

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16079 of 2016

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1. Shailesh Kumar, Son of Sri Ram Briksh Prasad,

2. Rajesh Kumar, Son of Late Shyam Sunder Prasad,

Both are resident of Village:- Dhekwaha, P.O:- Paithna, P.S:-
Islampur, District:- Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Road Construction
Department, "Vishweshwaraiya Bhawan", Bailey Road, Patna-15.

2. The Engineer-in-Chief cum Additional Commissioner cum
Special Secretary, Road Construction Department,
"Vishweshwaraiya Bhawan", Bailey Road, Patna-15.

3. The Chief Engineer (South Bihar Wing), Road Construction
Department, "Vishweshwaraiya Bhawan", Bailey Road, Patna-15.

4. The Executive Engineer, Road Construction Department, Road
Division, Hilsa (Nalanda).

5. The District Magistrate, Nalanda at Bihar Sharif-803101.

6. The Block Development Officer (B.D.O), Islampur (Nalanda).

7. The Head Master, +2 High School, Dekhwaha (Nalanda).

8. Rajeshwar Prasad, Son of Late Bihari Raut,

9. Mahesh Raut, Son of Late Bihari Raut,

Both resides at Village-Saraiyapur, P.O.-Bari Paithna, P.S.-
Islampur, District-Nalanda.

10. The District Land Acquisition Officer, Nalanda at Bihar Sharif,
Pin-803101.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manish Sahay, Advocate

Mr. Anil Kumar Sinha, Advocate

For the Respondent/s : Mr. Raj Ballabh Prasad Yadav-AAG11

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE ASHUTOSH
KUMAR)**

Date: 17-09-2018

The petitioners, by the present Public Interest Litigation, have approached this Court for restraining the respondents from constructing a road from Nalanda to Islampur on the ostensible ground that if such road is constructed, it would pass through some portion of a playfield appurtenant to a school and which field has been donated by the local villagers including the family of the petitioners for the purposes of being utilized as a playground.

2. It has been alleged that Plot Nos. 428, 431 and 432, which fall in the field of the school, would be taken over if the road in question is constructed with the alignment as of present.

3. In this context, it has been alleged that the earlier alignment of the road, which was approved, did not cross through any portion of the playground, but the aforesaid alignment has been changed only to save/protect the private lands of respondent Nos. 8 and 9.

4. Considering the aforesaid submission of the petitioners, this Court *vide* order dated 16.02.2018 directed



the respondent No. 1 (Secretary of the Road Construction Department, Govt. of Bihar) to look into the facts and circumstances of the case, the original plan for the construction of the road, deviation from the same, if any, and the reasons for deviation and submit a report regarding the original alignment plan and the reasons for the change in the aforesaid alignment, if any.

5. Pursuant to the aforesaid direction of this Court, an affidavit was sworn by respondent No. 1, intimating this Court that an Inquiry Team had been set-up for finding the actual state of affairs and the report of the Inquiry Team dated 19.04.2018 was brought on record. The enquiry report, *inter alia*, stated that the road was being constructed on the demarcation which was sanctioned by the Chief Engineer, Central Design Organization, Patna on 21.11.2013 and the road in question was found to be constructed according to the demarcation laid down. The total land of the playground of the school in question is 265.59 decimals and out of the aforesaid land, only 38.75 decimals in one corner of the land has been made use of for the construction of the road. The aforesaid usage of the playground has hardly affected its total area and that the Road Construction Department was about to initiate process for getting No Objection Certificate/transfer of land from the Human Resources Department.



6. It has also been submitted on behalf of the respondents that before starting the construction of the proposed road, the Technical Expert Committee came up with three proposals regarding the alignment. However, only one, out of such three proposals, was technically approved, taking into account that the alignment with 90 degree angle is not advisable and only such alignment be accepted/approved, which aims at minimum diversion.

7. We have perused the reports.

8. It appears that towards the northern end of the playground of the school in question, a road is being constructed, but there is no change in the alignment. The aforesaid alignment appears to have been chosen, taking into account that the road does not cross through congested area and with such alignment, it would require minimal acquisition. The Chief Engineer, in his affidavit, has affirmed the fact that out of the three alignment proposals, the one on which the road was being constructed, was approved as per the standard specification, which took into account that the approved alignment would facilitate safer and smooth movement of vehicles. It also took into account good geometry and better communication for road users for approving the present alignment.

9. An independent enquiry was also conducted by



the Deputy Collector, Land Reforms, Hilsa, the Executive Engineer, Rural Works Department, Hilsa and the Circle Officer, Islampur at the instance of the District Magistrate, Nalanda and it was found that the road is being constructed as per the approved alignment.

10. Since, the alignment was approved by the Highway Planning and Investigation Circle and only a minuscule area of the playground is being affected, we are of the view that no interference is required with the construction of the road in question with the aforesaid approved alignment.

11. The petition is thus dismissed.

12. Needless to state that all interim orders stand vacated.

(Mukesh R. Shah, CJ)

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	

