

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 4427 of 2014

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1. Barun Kumar Puri , Son of Late Annapurna Devi and Late Purnanand Puri.
 2. Vijaya Laxmi Puri, Wife of Late Arun Kumar Puri (Daughter-in-Law of Late Annapurna Devi).
 3. Mrs. Usha Puri, Wife of Barun Kumar Puri (Daughter-in-Law of Late Annapurna Devi).
 4. Rishi Raj Puri, Son of Late Arun Kumar Puri (Grandson of Late Annapurna Devi).
 5. Chaitanya Puri Mahant Son of Late Arun Kumar Puri (Grandson of Late Annapurna Devi).
 6. Kartik Kr. Puri Mahant, Son of Late Arun Kumar Puri (Grandson of Late Annapurna Devi).
 7. Miss Apurva Puri, D/o Barun Kumar Puri (Grand daughter of Late Annapurna Devi).

All resident of Mehdiganj, P.S.- Mehdiganj (Old Khajekalan), Patna City,
Patna- 800008, at present- Puri Niwas, Rd. No.6/c, Rajendra Nagar, Patna-
800016.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
2. The Additional Secretary Department of Revenue and Land Reforms, Government of Bihar, Patna.
3. The Principal Secretary Department of Rural Development Department, Bihar Vishveshwariya Bhawan, Patna.
4. The Commissioner, Patna.
5. The Land Acquisition Officer, Bihar, Patna.
6. The District Magistrate, Patna.
7. The Deputy Collector Land Reforms, Patna Sadar, Patna.
8. The S.D.O. Patna Sadar, Patna.
9. The Circle Officer Sampat Chak Circle, Sona Gopalpur, District- Patna.
10. The Chief Engineer, Rural Development Department Government of Bihar, Patna.
11. The Executive Engineer, Rural Development Department, Government of Bihar, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Nagendra Kumar, Advocate
For the State	:	Ms. Binita Singh, S.C. 28
For the Intervenor	:	Mr. Gautam Kumar Yadav, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date: 04-02-2017

Heard learned counsel for the parties.



2. The original writ petitioner, Annapurna Devi @ Annapurna Puri (hereinafter referred to as the 'petitioner'), who died during the pendency of the writ application and was substituted by her heirs, had moved this Court for restraining the respondents from constructing road over her private land under the 'Prime Minister Gram Sarak Yojana'.

3. Learned counsel for the petitioners submitted that due to the action of the concerned respondents, their private land was also used for constructing road, due to which she had filed a representation before the Chief Secretary of the State on 27.05.2013 praying for either removal of the road or payment of compensation for the land so utilized. Learned counsel submitted that the representation was forwarded to the Collector, Patna on 10.09.2013 for taking appropriate action but nothing was done forcing the petitioner to move this Court in the present writ application. Learned counsel submitted that once it has been found that the private land of the petitioner was used, the State cannot shirk from paying adequate compensation in accordance with law.

4. Learned counsel for the State submitted that the scheme was taken up in the year 2009 and the road in question was completed in the year 2013, prior to the filing of the present writ application and even prior to filing of the representation by the petitioner. She submitted that counter affidavits have been filed in the



present case bringing on record the factual position after full enquiry at the spot which discloses that though about 17,600 sq. ft. and odd land of the petitioners has been used for constructing the said road but the same was already existing as a rural road and further, that at the time of construction, no dispute or objection was raised by any party. Learned counsel submitted that even on 14.02.2013, the petitioner had executed sale deed with regard to the land adjoining the road in question in which the land in question has been shown as a rural road. Learned counsel submitted that upon the road having been completed, the petitioner became greedy and has moved the authorities claiming compensation, whereas right from the beginning she was well aware that there already was a rural road and even she had represented it like a rural road in the sale deed to her vendee. Learned counsel submitted that despite such fact, the State authorities were ready to pay some token amount of compensation but the petitioner was not ready. Learned counsel submitted that though the State can remove the formal road and restore the land to its original position as a rural road, but in the present case, the right of the persons who have either bought the land from the petitioner or are using the road, cannot be taken away since the land has been represented as a rural road in the sale deed and, thus, the vendees also have a right of usage of the land as a road. Learned counsel submitted that once the petitioner is precluded from using that land for any



