

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12469 of 2017

- =====
1. Gangadhar Giri, Son of Late Keshawanand Giri, Resident of Village- Kumna, P.O.- Kumna, P.S.- Kopa, District- Saran (Bihar) at present residing at Sri Krishna Vihar Colony, Near Health Institute, Beur, P.O.- Anisabad, P.S.- Beur, District- Patna (Bihar), Pin Code- 800002.
 2. Jahanwi Shekhar Giri, Son of Late Keshawanand Giri, Resident of Village- Kumna, P.O.- Kumna, P.S.- Kopa, District- Saran (Bihar).
 3. Ganeshanand Giri, Son of Late Surendra Giri, Resident of Village- Kumna, P.O.- Kumna, P.S.- Kopa, District- Saran (Bihar).
 4. Kumar Navendu, Son of Parmanand Giri, Resident of Village- Kumna, P.O.- Kumna, P.S.- Kopa, District- Saran (Bihar).
 5. Randhir Kumar Giri, Son of Ganeshanand Giri, Resident of Village- Kumna, P.O.- Kumna, P.S.- Kopa, District- Saran (Bihar).
 6. Krishna, Son of Parmanand Giri, Resident of Village- Kumna, P.O.- Kumna, P.S.- Kopa, District- Saran (Bihar).

.... Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Road Construction Department, Bihar, Patna.
2. Principal Secretary, Road Construction Department, Bihar, Patna.
3. The District Magistrate-cum-Collector, District- Saran at Chapra (Bihar).
4. Block Development Officer, Prakhand- Jalalpur, District- Saran (Bihar).
5. Circle Officer, Jalalpur, District- Saran (Bihar).

.... Respondents

=====

Appearance:

For the Petitioner/s : Mr. Raju Giri and
Mr. Santosh Kumar Mishra, Advocates.

For the Respondent/s : Mr. Raj Ballav Pd. Yadav, AAG 11.

For the N.H.A.I.: Mr. S.N. Pathak, Advocate.

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: **HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**)



Date: 11-04-2018

This Public Interest Litigation has been brought by the petitioners for commanding the respondent District Magistrate not to construct permanent structure in the form of Pump House on Aam Rasta (Village Road) said to be situated in Khata No. 637, Kheshra No. 273 in Village Kumma (Tola Bherwaniya), Prakhand Jalalpur, P.S. Kopa, District Saran.

2. Learned counsel for the petitioners submits that the construction of permanent structure in the form of a Pump House on the village road which is being used as a thorough fare for the villagers would obstruct free flow of traffic. Learned counsel has relied upon a judgment of the Hon'ble Supreme Court in the case of **The Municipal Board, Manglaur Vs. Mahadeoji Maharaj**, reported in AIR 1965 SC 1147 = 1965 2 SCR 242.

3. Facts of the said case would show that the plaintiff of the case was owner of a piece of land and through the said plot a public road was running with two Nalis on the North and South of the said road. There was also a water pipe running through the said plot which belonged to the defendant Municipality. A vacant site was lying in between the Nalis and the road. The Municipality was seeking to erect a structure on the vacant site wherein it intended to install a statue of Mahatma Gandhi and also to put up two rooms on



either side for Piyo and Library. A suit for injunction was filed by the plaintiff owner of the plot in which he proved his title to the site, his suit was decreed for possession as well as for permanent injunction.

4. In the aforesaid background as the matter went to the Hon'ble Supreme Court, the Hon'ble Supreme court took a view that the Municipality cannot put up any structures on the public pathway which are not necessary for the maintenance or user of it and it cannot be said that the putting up of the structures for installing the Statute of Mahatma Gandhi or for Piyo or Library are necessary for the maintenance or the user of the road as a public highway. The Municipality was found to be unauthorizedly acting on the land which belonged to the plaintiff. The plaintiff was, however, not allowed to ask for possession of any part of the public pathway, as it continues to vest in the Municipality.

5. In the present case, a Counter Affidavit has been filed wherein it is stated that the petitioner is creating obstruction in the construction of mini-water pump which is going to be used by the public at large. This is a welfare work in the interest of the public and, therefore, this litigation is not in favour of the public rather the same is against the interest of the public at large. It is further stated that under the scheme of the Government, land about 1500-2000 Sq. Ft. was required for the construction of the Water Pump and it is an



admitted position that the land in question on which the Water Pump is being constructed is a Government land. The Aam Sabha of the village has passed the proposal for construction of the said mini-water pump, a copy of the proceeding of the Aam Sabha has been brought on record by way of Annexure-B to the Counter Affidavit. It is further stated that where a mini-water pump is proposed to be constructed there is 140 Kari x 92 Kari road available which is sufficient for smooth transportation. The Sketch Map prepared by the Anchal Amin has been brought on record by way of Annexure-D to the Counter Affidavit. It is the submission of the respondent State that the installation of a mini-water pump does not create any obstruction to the people of the locality.

6. Having considered the submissions advanced on behalf of the petitioners and the State we are of the considered opinion that the petitioners are not acting *bona fide* in obstructing in the matter of installation of a mini-water pump which is definitely in the interest of larger community and the public at large. The judgment of the Hon'ble Apex Court, on which reliance has been placed, has been rendered in a totally different fact situation which we have noticed here-in-above. We are of the considered view that the extra-ordinary writ jurisdiction of this Court under Article 226 of the Constitution of India which is in the nature of a discretionary relief need not be



invoked in the facts of the present case.

7. The Writ Application is, therefore, dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	13.04.2018
Transmission Date	N/A

