

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.5936 of 2011

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1. Bhuvheshwer Yadav S/O Late Pitamber Yadav R/O Village - Kusiam, P.O. Bachhi, P.S. Baheri, District - Darbhanga
 2. Shiv Chandra Yadav S/O Dharnidhar Yadav R/O Village - Kusiam, P.O. Bachhi, P.S. Baheri, District - Darbhanga
 3. Krish Nandan Yadav S/O Late Radhakant Yadav R/O Village - Kusiam, P.O. Bachhi, P.S. Baheri, District - Darbhanga
 4. Biraj - Bati Devi W/O Jivachh Yadav R/O Village - Kusiam, P.O. Bachhi, P.S. Baheri, District - Darbhanga

.... Petitioners

Versus

1. The State Of Bihar
2. R. Laxman, the Collector Darbhanga
- 2.1 Pradeep Kumar, Collector, Darbhanga
- 2.2 Upendra Sharma, Collector, Darbhanga
- 2.3 Arun Prasad, Collector, Darbhanga
- 2.4 Pran Mohan Thakur, Collector, Darbhanga
- 2.5 Santosh Kumar Mal, Collector, Darbhanga
- 2.6 Narmadeshwar Lal, Collector, Darbhanga
3. P.K. Gupta, the Sub - Divisional Magistrate, Darbhanga
- 3.1 Raghunath Prasad, Sub-Divisional Magistrate, Darbhanga
- 3.2 Nadim Akhtar, Sub-Divisional Magistrate, Darbhanga
- 3.3 Pramod Singh, Sub-Divisional Magistrate, Darbhanga
- 3.4 Ashok Kumar Jha, Sub-Divisional Magistrate, Darbhanga
- 3.5 Ramji Prasad, Sub-Divisional Magistrate, Darbhanga
- 3.6 Ramendu Sharma, Sub-Divisional Magistrate, Darbhanga
- 3.7 Kishori Iswar, Sub-Divisional Magistrate, Darbhanga
- 3.8 Sanjay Kumar Singh, Sub-Divisional Magistrate, Darbhanga
- 3.9 Ravi Ranjan Kr. Gupta, Sub-Divisional Magistrate, Darbhanga
4. Kamal Kishore, the Anchaladhikari, Baheri
- 4.1 Narendra Mohan Jha, the Anchaladhikari, Baheri
- 4.2 Sanjiv Kumar Singh, the Anchaladhikari, Baheri
- 4.3 Bina Prasad, the Anchaladhikari, Baheri
- 4.4 Bipin Kumar Rai, the Anchaladhikari, Baheri
- 4.5 Kamal Kumar, the Anchaladhikari, Baheri
- 4.6 Lal Jyotinath Satdeo, the Anchaladhikari, Baheri
- 4.7 Kamal Kumar, the Anchaladhikari, Baheri
- 4.8 Rajiv Ranjan, the Anchaladhikari, Baheri
5. Yogendra Prasad Sharma, the Executive Engineer, R.E.O., Dabhanga
- 5.1 Sunil Kumar, the Executive Engineer, R.E.O., Dabhanga
- 5.2 Ram Narayan Yadav, the Executive Engineer, R.E.O., Dabhanga
- 5.3 Radhekishan Nand, the Executive Engineer, R.E.O., Dabhanga
- 5.4 Rabish Nath Rai, the Executive Engineer, R.E.O., Dabhanga
- 5.5 Kashi Nath Mishra, the Executive Engineer, R.E.O., Dabhanga
- 5.6 Din Bandhu Pd. Singh, the Executive Engineer, R.E.O., Dabhanga
6. S.S.Roy, the SDO, REO, Darbhanga
7. Birendra Kumar Yadav S/O Subhash Narayan Yadav R/O Village - Kusiam, P.O. Baheri, District - Darbhanga
8. State of Jharkhand through the Chief Secretary, Sudhir Prasad, the Chief Secretary, State of Jharkhand at Ranchi.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amarendra Narayan
Mr. Deepak Kumar
For the State : Mr. Ranjeet Kumar, AC to PAAG
For O.P. No. 5.1 : Mr. Abhinay Raj, Advocate
For O.P. No. 5.2 : Mr. Alok Kumar Rahi, Advocate
For State of Jharkhand : Mr. Satyavrat Verma
For the Respondent/s : Mr. DEVENDRA KR SINHA AAG2

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CORAM: HONOURABLE MR. JUSTICE RAMESH KUMAR DATTA

ORAL JUDGMENT

Date: 20.07.2016

Heard learned counsels for the parties.

