

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.17934 of 2015

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Vijay Kumar Singh S/o Late Kameshwer Prasad Singh J. L. Path, Ward
No. 19, Farbesganj, District - Araria

.... Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Principal Secretary, Urban Development Department Govt. of Bihar, Patna
3. The District Magistrate, Araria
4. The Sub - Divisional Magistrate, Farbesganj
5. The Executive Officer, Nagar Parishad, Farbesganj, District Araria (Bihar)
6. The Chairman, Nagar Parishad, Farbesganj, District Araria (Bihar)
7. The Director General Vigilance, Patna

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Binay Kumar Singh, Advocate.

For the Respondent/s : Mr. Jai Shankar Barnawal (GA-5)

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

3 29-02-2016

The present public interest litigation has been filed for conducting an enquiry by the higher officials regarding construction of R. B. Lane Road, in the town of Farbesganj, in the district of Araria. It has been alleged that the Executive Officer of Nagar Parishad, Araria, in connivance with vested interests, have been trying to construct road over a road already constructed by the Jain Community with the help of donations by people. The



allegation against the Executive Officer and the Chairman of Nagar Parishad, Farbesganj, is of passing of a resolution for making the road and of withdrawal of huge amounts in its name, which is, according to the petitioner, wholly illegal and, therefore, warrant interference by this Court.

The factual matrix of the case is that on the occasion of the visit of the Chief Priest of the Jain Community to the town of Farbesganj, in the district of Araria, preparations were made. The R. B. Road, leading to the Jain Bhawan, was sought to be repaired as it was in very bad condition and required urgent repairs and maintenance before the commencement of the annual function. A request was, accordingly, made to the District Magistrate, Araria, to direct the Nagar Parishad to undertake repairs. The Nagar Parishad, vide resolution, dated 16.05.2015, decided that these roads would be repaired by the Nagar Parishad itself, which was a wrong precedence. It is submitted by the petitioner that a sum of Rs. 7,08,900/- was allocated and sanctioned for execution of the said repair works.

However, since the road was sought to be constructed without any work order or tender a complaint was made by a public spirited person and the work was abandoned leaving the said road uprooted upto Jain Bhawan.

The Jain community made several requests to the District Magistrate, Araria, and Nagar Parishad to get the road repaired, but having failed in their efforts, they collected donations and got the said construction done and the annual festival of the Jain Community ended peacefully.

Strangely enough, after the road was already built in the month of July 2015, the Nagar Parishad, again, passed a resolution for construction of the already constructed road, known as R.B. Lane, and, on 12.08.2015, by the said resolution, sanction, for withdrawal of a sum of Rs. 29,00,000/-, was granted even though the road already stood constructed by the Jain Community a month earlier to the said resolution.

A compliant was, then, made to the District Magistrate, Araria, by the local residents, who, in turn, entrusted the enquiry to the Sub Divisional Officer, Farbesganj. The allegations were found to be true and, as such, the District Magistrate, Araria, issued order for institution of *First Information Report*, but since the District Magistrate, Araria, was, transferred, no *First Information Report* was instituted against the concerned authorities. The said illegal action of the Nagar Parishad, Forbesganj, was also brought to the notice of the new District Magistrate, the



concerned Principal Secretary and the Director General, Vigilance, alleging misappropriation of Government money to the tune of Rs. 29,00,000/-; but no action was taken. Thus, the petitioner has come to this Court drawing its attention towards misappropriation of public money by the State functionaries, in general, and the Nagar Parishad, in particular.

Heard learned counsel for the parties concerned and perused the affidavits filed by respondent nos. 3 and 4 and also by respondent no. 5.

On the last occasion, noticing the illegal action of the respondents, this Court had directed for personal appearance of the respondent Nos. 2, 3, 4, and 5, namely, Principal Secretary, Urban Development, Government of Bihar, Patna, District Magistrate, Araria, Sub Divisional Magistrate, Farbesganj, and Executive Officer, Nagar Parishad, Farbesganj, respectively.

The District Magistrate, Araria, has filed an affidavit, wherein it has been stated that no amount has been withdrawn for construction of the said road and that no resolution to the said effect was ever passed. It is submitted that on receipt of the complaint from the residents, an enquiry was ordered from his end and the Sub Divisional Officer,



Farbesganj, conducted an enquiry and the Sub Divisional Officer, Farbesganj, submitted a report on 24.06.2015, whereby it was reported that no work order was ever issued nor any money has been withdrawn for construction of the said R.B Lane. Thus, the allegation of the petitioner stood fully falsified.

The Executive Officer, Nagar Parishad, Farbesganj, has also filed an affidavit stating to the effect that no amount was withdrawn in the name of construction of road nor was any resolution for withdrawal of Rs. 29,00,000/- ever made. The complaint was duly attended by the Sub Divisional Officer, Farbesganj, on the instructions of the District Magistrate, Araria, and, vide letter of the Sub Divisional Officer, Farbesganj, contained in Memo No. 1370/C, dated 23.06.2015, the Sub Divisional Officer, Farbesganj, conducted an enquiry and submitted his report on 24.06.2014, which is marked as Annexure –A to the counter affidavit.

The Executive Officer, Nagar Parishad, Farbesganj, on being confronted with the resolution passed by the Nagar Parishad, on 12.08.2015, was unable to answer how the resolution, dated 12.08.2015, could be passed, even though the road had already been constructed, which was



well within the knowledge of the concerned respondents. The concerned officers have only taken the plea that they have joined only lately on their respective posts. Further, in view of the fact that there has been no misappropriation of public fund as no amounts were released for construction of the road in question, the allegations are unfounded and their respective explanations be accepted.

Having perused all the materials available on record and the counter affidavit filed by the respondents, it is evident that the Nagar Parishad has acted in a slip shod manner and it was the bounden duty of the Executive Officer to intervene and issue appropriate orders for restraining the Parishad, from taking such a decision, which can lead to gross misappropriation of public funds. Such a bald submission that the officers have joined only lately is fit to be summarily rejected.

However, in the given facts and circumstances of the case and taking into consideration that no public money has been misappropriated, because of timely intervention by the petitioner, this Court proceeds to close this proceeding with a word of caution and warning to the erring officers to be careful, in future, in the performance of their statutory duties and to act in accordance with law.

With the aforesaid observations, the present
Public Interest Litigation stands disposed of.

(I.A. Ansari, ACJ.)

(Anjana Mishra, J.)

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