taken 'U' turn to frustrate, discriminate the interest of the poor petitioners in order to facilitate the interest of those who have their shops in Uma Market and its owner, who is a rich and influential person of the town and in order to accommodate their interest and to harass poor shopkeepers. In Paragraph 5 of the rejoinder petitioners stated that the said Shyamnandan Road is a blocked road which is not available to the general public for traffic movement after closure of the railway crossing. The area is now an isolated area and is only catering to the needs of Uma Market Complex. In order to establish the contention petitioners also placed along with the rejoinder the recent photographs of the locality. In Paragraph 6 of the rejoinder petitioners stated that the two counter affidavit sworn and filed by Land Acquisition Officer, respondent no. 6 cannot be relied upon as he was party to the decision, Annexure-5 and cannot be allowed to take 'U' turn, which is wholly unjustified in the eye of law. In Paragraph 7 of the rejoinder petitioners asserted that the statement made in Paragraphs 7, 5 of the counter affidavit dated 20.08.2013 and 02.09.2013 respectively is wrong and misrepresentation as there is no heavy



movement of traffic of the general public in the area. In Paragraphs 8, 9 of the rejoinder petitioners asserted that there has been no change in the situation after 09.04.2007 when the resolution, Annexure-5 was taken. In Paragraph 10 of the rejoinder petitioners stated that Respondent-State is obliged to carry out the resolve made by it under Annexure-5 as they are bound by the promise which they made to the petitioners.

11. Further supplementary counter affidavit has been filed on behalf of respondent nos. 9, 10. In Paragraphs 3, 4 thereof statement has been made that in compliance of the order of the High Court dated 03.01.2014 civil work to raise 49 shops beneath the Railway Overbridge at Motijheel, Muzaffarpur has begun as per the amended plan with approval of a Committee of which four shopkeepers are also members. In Paragraphs 6, 8 of the supplementary counter affidavit statement has been made that building work is undertaken on participatory basis whereunder shopkeepers are also participating and for raising shops advance of Rs. 50 lakhs have been given to complete the building activity within the stipulated period of six months.

12. By filing further supplementary counter affidavit respondent nos. 9, 10 informed this Court that roof casting of 12 shops has been completed. Construction of 12 more shops has also made significant progress, as is evident from report dated 21.03.2014 and

that construction of all the 49 shops shall be completed within the stipulated period of six months.

13. I.A. No. 2513 of 2014 is an intervention application on behalf of three petitioners asserting that the original writ petition has been filed on behalf of eight petitioners in representative capacity for the 49 shopkeepers as they have come to learn that the Corporation is going to allot land to others which forced the interveners to intervene on behalf of those who are not to be given shops but are to be allotted lands.

14. Petitioners filed 2nd supplementary affidavit asserting that for success of their case, as set out in the writ petition, they crave to rely on the different order(s) passed in the present writ case, particularly orders dated 25.07.2013, 20.08.2013, 19.09.2013 and 03.01.2014. In Paragraph 3 of the said affidavit petitioners asserted that the aforesaid orders have attained finality as respondents have not preferred any appeal or review against those orders and this Court kept the writ petition pending for enforcing the petitioners' right of rehabilitation in the light of the resolution, Annexures-5, 6 and proceeded to monitor implementation of order dated 03.01.2014. In Paragraph 5 of the affidavit petitioners asserted that the rights, benefits accrued to them in the light of the orders of this Court cannot be taken away in view of the provisions of Rule 15 of Chapter X of Patna High



Court Rules which prohibit any change in the said order except by way of appeal or review which has not been preferred in this case by the respondents so far. In Paragraph 6 petitioners asserted that they crave leave to rely upon the statement made before this Court on 04.08.2014 by District Magistrate-cum-Collector, Superintendent of Police and the Municipal Commissioner, Muzaffarpur when they were called by this Court to answer the query made by this Court about free flow of traffic in Shyamnandan Road, Muzaffarpur the site where 49 shops are to be raised beneath the Railway Overbridge. In Paragraph 7 petitioners asserted that on 04.08.2014 the Municipal Commissioner informed this Court that construction of 12 out of 49 shops has already been completed and possession given to the 12 shopkeepers. 12 shops have been raised up to roof level, another 12 shops have been raised up to plinth level and the construction of remaining shops is in progress. In Paragraph 8 of the affidavit petitioners asserted that the shops have been raised beneath the Overbridge in other parts of the country as well and gave example of Ranchi where beneath the Overbridge in Station Road shops have been raised by Ranchi Municipal Corporation and appended photographs of those shops vide Annexure-8 to the supplementary affidavit. In Paragraph 9 of the affidavit petitioners again asserted that the rights accrued to them vide orders passed in the present writ case cannot be taken away in a parallel proceeding under



Article 226 of the Constitution violating the preamble and Article 21 of the Constitution. In Paragraph 10 of the affidavit petitioners placed reliance on the Full Bench judgment of the Patna High Court **In Re Babul Chandra Mitra AIR 1952 Patna 309 Paragraph 6, Arati Paul Vs. Registrar High Court Original Side AIR 1965 Calcutta 3** and submitted that High Court cannot issue a writ against itself, therefore, order passed in the present writ petition could not be interfered with.

15. Having taken note of the pleadings made by the parties, it is appropriate to notice the contents of interim orders dated 25.07.2013, 20.08.2013, 19.09.2013 and 03.01.2014 passed in the instant writ case over which petitioners placed reliance for the success of their plea raised in the petition.

(i) Under order dated 25.07.2013 a Single Judge of this Court having noticed the stand of the parties asked the engineers of the Corporation or the State Government to verify, clarify from the engineers of IRCON whether the so called 14 ft. wide concrete road laid by IRCON beneath the Overbridge is sufficient or not to serve as a foundation for raising the 49 shops.

(ii) Under order dated 20.08.2013 learned Single Judge of this Court permitted the petitioners to implead Secretary, Road Construction Department as respondent no. 13 in the writ case



and thereafter directed respondent no. 13 to file a separate counter affidavit indicating the steps which he is taking pursuant to Clause II d of the Memorandum of Understanding dated 27.05.2005 entered by and between the State Government and the Ministry of Railways and IRCON. Perusal of said order further indicates that the Secretary was directed to explain as to whether the action of respondent State does not amount to playing fraud by first getting the shopkeepers removed from the spot on the basis of assurance of rehabilitation and then leaving them in lurch.

(iii) Under order dated 19.09.2013 learned Single Judge of this Court took note of the averments made by the Principal Secretary, Road Construction Department in his counter affidavit sworn on 10.09.2013 in which statement was made that steps are being taken for rehabilitation of the shopkeepers for which three months' time is required and adjourned the matter to 11.11.2013 after taking note of the submission of the petitioners that shopkeepers have been kept waiting for rehabilitation for last 6½ years without any concrete steps having been taken for their rehabilitation by the respondents.

(iv) From perusal of order dated 03.01.2014 it appears that submission was made by the Corporation before the learned Single Judge that necessary funds for raising the shops in question have now been received from the State Government and the shops shall be raised

within a reasonable time i.e. six months and in appreciation of such fact learned Single Judge adjourned the matter by four weeks so as to enable the counsel for the Corporation to file report on affidavit indicating the progress made towards raising of the shops within such period.

