

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.775 of 2024

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1. Bishwanath Das Son of Late Krishna Das resident of Ward No. 26 Chimani Ghat, Post- Jahuganj, Nagle, Patna City, P.S.- Chowk Thana, District- Patna-800006.
 2. Asha Agrawal wife of Late Basuki Nath Das, Resident of Ward No. 26 Chimani Ghat, Post- Jahuganj, Patna City, P.S.- Chowk Thana, District- Patna-800006, Bihar.
 3. Shambhu Nath Das son of Late Krishna Das, Resident House No. 61, Ward No. 26 Chimani Ghat, Post- Jahuganj, Nagle Patna City, P.S.- Chowk Thana, District- Patna-800006, Bihar
 4. Keshav Das son of Late Krishna Das, resident of Ward No. 26 Chimani Ghat, Post- Jahuganj, Nagle, Patna City, P.S.- Chowk Thana, District- Patna-800006, Bihar
 5. Madhav Das son of Late Krishna Das, Resident of Ward No. 26 Chimani Ghat, Post- Jahuganj, Nagle, Patna City, P.S.- Chowk Thana, District- Patna-800006, Bihar

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
2. The Collector, Patna
3. The District Land Acquisition Officer, Patna
4. Bihar State Road Development Corporation Ltd., through Managing Director
5. The Circle Officer, Patna Sadar Circle, District- Patna.
6. Senior Superintendent of Police, Patna.
7. Station House Officer, Chowk Thana, Patna City

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Mrigank Mauli, Sr. Advocate Mr. Sudhir Kumar Bijpuria, Advocate Mr.Sanket, Advocate Mr. Rakshit Das, Advocate
For the Respondent/s	:	Mr. P.K. Shahi, A.G. Mr. Manish Dhari Singh, AC to AG Mr. Rakesh Ranjan, AC to GP-22



CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
C.A.V. JUDGMENT
Date : 17-05-2024

In the year 1984, the citizen of the capital city of Bihar were shown the dream of having a road parallel to the river Ganges as Marine Drive of Mumbai (then Bombay). Four decades later, it has now become a reality and from the J.P. Setu near Digha in the West, a road called the J.P. Ganga Path (*named after the freedom fighter, late Jai Prakash Narain and popularly known as the River Front*) connects East near Gulzarbagh where another river bridge, the Mahatma Gandhi Setu is present. Further, at regular intervals, it is being connected with the Ashok Raj Path, Patna (*the road named after the popular Maurya King, Samrat Ashoka which again runs through the entire city from the East in Patna City to the West, Danapur*).

2. It is now being extended towards far East and will join near Kangan ghat (Chimney ghat). There is also a story behind the name Kangan Ghat. It is said that Gobind Rai (*as Guru Govind Singh ji was known in his childhood days*) had thrown a gold bangle into the river as a message that one should keep away from the material things. Since then, it is known as Kangan ghat. The State government has ambitious plan of connecting the River Front by a Link Road with the Takhat Sri



Harmandir Sahib Ji, the birth place of the tenth Sikh Guru, Sri Govind Singh Ji.

3. The petitioners are having their residence at a place near Chowk Police Station in Patna City on a road which is the part of the proposed Link road to connect the said J.P. Ganga Path (River Front) with the Takhat Sri Harimandir Ji, Patna Sahib for the smooth movement of lakhs of pilgrims who visit Gurudwara from all over the world specially during the birth celebration of the tenth Guru. They want realignment of the Link Road so that the unutilized land of the Chowk Police Station is used thus sparing their land.

4. Heard Mr. Mrigank Mauli, learned Senior Counsel duly assisted by Mr. Sudhir Kumar Bijpuria and Mr. Sanket, learned counsel representing the petitioners while Mr. P.K. Shahi, learned Advocate General, Bihar duly assisted by Mr. Rakesh Ranjan, learned Assistant Counsel to Government Pleader No. 22 are here to defend the stand of the State Government.