By order dated 26.9.2012 this Court had initiated proceedings of contempt against the opposite party Nos. 2 to 6 and the newly added opposite party nos. 2.1 to 2.6, 3.1 to 3.9, 4.1 to 4.6 and 5.1 to 5.6 on the charge of having violated the interim order dated 15.9.2003 passed in CWJC No. 9867/2003 for maintaining status quo as also the final order dated 13.5.2010 passed in the said case.

The petitioners had filed the writ petition alleging construction of road under the Pradhan Mantri Gram Sadak Yojana by encroaching the petitioners' lands illegally, in which the interim order of maintaining status quo was passed on 15.9.2003. The writ application was finally disposed of by order dated 13.5.2010 restraining the respondents from making any construction over the rayati lands of the petitioners and a further direction was to make



proper measurement of the lands of the petitioners vis-à-vis the public lands on which the road is to be constructed and after making proper demarcation, proceed with the construction work of the road only upon the public lands unless consent in writing is obtained from the petitioners or any other raiyats with regard to construction of road over their lands. Thereafter the present contempt application was filed on 23.12.2011 alleging that in spite of the order of this Court, the opposite parties have constructed road on the petitioners' land and have not made measurement of the petitioners' land and the land on which the public road are to be constructed.

By a further rejoinder to the show cause of opposite party Nos. 2 to 4, the petitioners have alleged that till 2.8.2003 the opposite parties had only started earth filling work which on protest was stopped and thereafter the opposite parties had constructed pucca road as per sanction except the portion which belonged to the petitioners in which earth filling was carried out earlier but recently while maintenance and repair work was being done they have constructed pucca road putting metal and bitumen on it in 2010 in the absence of the petitioners. Even after order of this Court they have made repair work on 18th January, 2012 and the opposite parties are making false and misconceived statements in that regard.

After the initiation of contempt proceedings by order dated 26.9.2012, the opposite parties were given time to file their

respective show causes and further show causes in the matter.

In the course of submissions, learned counsel for the petitioners submitted that after going through the entire records including the show causes of the opposite parties and the documents and materials, according to him the real contemnners were opposite party nos. 2.1 Pradeep Kumar, the then Collector, Darbhanga posted there from 31.1.2003 to 5.10.2005, opposite party no. 4.1 Narendra Mohan Jha, the then Circle Officer, Baheri posted there at the relevant period till 9.7.2004, opposite party no. 5 Yogendra Prasad Sharma, the Executive Engineer, REO, Darbhanga posted there from 21.2.2011 onwards and opposite party no. 5.1 Sunil Kumar, the then Executive Engineer, REO, Darbhanga posted there from 7.2.2002 to 30.10.2004.

In view of the said stand of learned counsel for the petitioners and upon consideration of the materials on the record, by order dated 05.05.2016 the contempt proceedings were dropped against opposite party nos. 2, 2.2 to 2.6, 3, 3.1 to 3.9, 4, 4.2 to 4.6 and 5.2 to 5.6. Thereafter this Court had heard learned counsel for the petitioners and for the opposite party nos. 2.1, 4.1, 5 and 5.1.

Learned counsel for the petitioners has sought to argue that subsequent to the initiation of the contempt proceedings by this Court, the authorities of the State of Bihar have also made inquiries in the matter and on the basis of their enquiry, five



officials posted during the earlier period 2003-2004 were, prima facie, found responsible for violating the orders of this Court and departmental proceedings were initiated against them. Out of the said five persons, contempt proceedings had been initiated only against opposite party no. 5.1 Sunil Kumar, the then Executive Engineer, whose services were subsequently allotted to the State of Jharkhand on the re-organization of the erstwhile State of Bihar but he has been found not guilty in the departmental proceedings whereas, according to learned counsel for the petitioners, there are materials on the record to show that the construction work of road was carried out even after the interim order dated 15.9.2003 during the time when the opposite party no. 5.1 was the Executive Engineer, REO.