16. During pendency of C.W.J.C. No. 7151 of 2012 in which learned Single Judge of this Court monitored the progress to rehabilitate the 49 shopkeepers beneath Motijheel Railway Overbridge by raising 49 shops one Chandra Kishore Parasar, a resident of Muzaffarpur filed Public Interest Litigation bearing C.W.J.C. No. 6332 of 2014 praying inter alia to direct the State and its authorities to restrain the Corporation from raising the 49 shops beneath the Railway Overbridge, Motijheel, Muzaffarpur as also to remove the shops already raised beneath the said Railway Overbridge and to use the space for parking purpose or for park/ covered green area as the Motijheel area is the busiest business area of the town where shops already pre-existed on both sides of the road. In case, shops are raised beneath the Overbridge the same will reduce the motorable space of the road and the road shall become lane creating not only traffic congestion but will bring the traffic to stand still in the most busy area of the town and the construction of the shops, if allowed beneath the Overbridge, is in complete violation of Sections 232, 233, 235, 241 and 242 of the

Bihar Municipal Act, 2007.



17. The Division Bench appreciating the submissions raised in the Public Interest Litigation under order dated 24.04.2014 directed the State-Respondents i.e. District Magistrate, Superintendent of Police, Muzaffarpur to file separate counter affidavit and confirm whether construction of the 49 shops beneath the Railway Overbridge is permitted in accordance with laws of Urban Planning sanctioned by the competent municipal authorities and that the shops will not affect free flow of traffic leading to congestion on public street in the busy area of the town. District Magistrate/ Superintendent of Police were also directed to explain in the affidavit that if parking space in front of the shops on both sides is available leaving motorable area to ensure smooth flow of traffic. The Municipal Commissioner was directed to file separate affidavit enclosing the orders and plans approved by him under the Municipal Act for raising of the shops with further direction to explain if the shops will create no issue of traffic congestion and that he consulted the Superintendent of Police before permitting construction of the shops. In the penultimate paragraph of the order the Court further observed that any construction of the shops in the meantime shall be entirely at the risk, cost and responsibility of the Municipal Commissioner.

18. In the light of the aforesaid order of the Division

Bench learned Single Judge under order dated 16.06.2014 directed C.W.J.C. Nos. 7151 of 2012 and 19053 of 2013 to be heard by the Division Bench.

19. In compliance of the aforesaid order of the Division Bench dated 24.04.2014 District Magistrate, Muzaffarpur, respondent no. 4 filed counter affidavit stating that pursuant to the order dated 24.04.2014 of this Court Two Men Committee was constituted comprising the District Transport Officer, Muzaffarpur and Sub-Divisional Officer, East Muzaffarpur. The Committee visited the place beneath Motijheel Railway Overbridge towards north of the erstwhile railway crossing where shops are being raised by the Corporation and submitted report dated 07.07.2014, Annexure-A indicating that Dharmendra Kumar and others filed C.W.J.C. No. 7151 of 2012 asserting that due to raising of Motijheel Railway Overbridge petitioners of the said writ case as also others in all 49 shopkeepers were displaced. In the said writ case High Court passed orders from time to time directing the Municipal Commissioner, Muzaffarpur to rehabilitate the displaced shopkeepers after raising shops and in compliance of the order passed in the said writ case Municipal Commissioner constituted 6 Men Committee for raising the 49 shops and thus the construction of the shops have begun. In the counter affidavit District Magistrate further stated that the Municipal



Commissioner has given approval for construction of the shops and during spot enquiry it was found that in between the Town Police Station Crossing and the erstwhile railway crossing the shops are being raised between the pillars of Motijheel Railway Overbridge. It was also found that roof casting of 12 shops has been completed, 12 shops have been raised above lintel level and plinth of 12 shops has been raised till the date of the affidavit. In Paragraph 7 of the counter affidavit District Magistrate further stated that it has been reported that the construction of the above shops is not in accordance with the building bye-laws and there is no parking facility at the place. It is, thus, apparent that these shops are not being raised following the provisions of Sections 235, 241, 242 of the Bihar Municipal Act, 2007. In Paragraph 8 District Magistrate stated that it is relevant to mention that after Motijheel Railway Overbridge is commissioned erstwhile Railway Crossing has been blocked by erecting cemented wall for the safety of the general people for ensuring that they do not go over the railway track. Due to cemented wall the road is fully blocked and no vehicles are plying through the road but only the vehicles are being used by the people for going to Uma Market and the site of these shops under construction. Uma Market has its own parking space. A road leading to Shyamnandan locality is also in existence crossing eastern side of the shops under construction and if the vehicles are parked in front of the



shops under construction then it would be difficult to go to the road leading to Shyamnandan locality. In the eastern, western side of the shops under construction, 15 ft. wide road is available but parking of vehicles may not be proper. To support the aforesaid contention District Magistrate has also annexed with the counter affidavit a sketch map of the area for ready reference.

20. Senior Superintendent of Police, Muzaffarpur also filed counter affidavit stating in Paragraph 7 thereof that from the official record it appears that the predecessor of the present Senior Superintendent of Police called for a report from the Station House Officer, Town Police Station, Muzaffarpur about the volume of traffic in public street and parking space both sides of the Railway Overbridge, Motijheel on 20.06.2014. Station House Officer, Town Police Station submitted report dated 20.06.2014 and Police Inspector Incharge Traffic, Muzaffarpur submitted report dated 22.06.2014, Annexure-A series. Perusal of the two reports indicate that the road beneath the Railway Overbridge between Motijheel Town Police Station Crossing and Kalambagh Road Crossing has been closed after raising of Railway Overbridge by closing the railway crossing and for the present there is no traffic over the road by the side of the Overbridge, consequently there is neither parking problem nor traffic congestion over the two roads.



21. Corporation and its Commissioner, respondent nos. 7, 8 stated in Paragraph 5 of their counter affidavit that the 49 shops were initially raised on the land, which was allotted/ settled with the shopkeepers by the Corporation and the shopkeepers raised the shops at their own cost as per direction of the then Administrator of the Corporation in the year 2007. In Paragraph 6 of the said counter affidavit Corporation and its Commissioner stated that for development of Muzaffarpur town decision was taken to raise Railway Overbridge at Motijheel Railway Crossing where 49 shops were situate and to facilitate raising of the Overbridge the District Administration, Muzaffarpur removed the shops as the shops were causing hindrance and obstructing the alignment of the Overbridge. IRCON under letter dated 01.02.2007, Annexure-A requested the District Administration to assure the shopkeepers that they would be provided alternate space in the vicinity or below the Overbridge. In Paragraph 8 of the counter affidavit further statement has been made that a meeting has been convened by the District Magistrate, Muzaffarpur on 09.04.2007, minutes thereof are contained in Memo dated 09.04.2007, Annexure-B, whereunder IRCON undertook to construct 49 shops for the displaced shopkeepers underneath the Overbridge and the compensation in lieu of the shops would be given to the corporation which would be deposited in a separate account of the District Land Acquisition



