

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4750 of 2015

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1. Md. Serajul Haq S/o late Md. Sadique
 2. Md. Anwarul Haq S/o Md. Abid.
 3. Md. Imamuddin S/o Md. Mehmood@ Mohi;
 4. Md. Ayub S/o Late Nathuni All residents of Therbitta East Punarvas, Block-Kishanpur, PS. - Kishanpur, District- supaul.

.... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Education, Govt. of Bihar at Patna.
2. The Secretary, Bihar State Madarsa Education Board, Patna.
3. The District Magistrate, Supaul
4. The District Education Officer, Supaul.
5. The Rehabilitation Officer, Kosi Programme, Supaul.
6. The Block Development Officer, Block-Kishanpur, supaul.
7. The Block Education officer, Block - Kishanpur , Supaul
8. Md. Imran, S/o- Md. Kazim Qasmi, Secretary, Madarsa Hashmia Parsahi No. 714, Kosi Colony (Therbitta West Punarwas), P.s.- Kishanpur, Supaul
9. The Secretary, Madarsa Hashmia Parsahi No. 714, Kosi Colony (Therbitta West Punarvas) P.S. Kishunpur, Supaul.
10. The Director (Land Acquisition & Rehabilitation), Govt. of Bihar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashhar Mustafa

For the Respondent/s : Mr. AAG6- ANJANI KUMAR

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

C.A.V. JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

Date: 11 -05-2016

The residents of Therbitta East Punarbas Block Kishanpur, P.S.-Kishanpuar, District Supaul, are before this Court, seeking with the help of this Public Interest Litigation, issuance of a writ in the nature of *mandamus*, commanding the respondents to run the Madarsa Parsahi No. 14, at Therbitta East Punarvas, where the displaced persons of the flood disaster of Parsahi village have been

officially rehabilitated.

2. The present litigation arose out of the following series of events :-

- (i) The petitioner and others, who were residents of village Nowa Bakhar, Tola Parsahi, Post - Nawa Bakhar, Block Kishunpur, Supaul, which village got submerged in Koshi river during Koshi 2001 disaster, were rehabilitated by the Government at a newly acquired area, namely, Therbitta East Punarwas. In view of such rehabilitation and allotments, the residents of Nawa Bakhar shifted to the allotted plots in Therbitta East Colony.
- (ii) However, some persons, including respondent No. 8, shifted to a colony known as Therbitta East Punarvas. The said colony also came to be known as Therbitta colony.
- (iii) Since respondent No. 8 was Secretary of the sole Madarsa, i.e., Hasmia Madarsa No. 714 of Parsahi village, he designedly shifted the said Madarsa, at Therbitta colony, near his own residence causing great inconvenience to the residents of Paarsahi Tola, which had been officially rehabilitated at

Therbitta East Punarvas. Since the distance between Therbitta East Punarvas was considerable, children of Therbitta East Punarvas were, ultimately, deprived from attending classes at the Madarsa.

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- (iv) Since the shifting of the Madras to Therbitta (West) colony is unauthorized, the residents of Therbitta East Punarvas represented before the respondent authorities for allotment of land to the Madarsa so that it could function at Therbitta East Punarvas. Accordingly, on 09.09.2011, the District Education Officer, Supaul (respondent No.4), called for a report from the Block Education Officer, Kishanpur, Supaul (respondent No.7).
- (v) The report of respondent No. 7, which was forwarded to respondent No. 4, vide Memo No. 547, dated 02.12.2011, mentions that the entire population of Parsahi Tola has been rehabilitated at Therbitta East Punarvas and, accordingly, recommended Parsahi Madarsa to operate in this area only.
- (vi) Similarly, an inquiry was conducted by the respondent No. 4, on the complaint made by some



persons at the *Janta Darbar* of the District Magistrate, Supaul (respondent No. 3). In the said report also, on the basis of an inspection conducted, on 18.04.2012, by the respondent No. 4 personally, the Secretary, Bihar State Madarsa Board, Patna, was informed that 80-85 per cent of the residents of Parshi Tola are residing at Therbitta East Punarvas, whereas only 15 percent of the rehabilitated persons have their residence at Therbitta Colony. The above letter also clarified that because of the distance, between the two colonies, being 1.5 KM, 80-85 percent of the children of residents of Therbitta East Punarvas are being deprived of the benefits of the Madarsa. As such, the District Magistrate sought for a direction and an early guidance to fix the location of the Madarsa.