PRAYER:

5. The writ application has been preferred for the grant of following reliefs :-

(i) for issuance of writ in nature of Mandamus directing the Respondent



authorities for exclusion of Petitioners property from the proposed land acquisition for construction of connecting road from JP Ganga Path to Kangan Ghat (Chimney Ghat). Proposed land for acquisition is Khatiyani Land of the Petitioners, bearing Khata no.231, Khesra no. 407 admeasuring 0.02750 acre (1198 square feet) situated at Ward No. 26, P.S.- Chowk Thana Patna City, Patna City, District- Patna, Bihar over which the proposed connecting from JP Ganga Path to Kangan Ghat (Chimney Ghat) road to be constructed, which is residential house of the Petitioner and earns his livelihood from the same land;

(ii) for issuance of writ in nature of Mandamus for directing the Respondent authorities for considering the alternative alignment through uninhabited government land for construction of the connecting road from JP Ganga Path to Kangan Ghat (Chimney Ghat).

FACTS:

6. The matrix of facts giving rise to the present writ application is/are as follows:-

7. The petitioners' (no.1 and 3 to 5) herein are the brothers namely, Bishwanath Das, Shambhu Nath Das, Keshav Das, Madhav Das, all sons of Late Krishna Das while Asha



Agrawal, petitioner no. 2 is the wife of late Basukinath Das and daughter-in-law of late Krishna Das. They are having their ancestral land with exclusive, peaceful possession over it. The details of the land is/are as follows:-

*“Khata no.231, Khesra no. 407
admeasuring 0.02750 acre (1198 square feet)
situated at Ward No. 26, P.S.- Chowk Thana Patna
City, Patna City.”*

8. The petitioners came to know that their land is/are in the process of getting acquired for the widening/construction of the connecting road (Link Road) from JP Ganga Path (River Front) to the Kangan Ghat (Chimney Ghat) located just few hundred meters away from Takhat Sri Harimandir Ji Sahib Gurudwara.

9. They accordingly, vide letter dated 28.07.2023 represented before the District Collector, Patna, with the request to exclude their residential land (which is also the source of their livelihood) from the land acquisition process with the contention that there is an alternative government land available by way of vacant land of Chowk Police Station and thus the proposed road should be aligned differently.



10. The Collector, Patna vide letter no. 1920/ Land Acquisition dated 05/08/2023 acted on the request and constituted a committee for an inspection and to explore the possibility of change of alignment of proposed road. In compliance, the committee which included the Additional Collector- Patna, the District Land Acquisition Officer, Patna, the Deputy General Manager (Technical) Bihar State Road Development Corporation Ltd., (henceforth for short 'the BSRDCL) the S.D.O., Patna City, the Deputy Collector Land Reforms, Patna City and the Circle Officer Patna Sadar inspected the site for exploring new alignment of the proposed widening/construction of the connecting road from the JP Ganga Path to Kangan Ghat (Chimney Ghat).

11. The report of the Committee came to be submitted on 07.08.2023 and their opinion was that the Chowk Police Station being nearer to the Gurudwara, the further expansion of it may be needed. The Committee was also of the opinion that even after acquisition of a part of the land, the petitioners will be having sufficient land to run their business.

12. The Collector, Patna thereafter vide PR No. 008527(District) 2023/24 issued Press release/the notification dated 15/09/2023 for the land acquisition against construction of



the connecting road from JP Ganga Path to Kangan Ghat (Chimney Ghat). The petitioners' land was/were included in the list at serial no. 2.

13. The petitioners vide letter dated 14/11/2023 addressed to the Collector, Patna again objected to the widening/construction of proposed road which passes through their residential land. Their contentions was that road at the entrance is only 20 feet and the place proposed to be widened is already 25 feet, the alignment proposed is at 90 degree turn, which will make it a bit different for the commuters.

14. The petitioners contention is/was that the adjacent land to it is uninhabited government land admeasuring 917 decimal which is in possession of Chowk Police Station. Their further case is/was that the land present with it is more than what is required for a Police Station but when the committee constituted by the Collector, Patna visited the Police Station regarding exploring the possibility realignment of proposed road through the uninhabited government, their response was that it may be required for construction of building/future expansion and thus cannot be spared for acquisition.



15. The petitioners claimed that a new Police Station has already been constructed few years ago but Police officials are not ready to spare the land while their residential building is being acquired. They alleged that the committee failed to realize that their families may also require to expand their residential building in future. The further stand is/was that the proposed road is even otherwise dangerous as there is a blind 90° turn on the corner of government land which may cause serious accidents beside the traffic jams.

16. Having failed to elicit any response, the present writ petition.

17. This Court has taken note of the fact that subsequently, two of the writ petitioners also approached this Court in CWJC No.1113 of 2024. They were Kedar Das and Madhav Das (the petitioner nos. 2 &3 herein), the land in question was Khata No. 231, Khesra No. 406 situated under Chowk Police Station, Patna City. They too wanted the State to consider realignment of the road. The writ petition stands disposed of on 22.04.2024 and the Court chose not to interfere with the acquisition process.

