

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18214 of 2022

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Jagdish Puri Son of Late Kailash Puri, Resident of Savitri Sada, Mahadeva
Nai Basti, Malviya Nagar, P.S.-Mahadeva O.P., P.O. and District-Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Road Construction Department, Government of Bihar, Patna.
2. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
3. The Principal Secretary, Road Construction Department, Government of Bihar, Patna.
4. The District Magistrate, Siwan, Bihar.
5. The Chief-Engineer, Rural Work Division-2, Siwan.
6. The Superintending Engineer, Road Division, Road Construction Department, Siwan.
7. The Executive Engineer, Road Division, Road Construction Department, Siwan.
8. The Junior Engineer, Road Division, Road Construction Department, Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Y.V. Giri, Sr. Advocate Mr. Sumit Kumar Jha, Advocate Mr. Ashish Giri, Advocate Ms. Riya Giri, Advocate Ms. Devashish Giri, Advocate
For the Respondent/s	:	Mr. Sanjay Kumar, AC to GA-3

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 18-01-2023 Heard Mr. Y.V. Giri, learned senior counsel assisted

by Mr. Sumit Kumar Jha, learned counsel appearing on behalf
of the petitioner and Mr. Sanjay Kumar, learned AC to GA-3 for
the respondents.

2. Learned senior counsel appearing on behalf of the
petitioner submitted that the petitioner is aggrieved by the action
of the respondents who have raised the height of the road in
front of his shops, which amounts to wilful violation of the



directions of this Court passed in the case of ***Deepak Mukherjee & Ors. vs. The State of Bihar & Ors.*** reported in ***2010 (3) PLJR 998*** and ***Prashant Kumar & Ors. Vs. The State of Bihar & Ors.*** reported in ***2013 (2) PLJR 984***. The petitioner had objected at the time of the construction and had also filed his written objection, but no action has been taken by the District Magistrate, Siwan and the Executive Engineer, Road Construction Department, Siwan. The petitioner thereafter was forced to file his detailed representation before the District Magistrate, Siwan, to comply with the directions passed by this Court in case of ***Deepak Mukherjee & Ors. vs. The State of Bihar & Ors. (supra)***. He relies upon paragraph no. 6 which is reproduced here under:-

“6. In course of hearing the Engineer-in-Chief of Road Construction Department and Chief Engineer of Urban Development Department submitted that they would see to it that the house owners and inhabitants of the entire Urban Area of the State of Bihar are not affected because of construction of road. Learned counsel for the petitioners and the learned counsel for the State fairly agreed to the suggestions given by the experts who are present. We proceed to record the agreed suggestions, which are to be carried out:—

(i) The roads that have been



constructed till today by raising the heights shall not be disturbed but appropriate method shall be adopted by taking recourse to scientific and sophisticated device as a consequence of which the rain water does not enter into the houses of the house owners and inhabitants of the area and no inconvenience is caused.

(ii) When we have said scientific and sophisticated method that would include adequate drainage system which would not cause any inconvenience by introduction of such a system.

(iii) All the authorities, namely, Road Construction Department, Urban Development Department, Public Works Department and the Municipal Corporation shall work in harmony and develop the pilot project by identifying such roads where either the Cold Recycling Method or Hot Recycling Method are to be introduced to ensure that the height of the roads are not increased. The said exercise of identification for incorporation in the pilot project in either of the modes shall be completed by 20th of June, 2010 positively.

(iv) Till new methods are taken recourse to for the purpose of construction of the road appropriate and adequate measures shall be taken by constructing the roads in such a manner that the height of the roads are not increased ordinarily beyond the Plinth area and under no circumstances cause any inconvenience to the inhabitants of the locality.

(v) Wherever the height of the road is increased as a result of which inhabitants are affected, they are at liberty to bring it to the notice



of the Collector-cum-District Magistrate of the District who shall look into the same in quite promptitude and take appropriate action by bringing it to the notice of the experts.

(vi) The notice inviting tender for repair, maintenance and construction of work shall carry the stipulations which have been incorporated herein so that the contractors who are assigned the work do not behave in their own manner creating inconvenience and disturb the life pattern of the citizens by increasing the height of the roads.

(vii) Any contractor, who would deviate from the stipulations, shall be visited with the order of rescission of the contract and face such other penal consequence which shall be provided in the contract.”

3. Learned senior counsel has also placed his reliance on the judgment of this Court passed in ***Prashant Kumar & Ors. Vs. The State of Bihar & Ors. (supra)*** and has referred to paragraph no. 4, 6 and 9, which are reproduced here under:-

“4. The Division Bench gave elaborate directions in eight different sub-heads at paragraph 5. We also consider it appropriate to extract paragraph 6 with regard to the conclusions of the Division Bench arrived at on basis of and in presence of technical personnel of the State Government:-

‘6. We may hasten to add, the aforesaid terms and



conditions have been recorded on the concession given by the learned Advocate General, Engineer-in-Chief of Road Construction Department and the Chief Engineer of Urban Development Department and the learned Counsel appearing for the petitioners.'

6. It is no more in controversy before us that the PCC cemented road in question was in fact being constructed in violation of the orders of the Division Bench with elevated height of approximately 10 inches. The District Magistrate informed us that no sooner his attention was invited to the issue alongwith the order of the Division Bench he sent necessary request to the concerned authorities of the State Government. He informs us in person that the works have now been stopped. The Division Bench in paragraph 5(v) authorised the District Magistrate to look into the grievance with promptitude and take appropriate action by bringing it to the notice of the experts. We clarify that the Division Bench did not restrain the District Magistrate from appropriate action awaiting action by the concerned at leisure. We clarify that upon satisfaction that the PCC cemented road was being constructed contrary to the



orders of the Division Bench, the District Magistrate is required first to enforce his authority by immediately stopping the works and then bring it to the attention of the concerned.

9. The facts as have emerged in the present case compel us to give further directions that the order of the Division Bench in the case of Deepak Mukherji (supra) has to be implemented throughout the State and every District Magistrate shall possess the same powers and duty as we have clarified the order of the Division Bench with regard to the District Magistrate, Patna.”

4. Learned senior counsel appearing on behalf of the petitioner further submitted that in spite of repeated representations made before District Magistrate, Siwan, no action till date has been taken and he is sitting tight over the matter. He further submitted that he must take appropriate action in terms of directions of the Court forthwith.

5. Learned counsel appearing on behalf of the State submitted that the limited prayer of the petitioner is that his representation has not been considered in light of the ***Deepak Mukherjee & Ors. vs. The State of Bihar & Ors. (supra)*** and ***Prashant Kumar & Ors. Vs. The State of Bihar & Ors. (supra)***. He further submitted that a direction be given to the District Magistrate-cum-Collector, Siwan, to dispose of the representation of the petitioner taking into consideration the



above two impugned order passed by this Court within considerable period of time.

6. Considering the rival submissions of the parties, the District Magistrate-cum-Collector, Siwan, is directed to take necessary actions forthwith in the light of the directions passed in *Deepak Mukherjee & Ors. vs. The State of Bihar & Ors. (supra)* and *Prashant Kumar & Ors. Vs. The State of Bihar & Ors.(supra)* not beyond a period of one month. Any further delay will only amount to wilful disobedience of the order passed by this Court.

7. Accordingly, the present writ petition is disposed of.

(Purnendu Singh, J)

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