In support of his stand, apart from the pleadings of the petitioners, learned counsel for the petitioners relies upon a report submitted by the Sub-Divisional Officer, Sadar, Darbhanga to the District Magistrate, Darbhanga on 23.5.2014 after making a joint inspection of the spot on 6.5.2014 along with O.P.No.5, the Executive Engineer, Rural Works Department and further queries were made by him to the petitioner Bhuneshwar Yadav on 7.5.2014. According to the said report the petitioner Bhuneshwar Yadav orally stated that the road was constructed on the lands of the petitioners in the year 2003-04 itself and again in the beginning of



2012 (in January) the repairing work had been done on the said road but the Departmental Engineers have not shown its measurement. The SDO had also made inquiry from the local villagers and several of them stated that the road was very old and was constructed in 2003-04 and a year earlier it had also been repaired. The most important aspect relied upon by learned counsel for the petitioners in the said matter is the further statement that on spot inspection it was found that on the said road repair work had been carried out and the construction of pucca road was even then found to be quite strong. According to the SDO's report, the Executive Engineer, opposite party no. 5 and the Junior Engineer stated that in March, 2012 maintenance and repair works had been done and at the disputed spot (25 feet) the repair work had not been done and even in the measurement book no measurement has been recorded with regard to the repair work over the said spot and possibly on the pressure of local people the contractor had made repair work on the left over portion. The conclusion of the Sub-Divisional Officer was that from the spot inspection it was evident that the road had been constructed and repaired on the disputed area whether it was done in the year 2003-04 or January, 2012 or January, 2013 and, according to him, the Executive Engineers posted during the said periods are prima facie guilty of violating the order dated 15.9.2003 passed in CWJC No. 9867/2003 by not getting the work stopped,

not taking action against the contractor and not supervising the construction work of departmental road.

It is submitted by learned counsel for the petitioners that in view of the said report dated 23.5.2014 of the Sub-Divisional Officer, on the basis of spot inspection made along with the opposite party no.5 which clearly evidenced the construction of pucca road as also repair of the same even over the plots of the petitioners, clearly shows violation of the order of this Court not only during the period 2003 and 2004 but also subsequently after the final disposal of the writ petition by order restraining the respondents from making such construction.

Learned counsel in this regard also refers to the letter dated 12.6.2014 written by the Collector, Darbhanga to the Engineer-in-Chief-cum-Addl. Commissioner-cum-Special Secretary, Rural Works Department, Bihar in which after referring to the report dated 23.5.2014 of the Sub-Divisional Officer, Sadar, Darbhanga as also separate letter dated 26.5.2014 of opposite party no. 5 which is his explanation, he has recommended initiation of departmental proceedings against the concerned Engineers for not obeying the order dated 15.9.2003 of this Court and not taking action against the contractor and not supervising the construction work of departmental road for which they appeared to be guilty according to him.

Out of the four opposite parties against whom proceedings of contempt have been continued, opposite party no. 2.1, 4.1 and 5.1 were posted during the earlier period till 2004-2005, the allegation against them is of having violated interim order dated 15.9.2003 whereas, opposite party no. 5, who has been Executive Engineer since 2011, is alleged to have violated the final order dated 13.5.2010 passed by this Court.

The defence of opposite party nos. 2.1, 4.1 and 5.1 are broadly on similar lines, apart from the stand of the opposite party nos. 2.1 and 4.1 that they being officers of the general administration, namely, Collector and Circle Officer, they were not at all directly concerned with the actual construction of road under the Pradhan Mantri Gram Sadak Yojana, for which the prime responsibility was of the Executive Engineer, REO and the Engineers subordinate to him.

