

(2024) 03 PAT CK 0022

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 7678, 7573 Of 2020, 13689 Of 2022

Ram Bhajan Singh Yadav

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 07-03-2024

Acts Referred:

Citation : (2024) 03 PAT CK 0022

Hon'ble Judges : K. Vinod Chandran, CJ; Harish Kumar, J

Bench : Division Bench

Advocate : Nivedita Nirvikar, Anuj, Ansul, P.K. Shahi, P.K. Verma, Anjani Kumar, Sanjay Kumar Ghosarvey, Dr. K.N. Singh, Kumar Priya Ranjan, Devansh Shankar Singh, Shivaditya

Judgement

1. Three writ petitions have come up before us to be heard jointly. One of them is filed as a Public Interest Litigation assertedly on behalf of the villagers of Lodhipur & Chandmari, another filed by the Delhi Public School, Patna; both of which claim access through a road across the military cantonment area. Yet another writ petition is filed by the Union of India challenging the orders issued by the Circle Officer & the Sub-Divisional Magistrate against the Commandant of the Danapur Cantonment declaring construction of a wall on A-1 defence land and the use of the said land for training and operating a firing range to be illegal.

2. CWJC No. 7678 of 2020 is filed as a Public Interest Litigation seeking a consideration of the plea raised by the residents of Lodipur village, suffering due to the barricading and closure of the road connecting Lodipur village to Bihta-Maner road. It is alleged that the Danapur Cantonment Board having permitted such user, had illegally closed down the access which provides easy access to the National Highway-30 going to Shahpur on one direction and on the other to Saguna More and then to Patna. Annexure-1 is a true copy of the map of the area, and Annexures- 2 and 3, representations filed by the villagers.

3. The averments in the writ petition indicate that the Cantonment Board had intimated the closure of the road between the time when training was going on in

the firing range which was objected to by the villagers. The Cantonment Board then barricaded the road and also fenced it with barriers resulting in altercations between the villagers and the army personnel. F.I.Rs were lodged and the Circle Officer by a letter dated 08.06.2020 cautioned the Cantonment Board regarding the process as laid down under Section 258 of the Cantonment Act, 2006 having not been followed. Section 106 and Section 103 of the Criminal Procedure Code was invoked and Annexure-4 series of communications were addressed to the Cantonment Board.

4. CWJC No. 13689 of 2022 by the Delhi Public School, Patna seeks for similar directions, quashing the letter dated 03.09.2022 issued, prohibiting traffic of the DPS school buses through the subject road. The writ petition only speaks of a permissive user of the road granted, by Annexure-1 produced in the writ petition, indicating that it was granted on humanitarian grounds, restricted to the staff & students, as also limited to six months from 28.07.2020. The said communication was addressed to the District Magistrate also requiring expedite construction of the alternate access, as discussed in a meeting held on 30.06.2000.

5. The Union of India by their writ petition has challenged the orders issued by the Circle Officer & the Sub-Divisional Magistrate dated 08.06.2020 and 09.06.2020, Annexure-3, 4 and 4/A, which are relied on in the Public Interest Litigation, to further the cause of keeping the road open, unhindered to the villagers.

6. We heard Senior Counsel Smt. Nivedita Nirvikar on behalf of the petitioners in CWJC Nos. 7678 of 2020 and 13689 of 2022 and Dr. K.N. Singh, learned Additional Solicitor General appearing for the Union of India.

7. Smt. Nivedita Nirvikar, learned Senior Counsel took us through the orders passed by this Court and pointed out that the Development Commissioner was directed by this Court to visit the site and after inspection and measurement of the respective roads in the area; provide a feasible solution agreeable to both the parties. The Development Commissioner had made four suggestions of which one was stated to be the most apt one. There are alternatives possible if the Cantonment Board agrees and this would in fact facilitate easy access of the villagers to the National Highway and the two important locations; i.e.: Patna and Shahpur.

8. The learned Additional Advocate General (AAG) for the State, Shri Anjani Kumar, specifically points out the road now under construction which provides an easy access to Saguna More and from there to Patna; which is the most feasible, according to the Government. The learned Additional Solicitor General (ASG) vehemently opposes the contention of the petitioners and also points out that the most feasible road is that now pointed out by the AAG, on instructions from the State. As far as providing alternate roads parallel to the one now being used, the learned ASG specifically objects to the same. It is pointed out that all the roads

suggested, go in between the military cantonment area wherein various activities are going on. Free thoroughfare cannot be permitted within the cantonment area, which has not only serious security concerns, but also the aspect of endangering the life of the public who would casually traverse the roads lying inside the cantonment area, especially when there is a firing range in the vicinity as also storage of ammunition.