18. Both 'the BSRDCL'(the respondent no. 4) and the District Administration, [the Collector, Patna as also the



District Land Acquisition Officer, Patna (respondent nos. 2 and 3)] have filed their respective responses.

**COUNTER AFFIDAVIT OF THE BIHAR
STATE ROAD DEPARTMENT CORPORATION LTD.
(THE RESPONDENT NO. 4)**

19. The stand of the respondent no. 4 is that in the Khata No.231, Khesra No.407, only a small part of land is being acquired for the widening of the existing road. At present about 10,200 square feet land of the petitioners is/are available which is not used for the residential purpose. Further, on the request dated 28.07.2023 made by the petitioners, a committee was constituted by the Collector, Patna on 05.08.2023 which detailed out that only part of the petitioners' land is being acquired which does not affect them. The report was submitted on 07.08.2023.

20. The Deputy General Manager (Technical), 'the BSRDCL' (henceforth for short 'the Corporation') vide office letter no.613(we) dated 14.11.2023 informed the District Administration that the present acquisition plan is technically and financially more suitable than the proposal made by the petitioners.

21. The contention is that the proposed connectivity is being done to ease the congestion of Ashok Rajpath which



will benefit the people residing in Patna city area and is in larger public interest of the State of Bihar as the pilgrims who assemble in lacs to celebrate the birth anniversary of Guru Gobind Singh Ji in Patna Sahib Gurudwara will have smooth movement.

22. Further, the lands to be acquired is only about 10% of the petitioners existing land and presently not used for residential activity. This is in the larger public interest and as such the claim of depriving them of their livelihood and right to live with dignity is unfounded and fit to be rejected.

23. The further contention is that so far as the petitioners request to use part of Chowk Police Station land is concerned, taking into account its future development as also it being nearer to the Patna Sahib Gurudwara, it has rightly been not spared by the Police Administration. The petitioners want their personal benefit to prevail over and above the larger public interest which cannot be allowed. The land acquisition is being held as per the law and requirement and is technically and economically more viable.

24. Further, the repeated objection of petitioners have been considered at every level and the respondents have not find any merit in it. They are just creating hurdles in a very



important road project. The land acquisition process has almost been completed by the Competent Authority.

**COUNTER AFFIDAVIT ON BEHALF OF THE
RESPONDENT NOS. 2 AND 3. (the Collector, Patna and
the District Land Acquisition Officer, Patna)**

25. The case of the District Administration is that L.A. Case No 13/2023-24 has been initiated in view of the requisition made by the G.M(Technical) of 'the BSRDCL' for the acquisition of 0.75 acre of land in Mauja- Sukumarpur, Thana No.-341 for the Project- Digha to Didarganj length 20.5 k.m., connectivity from J.P. Ganga Path (River Front) to Kangan Ghat which now stand transferred to the Patna District in view of the Notification No-14141, dated- 29.11.2021 issued by the General Administration Department, Government of Bihar.

26. The publication of notification for the said project has been done on 15.09.2023 and the declaration made on 07.12.2023. The objections were invited from the land holders within the specified period of 60 days. During the said period, only 02 objections were received i.e. one from Shri Raj Nath Rai and the other from Shambhu Nath Das and brothers (the petitioners herein).



27. Further, in view of the said objections, the matter was taken up as per the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (henceforth for short ‘the 2013 Act’). The Collector, Patna constituted a committee on 05.08.2023 who after a spot inspection submitted its report on 07.08.2023 pursuant to which opinion was sought for from the Requisitioning Authority vide letter no-2833, dated-09.11.2023 by the office of the Collector, Patna on the point of changing of the alignment.

28. The Deputy G.M.(Technical) PIU, Gulzarbagh, Patna vide letter no-613, dated- 14.11.2023 sent its report along with the Google Maps of both the proposals with further contention that the proposal given with the requisition is much better option considering the economic, technical and social factors. It is their stand that while in the first proposal, 0.18 acre of private land will have to be acquired whereas in the second proposal (which they intended to acquire), only, 0.08365 acre of private land will be required for acquisition and thus minimum ‘*raiya*’ land will have to be acquired. Further, the second proposal is much better in terms of technical, economic and social factors. It was further informed that as the width of the



road is 45 feet, there will be no problem in the movement of the vehicles too.