Officer, out of which the expenditure would be made by the Municipal Commissioner for raising the shops underneath the Overbridge. In Paragraphs 9 to 15 of the counter affidavit Corporation and its Commissioner informed this Court about the prayer made in the connected Writ Petition bearing C.W.J.C. No. 7151 of 2012 and the orders passed by this Court in the said writ case including the fact that IRCON laid the foundation for raising the 49 shops below the Overbridge as per the decision taken in the meeting dated 09.04.2007. In Paragraphs 12, 13 of the counter affidavit reference is made to the Inspection Report of Additional Collector, Muzaffarpur contained in Memo No. 1423 dated 16.08.2013 wherein it was specifically pointed out taking into consideration the traffic problem, inconvenience caused to the public and that it may not be proper to raise the shops beneath the Overbridge, Amended Plan, Annexure-E proposed for raising 49 shops vide supplementary affidavit filed in C.W.J.C. No 7151 of 2012 in February, 2014. Petitioners, however, opposed any amendment in the construction plan and wanted the shops to be completed immediately as they were rendered jobless for long and the High Court being not satisfied about the delay caused in raising the shops directed under orders dated 10, 25.02.2014 that the construction work for raising 49 shops beneath the Overbridge be expedited and completed within six months where foundation has already been laid by IRCON



for raising the shops. In Paragraph 14 of the counter affidavit it is stated that as agreed in the meeting dated 09.04.2007 the shops for the displaced shopkeepers would be raised beneath the Overbridge where foundation of the shops has already been laid by IRCON in pursuance of the said decision. In Paragraph 15 of the counter affidavit further statement has been made that prior to the construction of the shops consultation was made with the District Administration wherein concerns were raised with regard to traffic issues but the petitioners were opposed to the idea of any amendment in the construction site plan which was brought to the notice of the Court by supplementary petition also filed in the same writ case. In Paragraph 16 the answering respondents expressed their readiness to comply with the order/direction passed by the High Court.

22. Senior Superintendent of Police, Muzaffarpur filed further counter affidavit giving reference to his earlier counter affidavit filed in the light of order dated 24.04.2014 on the basis of the report received from the Station House Officer, Town Police Station dated 22.06.2014. In the subsequent counter affidavit in Paragraph 8 it is stated that after perusal of the report of the Station House Officer, Town Police Station, Muzaffarpur, in the light of the direction of this Court, instructions were given to Town Dy. S.P. to submit report answering specific question raised by this Court as to whether after the

49 shops are raised under the Railway Overbridge free flow of traffic will or will not be affected. In the light of such instruction Town Dy.S.P. submitted report dated 08.07.2014, Annexure-A stating that after raising of the shops beneath the Overbridge free flow of traffic would be affected.

23. This Court under order dated 04.09.2014 directed the petitioner to implead Union of India through Ministry of Railways and General Manager, East Central Railway as Respondent Nos. 9, 10 and thereafter called upon counsel for the Railways to inform the Court as to whether Railway Crossing at Shyamnandan Road, Muzaffarpur is functional or closed after commissioning of the Railway Overbridge. In compliance of the said order Railway Administration has filed counter affidavit. In Paragraph 6 of the counter affidavit Railway Administration has referred to Paragraph 925 of Chapter-IX of Indian Railways Permanent Way Manual (hereinafter referred to as "IRP Manual") providing for replacement of existing level crossing with ROB/RUB on cost sharing basis is to be made where Minimum Train Vehicle Unit (hereinafter referred to as TVU) on the Railway Crossing is 1 lakh per day. Clause 5 of Paragraph 925 of IRP Manual provides that closure of level crossing should be ensured before commissioning of ROB/RUB. All such cases where State/ Local Authority do not agree to close the railway crossing such fact should be promptly



reported to the Railway Board. Paragraph 7 of the counter affidavit refers to Railway Board Policy No. 2007/CE-I/LX/90, Annexure-B, in terms whereof ROB/RUB work is undertaken by Railways in lieu of existing level crossing on cost sharing basis if the traffic density at the level crossing is 1 lakh or more TVUs. TV unit is obtained by multiplying the number of trains to the number of road vehicle passing over the level crossing in 24 hour. The policy letter further states under heading "Closure Of Level Crossing In Lieu Of Which ROB/RUB Has Been Raised" that as per standard condition of agreement entered into with the State Government prior to sanction of work for replacement of existing level crossing with ROB/RUB the State Governments are liable to give undertaking that the level crossing in lieu of which ROB/RUB is being sanctioned on cost sharing basis will be closed on commissioning of the ROB/RUB. In Paragraph 8 of the counter affidavit statement has been made that the field unit of Divisional Railway Manager (Engineering), Sonapur Division, Sonapur is regularly conducting frequency census every three years for TVU at level crossings. In Paragraphs 9, 10 statement has been made that after receipt of TVU data from field unit the level crossing where TVU has become 1 lakh or more proposal is initiated for obtaining consent of the State Government on cost sharing, closure of the level crossing on its commissioning, land acquisition etc. After receipt of consent sanction



of competent authority for provision of ROB/RUB in lieu of a particular level crossing is obtained. In Paragraphs 11, 12 the counter affidavit states that the similar procedure was followed for ROB in question in lieu of level crossing Gate No. 101 and 101A and following the due process like drawing of map for the ROB in consultation with the District Magistrate, Muzaffarpur. ROB between Motijheel Market and Chandralok Crossing near Shyamnandan Road (north to south) was raised, inaugurated. To eliminate the safety infringement after commissioning of ROB Commissioner of Railway Safety was approached for removal of signaling gears which was objected to in absence of approval of State Government for closure of level crossing and its actual closure. Due to non-removal of signaling gears there was complication in train operation and its safety. Permission for closing railway level crossing was sought from the District Magistrate, Muzaffarpur and Commissioner, Railway Safety, Eastern Circle, Kolkata. In Paragraph 13 counter affidavit states that DRM (Engineering), Sonapur under letters dated 30.04.2014/ 05.05.2014, Annexure-D sought permission for closing of railway crossing Gate No. 101, 101A. In Paragraphs 14, 15 counter affidavit states that in the light of the request of the DRM (Engineering) for closure of the level crossing a meeting was convened by the District Magistrate, Muzaffarpur, who accorded permission under letter No. 2162 dated



12.07.2014, Annexure-F to close the Railway Crossing Gate Nos. 101, 101A situate at Muzaffarpur-Samastipur Rail Section. In Paragraph 16 counter affidavit states that after receipt of the permission from the District Magistrate, Muzaffarpur the Railway Administration sought permission from the Commissioner of Railway Safety, Eastern Circle, Kolkata for closing the railway crossing Gate Nos. 101, 101A who also accorded sanction of closure of the aforesaid level crossing. In Paragraphs 17, 18 of the counter affidavit statement has been made that the ROB in question has been raised in lieu of Railway Crossing on account of heavy traffic in the public interest, as such, as per Railway Board's policy Railway Level Crossing Gate Nos. 101, 101A has been closed after raising a wall on both sides north to south. In case, wall on both sides is not raised by the Railway Administration there is possibility of untoward accident and another litigation would be initiated by filing claim application before Railway Claims Tribunal for getting compensation under Railway Act, 1989. It is further stated that in the facts and circumstances stated in the counter affidavit answering respondent prays that wall on both sides may not be removed because that has been raised under IRP Manual as well as recent Railway Board Policy.

24. Petitioners of C.W.J.C. No. 7151 of 2012 and others filed intervention application bearing I.A. No. 4728 of 2014



asserting that they are affected persons and necessary party and required to be heard to enable this Court to effectually and completely adjudicate the matter, settle all the questions involved in the writ petition and to dismiss the same with heavy cost. In support of the intervention application the interveners also filed counter affidavit raising the same plea which they raised in C.W.J.C. No. 7151 of 2012.

