

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17517 of 2023

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Pramod Kumar Seksaria son of Sri Rameshwar Prasad Seksaria, Resident of
C/o Agrawal Nursing Home, Pokhra Mohalla, South of Subhash Chowk,
Hajipur, P.S. Hajipur Town, District-Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Urban Development and Housing, Govt. of Bihar, Patna.
2. The District Magistrate, Vaishali at Hajipur.
3. The Nagar Parishad, Hajipur through its Executive Officer, Hajipur, District Vaishali.
4. The Executive Officer, Nagar Parishad, Hajipur, District Vaishali.
5. District Urban Development Agency, Vaishali at Hajipur.
6. The Deputy Development Commissioner, Vaishali at Hajipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Rajesh Ranjan, Advocate
For the State	:	Mr.Ajay Behari Sinha (Ga8)
		Mr. Upendra Kumar Singh, AC to GA 8
For the Nagar Nigam, Hajipur	:	Mr. Ankit Katariar, Advocate
		Mr. Kumar Pranav, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 09-01-2024

Heard Mr. Rajesh Ranjan, learned counsel
appearing on behalf of the petitioner; Mr. Ajay Behari Sinha,
learned GA 8 along with Mr. Upendra Kumar Singh, AC to GA8
for the State and Mr. Ankit Katariar along with Mr. Kumar
Pranav, learned counsels for the Nagar Nigam, Hajipur.

2. Petitioner is aggrieved by raising of the level of
the road.

3. Learned counsel appearing on behalf of the



petitioner submits that the height of the road has been raised which has caused inconvenience to him and also affected the gradient of the drainage system which is existing in the area. He further submits that the action of the respondent Nagar Parishad, particularly, the Executive Engineer and the Executive Officer are in violation of the several orders passed by this Court and in this regard, he has relied upon judgment passed in the cases of **Deepak Mukherjee Vs. State of Bihar, reported in 2010(3) PLJR 998** and **Prashant Kumar & Ors. Vs. the State of Bihar & Ors. reported in 2013(2) PLJR 984**. He further submitted that a direction be given to the District Magistrate-cum-Collector, Vaishali at Hajipur to look into the matter.

4. 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 (Supra) and Prashant Kumar (Supra)**. He further submitted that a direction be given to the District Magistrate-cum-Collector, Vaishali at Hajipur to look into the matter.

5. The law in this regard has been settled by this Court in several decisions and this Court finds it proper to refer the case of **Deepak Mukherjee Vs. State of Bihar, reported**



in 2010(3) PLJR 998. The Court has passed several directions, as contained in paragraph no.5 of the said order, which is reproduced hereinbelow:-

“5. 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. (Emphasis supplied)**
- (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.”

6. Sub-para 4 specifically directs that the heights of the road are not increased ordinarily beyond the plinth area and under no circumstances cause any inconvenience to the inhabitants of the locality.

7. Considering the fact that grievance has been raised by the petitioner that in spite of the direction having been issued in presence of the learned Advocate General, Engineer-in-Chief of Road Construction Department and the Chief Engineer of Urban Development Department, the Executive Officer, Nagar Parishad, Hajipur has proceed to defy the specific direction passed by this Court.

8 .This Court in the case of ***Prashant Kumar (Supra)*** has also made following observations in paragraph nos.4, 6 and 9 which are reproduced hereinunder:-

“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.”

9. Considering the rival submissions of the parties, the District Magistrate-cum-Collector, Vaishali at Hajipur is directed to take necessary actions forthwith in the light of the direction passed in *Deepak Mukherjee (Supra)* and *Prashant*



Kumar (Supra) not beyond a period of one month. Any further delay will only amount to wilful disobedience of the order passed by this Court.

10. With aforesaid observation and direction, the present writ petition is disposed of.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.01.2024
Transmission Date	NA

