

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16516 of 2012

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Gajendra Kumar Choudhary Son Of Late Bhogendra Narayan Choudhary Resident
Of Village - Shahpur Undi, Police Station - Patory, District - Samastipur

.... Petitioner

Versus

1. The State Of Bihar, Through The Principal Secretary, Department Of Rural Development , Government Of Bihar, Patna
2. The District Magistrate, Samastipur
3. The District Rural Development Officer, Samastipur
4. The Programme Officer (Manrega), Block Patori, Samastipur
5. The Executive Engineer, Manrega, Samastipur
6. The Sub-Divisional Officer, Patori, Samastipur
7. The Circle Officer, Patori, Samastipur
8. The Panchayat Secretary, Gram Panchayat Raj Sahpur Undi, P.S. - Patori, District - Samastipur

.... Respondents

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Appearance :

For the Petitioner : Mr. SABAL KUMAR JHA, ADVOCATE

For the State : Ms Nutan Sahay, AC to GA 5

For Respondent No. 8: M/s Avinash Kumar and Sanjay Kumar, Advocates

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

Date: 10-09-2015

Heard learned counsel for the petitioner, the State and the
respondent no. 8.

It is submitted by learned counsel the petitioner that the
land of the petitioner of Khesra Nos. 1798 and 1799 corresponding
to new plot no. 839 appertaining to Khata No. 379 of Revenue Thana
No. 154, Mouja Shahpur Undi has been utilized in construction of
road under MGNREGA scheme without any consent of the petitioner
or his family member(s).

A counter affidavit has been filed on behalf of the



respondent no. 8 stating that the petitioner has never raised any objection during the construction of the road concerned and every objection has been raised after its construction. It is also stated that the consent has been taken from one Kishori Devi wife of Sheo Kumar Chaudhary, who is wife of the brother of the petitioner and, in support of that, a document has been appended as Annexure C to the counter affidavit.

However, in my considered opinion, there is no value of such consent for several reasons. First reason would be that in Annexure C the aforesaid Kishori Devi has not stated that the concerned plot or portion thereof belongs to her. Secondly, even if it is assumed that the concerned land belongs to the joint family, then another question would be as to why Kishori Devi, the wife of Sheo Kumar Chaudhary, who is not a co-parcener, would come up to give consent for such land.

It appears that the aforesaid document has been prepared in a hush-hush manner as no detail of any land etc. has been given at all. Simply several persons have signed the document stating their willingness for use of their land for construction of road on hundred rupees non-judicial stamp and Kishori Devi's name appears therein. But, in the absence of any plot number given in the document, even if she has actually signed it, the same would be meaningless.

However, the petitioner has also not brought on record anything except a rent receipt to show that the plot concerned belongs to him. However, the rent receipt discloses Zamabandi No. 157 but it does not disclose the plot number or khata number.

In above view of the matter, this writ application is being disposed of granting liberty to the petitioner to approach the District Magistrate, Samastipur, i.e., respondent no. 2, by filing a representation along with the necessary documents. The respondent no. 2 would be, thereafter, obliged to examine the matter and come to the conclusion as to whether the private land of the petitioner or his family member(s) has been utilized for construction of the road concerned and valid consent has been given by a competent person of his family or not. For that purpose, the District Magistrate, Samastipur, apart from examining the document produced by the petitioner, would also examine the relevant khatian and the land register to see as to in whose favour the Zamabandi is running. He should take a decision by passing a reasoned order within a period of eight weeks from the date of receipt/production of a copy of this order. In case it is found that the land of the petitioner or his family member(s) has been utilized in construction of the road without his consent or consent of a competent person of his family member(s), then in such a situation, he would have either to initiate a proceeding

to acquire the concerned land in accordance with law so that proper compensation is given to the concerned person or alternatively he would have to take steps for removal of the construction from the plot of the petitioner or his family and restore it to its original form and nature.

However, if he comes to the conclusion that the land of the petitioner or his family member(s) has not been utilized or has been utilized with the consent of a competent person of his family then, in such a situation, he would have to pass a reasoned order disclosing the materials relying upon which he has come to such conclusion. The order so passed by the District Magistrate should immediately be communicated to the petitioner.

(Dr. Ravi Ranjan, J)

SC/-

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