29. The respondents thereafter took up the objections made by the land owners and it was rejected on 16.11.2023.

30. The respondents stand is that the land of Chowk Police Station is under the Home Department and it is very important police station of Patna City being nearer to the Gurudwara Sahib where devotees visit in large numbers. Thus the land of the Chowk P.S will become less in the coming years. Even if this land of the Police Station is acquired, there will be two turnings and the land of the existing road will thus become useless.

31. The respondents contention is that even after the acquisition of the land of the petitioners, they are left with 120 feet x 147 feet of their land which they can use for their business purpose and as such, contrary to their contention, they are not deprived of their livelihood.

32. The report further mentions that Bishwanath Das and Shambhu Nath Das (petitioner nos. 1 & 3) have encroached 10 feet x 85 feet land of Municipal Corporation which is Government land and have also constructed a house in acquired



Plot No-407 of the Road Construction Department. Further, they are making commercial use of Plot No- 408 of the land of 'Yatimkhana Anjuman Khadimul Islam Kashmiri Kothi', Patna City by encroaching it. Thus, they are encroachers for their benefits are creating hindrance in the important ambitious government project.

33. The State-respondents contended that the nature of the land in question has been decided as the residential branch road on the basis of the MVR of Municipal Ward No-26, Sheet No-242 (Jhauganj) which is adjoining to Mauja-Sukumarpur, Thana No-341 in view of the provision under Section-26(3) of 'the 2013 Act'.

34. Further, the higher rate of the average of the sale deeds from 15.09.2020 to 15.09.2023 and the MVR has/have been taken into account. The average of the sale deeds has been calculated to be 13,20,59,111.00 per acre and the MVR is 10,00,00,000.00 per acre. Thus, the higher rate of Rs. 13,20,59,111.00 per acre has been determined for payment of the compensation amount to the raiyats.

35. The last contention is that the Commissioner, Patna Division has given his approval in this regard for the said rate of Rs.-13,20,59,111.00 per acre vide letter no-71, dated-



23.12.2023 and the Collector, Patna after the approval has further given approval of the estimate proposal of Rs.-1 7,51,64,254.00 of the said *mauja*. The petitioners have been put on notices on 11.03.2024 and 28.03.2024 under Section 37 (2) of 'the 2013 Act' in LA Case No. 13/2023-24 and in that background, the writ petition is fit to be dismissed.

SUBMISSIONS :

PETITIONERS CASE -

36. Mr. Mrigank Mauli, learned Senior counsel appearing for the petitioners submit that they represented before the authorities regarding acquiring the unutilized land of the Chowk/Police Station. However, the committee constituted by the Collector, Patna submitted its report on 07.08.2023 stating therein that the land of the police station cannot be used since a new building is proposed to be made on the land of the police station. Further, the objection raised by the petitioners was rejected by the respondent-District Land Acquisition Officer, Patna by its order dated 16.11.2023 and communicated vide memo no. 3139 dated 20.12.2023 (Annexure P/16) to the writ petition.

37. Learned Senior counsel further submits that Section 8 of 'the 2013 Act' has not been complied with.



Secondly, no effective hearing took place in compliance of Section 15 of the Act. He submits that Section 8(e) of the Act provides that "*the land if any acquired earlier and remain unutilised, used for such public purpose and make recommendation in respect thereof*".

38. He submits that in the present case, the land of the Police Station has been acquired earlier and substantial portion of it has remained unutilised even after construction of the new modern police station.

39. Learned Senior Counsel submits that the suggestion of petitioners to use the unutilised land of the police station was not accepted by the committee formed for such purpose on the pretext that the vacant unutilised land of the police station is going to be used for construction of new T.O.P building. However this finding is contrary to an RTI query from the office of the Senior Superintendent of the Police, Patna vide memo no.2333 dated 30.03.2024 wherein it has been informed that there is no proposal for construction of new building within the existing vacant land of police station.

