

(2002) 12 PAT CK 0071
In the Patna High Court
Case No : C.W.J.C. No. 11690 of 2000

Binod Prasad Singh and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-12-2002

Acts Referred:

Citation : (2002) 12 PAT CK 0071

Judgement

1. This is a public interest litigation in which the Petitioners complain that on a public road, plot No. 534 situate in mauza Dakhingaon, P.S. Wazirganj, District Gaya the Respondents are constructing a laboratory on the flanks of the public road.

2. That a laboratory is being constructed at the site indicated is not in issue. The position of the laboratory has been shown by the Petitioners in a map, which is appended at annexure 5 to the rejoinder affidavit in reply to the counter affidavit of the Respondents. The map has been certified by the Amin of the village Kurkihar, P.S. Wazirganj, District Gaya. The position of the laboratory is indicated on the road itself. Ext. D/1 also annexed with the counter affidavit of the Respondents is also a map showing location of the laboratory on the same plot i.e. plot No. 534. The position is no different than indicated by the Petitioners. Thus, on a statement of fact there is no issue. Besides, the Petitioners have shown photographs to the court indicating visually where exactly the laboratory is. These photographs were shown to the learned Government Advocate, Mr. S.D. Yadav. Clearly, this laboratory is on plot No. 534. It is on the flank's of the road and it is on the road.

3. Public roads are to be protected. Public roads are not to be congested. Public roads are meant for the purpose of passage only and no other. In this regard the court reminds the State-Respondents of the decision of the Supreme Court: Municipal Board, Manglaur Vs. Sri Mahadeoji Maharaj, An issue was taken upto the Supreme Court whether three structures could be placed on the flanks of the public road. These structures were a piayo, library and a statue of Mahatma

Gandhi. The Supreme Court negated the position that nothing will come on the road as it is meant for passage only.

4. Besides, after the amendment to the Constitution by the 73rd and 74th Amendment one mandate of the Constitution is very significant. In Article 243ZD of the Constitution of India in matters relating to planning whether within Panchayats or Municipalities, there is an obligation to plan with a concept of "spatial planning". Constriction is the antithesis of space. In an urban habitat anything constructed will be planned. In public places it will be a public plan. Buildings and structures have to be spread out under the concept of "spatial planning" as opposed to congestion. The roads of the nation have to take care of the traffic of the future, increasing population and faster traffic. The flanks of the main, which are part of it will need to be wider for the safety of the pedestrians. Thus, public roads are to be kept free from encroachment.

5. Mandamus is issued to the Respondents to remove the construction of the laboratory on plot No. 534 on the flanks of public road. Hereinafter, where ever a public convenience, like public laboratory is constructed, the Respondents will pay heed to the law and keep it off the road and its flanks and keep in mind the concept of planning as a "spatial planning" referred to in the Constitution.

6. The petition succeeds.

7. Allowed with costs.