

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.19107 of 2016

=====

1. Ram Baran Yadav S/o - Late Gudo Yadav Resident of Village -
Durmatta, within Block and P.S. - Sangrampur, District - Munger.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Water Resources, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Water Resources, Govt. of Bihar, Patna.
3. The Engineer in Chief (South), Water Resources Department, Govt. of Bihar, Patna.
4. The Chief Engineer, Water Resources Department, Bhagalpur.
5. The Superintending Engineer, Water Resources Department, Haweli Khadagpur, District - Munger.
6. The Executive Engineer, Sinchi Pramandal, Tarapur, District - Munger.
7. The Divisional Commissioner, Munger Division, Munger.
8. The District Magistrate, District - Munger.
9. The Sub Divisional Magistrate, Tarapur, District - Munger.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Avanindra Kumar Jha, Advocate
For the Respondent/s : Mr. Anjani Kumar, AAG-4
: Mr. Shailendra Kumar, A.C. to AAG-4

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 23-08-2018

1. By way of this petition in the nature of public interest litigation, the petitioner has prayed for following relief:

“(i) For issuance of an Order/ Direction or a Writ in nature of Mandamus commanding the respondents



concerned to reconsider the sanctioned place of construction of Gated Weir/ Jhagrahwa Check Dam, (i.e. North-South direction near upstream Wing Wall of Jhagrahwa Bandh), {proposed to be constructed over Belharani River under Chankain Irrigation Scheme}, and shift the same to the point of opening of river on the northern side of the embankment. As the said shifting will enable storage of water in the entire place available inside/within the embankment already constructed by the local farmers, and would help in irrigating approximately 22000 Acres of agricultural land and benefit the local farmers living on north-west side of the river (downstream side).”

2. The grievance, which is voiced in the present petition, is to change the alignment of construction of Gated Weir/ Jhagrahwa Check Dam proposed to be constructed over Belharani river under Chankain Irrigation Scheme and to shift the same to the point of opening of river on the northern side of embankment.

2.1. It is the case on behalf of the petitioner that if the proposed Check Dam is shifted to the point of opening of river on the northern side of embankment, it will enable storage of water in the entire place available inside/within the embankment already constructed by the local farmers and would help in irrigating approximately 22000 acres of agricultural land and benefit the local farmers living in north-west side of the river (downstream side).

3. In response to the notice issued by this Court, the respondents have appeared through their counsel and a detailed counter affidavit has been filed on behalf of the respondent Nos. 1 to



6. It is stated that the Check Dam at the place is under construction after obtaining the detailed project report (DPR) and after obtaining the administrative sanction and that too after making local survey, soil test, and design of Check Dam and thereafter the same was got vetted by the Chief Engineer, Central Design and Research, Water Resources Department, Patna.

3.1. It is further submitted that when the layout of the work was started, the petitioner and some others raised objection and submitted an application requesting for shifting of the sanctioned worksite about 400 feet towards north from the sanctioned worksite. It is also stated that their application was duly considered and a joint inspection team headed by the Chief Engineer, Water Resources Department, Bhagalpur inspected the worksite and submitted the inspection report before the Water Resources Department. It is stated that the report mentioned that the alignment has been fixed as per the prevailing site conditions as follows:

“(i) Fresh design of structure due to river bed level at proposed site being lower by approx 1.3m.

(ii) Land acquisition for additional construction of approximately 120m long link canal to connect the existing distribution canal and for construction of afflux bundh.

(iii) Compensation for submergence additional area of 12000 Sq.m. etc.”

3.2. It is stated that after due consideration of the aforesaid report, the work has been started on the sanctioned alignment and approximately more than four crores rupees have now been spent for the construction of the Check Dam and, therefore, now it is not possible to revert back.



4. Having heard the learned counsels appearing on behalf of the respective parties and considering the counter affidavit filed on behalf of respondent Nos. 1 to 6, it appears that the Check Dam at the place has been sanctioned after considering the various aspects and after obtaining the expert opinion/ report and after having relevant considerations like local survey, soil test, design of Check Dam etc. and the same has been got vetted and sanctioned by the concerned department and/or authority. Therefore, when a conscious decision has been taken to construct the Check Dam at the place at which now the construction of Check Dam is going on, the Court would not be justified in interfering with the same as the Court would not have any expertise to opine on which point the check dam alignment is to be fixed unless the *mala fides* alleged which are lacking in the present petition.

4.1. At the outset, it is required to be noted that while exercising the powers under Article 226 of the Constitution of India and more particularly, with respect to construction of check dam etc., it is only required to be considered by the Court whether proceeding has been followed or not and/or the decision is such a arbitrary decision which no prudent person would take.

5. In the facts and circumstances of the case and the considering the detailed counter affidavit pointing out the procedure followed while selecting the place for construction of check dam, it can not be said that the decision is so arbitrary which no prudent person would take.

5.1. Even otherwise, it is required to be noted that as on today, now substantial construction of Check Dam has been made and approximately four crores rupees are already been spent, therefore, now it will not be appropriate at this stage to interfere with



the decision which may entail further financial implication upon the State and ultimately the public exchequer.

6. In view of the above and for the reasons stated above, the present petition fails and the same deserves to be dismissed and, is, accordingly, dismissed. Notice discharged.

(Mukesh R. Shah, CJ)

(Dr. Ravi Ranjan, J)

Brajesh/-

AFR/NAFR	
CAV DATE	
Uploading Date	28.08.2018
Transmission Date	

