
(2013) 11 JH CK 0012

In the Jharkhand High Court

Case No : Writ Petition (PIL) No. 1114 of 2008

Baidyanath Prasad

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 29-11-2013

Acts Referred:

Citation : (2014) 1 JLJR 165

Hon'ble Judges : R. Banumathi, C.J.;Dhirubhai Naranbhai Patel, J

Bench : Division Bench

Advocate : M. Jagannath, for the Appellant; Mahesh Tewar i, for the Respondent Nos. 1-4, Mr. A.K. Singh, Advocate for the Respondent No. 5 and Mr. R.R. Nath, Advocate for the Respondent No. 9, for the Respondent

Final Decision : Dismissed

Judgement

1. In this Public Interest Litigation, the Petitioner seeks a direction to stay the construction work of drains at Katharkocha to Birsa Chowk in the heart point of Ranchi and if the construction of drains is not stopped, the entire communication of general public of Katharkocha, Birsa Chowk will be badly affected due to blockage of road, since there is no alternative way to go out from the house of the tribal people. According to the case of the Petitioner, RRDA already sanctioned road construction from Birsa Chowk to Katharkocha but due to non-availability of N.O.C. from Railway authority, it was not completed. People of locality have represented before the Secretary, Railway Department, Government of India, but no action has been taken to construct the road. But suddenly, the authority started earth-cutting work for drain from Birsa Chowk to Katharkocha blocking the entire access of people of the area. Earlier petitioner had filed one W.P. (PIL) No. 4958 of 2004 and W.P. (PIL) No. 739 of 2005 and Cont. (Civil) Case No. 39 of 2007. Petitioner contends that if the road is not constructed, several people will be affected and, therefore, the writ petitioner seeks for direction to stay the construction of drains at Katharkocha to Birsa Chowk.

2. Respondents have filed counter affidavits on various dates stating that the

railway line between Hatia-Ranchi runs through Katharkocha slum area near Birsa Chowk and a good portion of land of Railway is under illegal occupation of some people who have constructed slums and huts and there have been attempts to construct Pucca road over railway land parallel to railway line. This path is used by the slum dwellers. According to the respondents, previously there was no drain and the rain water accumulated around the place making the railway line unstable. There was always a danger of train accident due to soft earth under the track. Therefore, it was decided to construct proper drain for outlet of the rain water. The construction of drain is entirely on the railway land. The petitioner praying on behalf of unauthorized occupants of railway land settled in slums around the area is illegal and they cannot plan any construction over railway land. According to the respondents, the drain is dug only for draining the rain water and petitioner has got no legal right to question the same.

3. The petitioner has filed rejoinder denying unauthorized occupation of the land. According to the petitioner, they are living at Katharkocha, Birsa Chowk for a long time and used the road in question, Birsa Chowk to Katharkocha Road. The people of Katharkocha have constructed houses after getting permission from R.R.D.A. and the people of Katharkocha have also taken electricity connection and they are paying the electrical charges.

4. After the respondents have filed counter affidavit justifying digging of a drain, the petitioner filed I.A. No. 2039 of 2012 in the writ petition seeking for a direction to the railway authorities to construct a Simple Level Crossing near Katharkocha where people are temporarily using for crossing the railway line because the Gali of Katharkocha, New Area are directly connecting near the Railway Crossing Place and there is no other alternative way to touch the Main Road or Birsa Chowk.

5. In response to I.A. No. 2039 of 2012, the Railways filed Counter Affidavit stating that construction of a Simple Railway Level Crossing, i.e., near Kilometer 423 of 11 is not possible since it is the signaled area where approaching trains frequently stop before entering Hatia Yard. It is also averred that construction of Railway Level Crossing at that site shall violate the safety norms which are there for the people at large and for proper working of the entire Railway System and, therefore, the Railways are not in a position for construction of a Simple Railway Crossing as desired by the petitioner.

6. Learned counsel for the petitioner contended that the residents of Katharkocha are residing there for long time and there are about thousand dwellings in the said area and, therefore it is necessary to provide railway crossing at Katharkocha for connecting with Mecon Satellite near ROB (Rail Over Bridge) Road from Katharkocha or a separate RUB at Katharkocha has to be constructed so that more than thousands of people would be benefited. Learned counsel further submitted that people/public of Katharkocha are paying Holding Tax, paying rent and are legal owners of landed property and submitted that the people are facing lots of hardships when the gate of Birsa Chowk is closed as

crossing the railway track is full of risk.

7. Mr. Mahesh Tewari, learned counsel appearing for the respondent-Railways submitted that it is not possible for the construction of a Simple Railway Level Crossing, i.e., near kilometer 423 of 11 since it is signaled area where approaching trains frequently stop before entering Hatia Yard. It was also submitted that the Railway has provided an approach road at a from the demanded crossing and also there is another ROB, which is only 430 meters apart in the north additional level crossing and in between these two, another one Railway Crossing is neither possible nor practical for all purposes for the safety measures required for the Railway.

8. We have considered the rival submissions of the learned counsel for the petitioner and the learned counsels appearing for the respondents.

9. The petitioner has filed number of rejoinders stating that the dwellings in the Katharkocha area are regular dwellings and those residents have obtained approval of the plan for construction of houses and have also obtained electricity connection. Having regarding to the point arising for consideration in this Public Interest Litigation, we do not propose to express any opinion on the legal rights or otherwise of the dwellings in Katharkocha Area. The only point falling for consideration is whether the petitioner is entitled to seek for a direction for construction of Railway Crossing at Katharkocha Basti Site.

10. In the various counter affidavits filed by the respondents, it is clearly stated that it is not at all possible for the construction of a Simple Railway Level Crossing at Katharkocha Basti Site, i.e., near Kilometer 423 of 11 as it is the signaled area where approaching trains frequently stop before entering Hatia Yard. According to the respondents, any construction of the Railway Level Crossing at that site shall violate the safety norms which are there for people at large and for proper working of the entire railway system. Since various precautionary measures in the signaling area of the approach of a station has to be taken, we find justification in the stand of the respondents that the Railways are not in a position for the construction of the Simple Railway Level Crossing. That apart, it is stated that presently the Railway Projects of constructing boundaries along with railway track by way of safety measures at places where there is thick population is already in progress and the request of the petitioner for construction of the Railway Crossing at the site cannot be permitted in the public interest of the society.

11. The contention of the petitioner is that the residents of Katharkocha area have no approach road to the Main Road or with Mecon Satellite. In their counter affidavit, the Railways have clearly stated that Railways have already provided a connecting road crossing 690 meters in the south direction towards Birsa Chowk from the demanded crossing and another ROB (Railway Over Bridge) is only 430 meters apart in the north and the additional level crossing in between these two already present crossing is neither possible nor practicable for all purposes for

the safety requirements of the Railways.

12. Chapter IX of the Indian Railway Permanent Ways Manual stipulates the prescription. There are two types of Level Crossing; first is Simple Level Crossing and the other is Manned Level Crossing. The respondents have clearly stated that wide and sufficient space for construction of a Level Crossing is not at all available at the site as requested by the petitioner. It is also stated that in a populated space, Manned Level Crossing could be constructed only when there is space for locking of the gate, residence of the Gateman, space, quarter and other necessary construction and such space is not available in the Katharkocha Basti site as requested by the petitioner.

13. When the Railways already undertake various safety measures and for construction of Simple Level Crossing no space is available, the prayer sought by the petitioner in this Public Interest Litigation cannot be granted. For the foregoing reasons, this writ petition is liable to be dismissed.

Accordingly, we dismiss this writ petition.