25. From the pleadings made by the parties in the two writ petitions as also in the counter, supplementary counter and rejoinder affidavit, it is evident that the petitioners of C.W.J.C. No. 7151 of 2012 and others, in all 49 persons, raised their shops on the municipal land situate by the side of Motijheel, Kalambagh Road on both sides of railway level crossing Gate No. 101, 101A on Muzaffarpur-Samastipur Rail Section, which is one of the busiest market area in the town of Muzaffarpur. In order to ensure smooth flow of vehicular traffic in the market area it was proposed to raise Railway Overbridge at the aforesaid two railway level crossing. In order to facilitate raising of the Railway Overbridge at the railway crossing, it was necessary to remove the 49 shops as the shops were affecting the alignment of the Overbridge, which was objected to by the 49 shopkeepers. IRCON, the agency entrusted to execute the contract for raising the Overbridge, requested the District Magistrate under letter dated 01.02.2007 that the space below the bridge portion specially



from the railway crossing to Town Police Station vertical clearance whereof from road to bridge is about 6 meters and the open space available below the bridge portion can be earmarked for the displaced shop owners and assurance to that effect be given to the shop owners by the District Magistrate that alternative space will be provided to them in the vicinity or below the bridge portion. In the light of the request of IRCON, District Magistrate sought instruction from the Corporation. Corporation in the meeting of its Board of Corporaters dated 05.04.2007 resolved to allot shops to the 49 affected shopkeepers beneath the bridge portion of the Railway Overbridge. Minutes of meeting dated 05.04.2007 was duly communicated to all concerned under Memo No. 609 dated 12.04.2009. In the light of the resolution of the Board of Corporaters the District Magistrate, Muzaffarpur convened a meeting of the District Administration, IRCON, Corporation and the representative of the affected 49 shopkeepers on 09.04.2007 in which it was agreed that the 49 shopkeepers should remove their shops to facilitate raising of the Overbridge and the affected shopkeepers shall be accommodated in the open space beneath the Overbridge. The proceeding of the meeting was communicated to all concerned under Memo No. 230 dated 09.04.2007. Even after commissioning of the Railway Overbridge 49 shopkeepers were not provided with the shops beneath the Overbridge or in its vicinity,



which prompted the petitioners of C.W.J.C. No. 7151 of 2012 to approach this Court in representative capacity on behalf of 49 shopkeepers and this Court asked the respondents to file counter affidavit. In the counter affidavit with reference to the resolution dated 09.04.2007, Annexure-5 it is categorically stated that IRCON would build 49 shops for the displaced shopkeepers beneath the Overbridge and the compensation in lieu of the shops would be given to the Corporation, which would be deposited in a separate account in the office of District Land Acquisition Officer, out of which the expenditure would be made by the Municipal Commissioner for building the shops beneath the Overbridge. It is further stated in the counter affidavit that till date of the counter affidavit neither any amount has been handed over to the Corporation nor any shop has been raised by IRCON, as such, the shops have not been settled with the petitioners and other shopkeepers. The authorities of IRCON stated in their counter affidavit that while raising the Overbridge IRCON realized that it may not be possible to complete the Railway Overbridge over Railway Crossing Gate Nos. 101 and 101A without removing the 49 shops of the petitioners and others and requested the District Administration to get the shops removed to facilitate raising of Railway Overbridge, pursuant where to the 49 shops were removed and the compensation amount for the shops so given by the District



Administration to the Corporation was to be deposited in a separate account of Land Acquisition Officer, Muzaffarpur, which amount would be spent by the Municipal Corporation for raising the shops. In Paragraph 10 IRCON authorities categorically stated that it is erroneous on the part of the Corporation Authorities to assert in their counter affidavit that IRCON was required to build the 49 shops as it was only authorised to lay foundation of the proposed 49 shops, which has already been laid by IRCON. In the same paragraph, it was further asserted that it is for the District Administration and the Corporation to choose the Agency from whom they wish to get the said shops raised. In this connection, IRCON referred to the Memorandum of Understanding dated 27.05.2005, Annexure-B arrived at by and between the Ministry of Railways, Government of Bihar and IRCON wherefrom it is apparent that it was the responsibility of the State Government to make available the land free from encroachment structures for raising the Overbridge and to hand over the same to IRCON. It categorically stated that it was the responsibility of the State Government to arrange for rehabilitation of the encroachers/ structures.

26. Corporation having received the copy of the counter affidavit filed supplementary counter affidavit annexing inspection report dated 10.07.2013, Annexure-A stating in Paragraph 6 thereof that IRCON has not laid the foundation for raising the 49



shops, rather it has only laid 14 ft. wide concrete road and has covered the open drain on both the flanks of Motijheel Road. It was further stated in the supplementary counter affidavit that besides the road and the cover provided over the drain a concrete road has also been laid by IRCON beneath the Railway Overbridge in six spans which is 46 ft. in length and 24 ft. in width. In Paragraphs 8, 9 of the said supplementary counter affidavit authorities of the Corporation with reference to Clause 2 of the minutes dated 09.04.2007 stated that the compensation amount provided to the Corporation is required to be deposited in a separate account of the Land Acquisition Officer to be spent by the Municipal Commissioner for raising the shops but the compensation amount has not been made available to the Corporation for raising the shops beneath the Overbridge. In Paragraph 10 of the said supplementary counter affidavit Corporation authorities stated that neither IRCON has laid the foundation for the shops nor compensation amount has been made available to the Corporation. In the circumstances, it is not possible to raise, hand over the shops to the petitioners and other shopkeepers. In Paragraph 11 of the supplementary counter affidavit Corporation Authorities further stated that no sooner foundation of the shops is raised by IRCON and the compensation amount is made available to the Corporation by the District Administration in the separate account of Land Acquisition

Officer, Muzaffarpur the Corporation shall undertake building of the shops and hand over the same to the petitioners and others within a reasonable time of raising of foundation and the payment of compensation amount.

27. Land Acquisition Officer, Muzaffarpur filed counter affidavit on behalf of Collector, Additional Collector, Muzaffarpur, respondent nos. 3, 4 in the light of the order of this Court dated 25.07.2013. In Paragraph 5 thereof reference was made to the letters dated 29.06.2009, 16.08.2013, Annexures-A, B issued by the Executive Engineer, Road Construction Division No. 1, Muzaffarpur in connection with inter-departmental transfer of land but the process could not be completed and consequently neither due compensation has been paid to the Corporation nor shops have been raised. Land Acquisition Officer further stated in Paragraph 7 of his counter affidavit that the foundation for raising the 49 shops beneath the Overbridge has also not been raised by IRCON, rather a slip road has been laid by IRCON, which is being projected as foundation for raising the shops. In the same paragraph of the counter affidavit Land Acquisition Officer further stated that there are two narrow streets in both the sides of Railway Overbridge which is very congested due to heavy traffic almost throughout the day and submitted that proposal to raise the 49 shops beneath the Overbridge is not practically feasible in



view of heavy traffic movement as the place is located in a densely populated area of the town. In the same paragraph Land Acquisition Officer stated that Municipal Commissioner has given his oral acceptance that as and when he receives the compensation amount the shops shall be raised at a convenient alternative place. Land Acquisition Officer further stated in the counter affidavit that steps are being taken for inter-departmental transfer of land to the Executive Engineer, Road Division No. 1, Muzaffarpur with intimation to the Urban Development Department of the Government. The counter affidavit filed on behalf of the Collector, Additional Collector, Muzaffarpur, respondent nos. 3, 4 through Land Acquisition Officer, Muzaffarpur was considered by a Single Judge of this Court on 20.08.2013 when the Court passed following order, which is quoted hereinbelow in extenso :

“10. 20.08.2013 Learned counsel for the petitioner is permitted to add the Secretary, Road Construction Department, as party respondent No. 13 to the writ petition in the course of the day.