It is further their stand that after passing of the interim order dated 15.9.2003, no such stand was taken by the petitioners regarding violation of the interim order till 13.5.2010 when the final order was passed, as no contempt petition with the allegation of violation of interim order was ever brought to the notice of this Court by the petitioners by filing any application till that stage.

It is further submitted that the contempt petition



itself was filed in the year 2011 and even in the contempt petition it was not the stand of the petitioners that any pucca road had been constructed upon it till the filing of the contempt application. Thereafter, in the rejoinder filed on behalf of the petitioners to the show cause filed by the opposite party nos. 2 to 4, the clear stand was that till 2.08.2003 the opposite parties had only got done earth filling work which on protest was stopped and the Department had constructed pucca road as per the sanction except the portion which belonged to the petitioners in which earth filling was carried out earlier but recently maintenance and repair work was carried out in 2010 in the absence of the petitioners and even after the final order of this Court they have made repairing on 18th January, 2012. It is thus, submitted that the clear stand of the petitioners is also that no pucca road was constructed on the land during the earlier period when opposite party nos. 2.1, 4.1 and 5.1 were posted and thus no case of contempt is made out against them.

With regard to the report of the Sub-Divisional Officer, Sadar Darbhanga dated 23.5.2014, it is contended that there is nothing in the said report which categorically states that there was a construction made in the year 2003-04 rather the spot inspection refers to the statements of several villagers that the pucca road was constructed in the year 2003-04 and had been repaired a year earlier but the said stand is not borne out by the clear averments made by

the petitioners to the contrary.

It is urged that in the inspection, the Sub-Divisional Officer has found that there was repair work on the road and pucca construction of the road was still in a good state. Thus, the conclusion of the Sub-Divisional Officer was merely that on the spot in question the road construction and repair work had been done, whether in the year 2003-04 or January, 2012 or January, 2013.

According to learned counsel, the said report of the SDO has to be seen along with the averments of the petitioners made in the contempt petitions and rejoinders, etc., which positively state that no pucca construction was made in the year 2003-04 and only earth filling work was done which was stopped on protest and filing of the writ petition alleging violation of their raiyati rights.

Learned counsel for the opposite party no. 5.1 in addition submits that the earlier measurement book of his period clearly shows the gap of 25 meters between 725-900 and no work was done on the petitioners' land in the years 2003-05 and for the said reasons the Jharkhand Government has exonerated the opposite party no. 5.1 in the departmental proceedings.

Learned counsel for opposite party no. 5, on the other hand, submits that the mere finding of the Sub-Divisional Officer regarding the existence of pucca road with repair works on the lands of the petitioners cannot be held against him as the stand of the



opposite party no. 5 has been that no construction work was carried out over the said portion of the land and as a matter of fact, even the measurement book of the recent period when repair was carried out shows a gap so far as the lands of the petitioners are concerned and neither any construction nor repair was done nor any bill was raised or paid under the authority of the opposite party no. 5 to the contractor.

It is submitted that the stand taken by the opposite party no. 5 in his letter dated 26.5.2014 to the District Magistrate, Darbhanga is the correct position which was that the present Engineers had not got the work done on the lands of the petitioners and the stand of the opposite party no. 5 has been that it is the contractor who, on the pressure of local people, may have done the work on his own for which opposite party no. 5 cannot be blamed.

Learned counsel for the petitioners in reply to the stand of learned counsel for the opposite party no.5, submits that the said stand is contrary to the joint report dated 3.10.2003 filed by the opposite party no. 5 along with the Sub-Divisional Officer, Sadar, Darbhanga in which he has laid the blame on the then Executive Engineer, opposite party no. 5.1 and the Assistant Engineer and Junior Engineers posted under him for the work that had been done, which directly contradicts the subsequent report given by the Sub-Divisional Officer which was done on the basis of a spot inspection,



which spot inspection clearly shows existence of the pucca road along with repair works on 6.5.2014 which was thus during the period of the opposite party no. 5, who has wrongly tried to deflect the blame on the Engineers posted during the earlier period to get himself absolved of the responsibility for the construction/repair of the pucca road which cannot be denied in view of the spot inspection made by the Sub-Divisional Officer, Sadar, Darbhanga along with the opposite party no. 5.

