
(2011) 01 PAT CK 0165
In the Patna High Court
Case No : CWJC No. 1373 of 2009

Shyam Bihari Giri

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 10-01-2011

Acts Referred:

Bihar Panchayati Raj Act, 2006 — Section 73(17)(I)

Citation : (2012) 2 PLJR 97

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Judgement

Navin Sinha, J.—Heard learned counsel for the petitioner and learned counsel for the State. The petitioner seeks the relief for establishment of the Primary School at Vidhi Khap (Dinara South) Tola in lieu of Vidhi Khap (Bhagwanpur Tola). It is submitted that the petitioner donated his lands for the purposes duly approved by the State on 18.10.2007, whereafter the registered deed was executed on 29.10.2007 and mutation done in the name of the State. The Aam Sabha resolved upon the location of the primary school whereafter the lands were donated.

2. Learned counsel for the State submits from the counter affidavit that no new school has been established, but only the extension of the earlier school has been done. The present location of the school has been found convenient as per the report of the Block Education Extension Officer and the Junior Engineer, Bihar Education Project and the building completed.

3. The location of a school is primarily an executive act to be decided by the authorities concerned, who are best suited and equipped to do so. Therefore it has been held in 2001 (10) SCC 75 that the writ Court shall not interfere in such matter unless there be any allegations of statutory violations. Section 73(17)(I) of the Bihar Panchyati Raj Act vested the authority in the Zila Parishad for deciding the location for establishment of Primary and Secondary school. That the Aam Sabha may have resolved in favour of lands of the petitioner shall not

suffice in absence of the necessary resolution of the Zila Parishad. There is no such pleading by the petitioner. To that extent, the Court finds it difficult to grant any relief to the petitioner with regard to the establishment of the school.

4. If the present school has been established contrary to any resolution of the Zila Parishad or without any resolution of the Zila Parishad, the District Magistrate is directed to take appropriate action in accordance with law under the Panchayati Raj Act, 2006.

5. That brings to the fore the question of the lands donated by the petitioner and accepted by State Government for establishment of a school, contended to be unsuited in the counter affidavit. The State authority can not have their cake and eat it too. If there stand in the counter affidavit is that the lands are un-suited, the donation should not have been accepted in all fairness. The State official should have handed back the possession of the lands to the petitioner in accordance with law. Let the District Magistrate ensure compliance of this part of the order within a maximum period of one month from the date of receipt/production of a copy of this order before him. In the event that any constructions have been put by the respondent on the lands of the petitioner, the District Magistrate is required to have the same demolished and handover vacant possession to the petitioner. The application stands disposed.