IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12943 of 2016

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1. Mukesh Sahni son of Shri Bhagwat Sahni, resident of village and P.O- Satish Nagar, P.S-Pasraha, Distt- Khagaria.
2. Gopal Sahni son of Late Dashrath Sahni, resident of village and P.O- Satish Nagar, P.S-Pasraha, Distt- Khagaria. .... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Animal husbandry and Fish Resources Department, Govt. of Bihar, New Secretariat, Patna.
2. The Collector, Begusarai.
3. The Director Fisheries Department, Bihar, Patna.
4. The Regional Officer, Bihar, National Highway Authority of India, D-63, 1st Floor, Sri Krishnapuri, Patna-1.
5. The Executive Engineer, National Highway Division, Khagaria.
6. The Project Director, National Highway Authority, Tilrath, Begusarai.
7. The Assistant Engineer, National Highway, Sub- Division, Pasraha, Khagaria.
8. The Junior Engineer, National Highway, Pasraha, Narainpur, Distt- Khagaria.
9. The District Fisheries Officer-cum- Chief Executive Officer, Khagaria.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Mahasweta Chatterjee, Advocate
For the Respondent/s : Mr. Rishi Raj Sinha- SC-19

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL ORDER

4 23-08-2017 Heard learned counsel for petitioners as well as learned counsel appearing for the State-N.H.I.

The petitioners are members of Parbatta Thana Matsyajivi Sahyog Samiti Ltd. Korchakka, Satish Nagar district-Khagaria. The aforesaid society has been registered under the provisions of Bihar Cooperative Societies Act, 1935. The case of the petitioners is that 24 Fish Jalkars were settled with the above stated society by the District Fishery Officer, Khagaria with effect

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from 01.07.2012 to 30.06.2019 for seven years including Lakhana and Singhthauna Dumra Jalkars. The aforesaid Jalkars are situated adjacent to National High Way No. 31 between 300 to 312 kilometers. Similarly Lakhana is situated adjacent to N.H.31 between 309 to 312 kilometers but in rainy season, the water of Jalkars over flows and spread over N.H.31 between 300 to 312 kilometers as a result of which fish cultivated by the petitioners goes to that area of N.H.31 between 300 to 312 kilometers and taking advantage of the aforesaid situation, the anti social elements take out fish from the aforesaid area of N.H.31, resulting huge financial loss to the petitioners.

Learned counsel appearing for petitioners submits that petitioners made representations to officials of N.H.31 and the State Government for getting permission to fishing on the above stated area in rainy season and certain officials have reported in favour of the petitioners, which is evident from perusal of Annexure-3, Annexure 4 and Annexure-6 to the petition and the officials suggested that the petitioners may take the fishes from the area as stated above during rainy season but for that purpose petitioners have to furnish a bond. Learned counsel further submits that thereafter petitioners approached the respondent No. 4, the Regional Officer, Bihar National High Way Authority of

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India and file petition for grant of permission to furnish bonds but the matter is still pending and the respondent No. 4 has not taken any decision as yet.

On the other hand, learned counsel appearing for the State-N.H.I. refuted the above submission arguing that the petitioners do not have any right to use the land acquired by the State and N.H.I. and, moreover, the District Fishery Officer settled the Jalkars to society and not individually to petitioners.

Having heard the contentions of both the parties, I went through the record, I find that District Fishery Officers settled 24 Jalkars with Parbatta Thana Matsyajivi Sahyog Samiti Ltd. Korchakka, Satish Nagar district-Khagaria and out of aforesaid 24 Jalkars, two Jalkars Lakhana and Singhthauna Dumra Jalkars were settled with the petitioners by the aforesaid society as petitioners happen to be the members of the aforesaid society. Moreover, it is an admitted position that the above stated Lakhana and Singhthauna Dumra Jalkars are situated adjacent to N.H.31. It is also an admitted position that in rainy season, fish cultivated by the petitioners in the aforesaid Jalkars goes out on National High Way No. 31 and the aforesaid fact has been corroborated by the officials of N.H.I. which is evident for the above stated Annexures. It would appear from perusal of Annexure-6 to this

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petition that respondent No. 6, the Project Director of N.H.I. has written a letter to respondent No. 4 for grant of permission to petitioners to take out fishes from the area of N.H.I. after taking bond from them and, furthermore, Annexure-7 goes to show that petitioners gave written application to respondent No. 4 seeking permission to furnish bond but admittedly, up-till now, the respondent No. 4 has not taken any decision in respect of the reports submitted by his subordinates as well as petition filed by the petitioners.

Therefore, in the aforesaid circumstance, this writ petition stands disposed of directing the respondent No. 4 to take appropriate decision on the petition dated 04.12.2015 filed on behalf of the petitioners within three weeks from the date of receipt/production of copy of this order and while taking the decision, the respondent No. 4 shall keep in mind the reports submitted by his subordinates in respect of the fishes of the Jalkars.

(Hemant Kumar Srivastava, J)

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