The Secretary, Road Construction Department is directed to file a separate counter affidavit apart from the counter affidavit being filed on behalf of the other State respondents as to what step he is taking pursuant to clause II (d) of the Memorandum of Undertaking dated 27.05.2005 entered into between the State Government, and the Ministry of Railways and M/s. Ircon International Limited. He shall

further explain as to whether the action of the respondent State does not amount to playing a fraud by first getting the shop-keepers removed from the spot on the basis of assurance of rehabilitation and then leaving them in the lurch.

Put up on 3.9.2013.

Learned counsel for the Corporation shall also file counter affidavit within the same period.”

28. In compliance of the aforesaid order of the High Court dated 20.08.2013 Land Acquisition Officer, Muzaffarpur filed supplementary counter affidavit on behalf of respondent nos. 4 to 6 stating that resolution to raise 49 shops beneath the Overbridge is not practically feasible in view of the traffic movement as the place beneath the Railway Overbridge is located in a densely populated market area of the town. In the same supplementary counter affidavit it was further stated that Municipal Commissioner is ready for inter-departmental transfer of land to the Road Construction Department and after getting compensation amount he will get the shops raised at a convenient alternative place. In this connection, he also referred to letter no. 31.08.2013, Annexure-E of the Municipal Commissioner.

29. Respondent nos. 9, 10 the authorities of Corporation filed 2nd supplementary counter affidavit stating in Paragraph 4 thereof that in compliance of the order of the High Court dated 25.07.2013 the Engineers of the Corporation met the Engineers



of IRCON informing them that foundation for raising the shops has not been raised so far. Outcome of the meeting was apprised to the Municipal Commissioner under letter no. 437 dated 26.08.2013, Annexure-C that a temporary structure of 10" wall can be made by IRCON for raising the shops with corrugated sheet roof, as it would not be proper to cut or dig 1 ft. wide concrete slip road and there was no requirement for raising an anchorage and further submitted that shortly a plan for raising the aforesaid shops would be prepared and submitted before the District Magistrate and that shops would be raised below five spans of the Overbridge and one of the span beneath the Overbridge would remain untouched for free traffic movement.

30. Secretary, Road Construction Department, Government of Bihar, Patna, respondent no. 13 also filed counter affidavit on 10.09.2013 in the light of order dated 25.07.2013 stating that as per Clause IId of the Memorandum of Understanding dated 27.05.2005 entered by and between the State Government, Ministry of Railways and IRCON, the Government shall arrange rehabilitation of encroaching structures, if any, coming in the way of raising of Railway Overbridge. In the same paragraph Secretary further stated that the District Magistrate, Muzaffarpur under letter no. 05 dated 16.08.2013 has directed the Executive Engineer, Road Division No. 1, Muzaffarpur to furnish requisition for inter-departmental transfer of



land utilized for Railway Overbridge. Requisition submitted by Executive Engineer under letter no. 1257 dated 24.08.2013 has already been sent to the District Land Acquisition Officer, Muzaffarpur for processing the inter-departmental transfer of land over which Railway Overbridge has been raised. The land shall be transferred to the Road Construction Department through Land Reforms Department. It was also stated in the same counter affidavit that after the process of land transfer is complete the District Administration, Muzaffarpur will furnish demand from Road Construction Department the cost required for rehabilitation of the displaced 49 shopkeepers. He further stated in the counter affidavit that department will transfer the amount demanded by the District Administration for rehabilitation of the shopkeepers and prayed for three months' time to complete inter-departmental transfer of land and to transfer the fund for rehabilitation of the shopkeepers.

Aforesaid counter affidavit filed by the Secretary was considered by a Single Judge of this Court under order dated 19.09.2013, which is also quoted hereinbelow in extenso :

“13. 19.09.2013 The Principal Secretary, Road Construction Department in his counter affidavit sworn on 10.09.2013 has stated that steps are being taken for rehabilitation of the shopkeepers for which three months time has been sought.

Learned counsel for the petitioners submits that the shopkeepers have been kept waiting since the last six and a half years without any concrete step having been taken for their rehabilitation by the respondents.

Let the matter be expedited.

Put up on 11th November, 2013.”

31. In the light of the aforesaid order dated 19.09.2013 matter was again considered by another Single Judge of this Court on 03.01.2014 when the authorities of the Corporation informed this Court that the funds for raising the shops in question have now been received from the State Government and the shops shall be raised within a reasonable time i.e. six months and in appreciation of such fact learned Single Judge adjourned the matter by four weeks so as to enable the counsel for the Corporation to file report on affidavit indicating the progress made towards raising of the shops within such period.

32. In the light of order dated 03.01.2014 further supplementary counter affidavit has been filed by the authorities of the Corporation, respondent nos. 9, 10. In Paragraphs 3, 4 thereof statement has been made that in compliance of the order of the High Court dated 03.01.2014 civil work to raise 49 shops beneath the Railway Overbridge at Motijheel, Muzaffarpur has begun as per the amended plan with approval of a Committee of which four shopkeepers are also members and the building activity shall be

completed within the stipulated period of six months.

33. Aforesaid supplementary counter affidavit was considered by Single Judge of this Court under order dated 25.02.2014 and progress made in the construction of shops was found unsatisfactory with direction to expedite the construction work. In the light of order dated 25.02.2014 Corporation authorities filed further supplementary counter affidavit informing this Court that roof casting of 12 shops has been completed, construction of 12 more shops has also made significant progress, which would be evident from report dated 21.03.2014 and that construction of all the 49 shops shall be completed within the stipulated period of six months.

34. Aforesaid supplementary counter affidavit was considered by Single Judge of this Court under order dated 28.03.2014 when the matter was adjourned by two months with direction to file further supplementary counter affidavit indicating further progress made in the construction of the shops.

35. In the light of the order dated 28.03.2014 matter was taken up by learned Single Judge on 16.06.2014 when counsel for the Corporation informed that one Chandra Kishore Parasar a resident of Muzaffarpur filed Public Interest Litigation bearing C.W.J.C. No. 6332 of 2014 praying inter alia to restrain the State and its authorities including the Corporation from raising the 49 shops beneath the





