

(2019) 10 PAT CK 0019

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 12275 Of 2019

Rajendra Singh And Anr

APPELLANT

Vs

State Of Bihar Through And Ors

RESPONDENT

Date of Decision : 15-10-2019

Acts Referred:

Citation : (2019) 10 PAT CK 0019

Hon'ble Judges : Amreshwar Pratap Sahi, CJ; Ashutosh Kumar, J

Bench : Single Bench

Advocate : Arun Kumar, Manish Kumar

Final Decision : Disposed Of

Judgement

Heard learned counsel for the petitioners who has filed rejoinder affidavit today.

This dispute in essence relates to an allegation of obstruction being caused to the passage of an old recorded drainage in the revenue records over plot no.366 area 1 acre 03 decimals. The contention of the petitioners is that this natural water flow which is connected to another water source and is a perennial source of irrigation is sought to be blocked by the State by construction of road under the garb of raising constructions over the embankment which is plot no.810 that connects with plot no.811 which is recorded as a path way.

It appears that under the PMRY scheme, the road was sought to be replenished by some earth work which was undertaken and for that excavations were carried out and mud filling was commenced which according to the petitioner has resulted in the filling up of the natural water way over plot no.366 causing a permanent obstruction. Learned counsel, therefore, submits that this public interest litigation has been filed in order to ensure that the said natural water way over plot no.366 is not disturbed so as to cause any further obstruction in the source of irrigation which is available to several hundred acres of land.

A counter affidavit has been filed on behalf of the respondents and along with a

counter affidavit a report of the Circle Officer, Akabarpur, Nawada has been filed which is dated 13th July, 2018. The same categorically recites that so far as plot no.366 is concerned, the same is recorded as a water body and in order to construct the road the alignment may require filling up part of the said land and, therefore, the objections and enquiry may be considered to be undertaken in respect thereof.

A rejoinder has been filed and a photo stat copy extract of the map has also been placed before us which demonstrates the topography of the area, including the status of plot no.366.

Having considered the submissions and the averments contained in the affidavits, we find that it is undisputed that plot no.366 is recorded as a water body, namely, a water way as described by the petitioners. This water passage is scattered by embankment which is recorded as plot no.810. However, the entire water passage does not appear to be embanked by plot no.810 and the path way is being constructed according to the respondents over the embankment. Thus, according to the respondents themselves and the report of the Circle Officer dated 13th July, 2018, the construction of the path way might result in encroaching upon the land of plot no.366 which is a water way.

In the wake of the aforesaid facts, we direct the District Magistrate, Nawada to instruct the revenue officials, including the Circle Officer, Akabarpur, Nawada to get a spot survey conducted and to ensure that plot no.366 which is recorded as a water way with an area of 1 acre 03 decimals should be retained intact and in the event, any such realignment for the road is required then the area of water way should not be reduced so as to allow the flow of natural water through the said passage. The Collector shall, therefore, ensure that the recorded area of plot no.366 should not be reduced even if any realignment is required in respect of the road.

With the aforesaid directions, we dispose of the writ petition.