40. Learned Senior counsel has relied on a decision of Hon'ble Apex Court in the case of **Raghubir Singh Sehrawat Vs. State of Haryana & Ors.** reported in **2012 (1) SCC 792.**



Paragraph 43 of the said order read as follows:-

“43. It also appears that the authorities concerned are totally unmindful of the plight of those sections of the society, who are deprived of their only asset like small house, small industrial unit, etc. They do not realise that having one's own house is a lifetime dream of a majority of the population of this country. Economically affluent class of society can easily afford to have one or more houses at any place or locality in the country but other sections of the society find it extremely difficult to purchase land and construct house. Majority of people spend their lifetime savings for building a small house so that their families may be able to live with a semblance of dignity. Therefore, it is wholly unjust, arbitrary and unreasonable to deprive such persons of their houses by way of the acquisition of land in the name of development of infrastructure or industrialization. Similarly, some people set up small industrial units after seeking permission from the competent authority. They do so with the hope of generating additional income for their family. If the land on which small units are established is acquired, their hopes are shattered.



Therefore, before acquiring private land the State and/or its agencies/instrumentalities should, as far as possible, use land belonging to the State for the specified public purposes. If the acquisition of private land becomes absolutely necessary, then too, the concerned authorities must strictly comply with the relevant statutory provisions and the rules of natural justice.”

41. He further relied on another decision of the Apex Court in the case of **Rajinder Kishan Gupta and Another vs. Union of India & Others** reported in **2010 (9) SCC 46** wherein similar proposition has been held at paragraph-10 as follows:

“10. (i) When the acquisition of the land is for DMRC and when there is a specific Act, namely, the Metro Railways (Construction of Works) Act, 1978 whether the authorities are justified in invoking the urgency provision in the Land Acquisition Act by dispensing enquiry under Section 5-A of the said Act.

(ii) When government land adjoining to the land in question is available, whether acquisition of a private land belonging to the appellants is justifiable.”



42. Another decision cited by him is in the case of **Kamal Trading Private Ltd. Vs. State of West Bengal & Orthers** reported in **2012 (2) SCC 25**. Paragraph 14 to 16 read as follows:-

“14. It must be borne in mind that the proceedings under the LA Act are based on the principle of eminent domain and Section 5-A is the only protection available to a person whose lands are sought to be acquired. It is a minimal safeguard afforded to him by law to protect himself from arbitrary acquisition by pointing out to the authority concerned, inter alia, that the important ingredient, namely, "public purpose" is absent in the proposed acquisition or the acquisition is mala fide. The LA Act being an expropriatory legislation, its provisions will have to be strictly construed.

15. Hearing contemplated under Section 5-A(2) is necessary to enable the Collector to deal effectively with the objections raised against the proposed acquisition and make a report. The report of the Collector referred to in this provision is not an empty formality because it is required to be placed before the appropriate Government together with the Collector's



recommendations and the record of the case. It is only upon receipt of the said report that the Government can take a final decision on the objections. It is pertinent to note that declaration under Section 6 has to be made only after the appropriate Government is satisfied on the consideration of the report, if any, made by the Collector under Section 5-A(2). As said by this Court in Hindustan Petroleum Corporation Ltd., the appropriate Government while issuing declaration under Section 6 of the LA Act is required to apply its mind not only to the objections filed by the owner of the land in question, but also to the report which is submitted by the Collector upon making such further inquiry thereon as he thinks necessary and also the recommendations made by him in that behalf.

16. Sub-section (3) of Section 6 of the LA Act makes a declaration under Section 6 conclusive evidence that the land is needed for a public purpose. Formation of opinion by the appropriate Government as regards the public purpose must be preceded by application of mind as regards consideration of relevant factors and rejection of irrelevant ones. It is, therefore, that the hearing contemplated under Section 5-A and the report made by the Land



Acquisition Officer and his recommendations assume importance. It is implicit in this provision that before making declaration under Section 6 of the LA Act, the State Government must have the benefit of a report containing recommendations of the Collector submitted under Section 5-A(2) of the LA Act. The recommendations must indicate objective application of mind.”

43. Learned Senior Counsel lastly refers to the Hon’ble Apex Court decision in the case of **Hindustan Petroleum Corporation Ltd., vs. Darius Shapur Chenai and Ors.** reported in **2005 (7) SCC 627**. He placed reliance on paragraphs nos. 6, 16 to 18 and 29 which read as follows:

“6. It is not in dispute that Section 5-A of the Act confers a valuable right in favour of a person whose lands are sought to be acquired. Having regard to the provisions contained in Article 300-A of the Constitution, the state in exercise of its power of "eminent domain" may interfere with the right of property of a person by acquiring the same but the same must be for a public purpose and reasonable compensation therefor must be paid.