Railway Overbridge, Motijheel, Muzaffarpur as also to remove the shops already raised beneath the said Railway Overbridge and to use the space for parking purpose or for park/ covered green area as Motijheel area is the busiest business area of the town where shops already pre-existed on both sides of the road. Learned Single Judge was further informed that in the Public Interest Litigation it has further been asserted that if shops are raised beneath the Overbridge the same will reduce the motorable space of the road and the road shall be reduced to the status of a lane creating not only traffic congestion but will bring the traffic to stand still in the most busy area of the town. Learned Single Judge was further informed that the proposed shops beneath the Overbridge, if raised, shall be in complete violation of Sections 232, 233, 235, 241 and 242 of the Bihar Municipal Act, 2007. The Division Bench appreciating the submissions raised in the Public Interest Litigation under order dated 24.04.2014 directed the State-Respondents to file separate counter affidavit and confirm whether construction of the 49 shops beneath the Railway Overbridge is permitted in accordance with laws of Urban Planning sanctioned by the competent municipal authorities and that the shops will not affect free flow of traffic leading to congestion on public street in the busiest market area of the town. The Division Bench directed the District Magistrate/ Superintendent of Police to explain in the affidavit that



parking place in front of the shops on both sides is available leaving motorable area to ensure smooth flow of traffic. The Municipal Commissioner was directed to file separate affidavit enclosing the orders and plans approved by the Corporation for raising of the shops beneath the Overbridge with further direction to explain that shops will not create issue of traffic congestion and that he consulted the Superintendent of Police before permitting construction of the shops and having observed as above the Division Bench under order dated 24.04.2014 directed the Corporation to proceed with the construction of shops beneath the Overbridge on its own risk and responsibility. In the light of the observation of the Division Bench in the Public Interest Litigation filed by Chandra Kishore Parasar (C.W.J.C. No. 6332 of 2014) contained in order dated 24.04.2014 learned Single Judge under order dated 16.06.2014 directed C.W.J.C. Nos. 7151 of 2012, 19053 of 2013 to be heard by the Division Bench.

36. In the light of the order of the Division Bench dated 24.04.2014 District Magistrate, Muzaffarpur, respondent no. 4 filed counter affidavit stating that pursuant to the order dated 24.04.2014 of this Court Two Men Committee was constituted comprising the District Transport Officer, Muzaffarpur and Sub-Divisional Officer, East Muzaffarpur. The Committee visited the place beneath Motijheel Railway Overbridge towards north of the erstwhile



Railway Crossing where shops are being raised by the Corporation and submitted report dated 07.07.2014, Annexure-A indicating that Dharmendra Kumar and others filed C.W.J.C. No. 7151 of 2012 asserting that due to raising of Motijheel Railway Overbridge petitioners of the said writ case as also others in all 49 shopkeepers were displaced. In the writ petition filed by the displaced shopkeepers High Court passed orders from time to time directing the Municipal Commissioner, Muzaffarpur to rehabilitate the displaced shopkeepers after raising shops and in compliance of the order passed in the said writ case Municipal Commissioner constituted Six Men Committee for raising the 49 shops and thus the construction of the shops has begun. In the counter affidavit District Magistrate further stated that the Municipal Commissioner has given approval for construction of the shops and during spot enquiry it was found that in between the Town Police Station Crossing and the erstwhile Railway Crossing the shops are being raised between the pillars of Motijheel Railway Overbridge. It was also found that roof casting of 12 shops has been completed, 12 shops have been raised above the lintel level and plinth of 12 shops has been raised till the date of the affidavit. In Paragraph 7 of the counter affidavit District Magistrate further stated that it has been reported that the construction of the above shops is not in accordance with the building bye-laws and there is no parking facility at the place and that



the shops are not being raised following the provisions of Sections 235, 241, 242 of the Bihar Municipal Act, 2007. In Paragraph 8 of the counter affidavit District Magistrate stated that it is relevant to mention that after Motijheel Railway Overbridge was commissioned erstwhile Railway Crossing has been blocked by erecting cemented wall for the safety of the general people to prevent them from coming to the railway track. After raising of the cemented wall the road is completely blocked and no vehicle is plying through the road except the vehicles are being used by the people for going to Uma Market and the site of these shops under construction. Uma Market has its own parking space. A road leading to Shyamnandan locality is also in existence crossing eastern side of the shops under construction and if the vehicles are parked in front of the shops under construction then it would be difficult to go to the road leading to Shyamnandan locality. In the eastern, western side of the shops under construction, 15 ft. wide road is available but parking of vehicles may not be proper over the same.

37. Senior Superintendent of Police, Muzaffarpur also filed counter affidavit stating in Paragraph 7 thereof that from the official record it appears that the predecessor of the present Senior Superintendent of Police called for a report from the Station House Officer, Town Police Station, Muzaffarpur about the volume of traffic over the public street and parking space both sides over the Railway



Overbridge, Motijheel on 20.06.2014. Station House Officer, Town Police Station submitted report dated 20.06.2014 and Police Inspector Incharge Traffic, Muzaffarpur submitted report dated 22.06.2014, Annexure-A series. Perusal of the two reports indicate that the road beneath the Railway Overbridge between Motijheel Town Police Station Crossing and Kalambagh Road Crossing has been closed after raising of Railway Overbridge by closing the railway crossing and for the present there is no traffic over the road by the side of the Overbridge, consequently there is neither parking problem nor traffic congestion over the two roads.

38. Corporation and its Commissioner, respondent nos. 7, 8 also filed counter affidavit stating in Paragraph 5 that the 49 shops were initially raised on the land, which was allotted/ settled with the shopkeepers by the Corporation and the shopkeepers raised the shops at their own cost as per direction of the then Administrator of the Corporation in the year 2007. In Paragraph 6 of the said counter affidavit Corporation and its Commissioner stated that for development of Muzaffarpur town decision was taken to raise Railway Overbridge at Motijheel Railway Crossing where 49 shops were situate and to facilitate raising of the Overbridge the District Administration, Muzaffarpur removed the shops which were causing hindrance and obstructing the alignment of the Overbridge. IRCON under letter dated



01.02.2007, Annexure-A requested the District Administration to assure the shopkeepers that they would be provided alternate space in the vicinity or below the Overbridge. In Paragraph 8 of the counter affidavit further statement has been made by the Corporation and its Commissioner that a meeting was convened by the District Magistrate, Muzaffarpur on 09.04.2007, minutes of the meeting is contained in Memo dated 09.04.2007, Annexure-B, whereunder IRCON undertook to construct 49 shops for the displaced shopkeepers underneath the Overbridge and the compensation in lieu of the shops would be given to the corporation, which would be deposited in a separate account of the District Land Acquisition Officer, out of which the expenditure would be made by the Municipal Commissioner for raising the shops underneath the Overbridge. In Paragraphs 9 to 15 of the counter affidavit Corporation and its Commissioner informed this Court about the prayer made in the Writ Petition bearing C.W.J.C. No. 7151 of 2012 filed by few of the displaced shopkeepers and the different orders passed by this Court in the said writ case including the fact that IRCON laid the foundation for raising the 49 shops below the Overbridge as per the decision taken in the meeting dated 09.04.2007. In Paragraphs 12, 13 of the counter affidavit reference is made to the Inspection Report of Additional Collector, Muzaffarpur contained in Memo No. 1423 dated 16.08.2013 wherein it was specifically pointed out taking



into consideration the traffic problem, inconvenience caused to the public and that it may not be proper to raise the shops beneath the Overbridge, Amended Plan, Annexure-E proposed for raising 49 shops vide supplementary affidavit filed in C.W.J.C. No 7151 of 2012 in February, 2014. Petitioners of C.W.J.C. No 7151 of 2012 and other shopkeepers, however, opposed any amendment in the construction plan and wanted the shops to be completed beneath the Overbridge immediately as they were rendered jobless for long and the High Court being not satisfied about the delay caused in raising the shops directed under orders dated 10, 25.02.2014 passed in C.W.J.C. No 7151 of 2012 that the construction work for raising the 49 shops beneath the Overbridge be expedited and completed within six months. In Paragraph 15 of the counter affidavit further statement has been made on behalf of the Corporation that prior to the construction of the shops consultation was made with the District Administration wherein concerns were raised with regard to traffic issues but the petitioners and other displaced shopkeepers were opposed to the idea of any amendment in the construction site plan, which was brought to the notice of the Court by supplementary petition also filed in the same writ case. In Paragraph 16 the Corporation authorities, however, expressed their readiness to comply with the order/direction passed by the Division Bench of the High Court.



