

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12275 of 2019

1. Rajendra Singh, Son of Late Bajrangi Singh,
 2. Sunil Kumar Son of Madan Singh
- Both are Resident of Village-Kulna, Post Office-Kushmhar, Block-Police Station-Akbarpur, District-Nawadah.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Department of Rural Works, Government of Bihar, Patna.
2. The Chief Engineer, Rural Works Department, Government of Bihar, Patna.
3. The Superintending Engineer, Rural Works Department, Magadh Division, Gaya.
4. The Executive Engineer, Rural Works Division-2, Rajauli, District-Nawadah.
5. The District Magistrate, Nawadah.
6. The Sub Divisional Officer, Rajauli, District-Nawadah.
7. The Circle Officer, Akbarpur, District-Nawadah.
8. The Officer-in-Charge, Akbarpur Police Station-District-Nawadah.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Arun Kumar, Advocate
For the Respondent/s : Mr. Manish Kumar, AC to AAG-6

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 15-10-2019

Heard learned counsel for the petitioners who has filed rejoinder affidavit today.

This dispute in essence relates to an allegation of obstruction being caused to the passage of an old recorded drainage in the revenue records over plot no.366 area 1 acre 03



decimals. The contention of the petitioners is that this natural water flow which is connected to another water source and is a perennial source of irrigation is sought to be blocked by the State by construction of road under the garb of raising constructions over the embankment which is plot no.810 that connects with plot no.811 which is recorded as a path way.

It appears that under the PMRY scheme, the road was sought to be replenished by some earth work which was undertaken and for that excavations were carried out and mud filling was commenced which according to the petitioner has resulted in the filling up of the natural water way over plot no.366 causing a permanent obstruction. Learned counsel, therefore, submits that this public interest litigation has been filed in order to ensure that the said natural water way over plot no.366 is not disturbed so as to cause any further obstruction in the source of irrigation which is available to several hundred acres of land.

A counter affidavit has been filed on behalf of the respondents and along with a counter affidavit a report of the Circle Officer, Akabarpur, Nawada has been filed which is dated 13th July, 2018. The same categorically recites that so far as plot no.366 is concerned, the same is recorded as a water body and in order to construct the road the alignment may require filling up



part of the said land and, therefore, the objections and enquiry may be considered to be undertaken in respect thereof.

A rejoinder has been filed and a photo stat copy extract of the map has also been placed before us which demonstrates the topography of the area, including the status of plot no.366.

Having considered the submissions and the averments contained in the affidavits, we find that it is undisputed that plot no.366 is recorded as a water body, namely, a water way as described by the petitioners. This water passage is scattered by embankment which is recorded as plot no.810. However, the entire water passage does not appear to be embanked by plot no.810 and the path way is being constructed according to the respondents over the embankment. Thus, according to the respondents themselves and the report of the Circle Officer dated 13th July, 2018, the construction of the path way might result in encroaching upon the land of plot no.366 which is a water way.

In the wake of the aforesaid facts, we direct the District Magistrate, Nawada to instruct the revenue officials, including the Circle Officer, Akbarpur, Nawada to get a spot survey conducted and to ensure that plot no.366 which is recorded as a water way with an area of 1 acre 03 decimals should be retained intact and in the event, any such realignment for the road is required then the



area of water way should not be reduced so as to allow the flow of natural water through the said passage. The Collector shall, therefore, ensure that the recorded area of plot no.366 should not be reduced even if any realignment is required in respect of the road.

With the aforesaid directions, we dispose of the writ petition.

(Amreshwar Pratap Sahi, CJ)

(Ashutosh Kumar, J)

Sunil/-

AFR/NAFR	
CAV DATE	
Uploading Date	16.10.2019
Transmission Date	