16. However, considerations of the objections by the owner of the land and



the acceptance of the recommendations by the Government, it is trite, must precede a proper application of mind on the part of the Government. As and when a person aggrieved questions the decision-making process, the court in order to satisfy itself as to whether one or more grounds for judicial review exist, may call for the records whereupon such records must be produced. The writ petition was filed in the year 1989. As noticed hereinbefore, the said writ petition was allowed. This Court, however, interfered with the said order of the High Court and remitted the matter back to it upon giving an opportunity to the parties to raise additional pleadings.

17. Contention of Mr Chaudhari to the effect that for long the additional ground relating to non-application of mind on the part of the State had not been raised and, thus, it might not be necessary for the State to file a counter-affidavit, does not appeal to us. When rule nisi was issued, the State was required to produce the records and file a counter-affidavit. If it did not file any counter-affidavit, it may, subject to just exceptions, be held to have admitted the allegations made in the writ petition.

18. In view of the fact that the action required to be taken by the State



Government is distinct and different from the action required to be taken by the Collector; when the ultimate order is in question it was for the State to satisfy the court about the validity thereof and for the said purpose the counter-affidavit filed on behalf of a Collector cannot be held to be sufficient compliance with the requirements of law. The job of the Collector in terms of Section 5-A would be over once he submits his report. The Land Acquisition Collector would not know the contents of the proceedings before the State and, therefore, he would be incompetent to affirm an affidavit on its behalf.

“29. The Act is an expropriatory legislation. This Court in State of M.P. v. Vishnu Prasad Sharma observed that in such a case the provisions of the statute should be strictly construed as it deprives a person of his land without consent. [See also Khub Chand v. State of Rajasthan and CCE v. Orient Fabrics (P) Ltd.]

There cannot, therefore, be any doubt that in a case of this nature due application of mind on the part of the statutory authority was imperative.”



THE STAND OF THE RESPONDENTS

44. Learned Advocate General, Mr. P.K. Shahi representing the State on the other hand submits that the J.P. Ganga Path (River Front Road) has now come into existence and is being used by the commuters from the West to East successfully thus easing the traffic in the old Patna City and the State Government further proposes to extend it towards the East.

45. He submits that the Technical Experts found the route envisaged as Link Road to be the best suited and though the objection of the petitioners was/were there, ultimately, it is the State Government which has to decide what should be the best route of a particular road. The petitioners can put forward their view points but cannot dictate the terms. The proposal given by them was not found feasible by the Committee constituted by the D.M., Patna and thus the petition was rejected.

46. It is his submission that due care was taken on the petition/representation preferred by the petitioners and on 05.08.2023, the Collector, Patna constituted a Committee consisting of all the important officials who having found the alignment proposed by the petitioners not proper as also cost



effective submitted a report on 07.08.2023. The petition was finally rejected on 16.11.2023.

47. He concluded his argument by submitting that in such cases, on the basis of the report submitted by the Technical Experts, it is the authorities who are the best one to judge what actually should be the route.

FINDINGS:-

48. Having heard the learned Senior counsel for the petitioners as also the learned A.G., the facts that emerges is/are that:

(i) the respondents took decision to acquire the land that connects the JP Ganga Path and Kangan Ghat (Chimney ghat) for construction of the Link Road;

(ii) the Link Road will facilitate easier movement of pilgrims to the Takhat Shri Harimandir Ji Saheb;

(iii) the petitioners are having ancestral land on the said Link road where their residence/godown are situated;

(iv) for the construction of Link Road between J.P. Ganga Path and the Kangan ghat (Chimney ghat), the road so proposed touches some part of the petitioners'



property;

(v) the petitioners filed objection stating that if the vacant land of the Chowk Police Station is taken, their ancestral land can be spared;

(vi) the District Magistrate, Patna constituted a committee of stake holders on 05.08.2023 who submitted report on 07.08.2023 stating therein that:

(a) the proposal of the respondents is/are the most feasible one as minimum acquisition process will be required;

(b) the alignment in the proposal made by the petitioners not only will require more acquisition, it will further lead to two bends creating traffic jams as also accidents;

(c) the police authorities clearly showed their inability to provide the land of police station as it may be needed for future expansion;

(vii) considering all these facts, the objection of the petitioners was rejected;

(viii) While rejecting the representation, respondents



also incorporated that the same was not preferred in a proper format as required under Section 15 (2) of 'the 2013 Act.'

