

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.24664 of 2018**

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In The Matter Of Letter Dated 30.11.2018 Of Mr. Ajit Kumar Singh Based On  
New Report

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate, Bhagalpur
3. The Superintendent of Police, Bhagalpur
4. The Station House Officer, Town Police Station, Bhagalpur

... .. Respondent/s

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**Appearance :**

For the Petitioner/s :

For the Respondent/s :        Mrs. Binita Singh, SC 28  
                                              Mr. Nishant Jha, AC to SC 28  
                                              Mr. Manish Kumar, Adv.

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**CORAM: HONOURABLE THE CHIEF JUSTICE**  
**and**  
**HONOURABLE JUSTICE SMT. ANJANA MISHRA**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)**

**Date : 01-07-2019**

The present Public Interest Litigation  
  
which was registered on the basis of a letter dated  
  
30.11.2018 by one Ajit Kumar Singh by which  
  
attention of the Court was drawn to the construction of  
  
Water Tank within the precincts of the Lajpat Park



situated in the Town and District of Bhagalpur.

2. In the aforementioned letter sent by Shri Ajit Kumar Singh of Bhagalpur, it has been alleged that the District Administration was trying to erect a Water Tower in the midst of the historical Lajpat Park and in doing so was damaging the walking track and were ruthlessly hacking down the trees without seeking prior permission from the Forest Department. It had been stated that the people of the town of Bhagalpur were being badly affected and were wholly frustrated on account of the damage of the historical monuments and had been seriously prejudiced in enjoying the park. It was contended that the 30 acres of land which was located within the jurisdiction of the Bhagalpur Municipality and which had been the historic ground for the protests of 1928 against the Simon Commission and which was being used as platform for the freedom struggle had been arbitrarily invaded by some disgruntled elements. It was in this historic ground that currently local children, youngsters and elderly persons



were getting together and enjoying the grounds for the purpose of sports, morning walk and social gathering. However, without taking the consent of the local people, the walking track of the park was broken down after mercilessly hacking down the fully grown green trees, the District authorities were proceeding to construct a water tank (Jalminar). The aforementioned letter was sent to the High Court which was placed before Hon'ble the Chief Justice on the administrative side and upon consideration, the present Public Interest Litigation has been registered and, accordingly, on 19.12.2018 notices were issued to the Bhagalpur Municipal Corporation as also the State of Bihar calling upon them to seek necessary instruction and file affidavit.

3. A counter affidavit was filed before the Court by the Municipal Corporation, Bhagalpur from which it appears that the land pertaining to the Lajpath Park measuring an area of 2.25 acres. Pursuant to the resolution of the department of Urban and Housing Development, Government of Bihar,



contained in Memo No. 1153 dated 01.07.2013 with regard to the implementation of Bhagalpur Water Supply Scheme Project -1 which was to be provided financial assistance by the Asian Development Bank. It appears that main aim of the scheme is to make available water supply to the residents of Bhagalpur Municipal Corporation as per the national yardstick. The said proposal also included a scheme for purification of the water of river Ganges for its supply to the residents and was to be implemented through BUIDCO.

4. In the affidavit, it was submitted that the General Board of the Municipal Corporation vide its resolution dated 04.07.2017 had decided to give permission to construct the said Tank at the corner of the said park, keeping in view the facility to be provided to the people who visit it for their morning and evening walks and also to provide drinking water facility to the people of the locality/vicinity.

5. As regard the walking track, it was



emphatically submitted that, as soon as the matter came to the knowledge of the authorities, immediate steps were undertaken for its repair. The said path had since been repaired to ensure smooth walking for the visitors.

6. As per the above mentioned resolution dated 04.07.2017 of the General body of the municipal Corporation, the construction of the tank has been shifted to the corner of Lajpat Park so that walkers do not face any disturbance and also to cater to other purposes for which this path is being utilized. The construction of tank has been done as per the demand of the people of the locality and the said tank will provide drinking water to approximate 2000 people of the locality thus fulfilling the prime need of the locality.

7. With regard to cutting of trees over the lands of Lajpat Park in question, it was contended that, only 20x20 metres of land had been allotted to Pan India for construction of the new tank and 40 wild trees and shrubs had been felled down for which the authorities sought leave of this Hon'ble Court to submit



the videography of the area showing plantation in the area for perusal of this Hon'ble Court.

8. It was further submitted that the respondents in all fairness, have taken steps for plantation of several trees to retain the ecological balance and maintain the park and its greenery. Therefore the allegations made by the petitioner was said to be totally false and and was emphatically denied.

