

(1992) 11 PAT CK 0012
In the Patna High Court
Case No : C.W.J.C. No. 1682 of 1983

Haliwant Prasad Srivastava

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 11-11-1992

Acts Referred:

Constitution of India, 1950 — Article 300A

Citation : (1993) 2 PLJR 548

Hon'ble Judges : Binod Kumar Roy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.K. Roy, J.—Through this writ application the real prayer of the petitioner is to restrain the Respondents from digging and/or changing the physical features of survey plot Nos. 733 and 734 of village Jaijore P.S. Darauli Thana No. 326 District Siwan. The petitioner claims himself to be the owner of the aforementioned plots. For giving proper education to the children of the petitioner as well as the villagers a school was opened on the aforementioned plots. Under the Gandak Project, a scheme of water course was selected in the village showing its canal to pass through the aforementioned plot as well. The petitioner and other villagers represented to the authorities highlighting the sufferance of the students, teachers and the staff of the School. The grievance was considered. The Superintending Engineer, Saran Canal Anchal, Gandak Project (Respondent No. 2) as well as the Assistant Engineer-cum-Sub-divisional Officer, Gandak Project, Andar (Respondent No. 4) made a spot enquiry. Respondent No. 2 directed Respondent No. 3, the Executive Engineer, Saran Canal Anchal, Gandak Project, Mairwa, District Siwan to change the water course and save the School. A fresh water course was selected and plots were also acquired and necessary notification was published in the Siwan District Gazette dated 1.10.1982 (as contained in Annexure-2). A map prepared in regard to the new water course has been appended as Annexure 3. All on a sudden the

petitioner and some of the villagers noticed that a large number of labourers appeared and wanted to cut away the earth for the construction of the water course from the plots in question which were not included in the notification (Annexure-2). On being asked they said that they were directed by the contractor to adopt the old route of the proposed canal. On collecting information from the office of the Respondents, the petitioner and other villagers could gather that this has been done at the instance of some vested interest. The petitioner also filed a petition before Respondent No. 2 alleging that it would be highly unjust, illegal and arbitrary to direct the change of course of canal.

2. Even though this writ application came at the earliest under the heading "For Admission" on 19.4.1983, this Court wanted a categorical statement from the Learned Counsel for the State as to whether plots No. 733 and 734 in question have been acquired by the State Government and allowed time to obtain instructions. The matter was adjourned on 4.5.1983, 20.5.1983, 7.7.1983, 20.7.1983, 1.8.1983, 16.8.1983 and 3.9.1983. On 3.9.1983 the State was directed to State facts on affidavit directing issuance of status quo as of that date. On 26.9.1983 the writ application was admitted. The order of status quo passed on 3.9.1983 was directed to be maintained. Till today, no counter-affidavit has been filed by the Respondents.

3. Mr. S. C. Surya, Learned Counsel for the petitioner, submits as follows : Unless and until the plots in question are acquired by the State of Bihar under the provisions of the Land Acquisition Act, the Respondents cannot deprive the petitioner of its utilisation, more so when a School is in existence. The Respondents have violated the rights guaranteed to the petitioner under Article 300-A of the Constitution of India. Accordingly, the petitioner is entitled to the reliefs claimed for.

4. Mr. D.N. Singh, learned Standing Counsel No. II, on the other hand, submits that the petitioner has suppressed the facts and thus they are not entitled to the reliefs claimed for. He further submits that the Respondents were justified in proceeding to dig canal for public purpose.

5. In absence of any counter-affidavit and/or production of records before this Court showing that the lands in question have been re-acquired, it is difficult to appreciate the action of the Respondents. Article 300-A of the Constitution of India guarantees propriety right of a citizen in his properties. Accordingly, there is no manner of doubt that unless the plots in question, which belong to the petitioner, are acquired in accordance with law, the Respondents cannot be permitted to change their nature by digging a canal.

6. Accordingly, I am of the view that the petitioner is entitled to the reliefs claimed for by him. In the result, this writ application is allowed. The respondents are restrained from interfering with the possession of the petitioner over the plots in question till he is deprived of it in accordance with law. No cost.