
(2019) 07 PAT CK 0216

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3839 Of 2019

Samrendra Nath Bhowmik

APPELLANT

Vs

State Of Bihar Through The Chief Secretary And Ors

RESPONDENT

Date of Decision : 11-07-2019

Acts Referred:

Citation : (2019) 07 PAT CK 0216

Hon'ble Judges : Rajeev Ranjan Prasad, J

Bench : Single Bench

Advocate : Alok Ranjan. Md. Khurshid Alam

Final Decision : Disposed Of

Judgement

Petitioner in the present case is seeking the following reliefs:

â??(i) For restraining the respondents to enhance the height of the road by making construction over the existing road and further directing the

respondents to construct the road after dismantling the old existing road as settled by this Honâ??ble court through various judicial pronouncements,

due to illegal act of the authorities the height of the road will increase and dirty rain and drainage water will flow in the house of the petitioner and for

that the petitioner is compelled to approach this Honâ??ble Court by way of filing instant writ application or,

(ii) For any other appropriate relief/reliefs to which the petitioner is found entitled in the facts and circumstances of this case.â??

It is the contention of learned counsel for the petitioner that the petitioner is resident of Mohalla â?" Bari Khanjarpur, P.S. - Barari, District â?"

Bhagalpur where the respondent authorities have floated NIT for construction of road and the same is being constructed. The petitioner submits that

the construction of road is being done in complete violation of the statutory provisions as well as the law laid down by judicial pronouncements on the subject from time to time by this court.

It is submitted that the height of the road is being raised considerably as a result whereof the house of the petitioner and similarly situated will be going down and drainage water as well as rain water will flow in the house of the petitioner.

In the given facts and circumstances of the case, the petitioner is said to have represented before the respondent authorities along with a copy of the order which was passed earlier in CWJC No. 18636/2015(Samrendra Nath Bhowmik Vs. State of Bihar and others), copy of which has been enclosed as Annexure 2 to the writ application, but then, the respondent authorities are not taking care of the same. Petitioner has also filed a contempt application which is pending consideration.

Learned counsel for the State submit that in the present circumstance appropriate direction may be given to the respondent authorities to look into the grievance of the petitioner and redress the same in accordance with law.

Having heard learned counsel for the petitioner and the State, this court is of the considered opinion that the grievance of the petitioner must be looked

into by the District Collector, Bhagalpur (Respondent No. 5) and the Administrator, Municipal Corporation, Bhagalpur (Respondent No. 6). A similar grievance was subject matter of consideration as back as in the year 2010 before Hon'ble Division Bench of this court in CWJC No. 4839/2010

(Deepak Mukherjee Vs. State of Bihar and others) and CWJC No. 14831/2009 (Jawahar Lal Vs. State of Bihar and others) which were disposed of

on 19.04.2010 after taking note of the submission of the then learned Advocate General that the authorities of the State Government are deliberating

to adopt either the cold recycling method or the hot recycling method and on instruction, and in course of hearing of the said case the Engineer-in-

Chief of Road Construction Department and Chief Engineer of Urban Development Department submitted that they would see to it that the house

owners and inhabitants of the entire urban area of the State of Bihar are not affected because of construction of road.

Taking note of the submission the Hon'ble Division Bench passed the following orders : -

â??(i) The roads that have been constructed till today by raising the heights shall not be disturbed but appropriate method shall be adopted by taking

recourse to scientific and sophisticated device as a consequence of which the rain water does not enter into the houses of the house owners and

inhabitants of the area and no inconvenience is caused.

(ii) When we have said scientific and sophisticated method that would include adequate drainage system which would not cause any inconvenience by

introduction of such a system.

(iii) All the authorities, namely, Road Construction Department, Urban Development Department, Public Works Department and the Municipal

Corporation shall work in harmony and develop the pilot project by identifying such roads where either the Cold Recycling Method or Hot Recycling

Method are to be introduced to ensure that the height of the roads are not increased. The said exercise of identification for incorporation in the pilot

project in either of the modes shall be completed by 20th of June, 2010 positively.

(iv) Till new methods are taken recourse to for the purpose of construction of the road appropriate and adequate measures shall be taken by

constructing the roads in such a manner that the height of the roads are not increased ordinarily beyond the Plinth area and under no circumstances

cause any inconvenience to the inhabitants of the locality.

(v) Wherever the height of the road is increased as a result of which inhabitants are affected, they are at liberty to bring it to the notice of the

Collector-cum-District Magistrate of the District who shall look into the same in quite promptitude and take appropriate action by bringing it to the

notice of the experts.

(vi). The notice inviting tender for repair, maintenance and construction of work shall carry the stipulations which have been incorporated herein so

that the contractors who are assigned the work do not behave in their own manner creating inconvenience and disturb the life pattern of the citizens

by increasing the height of the roads.

(vii) Any contractor, who would deviate from the stipulations, shall be visited with the order of rescission of the contract and face such other penal

consequence which shall be provided in the contract.â??

The order-sheet shows that in the said case late Pradhan Jwala Prasad, a retired Chief Engineer had rendered assistance to the Honâ??ble Division

Bench.

After the order of the Honâ??ble Division Bench of this court in the light of the submissions of the department if the roads are not being constructed

abiding by the conditions mentioned therein, it may be a case of contempt simplicitor, however, learned counsel for the petitioner has informed this

court that a contempt is already pending, therefore, this court would not be going into that aspect of the matter.

Let the respondent nos. 5 & 6 look into the grievance of the petitioner, find out whether the notice inviting tender was issued in terms of the judgment

of the Honâ??ble Division Bench of this court and in case it has so been issued then whether the contractor has complied with the said condition. If

the condition so prescribed is not being complied with, the respondent nos. 5 & 6 shall take remedial measures to make the work compliant and in

consonance with the judgment of the Honâ??ble Division Bench. The Principal Secretary, Road Construction Department, Government of Bihar

(respondent no. 4) shall equally look into the matter to ensure compliance which will in fact be redressal of the grievance of the petitioner.

The writ application stands disposed of accordingly.