

## Fekan Singh Vs State Of Bihar

**Court:** Patna High Court

**Date of Decision:** March 16, 2023

**Hon'ble Judges:** Partha Sarthy, J

**Bench:** Single Bench

**Advocate:** Vikash Kumar Pankaj, Mukul Prasad

**Final Decision:** Dismissed

### Judgement

Heard learned counsel for the parties.

The petitioner has filed the instant writ application for the following relief(s):-

“ (i) To issue Writ of Certiorari or any other appropriate Writ order to set aside the order contained in Memo No. 1867 dated 12.09.2022

(Annexure-6) passed Respondent No. 6 in Miscellaneous Case No. 22 / 2016 whereby he has directed to remove / demolish a certain section

of the only available road through which the entire village comprising more than 90 families, is connected with the main road or outer

world and therefore, the aforesaid road is the lifeline of the said village.

(ii) To issue consequential Writ of Mandamus or any other appropriate Writ order commanding Respondents particularly, Respondents No.

6 & 9 to immediately acquire the requisite land of Respondent No. 15 in-order to seamless functioning of the aforesaid road, as indicated in

the Order dated 26.02.2016 passed in CWJC No. 592 of 2016 (Annexure-1) filed by the Respondent No. 15.

(iii) To issue consequential Writ of Mandamus or any other appropriate Writ order commanding Respondents particularly, Respondents No.

6 to 15 to henceforth, restrain from damaging the aforesaid road.”

The case of the petitioner in brief is that since time immemorial the villagers of village Harichhapra, P.S. - Dumra, District “ Sitamarhi were using a

pavement sidewalk for their commutation to reach the main road.

All the raiyats of both the sides of the road including the respondent no. 15 agreed to donate their portion of land in order to construct a permanent

road 10-12 ft. wide for seamless communication for all including ambulance etc. Accordingly the road was constructed in the year 2015.

It is further case of the petitioner that the respondent no. 15 preferred C.W.J.C. no. 592 of 2016 in this Court which was disposed of by order dated

26.12.2016 (Annexure-1) in the following terms:-

“Having regards to the facts and circumstances of the case, the same is being disposed of with a liberty granted to the petitioner to

approach the respondent no. 2, the District Magistrate, Sitamarhi, by filing a representation along with copies of the documents in support

of his claim. In such case, let the District Magistrate, Madhubani examine it and take a decision in accordance with law as to whether the

land of the petitioner has been or is being utilized for construction of the road concerned or not. If it is found that the petitioner's land has

been or being utilized for construction of road without his consent then that should be stopped immediately. Construction made, if any,

should be removed forthwith so that the land could be brought to its original nature and form and possession should be delivered back to

the petitioner. If the land is required to be used as such in public interest then a decision would have to be taken to initiate a proceeding for

acquisition of the land in accordance with law. If claim of the petitioner does not find favour of the District Magistrate then a reasoned and

speaking order would be required to be passed and the same should immediately be communicated to the petitioner. It is expected that a

decision would be taken within the period of three months from the date of filing of representation along with a copy of this order by the

petitioner before the District Magistrate concerned.

In case the State authorities decide to acquire the land in accordance with law then they would require to take necessary steps and should

conclude the proceeding within a period of six months.”

It is submitted by learned counsel for the petitioner that pursuant to the order dated 26.2.2016 passed by this Court, the respondent no. 15 filed Misc.

Case before the learned Collector, Sitamarhi, which was registered as Misc. Case no. 22 of 2016 and has been disposed of by order impugned dated

12.9.2022 (Annexure-6). It is against this order dated 12.9.2022 that the instant application has been preferred for the reliefs prayed for hereinabove.

Learned counsel for the petitioner submits that the Rasta has been used by the general public since time immemorial which has also been admitted to

by the respondent no. 15 in his petition before the Collector which is at Annexure-3 to this petition. It is further submitted that if the road is removed

pursuant to the direction of the Collector, Sitamarhi as contained in order dated 12.9.2022, it will result in undue hardship to the local public who have

no other way to reach their village. It is thus submitted that instead of passing the said order, the Collector, Sitamarhi should have taken steps for

acquisition of the land.

The instant application is opposed by learned counsel appearing for the State who submits that there is no illegality in the order. There being no merit

in the instant application, the same be dismissed.

Having heard learned counsel for the parties and taking into consideration the averments made in writ application, it would transpire that on respondent

no. 15 approaching this Court on earlier occasion vide C.W.J.C. no. 592 of 2016, this Court in its order dated 26.2.2016 (Annexure-1) had clearly

observed that there is no dispute on the fact that land of a person cannot be utilised by the State Authority without its acquisition in accordance with

law unless consent of the land of the owner has been taken. This Court had also observed that if the land is required to be used in public interest then

a decision would have to be taken to initiate a proceeding for acquisition of the land in accordance with law. From the recital in the writ application

and from the contents of the order impugned dated 12.9.2022, it is not in dispute that neither the consent for construction of the road has been given by

the respondent no. 15, nor any proceeding for acquisition has been initiated for acquiring the land of the said respondent no. 15 nor any compensation

has been paid to him. The Collector, Sitamarhi has thus ordered that the Sub Divisional Officer, Sitamarhi Sadar and the Mukhia, Gram Panchayat Raj

Harichhapra will not proceed with any construction on the land of the respondent no. 15 and will ensure the removal of the road within a period of one

week. He further held that none of the authorities will proceed with any construction etc. on the said land without the consent of the land owner or

acquisition of the land in accordance with law.

The Court does not find any illegality in the order of the Collector, Sitamarhi dated 12.9.2022 passed in Misc. Case no. 22 of 2016 and no merit in the

instant writ application.

The application is dismissed.