9. By Order No. 11 dated 12.07.2022 the Development Commissioner, the Chief Secretary, the Principal Secretary, Road Construction Department and the Secretary, Urban Development Department, Government of Bihar were impleaded as the additional respondents in the Public Interest Litigation and the writ petition filed by the Union of India. The Development Commissioner was also directed to convene a meeting of all the stake holders including the District Magistrate, Patna, Chief Executive Officer, Cantonment Board, Danapur, the Sub-Divisional Magistrate, Danapur, the Circle Officer, Danapur and the General Officer Commanding of Danapur. By Order No. 13 dated 19.09.2022, a Division Bench of this Court directed the Development Commissioner, Government of Bihar, Patna to have the spot inspected in terms of an earlier order dated 12.07.2022; as mutually agreed upon by the parties. Pursuant to the orders passed, the Development Commissioner has filed a report before this Court. The Development Commissioner put forth four options, one of which was the status quo to be maintained; which the villagers and the DPS proclaim to be the best option.

10. The matter was heard time and again before this Court and we had also directed the various stake holders to convene at the spot and put forth the various proposals as now relevant for consideration.

11. We heard the learned Senior Counsel, the learned ASG and the learned AAG in our chambers, with the help of a map prepared, accepted by all parties. We have to refer to the map extensively and we deem it appropriate that the same be annexed to this judgment as Annexure-I. The existing pathway the villagers and the DPS demand, for ingress and egress is marked as 'A-B' in the map, which cuts across the cantonment area from the boundary pillar and proceeds from south to north to the NH- 30; lying east to west. At the south end of the road, there is a canal, on crossing which immediately on the left hand side is the 'Short Range' and as the road proceeds further north, again on the left hand side is the simulator and the indoor shooting area. Then it divides the quarters occupied by the army personnel and before the road touches the NH-30 it has the 'magazine' on the right-hand side and the training field on the left-hand side. This is the road now blocked by the Army; which is asserted to be under the control of the Military Authorities and not the Cantonment Board. This road and the land on both sides are said to be Class "A"(1) Land as defined under The Cantonment Land Administration Rules, 1937; on which we need to elaborate, in dealing with the writ petition filed by the Union of India.

12. The subject road, through which the villagers seek thoroughfare, as pointedly

argued by the Union of India, is not a public road. We have to separately deal with the writ petition of the Union of India, filed against the orders issued by the Circle Officer and the Sub Divisional Magistrate, which are impugned in the said writ petition. Both the impugned orders have referred to Section 258 of the Cantonments Act, 2006. The said provision comes under Chapter-X dealing with 'Town planning and control over buildings etc.'. Section 258 refers to closing and opening of streets for public use and also restricts its power to permanently close any street, without the permission of the General Officer Commanding-in-Chief, or the Principal Director.

13. To interpret the above clause, we have to necessarily look at the definition of 'streets' as found in the Cantonment Act, 2006, under Section-2(zza) which is extracted hereunder:-

"street" includes any way, road, lane, square, court, alley or passage in a cantonment, whether a thoroughfare or not and whether built upon or not, over which the public have a right of way and also the road-way or foot-way over any bridge or cause way."

(underlining by us for emphasis)

14. The necessary concomitant for application of Section 258 is that the public should have a right of way over the street; which is absent in the present case. As we noticed there is only a permissive user, that too on altercations occurring disturbing public peace as also limited for six months and only for the purpose of ensuring alternate access.

15. The specific plea made by the Union of India is also that the road on which free thoroughfare is claimed by the villagers and the DPS is one coming under Class "A"(1) of the Cantonment Land Administration Rules, 1937, which Rule is extracted hereunder:-

"5. Class "A" (I) land which is actually used or occupied by the Military Authorities, for the purposes of fortifications, barracks stores, arsenals, aerodromes, bungalows for military officers which are the property of Government, parade grounds, military recreation grounds, rifle ranges, grass farms, dairy farms, brick fields, soldiers and hospital gardens as provided for in paragraphs 419, 421 and 425 of Regulations for the Army in India and other official requirements of the Military Authorities."

16. It is the contention of the Union of India that the subject lands through which the road 'A-B' passes, are under the direct administration of the Military Authorities and not the Cantonment Board. We have seen from the facts stated above that the ingress and egress, as claimed by the villagers, is through the street which has magazines, armouries, barracks, residence of military officers, parade grounds, recreation grounds and rifle ranges by its sides and adjacent to it. Hence, there can be no application of Section 258 to the road 'A-B' on which the villagers and the DPS claim a right.

17. In fact Chapter-IV deals with Special Rules for Class "A"(1) lands and insofar as such lands are concerned; which shall ordinarily be kept vacant. As per Rule-14(4), any temporary use or occupation should be licensed by the Military Estate Officer under Rule-39 for periods not exceeding five years with previous sanction of the Commanding-in-Chief or for any other longer period with the previous sanction of the Central Government. Hence, while Section-258 provides for an approval in closing streets through which the public have a right of way, insofar as Class "A"(1) lands are concerned, the temporary use should have approval from the Commanding-in-Chief or the Central Government; the Commanding-in-Chief being permitted to grant sanction only for a period of less than five years. The impugned orders in CWJC No. 7573 of 2020, is passed without examining the statutory scheme as coming out from the enactment and the rules framed thereunder and they stand set aside.