9. The respondents further informed the Court that for the construction of Jalminar there is no parti (vacant) land measuring 500 metres approx around the park for construction of jalminar and therefore its construction could be shifted to some other place. Further the Three-Man Committee also opined in favour of construction of jalminar at the proposed place.

10. The respondents further contended that earlier there was no other source of water supply in the park except a Boring, and that too, was insufficient to cater the needs of the maintenance of the park as well



as its visitors. Further the use of boring was resulting in the depletion of ground water level. The nearby residents were also facing difficulties, as the supply of water by corporation was also meager. The aforesaid fact clearly revealed that the establishment of Jalminar would amply benefit to maintain the ecological balance and will meet the criteria of sustainable development. The respondents further contended that the petitioner had filed the petition against the construction of Jalminar on 08.12.2018 when more than fifty per cent construction was already completed and the same was well within the knowledge of the petitioner. Therefore, it was established that the said petition has been filed with a mala fide intention and solely with an objective to harass the Municipal Corporation. Further, that since much public money had already been invested, the shifting of Jalminar would alter the design of the laid down pipelines, causing substantial loss to the government coffers.

11. It was further contended by the



authorities that till date there had been no objection by any ward councilor regarding the construction of Jalminar and even the ward councilor of Ward No. 20 had suggested for the continuation of the work as it would benefit the citizens and ensure a smooth supply of water to the town of Bhagalpur. It was thus, contended by the Bhagalpur Municipal Corporation that the allegations were wholly unfounded and the construction of the Jalminar was more in public interest.

12. This Court while hearing the matter on 28.01.2019 took into consideration the resolution of the Board dated 4<sup>th</sup> July, 2017 and after perusal thereof noted that the said resolution dated 4<sup>th</sup> July 2017 did not survey any other viable alternatives and there was no indication about the availability of any other land or authorization to proceed to allot land of a park for the purpose of raising a water tank. Though the survey area by a Amin indicated that a very small area of the park has been utilized for the purpose of construction of water tank without disturbing its utilization by the



citizens of the locality or causing disturbance to the environmental features, the Municipal Board was further directed to reconsider the matter and take an appropriate decision and inform the Court as to why it was unavoidable to relocate the water tank in a corner of the park and not at any other location.

13. A further affidavit was filed before the Court stating that there was no land available within the radius of 1 K.m. of the Lajpat Park for setting up of the water tank.

14. Taking serious note of the manner in which the affidavit had been filed, on 25.03.2019, the Court passed the order in the following terms:-

“There is nothing on record to indicate that there was some land available after one kilometer and it only required laying down of pipe-lines for a kilometer which is nothing unusual for a big town like Bhagalpur. There is therefore no effort at all by the Municipal Corporation to make any effort to find out any suitable land for the construction of a water



tank which has been undertaken admittedly inside the park.

The Collector, Bhagalpur, is therefore directed to conduct an enquiry against those who have initiated the construction of such a water tank and have allowed the park to be encroached without there being any prior consideration of availability of alternative land and submit his report within six weeks.

15. When the matter came up for consideration on 18<sup>th</sup> of June, 2019 the affidavit was filed by the Circle Officer, duly authorized by the District Magistrate, Bhagalpur in which it had been contended that pursuant to the direction of this Court the District Magistrate proceeded to conduct an enquiry and for that purpose a committee comprising of himself, Deputy Development Commissioner, Bhagalpur and Additional Collector, District Revenue Section, Bhagalpur was constituted vide letter no. 837 dated 25.04.2019. The District Magistrate informed the Court that at a meeting of General Committee of



Bhagalpur Municipal Corporation was held on 04.07.2017, in which one of the agenda was with regard to providing for pure drinking water service and for the implementation thereof for conduct and implementation of Bhagalpur New Water Supply Scheme which was to be done under the aegis of Pan India. It was decided to make the land belonging to the Corporation available for the construction of WTP and OHT and as such, the land including Lajpat Park was marked. It was resolved that the Deputy Mayor and Town Commissioner would take further action after conducting an enquiry at their level. The aforesaid three functionaries conducted an enquiry and after spot verification accorded sanction for the construction of WTP and OHT, which is evident from the report dated 26.07.2018. The aforesaid report was subsequently confirmed by the general committee in its meeting held on 05.03.2019. Thus, it can be safely concluded that the decision of the Bhagalpur Municipal Corporation was ratified by the three members committee constituted by the general committee.



16. The further statement of the District Magistrate in the counter affidavit indicated that on 31.05.2019, the District Magistrate conducted a joint enquiry and in course of the enquiry the aforesaid facts came to be reported which was indicated in its report dated 15.06.2019.

