

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1551 of 2023

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Fekan Singh Son of Ram Swarth Singh, Resident of Village- Harichhapra,
P.S.- Dumra, District- Sitamarhi, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Govt. of Bihar, Patna.
2. The Principal Secretary, Department of Panchyati Raj, Govt. of Bihar, Patna.
3. The Principal Secretary, Department of Revenue and Land Reforms, Govt. of Bihar, Patna.
4. The Principal Secretary, Department of Rural Works, Govt. of Bihar, Patna.
5. The Commissioner, Tirhut Division, Muzaffarpur.
6. The District Magistrate-cum- Collector, Sitamarhi.
7. The Superintendent of Police, Sitamarhi.
8. The Land Reforms Deputy Collector, Sitamarhi.
9. The Land Acquisition Officer, Sitamarhi.
10. The Sub- Divisional Officer, Sadar, Sitamarhi.
11. The Circle Officer, Dumra, Sitamarhi.
12. The Block Development Officer, Dumra, Sitamarhi.
13. The Officer-in- Charge, P.S.- Dumra, Sitamarhi.
14. Mukhiya, Gram Panchayat- Harichhapra, Dumra, Sitamarhi.
15. Jug Paltan Singh @ Paltan Singh, Son of Late Ram Pyare Singh, Resident of Village- Harichhapra, P.S.- Dumra, District- Sitamarhi, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vikash Kumar Pankaj, Advocate
For the Respondent/s : Mr. Mukul Prasad, AC to GP 18

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

Date : 16-03-2023

Heard learned counsel for the parties.

The petitioner has filed the instant writ application for
the following relief(s):-

“(i) To issue Writ of Certiorari or any other appropriate Writ



order to set aside the order contained in Memo No. 1867 dated 12.09.2022 (Annexure-6) passed Respondent No. 6 in Miscellaneous Case No. 22 / 2016 whereby he has directed to remove / demolish a certain section of the only available road through which the entire village comprising more than 90 families, is connected with the main road or outer world and therefore, the aforesaid road is the lifeline of the said village.

(ii) To issue consequential Writ of Mandamus or any other appropriate Writ order commanding Respondents particularly, Respondents No. 6 & 9 to immediately acquire the requisite land of Respondent No. 15 in-order to seamless functioning of the aforesaid road, as indicated in the Order dated 26.02.2016 passed in CWJC No. 592 of 2016 (Annexure-1) filed by the Respondent No. 15.

(iii) To issue consequential Writ of Mandamus or any other appropriate Writ order commanding Respondents particularly, Respondents No. 6 to 15 to henceforth, restrain from damaging the aforesaid road.”

The case of the petitioner in brief is that since time immemorial the villagers of village Harichhapra, P.S. - Dumra, District – Sitamarhi were using a pavement sidewalk for their commutation to reach the main road.

All the raiyats of both the sides of the road including the respondent no. 15 agreed to donate their portion of land in order to construct a permanent road 10-12 ft. wide for seamless communication for all including ambulance etc. Accordingly the road was constructed in the year 2015.

It is further case of the petitioner that the respondent



no. 15 preferred C.W.J.C. no. 592 of 2016 in this Court which was disposed of by order dated 26.12.2016 (Annexure-1) in the following terms:-

“Having regards to the facts and circumstances of the case, the same is being disposed of with a liberty granted to the petitioner to approach the respondent no. 2, the District Magistrate, Sitamarhi, by filing a representation along with copies of the documents in support of his claim. In such case, let the District Magistrate, Madhubani examine it and take a decision in accordance with law as to whether the land of the petitioner has been or is being utilized for construction of the road concerned or not. If it is found that the petitioner's land has been or being utilized for construction of road without his consent then that should be stopped immediately. Construction made, if any, should be removed forthwith so that the land could be brought to its original nature and form and possession should be delivered back to the petitioner. If the land is required to be used as such in public interest then a decision would have to be taken to initiate a proceeding for acquisition of the land in accordance with law. If claim of the petitioner does not find favour of the District Magistrate then a reasoned and speaking order would be required to be passed and the same should immediately be communicated to the petitioner. It is expected that a decision would be taken within the period of three months from the date of filing of representation along with a copy of this order by the petitioner before the District Magistrate concerned.

In case the State authorities decide to acquire the land in accordance with law then they would require to take necessary steps and should conclude the proceeding within a period of six months.”



It is submitted by learned counsel for the petitioner that pursuant to the order dated 26.2.2016 passed by this Court, the respondent no. 15 filed Misc. Case before the learned Collector, Sitamarhi, which was registered as Misc. Case no. 22 of 2016 and has been disposed of by order impugned dated 12.9.2022 (Annexure-6). It is against this order dated 12.9.2022 that the instant application has been preferred for the reliefs prayed for hereinabove.

Learned counsel for the petitioner submits that the *Rasta* has been used by the general public since time immemorial which has also been admitted to by the respondent no. 15 in his petition before the Collector which is at Annexure-3 to this petition. It is further submitted that if the road is removed pursuant to the direction of the Collector, Sitamarhi as contained in order dated 12.9.2022, it will result in undue hardship to the local public who have no other way to reach their village. It is thus submitted that instead of passing the said order, the Collector, Sitamarhi should have taken steps for acquisition of the land.

The instant application is opposed by learned counsel appearing for the State who submits that there is no illegality in the order. There being no merit in the instant application, the



same be dismissed.

Having heard learned counsel for the parties and taking into consideration the averments made in writ application, it would transpire that on respondent no. 15 approaching this Court on earlier occasion vide C.W.J.C. no. 592 of 2016, this Court in its order dated 26.2.2016 (Annexure-1) had clearly observed that there is no dispute on the fact that land of a person cannot be utilised by the State Authority without its acquisition in accordance with law unless consent of the land of the owner has been taken. This Court had also observed that if the land is required to be used in public interest then a decision would have to be taken to initiate a proceeding for acquisition of the land in accordance with law. From the recital in the writ application and from the contents of the order impugned dated 12.9.2022, it is not in dispute that neither the consent for construction of the road has been given by the respondent no. 15, nor any proceeding for acquisition has been initiated for acquiring the land of the said respondent no. 15 nor any compensation has been paid to him. The Collector, Sitamarhi has thus ordered that the Sub Divisional Officer, Sitamarhi Sadar and the Mukhia, Gram Panchayat Raj Harichhapra will not proceed with any construction on the land



of the respondent no. 15 and will ensure the removal of the road within a period of one week. He further held that none of the authorities will proceed with any construction etc. on the said land without the consent of the land owner or acquisition of the land in accordance with law.

The Court does not find any illegality in the order of the Collector, Sitamarhi dated 12.9.2022 passed in Misc. Case no. 22 of 2016 and no merit in the instant writ application.

The application is dismissed.

(Partha Sarthy, J)

Spd/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	17.03.2023
Transmission Date	