18. We are also of the opinion that considering the security concerns raised there is no possibility of permitting the free ingress and egress through the said road, also reckoning the safety of the villagers and the school children.

19. The second option suggested by the learned Senior Counsel appearing for the Public Interest Litigant and the School is towards the west of the road now blocked, starting from the portion marked as 'C' in the map and ending at N.H.-30 at the place marked 'D' in the map ('C-D'). It is submitted that this is an existing road which proceeds from N.H. 30 towards south and it intersects the cantonment area and what has to be opened is just 158 metres so that there can be free access provided over the canal. Again, the 158 metres sought to be opened, has the training area on both sides. The pathway proceeding from the north to the south ends at the place where the 158 metres begin. Even the pathway on both sides have defence colonies and training areas on both sides. The said option is also not feasible since, if a pathway is provided, it will cut through the training areas and it is comprised within Class "A"(1) lands.

20. The next option available is further to the west where it is marked as 'E-F-G'. There is a 500 metre portion which would intersect the long range and the Under-Water Bomb training area which again raises security concerns. Hence, all the three options above stated, coming within Class "A"(1) lands cannot be found feasible.

21. Learned Senior Counsel appearing for the Public Interest Litigant would then point out to the other options provided, which are said to be too lengthy for the villagers to access any place. They are respectively referred to as Hathikhana-Chandmari, existing route of D.P.S., route proposed by R.C.D. and the State Government route via Shahpur, in the map annexed. Learned AAG specifically pointed out that the 'State Government proposed route via Shahpur', is only a term employed in the map and the State Government does not favour it. It is submitted that this would entail huge acquisition and it would be difficult to clear the area for construction of a wide road. Moreover, the distance is of about 9.5 K.Ms making the acquisition and construction financially unviable. There is no

road in existence as is proposed and hence there could be none constructed by the State Government as is proposed; which is reiterated to be not a proposal of the State Government.

22. According to the learned AAG, the best option would be the Hathikhana-Chandmari road which is being developed by the State Government. The State Government is said to have acquired two acres of defence land spending an amount of Rs. 9.6 crores so as to straighten the curves and provide easy access to the villagers of Lodhipur and Chandmari. The road as seen from the map starts from Hathikhana and proceeds in a south westerly direction to Mubarakpur and ends in the existing road around Raghurampur; which village lies to the north of the road. To the south-western side of the existing road; to which the newly constructed road reaches, lies the villages of both Lodhipur and Chandmari. The D.P.S. School is also located in Chandmari village. Construction is said to have been going on and the same would be completed within a period of six months, is the submission of the learned AAG.

23. We also see that the said access which proceeds from Lodhipur and Chandmari crosses Mubarakpur and proceeds through Hathikhana and reaches Saguna More and from there to Patna. The learned Senior Counsel appearing for the Public Interest Litigant would point out that it would be a circuitous road then to Shahpur and would inconvenience the villagers who are proceeding to Shahpur. We cannot but observe that the security concerns raised by the Army and the Cantonment Board has a precedence over the concerns raised by the villagers, of a circuitous road to reach one of the important locations. It also has to be noticed that if the original access at 'A-B' had been opened up, it would have been quite circuitous to reach Saguna More and then to Patna, but Shahpur would have been nearer.

24. There is no question of competing claims being taken into account or an equitable consideration being made, in matters where security concerns are raised by the Army. There cannot be any equitable consideration especially when there is an access available for the villagers and the D.P.S. to reach the main road on which construction is going on and the State Government undertakes to complete it within a period of six months. We also see that there are other roads providing access to the area and it is not as if the villagers do not have any access to reach the important locations nearby.

25. Considering the fact that an alternate road is constructed by the State Government, we are of the opinion that the Public Interest Litigation and the writ petition filed by the D.P.S. have to be closed. The writ petition filed by the Union of India is to be allowed setting aside the orders of the Circle Officer, Danapur & the Sub Divisional Magistrate, Danapur and we do so. We find absolutely no infirmity or illegality in the Army & the Cantonment Board having denied access to the villagers and for plying the school buses through the roads intersecting the Cantonment area. As of now, the State Government has spent considerable amount of money to acquire land from the Cantonment Board and construct a

road which provides easier access to the National Highway and Patna from both the villages. We reject CWJC Nos. 7678 of 2020 and 13689 of 2022. We also set aside the impugned orders in the writ petition filed by the Union of India, CWJC No. 7573 of 2020.

26. However, only noticing the submission of the AAG, that the construction of the new road will be completed within six months; we direct the road ('A-B') to be opened for plying the school buses during the time notified by the Military Authorities (the Commander-in-Chief) in consultation with DPS for a period of six months or till the time the Hathikhana-Chandmari road is completed; whichever is later.

27. Ordered accordingly.