- (vii) Notwithstanding the reports aforementioned, respondent No. 2, Secretary of the Madarsa Board, had been supporting the functioning of the Madarsa from its current location. This fact could be gauged by the petitioners, when the Secretary declined to receive their representation and informed that the

Circle Officer had already allotted 17 decimal of lands to the Madars in Therbitta Colony.

(viii) Considering the seriousness of the issue, the petitioners and others, who had earlier represented before the respondent authorities, on 07.10.2010, 23.08.2011, 01.04.2013, 04.09.2014 and 04.12.2014, presented a Memorandum to respondent No. 3 on 04.12.2014. The grievance of the petitioners was also widely reported in local newspapers including *Hindustan*, *Dainik Jagran* and *Prabhat Khabhar*.

3. Learned Counsel for the petitioner has submitted that on verification, it was learnt that it is the Rehabilitation Officer (respondent No. 5) and not the Circle Officer, who is empowered to allot land in the areas acquired for the purpose of rehabilitation. Pursuant to the RTI query, Kosi Programme Rehabilitation Officer has categorically answered by his letter, dated 15.01.2015, that no land has been allotted to the Madarsa Hashmia No. 714. In any case, it was clarified that allotment of land to Madarsa or its operation cannot take place at Therbitta Colony inasmuch as this colony was meant only for the rehabilitation of the displaced residents of villages, namely, Borha, Jobha, Bhojha and Asanpur

Kupha, and, as such, the displaced residents of Parsahi Tole have been officially rehabilitated only at Therbitta East Punwavas.

4. Learned Counsel has further submitted that it is apprehended by the petitioners that since majority of enrolled students of Madarsa are residing at Therbita East Punarvas, their continued absence makes it convenient for the Madarsa administration to embezzle the funds allotted to the Madarsa under various welfare schemes, including Mid-day Meal, etc. by the State/Central Government and, thus, Therbitta Colony is the most obvious and desired location for the Madras for its administrators.

5. Learned Counsel for the petitioner drew the attention of the Court to a document, marked as Annexure -6 series, which is a letter contained in Memo No. 517, dated 03.09.2015, issued by the Office of the Rehabilitation Officer, Koshi, Supaul, whereby instruction was sought for from the Director, Land Acquisition and Rehabilitation. In response to the said letter, the aforementioned authority directed respondent No. 5 to submit a detailed report vide queries raised in Memo No. 1761, dated 12.10.2015. The report sought for was never answered by respondent No. 5.

6. It is submitted, on behalf of the petitioners, that Therbitta Punarvas East was allotted for rehabilitation of the residents of village Nawa Bakhar Tole Parsahi as was evident from

the reply given by the authorities under the Right to Information Act (Annexure-7 series). Obviously, Therbita Punarwas West/Koshi Colony was a place meant for rehabilitation of displaced persons of other regions.

7. The respondent No. 8, claiming to be the Secretary of the Managing Committee of Madarsa Hashmia Parshai, Madras No. 714, presently situated in Koshi Colony Therbita, has filed an affidavit claiming that it was wrong, on the part of the petitioner, to contend that 85 percent of the population of the displaced persons live in East Punarwas. It is contended that in a recent survey, the population of Koshi Colony, Therbita West, is shown to be much higher than the rehabilitated persons at East Punarwas. It is further contended that the students of East Punwarwas are regularly attending their classes at the Madarsa and they regularly appeared at the examinations without any resistance or hindrance.