17. A report dated 17.06.2019 by the committee further indicated that the some other land had also been taken into consideration and the land which has been mentioned as available in the proximity of 750 meters from the said park, which stands entered in the Khatiyani in the name of State of Bihar. However, the said land became the subject matter of the Title Suit No. 29 of 1998 filed by one Nagendra Narayan Jaiswal & Ors and though the same was disposed of on 16.03.2013 in favour of the State of Bihar, a Title Appeal has been preferred in the said case bearing Title Appeal No. 39 of 2013 (Arun Kumar Jaiswal & Ors. Vs. The State of Bihar & Ors.) which is presently subjudice in the Court of 5<sup>th</sup> ADJ, Bhagalpur.



18. It was, thus, submitted that save and except the aforesaid plot there was no other government land where the proposed construction could be effected. It was stated that the construction thereof was a measure of necessity for the welfare of the town of Bhagalpur but serious efforts would be undertaken to ensure that there is no hindrance caused to the ecological environment of the area and the sanctity of the park would be maintained.

19. We have heard learned counsel for the State and also the counsel appearing for the Bhagalpur Municipal Corporation who have given serious thought to the issue. It appears to us that the issue regarding construction of water tank at Lajpat Park was brought to the notice of the Court only when the construction had already been taken up and had advanced to the stage of 50 per cent. It also appears to us that the matter was considered and after weighing the interest of the public with regard to supply of drinking water to the residents of the municipal area, the



aforesaid construction was undertaken. It further appears that the substantial amount has been invested in the project and shifting the same to any other place would occasion wastage of the public funds and also delay the project and in view of the acute scarcity of water supply, the interest of the public would be severely jeopardized.

20. Considering the fact that the only land which has come up for consideration where Jalminar could possibly be relocated, is also seriously disputed and could be subjected to a series of litigation for constructing the project and may even result in settling the same, the demand of smooth and adequate flow of water supply to the residents of the area is a matter of paramount public interest, we are of the considered opinion as such definitely outweighs the need of the people who have been benefiting in the park which is alleged to have been disturbed by the construction of the tank. We thus decline to interfere in the same.



21. In the circumstances, we are of the opinion that the construction of the tank which has been located in a small area of the park could not be disturbed as its construction has advanced substantially and would benefit the people of the municipal area at large. However, it would be appropriate and in the interest of justice that the Bhagalpur Municipal Corporation should take adequate steps for restoring the disturbed portion of the walking track and also planting adequate number of trees so that the ecological environment of the area is maintained and no further disturbance is caused to the park. The constructions which are to be made should be planned and implemented in a manner which should not disturb the residents of the area nor should it create any disturbance so as to have any impact on the historical nature of the park. We however, make it clear that the aforementioned decision should not be taken as a license to enable the Bhagalpur Municipal Corporation to make any further construction of any other nature within the precincts of



the park.

22. Public Interest Litigation is made for the enforcement of fundamental and another legal rights of the people who are poor weak ignorant of legal redressal system. It is made for those who are in a disadvantaged position due to the social or economic background. It is well settled that such litigation can be initiated only for redressal of public injury and enforcement of public duty or vindicating interest of public nature.

23. Water is an essential need for the survival of humanity and its need has been perceived to be one of the essential human rights in India. Right to life as envisaged under Article 21 is closely associated with right to water. Thus, drinking water supply has to be encouraged as water is the most essential need for humankind without which neither mankind or flora and fauna can survive or flourish. Thus, efforts have been on and are being undertaken through different instrumentalities for ensuring that the demands of water



supply are being met. Nonetheless, the supply keeps on being lacking and despite all advancements made, there is acute and all pervasive scarcity of water which have been felt in various parts of the country including the State of Bihar. The prime obligation to give safe drinking water is designated to the State Government and further to particular municipal corporations. At a time where the Bhagalpur Municipal Corporation has taken a measure to address itself to the acute water supply in the town of Bhagalpur, we while appreciating the concern of the letter petition in maintaining the ambience and historical importance of the park, we would definitely encourage the Corporation and the State Administration to take adequate steps to further the project so that the construction of the Jalminar is completed at the earliest and ensure that the people of Bhagalpur are benefited to an adequate quantity of water for meeting the necessary needs, so that their survival need not be at stake.

24. With the aforesaid observation, the



present Public Interest Litigation is consigned to  
records.

(Amreshwar Pratap Sahi, CJ)

( Anjana Mishra, J)

Jagdish/-

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