other purpose except as a road, in view of the same having been shown to her vendees as a road, the restoration of the road in the original form is both against public interest as well as wastage of funds already utilized for such purpose. Learned counsel submitted that even with regard to any compensation, which technically may have been paid to the land owner, the same cannot now be claimed by the petitioner exclusively as she has shown the said land to be a road to her vendee and further that even the vendee has a right to access and if the land in question is used for any other purpose, the said vendee shall not have any ingress or egress over the land bought by him, which also indicates the intention of the petitioner to derive undue benefit from a situation which has arisen, though inadvertently.

5. Learned counsel for the petitioners, by way of reply, submitted that mere mentioning of the land as road would not take away their right on the land and they are entitled to use the same in the manner as they think fit and proper. He further submitted that the State cannot acquire the land of the petitioners for building the road without the consent of the land owner or paying compensation. He further submitted that the State cannot take upon itself the duty to protect the right of the vendee as it cannot take a stand on their behalf that they have no access to the land they have purchased. He submitted that even a *dagar* (lane) on the eastern side shown in the sale deed is for the purpose of ingress and egress.



6. Having considered the matter, in the opinion of the Court, there cannot be any two opinions with regard to the position in law that any private land, even if it is to be used for any public purpose, cannot be done without due authority in law which means that if the land is required for such purpose, it has to be taken over by the State after following the prescribed procedure and in accordance with law. In the present case, the admitted position is that no private land has been acquired by the State under the 'Prime Minister Gram Sarak Yajana' and equally admitted is the position that 17,600 sq. ft. and odd land of the petitioners has been utilized for purposes of building of road. Thus, from a purely technical point of view, the contention of the petitioner may be valid. However, the Court cannot lose sight of the fact that there already existed a rural road over the land in question and the same was only converted into a metal road under the aforesaid scheme, for which the work began in the year 2009 and attained finality in the year 2013, before filing of the writ petition. There is nothing on record to show that the petitioners, at any point of time, during the four years it took for construction to be completed, had made any objection before any authority and only for the first time she made an application, that too, directly to the Chief Secretary of the State, without making any representation to the local authorities or objecting to the same. The representation was also forwarded to the Land Acquisition Officer, Patna only on 27.05.2013



when such representation was given to the Chief Secretary of the State. In the present case, another glaring fact is that in the sale deed executed by the petitioner on 14.02.2013, the land in question has been shown as rural road. This clearly discloses the admitted position that there existed a road over the land in question. The mere reference of a *dagar* on the eastern side would not mean that a sufficiently large passage existed for there to be enough space for free flow of traffic including movement of vehicles. The Court can safely presume a practical fact that no vendee would buy a land without there being enough space existing for ingress or egress to the property he or she has purchased. In the present case, that being the position, the Court was left with two options, either to direct for undoing and removing the road already constructed and restoring the land in question to its previous form or in the alternative not to interfere in the matter since while executing the sale deed, the land in question being shown as a rural passage, the petitioner no longer having exclusive right to the same and thus not being entitled to compensation treating it to be her private property belonging exclusively to her, the Court would refrain from interfering on the principle that public right has to prevail over individual right. The Court in such a situation, considering the peculiar facts and circumstances of the case, is persuaded to take the latter approach, moreso, due to the fact that the petitioner never agitated about the action of the authorities during the entire four years



when the road was being constructed and also since admittedly there already existed a road on such land.

7. In view thereof, the Court is not inclined to interfere in the matter under its extraordinary prerogative writ jurisdiction under Article 226 of the Constitution. The petitioners on account of the action of the State authorities has not been prejudiced, inasmuch as, even if the formal road built is restored to its original position, the same shall have to be kept as a road which was already existing and on which other persons, including the vendees of the petitioner, have a right for such use as a road under their registered deed of sale.

8. Accordingly, the writ application stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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