8. In the counter affidavit filed by respondent No. 2, it is averred that the Madarsa, in question, was registered with Bihar State Madarsa Board ((hereinafter referred to as 'the Board') and the said Madarsa is being governed by its Managing Committee, constituted by the local residents, and is being presently headed by one Imran Ahmed. It is also contended that the issue, regarding the decision to shift the Madars to Therbita Colony Punarwas was dealt



with earlier and by Resolution, dated 13.09.2010, of the Managing Committee of the Madarsa, it has been resolved to shift the Madarsa to Therbita Colony Punwarwas. However, the matter was agitated by the local residents and a committee, headed by Abdul Jaffar and Md. Afrose, as its president and secretary respectively, was constituted and, ultimately, in order to ascertain facts, enquiry was entrusted, vide letter No. 1101, dated 25.02.2011, to the District Education Officer, Supaul.

9. A petition was also filed before the Board by the New Committee, whereby they sought for permission to run the said Madarsa at Purab Punarwas. It was submitted that in pursuance of the said representation, an enquiry was conducted by the District Authorities after giving notices to all the parties and a report was submitted to the effect that the Madarsa, at Therbita Punarwas Colony, is the real and genuine Madarsa. Accordingly, the Madarsa Board took a decision to continue the Madarsa at Koshi Colony, Punarwas, and a recommendation was made for allotment of 17 decimals land on which the Madarsa was to be reconstructed (Annexure-C). It was on the basis of the said report that the Board took a decision to continue with the Madarsa, vide Annexure-D, dated 22.07.2013, to allow the Madarsa to continue at Koshi Colony, Punarvas. It was contended, in the said affidavit, that the



decision, as contained in Annexure-D, was challenged in CWJC No. 24550 of 2013, wherein a direction was given to the petitioners thereof to file an appeal against such a direction giving recognition to the Madarsa Hashmia Parsahi, Koshi Colony, Therbitta Punarvas. As such, it was contended that the writ application is not maintainable.

10. From the stance adopted by the respondent No. 4, namely, District Programme Officer, it is evident that he has taken recourse to a simple method of answering the allegation of the writ petitioner by stating that the Rehabilitation Officer had already written, vide letter No. 517, dated 03.09.2015, that 'No Objection Certificate' be issued with regard to allotment of 17 decimals of land, out of the already requisitioned 50 decimals of land, for Madarsa in Koshi Punarvas. Thus, decidedly, the respondents had chosen to accommodate the Madarsa, in question, at Koshi Punarvas Colony, Therbitta (West).

11. It is important to mention here that the Director, Land Acquisition and Rehabilitation, Government of Bihar, Patna, having been impleaded as respondent No. 10, has categorically averred, in his affidavit, that the displaced residents of village Nawa Bakhar, Tola Parsahi, were officially rehabilitated by the respondents at a newly acquired area, namely, Therbitta East,



Punarwas. As per the scheme, the residents of Nawa Bakhar Parsahi Tola have been shifted to their allotted plots at Therbitta East Punarwas. However, respondent No 8, being Secretary of sole Madarsa, i.e., Hashmia Madarsa No. 714 of Parsahi Tola, along with 4 or 5 families of Parsahi Tola, shifted to Therbitta West Punarwas known as Therbitta Colony. Thereafter, respondent No. 8 also shifted the Madarsa to the aforementioned colony near his residence. This evoked widespread discontentment and representations were made by the residents of Therbitta East. Thus, an enquiry was conducted and, finally, the Rehabilitation Officer, Koshi Programme, Supaul, submitted his report, vide Memo No. 321, dated 16.06.2015, and accordingly, the Director Land Rehabilitation and Acquisition, Government of Bihar, vide letter No. 184, dated 09.02.2016, requested the District Magistrate, Supaul, to issue and provide allotment certificate along with No Objection Certificate of the land of Madarsa Hasmia Parsahi for construction of boundary wall and toilets as the Madarsa Harsahi Parsahi No. 714 is functioning at the rehabilitated place at Therbita Colony, Block Kishunpur, District Supaul. However, the petitioners seriously objected to the same, but even though their protests were also referred to in the aforementioned letter, till date, there has been no official response from the District Magistrate in this regard.