49. The petitioners have only one contention to put forward, if the road crosses through a part of the Chowk Police Station, their land can be spared. The respondents have reasoned out to reject the said prayer on the ground that:

(i) firstly, the alignment so proposes is the best suited one and it will require lesser acquisition of land;

(ii) the proposal given by the petitioners will lead to non-utilization of the large stretch of existing road which is not feasible;

(iii) Takhat Sir Harmindir Saheb Ji as also quite a large area in the densely populated Patna city zone comes under the Chowk Police Station and taking into account its importance and further expansion, the proposal put forward by the petitioners to acquire a part of it is not again not feasible;

(iv) even after the acquisition of the land, the petitioners are left with 120 feet x 147 feet of



land which can be easily used for their business purposes;

(v) the petitioners are encroachers *inasmuch* as petitioner nos 1 and 3 namely, Biswanath Das and Shambhu Nath Das have encroached 10 feet x 85 feet of Municipal Corporation land and have made 'pucca', construction;

(vi) they are also making commercial use of Plot No. 408 which is the land of the *Yatimkhana Anjuman Khadimul Islam Kashmiri Kothi, Patna City* by encroaching it.

50. So far as the reliance placed by the petitioners on the Hon'ble Apex Court judgment in **Raghubir Singh Sehrawat Vs. State of Haryana & Ors.** (supra) is concerned, in the opinion of the Court, the petitioners do not come under the deprived sections of the society nor this is an agricultural land. Further, a small portion of the land is being acquired. The respondents have given reason that by acquiring this land, not only lesser land will be acquired, it will facilitate smooth movement of traffic.



51. With regard to the next case cited of the Hon'ble Supreme Court decision in **Rajinder Kishan Gupta and Another vs. Union of India & Others** (supra), it has to be noticed that the petitioners are proposing a different route/alignment where the Chowk Police Station is situated. The respondents have already clarified that this will lead to a larger acquisition of land plus unnecessary bends which may be traffic hazard beside jam. This beside the importance of the Chowk P.S. being situated in a densely populated place and as such its further expansion has to be kept into mind.

52. Again, so far as the reliance placed on **Kamal Trading Private Ltd. Vs. State of West Bengal & Orthers** (supra) is concerned, it has to be noted that here that the Collector, Patna did constituted a committee with a direction to submit a report. The committee came to the conclusion that this is the most viable route having lesser bend and straightway connects to Ashok Raj Path. It has been acquired for the public purpose. Further, the order dated 16.11.2023 clearly show that it has been incorporated therein that the petition was not submitted in line with the section 15 (2) of 'the 2013 Act' and in that background, that petitioners cannot now go back and claim that



the State government ought to have taken the decision.

53. So far as the case of **Hindustan Petroleum Corporation Ltd. vs. Darius Shapur Chenai and Ors.** (supra) cited by the petitioners is concerned, two things have been dealt with in the order:

(i) public purpose;

(ii) reasonable compensation.

54. Here the respondents have fully explained the public purpose for which the land is being acquired. Further, the petitioners are not aggrieved by the compensation amount and no such contention has been raised here either. There has been complete application of mind on their part so far as the acquisition of the land in question is concerned.

55. This Court has taken note of an order of the Hon'ble Apex Court in the case of **G. Narsing Rao (died) THR. LRS Vs. The National Highway Authority of India & Anr.** in **Special Leave to Appeal (C) No(s) 9314-9315/2022** which read as follows:

“Having heard learned counsel for the respective parties and having gone through the impugned order passed by the High Court, we are of the opinion that the High Court is absolutely justified in passing the impugned order. It cannot be disputed



that the public interest is the paramount consideration and the National Highway Authority can be said to be best judge to decide which land to be acquired and which not to be acquired for the purpose of construction of the Highways.

In that view of the matter, no interference is called for in exercise of powers under Article 136 of the Constitution of India. The Special Leave Petitions stand dismissed.

Pending applications, if any, shall stand disposed of.”

56. Further, in the case of **Ramji Veerji Patel & Others Vs. Revenue Divisional Officer & Others** reported in **(2011) 10 SCC 643**, the Hon’ble Supreme Court held that where the land proposed to be acquired and the alternative land suggested by the commuters/persons interested are equally suitable for the purpose for which the land is being acquired, the satisfaction of the Government, if not actuated with ulterior motive, must get primacy. In the judicial review, it is not open to the Court to examine the aspect of suitability as a Court of appeal and substitute its opinion.