39. Senior Superintendent of Police, Muzaffarpur also filed further counter affidavit giving reference to his earlier counter affidavit filed in the light of order of the Division Bench dated 24.04.2014 on the basis of the report received from the Station House Officer, Town Police Station dated 22.06.2014. In the subsequent counter affidavit in Paragraph 8 it is stated that after perusal of the report of the Station House Officer, Town Police Station, Muzaffarpur, in the light of the direction of this Court, instructions were given to Town Dy.S.P. to submit report answering specific question raised by this Court as to whether after the 49 shops were raised under the Railway Overbridge free flow of traffic will or will not be affected. In the light of such instruction Town Dy.S.P. submitted report dated 08.07.2014, Annexure-A stating that after raising of the shops beneath the Overbridge free flow of traffic would be affected.

40. In the light of the order of this Court dated 04.09.2014 Union of India through Ministry of Railways and General Manager, East Central Railway has filed counter affidavit. In Paragraph 6 of the counter affidavit Railway Administration has referred to IRP Manual providing for replacement of existing level crossing with ROB/RUB on cost sharing basis at such Railway Crossing where Minimum TVU at a particular Railway Crossing is 1 lakh per day. Clause 5 of the IRP Manual provides that closure of level



crossing should be ensured after commissioning of ROB/RUB. Manual further provides that all such cases where State/ Local Authorities do not agree to close the railway crossing such fact should be promptly brought to the Railway Board. Paragraph 7 of the counter affidavit refers to Railway Board Policy, 2007, in terms whereof ROB/RUB work is undertaken by the Railways in lieu of existing level crossing on cost sharing basis if the traffic density at the level crossing is 1 lakh or more TVUs. It also indicates the manner in which TV unit is obtained by multiplying the number of trains to the number of road vehicles passing over the level crossing in 24 hour. The policy letter further indicates that as per standard condition of agreement entered into with the State Government prior to sanction of work for replacement of existing level crossing with ROB/RUB the State Government is liable to give undertaking that the level crossing in lieu of which ROB/RUB is being sanctioned on cost sharing basis will be closed on commissioning of the ROB/RUB. In Paragraph 8 of the counter affidavit statement has been made that the field unit of the Divisional Railway Manager (Engineering), Sonapur Division, Sonapur is regularly conducting frequency census every three years for TVU at level crossings. In Paragraphs 9, 10 statement has been made that after receipt of TVU data from field unit the level crossing where TVU has become 1 lakh or more proposal is initiated for obtaining consent of the



State Government to provide ROB/RUB on cost sharing, after closure of the level crossing on its commissioning. After receipt of consent from the State Government for closure of level crossing for provision of ROB/RUB in lieu of a particular level crossing is given. In Paragraphs 11, 12 the counter affidavit states that similar procedure was followed for sanction of ROB in question in lieu of level crossing Gate Nos. 101 and 101A and following the due process like drawing of map for the ROB in consultation with the District Magistrate, Muzaffarpur. ROB between Motijheel Market and Chandralok Crossing near Shyamnandan Road (north to south) was raised, inaugurated. To eliminate the safety infringement after commissioning of ROB Commissioner of Railway Safety was approached for removal of signaling gears, which was objected to in absence of approval of State Government for closure of level crossing. Due to non-removal of signaling gears there was complication in train operation and its safety. Permission for closing railway level crossing was sought from the District Magistrate, Muzaffarpur and Commissioner, Railway Safety, Eastern Circle, Kolkata. In Paragraph 13 counter affidavit states that DRM (Engineering), Sonapur under letters dated 30.04.2014/05.05.2014, Annexure-D sought permission from the District Magistrate, Muzaffarpur for closing of Railway Crossing Gate Nos. 101, 101A. In Paragraphs 14, 15 counter affidavit states that in the light



of the request of the DRM (Engineering) for closure of the level crossing Gate Nos. 101, 101A a meeting was convened by the District Magistrate, Muzaffarpur, who accorded permission under letter No. 2162 dated 12.07.2014, Annexure-F to close the Railway Crossing Gate Nos. 101, 101A situate at Muzaffarpur-Samastipur Rail Section. Perusal of letter dated 12.07.2014, Annexure-F, however, indicates that the District Magistrate, Muzaffarpur allowed closure of Railway Crossing Gate Nos. 101, 101A in the light of the report dated 07.06.2013 (perhaps mistake for 07.06.2014). In Paragraph 16 counter affidavit states that after receipt of the permission from the District Magistrate, Muzaffarpur the Railway Administration sought permission from the Commissioner of Railway Safety, Eastern Circle, Kolkata for closing the Railway Crossing Gate Nos. 101, 101A, who also accorded sanction to close the aforesaid level crossing. In Paragraphs 17, 18 of the counter affidavit statement has been made that the ROB in question has been raised in lieu of Railway Crossing on account of heavy traffic in public interest, as such, as per Railway Board's policy Railway Level Crossing Gate Nos. 101, 101A has been closed after raising a wall on both sides north to south.

41. From the counter affidavit of the Railways itself it is evident that in terms of IRP Manual and the Railway Board's Policy, 2007 permission of the State Government for closure of the Railway

Crossing is to be obtained before land acquisition, commissioning of the ROB/ RUB, which is also incorporated in the Memorandum of Understanding dated 27.05.2005 signed by and between the Railway Administration, State Government and the Executing Agency IRCON. The responsibilities entrusted to the State Government is contained in Clause II of the Memorandum of Understanding, which is incorporated hereinbelow for ready reference :

“II. STATE GOVERNMENT

a. The State Government shall expeditiously approve the GADs and the estimates.

b. The State Government shall deposit the Government funds, not already deposited with Railways, as per actual and approved costs and as per the apportioned share as per extant instruction and further in terms of assurances given in Chief Secretary/ Bihar letter no. 28/Con, dt. 12.06.2004 and 963/CCS dated 25.06.2004.

c. The State Government shall acquire necessary land and hand it over to IRCON free from encroachments and structures.

d. The State Government shall arrange rehabilitation of encroachments/ structures, if any coming in the way of progress of ROB.

e. The State Government shall extend all help promptly in diversion of utilities and providing land for diversion of Level Crossing.

f. The State Government shall extend full cooperation at all levels so as to complete the work of ROB. in

reasonable time and cost.

g. The State Government shall close the Level Crossing permanently before traffic is allowed on the ROB's."

42. In the light of the aforesaid Memorandum of Understanding dated 27.05.2005 the 49 shopkeepers were removed under resolution of the Board of Corporaters dated 05.04.2007 and resolution of the District Administration, Muzaffarpur dated 09.04.2007 with clear understanding that the 49 shopkeepers will be provided with suitable rehabilitation either beneath the Overbridge **or any other suitable place**. Railway Overbridge was commissioned on 10.06.2011, as has been asserted by the petitioners of C.W.J.C. No. 7151 of 2012 in Paragraph 13 but even thereafter the 49 shopkeepers were not rehabilitated either beneath the Overbridge or at suitable alternative space. Few of the shopkeepers filed the writ petition in representative capacity praying inter alia for issue of Writ of Mandamus to rehabilitate them in the light of the contents of Memorandum of Understanding dated 27.05.2005 as also resolution dated 05.04.2007, 09.04.2007. In the light of the IRP Manual, Railway Board's Policy, 2007 and the contents of Memorandum of Understanding dated 27.05.2005 steps for rehabilitation of the displaced shopkeepers in the light of the Municipal Laws and for obtaining permission for closure of the Railway Crossing Gate Nos.