12. We have heard Mr. Ashhar Mustafa, learned Counsel for the petitioner, and Mr. Anjani Kumar, learned Additional Advocate General No.6, appearing on behalf of the State. We have heard also Mr. Md. Rashid Alam, learned Counsel, appearing for the Madarsa, and Mr. Shabbir Ahmad, learned Counsel, appearing for respondent No.8. We have also perused the affidavits filed by the parties. The issues, which need to be resolved in the present Public Interest Litigation, are:

(i) Whether the residents of Tola Parsahi, Nawa Bakhar, being the victims of the Koshi inundation, were rehabilitated officially at Therbitta East Punarwas or at Therbita West Punarwas/ Koshi Colony?

(ii) Whether the majority of the displaced persons of Tola Parsahi Nawa Bakhar had settled at Therbitta East or at Koshi Colony/Therbitta West?

(iii) Whether the appropriate place for the Madarsa, in question, to function shall be at Therbitta East or at Koshi.

13. Addressing ourselves to the first issue, the Principal Secretary, in his affidavit, dated 23.02.2016, has clearly stated (as per Annexure – C appended there to), that the residents of Nawa



Bakhar had to be rehabilitated at Therbitta East/Maledh; however, a few residents, unauthorizedly, shifted here and there in addition to the authorized place of rehabilitation. Further-more, respondent No. 10, namely, Director (Land Acquisition and Rehabilitation), Government of Bihar, has admitted that the displaced persons of Nawa Bakhar, Tole Parsahi, were officially rehabilitated by the Government at a newly acquired area namely, Therbitta East. These affidavits only reinforce the submission, advanced by the petitioners, that the Block Education Officer (respondent No.7), after necessary enquiry, reported to the District Education Officer, Supaul, (respondent No. 4), on 02.12.2011 (Annexure-1), that except for 5-6 families, all the residents of Tole Parsahi, Nawa Bakhar, had officially shifted to Therbita East Punarvas and, thus, the Madarsa should also run at Therbitta East Punrwas. Furthermore, the response to the Right to Information Act, as furnished to the petitioner, marked as Annexure-7 series, confirm that the residents of Tole Parsah, Nawa Bakhar, had to officially shift only at Therbita East Punarvas and not at Therbitta West Punarvas/Kosi Colony.

14. It also appears that while seeking guidance from the Madarsa Board for shifting the present Madarsa, Block Development Officer (Respondent No. 6), had duly informed the

Board, way back on 29.12.2010, that the residents of Tole Parsahi, Nawa Bakhar, were officially rehabilitated by the Government at Therbitta East Punarvas. The said letter, dated 29.12.2010, is marked at Annexure -9 to the affidavit.

15. We have also noticed that Annexures- 10 and 11, dated 19.02.2016, further confirm that the residents of Tole Parsahi, Nowa Bakhar, alone have been allotted land in Therbitta East Punarvas and, as such, there is not even a single case, wherein any resident of Tole Parsahi, Nawa Bakhar, has been ordered to be rehabilitated at Therbitta West Punarvas by the District Rehabilitation Officer.

16. Our unhesitant conclusion, therefore, is that the residents of Tola Parsahi, Nawa Bakhar, being the victims of the Koshi inundation, were rehabilitated officially at Therbitta East Punarwas.