57. Recently, a bench of the Patna High Court in the case of **Lalita Devi & Anr. Vs. The State of Bihar & Ors.**



(C.W.J.C No. 4562 of 2022 and analogous cases) reported in **2024 (2) BLJ 19** dealing with similar matter held in paragraph nos. 207 and 208 which read as follows:

207. The Supreme Court, in the cases of Ramji Veerji Patel (supra) and G.Narsing Rao (supra), has held that authority is the best judge to decide which land is required to be acquired for the purpose of construction of public project for public purpose. The satisfaction of the Government, if not actuated with ulterior motive, must get primacy. It is not open to the Court to examine the aspect of suitability as a court of appeal and substitute its opinion.

208. Accordingly, I am of the view that non consideration of the proposal of the petitioners regarding alternative sites by the State Government in the facts and circumstances of the present case does not vitiate the acquisition, in question.”

CONCLUSION:

58. This Court thus holds that it is the Government authorities/Technical Experts who are the best persons to decide what should be the route of road/metro/railways/highways. The aggrieved persons do have the right to put forward their



proposal but they cannot dictate terms. The decisions taken by the authorities/experts cannot be questioned unless it is proved that the same has been done with an ulterior motive.

59. Further, the Court cannot put its eyes away on the stand of the respondents that two of the petitioners herein have encroached the land of Municipal Corporation by making ‘*pucca*’ construction as also are making commercial use of the ‘*Yatimkhana Anjuman Khadimul Islam Kashmiri Kothi*’, Patna City.

60. In the aforesaid background, no relief can be extended to the petitioners. A decision taken by the authorities must also be followed by its immediate implementation and delaying any project only because an objection has been put forward by the aggrieved persons for their personal benefits, hampers not only the development process, it greatly enhances the cost of construction. Time has come for the respondents to fix a time frame by which the objections are considered and taken to its logical conclusion so that the project envisaged moves on the track in time.

61. However, before parting, a word of caution for the respondents. It is seen that in the construction of the J.P. Ganga Path and the Link roads, those involved in the



construction works have completely ignored the environment issues forcing the citizen of the Capital City to suffer. The debris are being thrown in the river Ganges in full public view, the sand that has been laid to use makeshift road parallel to the river for the movement of their vehicles/machines keep the entire walking track as also the Patna University area/the N.I.T., Patna dusty as rarely waters are sprinkled on this makeshift pathways. Heavy re-suspension of dust in the air can be observed due to movement of the construction vehicles. The city is getting choked and this is being witnessed/suffered by the helpless citizen.

62. It seems there is no monitoring cell in the District Administration to put a check on all these violations/environmental hazards. No wonder, Patna was declared the second most polluted city of the country on 05.05.2024 by the Central Pollution Control Board (CPCB) after they surveyed 247 cities of the Country. In the city, Muradpur was declared the second most polluted area. It is to be noted that Muradpur is where the prestigious Patna Medical College Hospital is situated and to its south runs the J.P. Ganga Path (River Front).



63. The Bihar State Pollution Control Board (the BSPCB) on its part also failed to fulfill the duties. Though, the website of 'the BSPCB' speaks of commitment to provide pollution free environment to the people of State of Bihar, the report of the Central Pollution Control Board completely negates such commitment. It is wake-up call for them to take immediate remedial measure before its too late.

64. The District Magistrate, Patna is thus directed to constitute a monitoring committee of the Senior officials who shall visit the site at least fortnightly, check whether all the norms relating to construction work including the environment related issues as also the safety of the workers is/are being followed or not. The committee will regularly submit report and suggestions so that necessary directions are issued accordingly. This Committee shall continue till the conclusion of the construction of the J.P. Ganga Path and the link roads within the district of Patna. The D.M., Patna shall constitute the monitoring committee at an earliest and not later than one month from the date of the passing of the present order as the citizen of the city can not be allowed to suffer even for a single day.

65. So far as the writ petition is concerned, it is bereft of merit and is accordingly dismissed.



66. Let a copy of the order be sent to the Principal Secretary, Environment, Forest and Climate Change Department, Bihar, Patna, the Secretary, Bihar State Pollution Control Board for perusal and appropriate action as also the District Magistrate, Patna for compliance on the direction so made.

(Rajiv Roy, J)

Jagdish/Neha-

AFR/NAFR	AFR
CAV DATE	09.05.2024
Uploading Date	17.05.2024
Transmission Date	