I have considered the submissions of learned counsels for the parties and the materials on the record. From a consideration of the stand of the petitioners right from the stage of the writ petition as also in the contempt application, it is clear that till the disposal of the writ petition and even at the time when the contempt application was filed and subsequently in the first rejoinder which the petitioners had filed to the show cause filed on behalf of opposite party nos. 2 to 4, it was nowhere the stand of the petitioners that pucca road had been constructed on the land of the petitioners till the disposal of the writ petition, rather a clear stand was that earth filling work had been done which was stopped on protest and the interim protection had been granted by this Court. The Sub-Divisional Officer in his spot inspection made along with the opposite party no. 5 on 6.5.2014 has also referred to the fact that there was pucca road along with the repairs of the road in existence

and the pucca road was still in a good condition although the SDO has recorded the statement of villagers that road was constructed in the years 2003-04.

On a consideration of the entire materials on the record, this Court cannot draw a definite conclusion that there had been construction of pucca road on the lands of the petitioners during the period 2003-04 when the opposite party nos. 2.1, 4.1 and 5.1 were posted there. Thus at the very least they are entitled to the benefit of doubt. In view of the stand taken by the petitioners themselves, the changed stand of the petitioners cannot be accepted at this belated stage.

However, from the report dated 23.5.2014 of the Sub-Divisional Officer on the basis of the joint inspection made on 6.5.2014 along with the opposite party no. 5, it is evident that there was a pucca road in existence along with the recent repair, which repair admittedly had been made during the period of posting of opposite party no. 5. Even the opposite party no. 5 in his separate letter dated 26.5.2014 to the District Magistrate with respect to the inspection has not denied the factum of existence of the pucca road rather he has tried to deflect his responsibility stating that before starting repairs an inspection was got made by him through his subordinates who had reported that pucca road was already in existence there. He has also sought to rely upon the measurement

book in which no measurement with regard to the lands of the petitioners has been entered and according to him, during the course of maintenance, a gap was maintained. This Court however, finds it difficult to countenance any such attempt on the part of the opposite party no. 5 to deflect his responsibilities by showing that it is the contractor on the pressure of the villagers, who may have got the road constructed.

In view of the clear cut restraint order of this Court by the final order dated 13.5.2010 passed in CWJC No.9867/2003, it was the bounden duty primarily of the opposite party no. 5 to ensure that the order was not violated. The bare statement of the opposite party no. 5 that it may have been the handiwork of the contractor on the pressure of the villagers, cannot absolve him of the responsibility and it appears to be a clear cut case of willful violation and disobedience of the orders of this Court restraining the opposite parties from constructing the road on the lands of the petitioners for which a lame excuse has been sought to be raised. This Court rejects such excuse raised by the opposite party no. 5 and clearly finds him guilty of disobeying the order dated 13.5.2010 of this Court.

Thus, in the light of the above the contempt proceedings against the opposite party nos. 2.1, 4.1 and 5.1 are dropped.

The opposite party no. 5, Yogendra Prasad Sharma is

held guilty of willful disobedience of the order dated 13.5.2010 of this Court and thus having committed contempt of this Court. He is accordingly sentenced to undergo imprisonment of two months and also to pay fine of Rs. 2000/-

The contempt application is, accordingly, disposed of.

(Ramesh Kumar Datta, J)

Later on

I.A. No. 5794 of 2016 has been filed on behalf of opposite party No.5, Yogendra Prasad Sharma, praying for grant of bail.

It is stated that the Opposite Party No.5-petitioner intends to file an appeal against the order of punishment awarded today.

On a consideration of the aforesaid prayer, it is directed that the execution of the punishment awarded by the order passed today shall remain suspended for two weeks from today and the Opposite party No.5-petitioner, Yogendra Prasad Sharma, shall be released on bail on furnishing personal bond of Rs. 20,000/-

(Twenty Thousand) to the satisfaction of the Registrar General of this Court.

S.Pandey/- VPS

(Ramesh Kumar Datta, J)

AFR/NAFR	
CAV DATE	
Uploading Date	23.07.2016
Transmission Date	