17. So far as issue No. 2 is concerned, we have noticed that the issue is addressed with greatest clarity in the report of District Education Officer (Respondent No. 4) forwarded to the Madarsa Board, on 04.05.2015, which is marked as Annexure-2 to the writ application. This report shows that pursuant to a complaint received by the District Magistrate, the District Education Officer physically inspected the Madarsa and reported that since 80-85%



population of Tole Parsahi, Nowa Bakhar, had rehabilitated at Therbitta East Punarvas, the above population is being deprived of the benefit of the Madarsa Education as the Madarsa has been shifted to Therbitta West Punarwas/Kosi Colony. Annexure-1 to the writ application further confirms that amongst the local population of Tole Parsahi, Nowa Bakhar, only six families, unauthorizedly, shifted to Therbitta West Punarwas/Kost Colony.

18. Annexure-6 further clarifies that the Director, Land Acquisition and Rehabilitation (respondent No. 10), vide letter, dated 12.10.2015, refused to grant No Objection Certificate for allotment of land to the present Madarsa at Therbitta West Punarwas/Kosi Colony on the consideration that 80-85 percent residents of Tole Parsahi, Nowa Bakhar, had been officially rehabilitated at Therbitta East Punarwas. We find no fault with the decision so taken by the Director, Land Acquisition and Rehabilitation (respondent No. 10) that in furtherance of earlier letters, including Annexure- 5, respondent No. 10, again, sought for a report from the District Rehabilitation Officer (respondent No. 5) regarding the steps being taken to remove the encroachment by the present Madarsa at Kosi Colony/Therbitta West Punarvas. Respondent No. 10 even asked respondent No. 5 to explain the circumstances, whereunder Madarsa is being run at Kosi



Colony/Therbitta West Punarwas, besides confirming if the Madarsa is running at the plot, which has been allotted to Dhuthat Sanskrit School. Instead of furnishing report to the respondent No. 10, as had been sought for above, the District Authorities kept on insisting for issuance of No Objection Certificate for allotment of 17 decimals of land to the Madarsa, in question, at Therbitta East Punarwas/Kosi Colony.

19. In absence of receipt of any report, respondent No. 10 was, ultimately, compelled to write to the District Magistrate, on 09.02.2016, with necessary enclosures, asking him to create a record in the matter and forward his recommendation with respect to the allotment of land to the Department concerned for doing the needful. From the affidavit of the Principal Secretary, what also becomes abundantly clear is that on 23.02.2016, there were altogether 244 families at Therbitta East Punarwas and 162 families at Therbitta West Punarwas/Kosi Colony. However, a careful reading of the survey reports of the rehabilitation office, marked as Annexure-12 series of the affidavit, reveals that more than half of the families of Therbitta East, Punarwas, have been rehabilitated by the Government from Nowa Bakhar, whereas only 6 families from Nowa Bakhar is shown to have, somehow, rehabilitated themselves at Therbitta West Punarwas.



20. From the above discussions, it is patently and manifestly clear that that the residents of Tole Parsahi were officially rehabilitated at Therbitta East Punarwas and it was only a limited population, which had unauthorizedly ventured into the territory of Kosi Colony, Therbitta West. What also clearly emerges from the documents, annexed to the writ application, that sizeable population of the displaced persons presently residents of Therbitta East Punarwas and the Madarsa, in question, is running not at Therbitta East Punarwas, but at the place of unauthorized occupation of Kosi Colony, where only a limited population of displaced persons have come to settle.

21. It also remains an admitted fact from the various affidavits filed by the respondents that, till date, no land has been officially allotted to the Madarsa. Accordingly, we are of the firm view that it would be in the interest of justice that the Madarsa, in question, be directed to be allotted adequate land at Therbitta East Punarwas so that the majority of the population and families of Therbitta East Punarwas be benefitted to the maximum. We direct that the State respondents shall take necessary steps for allotting land at the Therbitta East Punrwas Colony so that the grievance of the petitioners are redressed at the earliest. Respondent No. 10 shall ensure that the controversy, in question, is laid to rest so that

students of the Madarsa may not remain at home to their prejudice any further.

22. With the aforementioned observations and directions, we allow the writ application.

(I. A. Ansari, ACJ)

(Anjana Mishra, J)

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