101, 101A should have been taken before displacing the shopkeepers and commissioning of the ROB respectively. The ROB was commissioned on 10.06.2011, the Railway Crossing Gate Nos. 101, 101A was closed soon thereafter and Commissioner, Railway Safety was approached for removal of signaling gears but he objected to give approval for removal of signaling gears in absence of approval of the State Government for closure of level crossing, which fact is also stated in Paragraph 12 of the counter affidavit of the Railway Administration. District Magistrate, Muzaffarpur, however, granted permission for closure of Railway Crossing Gate Nos. 101, 101A under letter dated 12.07.2014. Permission granted by the District Magistrate, Muzaffarpur to close the Railway Crossing Gate Nos. 101, 101A under letter dated 12.07.2014, however, does not indicate that while granting such permission he has considered the concern of rickshaw puller, those who carry goods on push-cart as also old, infirm, disabled and pedestrians including those who move on crutches that it is difficult for them to climb the Overbridge total length whereof is 547.2 meters. In the circumstances, post facto permission granted by the District Magistrate, Muzaffarpur to permanently close the Railway Crossing Gate Nos. 101, 101A under letter dated 12.07.2014 is quashed with direction to the General Manager, East Central Railway, respondent no. 10 and his subordinates to not only remove the wall but also to provide

adequate space on both the sides a manned level crossing for rickshaw puller, those who carry goods on push-cart as also old, infirm, disabled and pedestrians including those who move on crutches to pass through without climbing the Overbridge.

43. In the light of IRP Manual, Memorandum of Understanding dated 27.05.2005 and the Railway Board's Policy, 2007 those displaced on account of raising of ROB are required to be rehabilitated before the land is handed over to IRCON for raising the ROB. In appreciation of the responsibility of the State Government to rehabilitate the displaced shopkeepers Corporation and the District Administration, Muzaffarpur under resolution dated 05.04.2007, 09.04.2007 resolved to provide shops to the displaced 49 shopkeepers beneath the Overbridge. Aforesaid decision of the Corporation and the District Administration, Muzaffarpur was taken without appreciating the fact that there are two narrow streets by the side of Railway Overbridge on both the sides of the Overbridge which is very congested due to existing shops on the one side of both the streets and there is heavy traffic on the streets throughout the day. The decision to raise the 49 shops beneath the Overbridge is not practically feasible in view of the heavy traffic movement in the area which is located in a densely populated area of the town and that the 49 shops if raised beneath the ROB, construction of the shops will be in teeth of the

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provisions of Sections 235, 241, 242 of the Bihar Municipal Act, 2007. Reference in this connection may be made to the counter affidavit filed by the Land Acquisition Officer, Muzaffarpur on behalf of respondent Collector, Additional Collector, Muzaffarpur in the light of order of this Court dated 25.07.2013 and the counter affidavit of the District Magistrate, Muzaffarpur dated 10.07.2014 filed in compliance of the order of the Division Bench dated 24.04.2014.

44. Resolution of the Corporation and the District Administration, Muzaffarpur dated 05.04.2007, 09.04.2007 providing for raising of 49 shops beneath the Overbridge has been made without appreciating the fact that there are two narrow streets by the side of the Railway Overbridge, which is congested on both the sides because shops already exist and there is heavy traffic on the two streets throughout the day. Raising of the 49 shops beneath the Railway Overbridge shall be in teeth of the provisions of Sections 235, 241, 242 of the Bihar Municipal Act and cannot be permitted contrary to public interest.

45. In terms of IRP Manual, Memorandum of Understanding and the Railway Board's Policy, 2007 the displaced shopkeepers are required to be rehabilitated. Accordingly, the State of Bihar and its functionaries including those who are party to the Memorandum of Understanding dated 27.05.2005 are directed to



rehabilitate the 49 shopkeepers at a suitable alternative place and not beneath the Railway Overbridge and to that extent resolution of the Board of Corporaters and the District Administration, Muzaffarpur dated 05.04.2007, 09.04.2007, Annexures-6, 5 are modified with further direction to adequately compensate the 49 shopkeepers for the loss suffered by them since 2007 as in terms of IRP Manual, Memorandum of Understanding dated 27.05.2005 and the Railway Board's Policy, 2007 the State authorities were required to have settled them soon after their displacement which took place in 2007 in the light of the resolution of the Corporation and the District Administration, Muzaffarpur dated 05.04.2007, 09.04.2007.

46. In the light of our directions and observations above, the four writ petitions are disposed of requiring the State Government and its functionaries to rehabilitate the 49 shopkeepers at a suitable alternative place with further direction to pay them adequate compensation for the loss suffered by them from the date of removal of their shops till the date of their rehabilitation, which must be made within a reasonable time not exceeding one month from the date of this judgment.

47. Before parting with this judgment, we may observe and take notice of the fact that in the State Capital, Patna there are two main trunk roads, namely, Ashok Rajpath and Bailey Road.



Both these roads connect Danapur on the western side of the city to Patna Town and the Old Patna City. Ashok Rajpath runs parallel to the bank of river Ganges. Bailey Road connects Saguna Crossing with Patna Town and then meets Ashok Rajpath near Gandhi Maidan. The width of both these roads including its flank is 23, 35 meters respectively but has been encroached by the vegetable, fruit, mutton, fish, chicken and other vendors. So much so that the flank of Bailey Road by the side of New Secretariat, opposite Technical Secretariat Vishwesharaiya Bhawan has also been encroached by the push-cart and other vendors who sell vegetable, fruit and other items right beneath the nose of those who rule the State from the main, other Secretariats of the State but hardly any steps have been taken by the administration to remove them from the flanks of the road. Same is the story of all other roads, lanes and by-lanes in every locality of the town. State authorities being unmindful of the provisions of the State Vendors (Protection of Livelihood and Regulation of State Vending) Act, 2014 have neither created any vending zone nor are they regulating the number of street vendors on the roads, result being that there is mushroom growth of encroachment on every road, lane, by-lane of the town including the two main trunk roads leading to excessive traffic congestion right from 8:00 in the morning until late in the evening. In order to remove the traffic congestion Government has raised or is



raising several overbridges. Cost involved in raising the overbridges is much more than creating vending zone and shifting the vendors to the vending zone provided the number of vendors is regulated. The fly-over is required to be made either on the Railway Crossing or on a cross road to get rid of the round about and to avoid traffic congestion. The first priority of the Government, in our opinion, should be to remove the encroachment from the road and its flank, even after removal of encroachment from the road if the traffic congestion is not brought within reasonable limits then only to raise a fly-over, thereby the Government will save considerable fund, which may be utilized for the betterment of those who are below the poverty line or just above the poverty line. The vendors, who could not be accommodated in the vending zone, may be accommodated under different labour oriented schemes of the Government like MGNREGA etc.

(V.N. Sinha, J)

**I agree.
Prabhat Kumar Jha, J**

(Prabhat Kumar Jha, J)

Rajesh/A.F.R.

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