

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12516 of 2022

Radha Raman Lal Son of Late Surya Narayan Lal, Resident of Village-Itharwa, P.O. Darima, Dist Madhubani, PIN 847112.

... .. Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Madhubani
2. Deputy Development Commissioner (DDC), Madhubani
3. Circle officer (C.O.) Block Bishfi, Madhubani.
4. Blok Development Officer, Block Bishfi, Madhubani.
5. LOk Shikayat Nivaran Padadhikari, Benipatti, Madhubani
6. Superintendent of Police (S.P.), Madhubani.
7. Mukihya, Dilip Kumar Safi, Panchayat Singhia Purvi, Block Bisfi, Madhubani, PIN 847112
8. Binay Kumar Jha Son of Late Kaladhar Jha Resident of Village Itharwa, P.O. Darima, Madhubani, PIN 847122
9. Yoganand Jha Son of Late Upendra Jha Resident of Village Itharwa, P.O. Darima, Madhubani, PIN 847122
10. Abhilashanand Jha Son of Late Kaladhar Jha Resident of Village Itharwa, P.O. Darima, Madhubani, PIN 847122

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Ms. Archana Sinha, Sr. Advocate Mr. Alok Shahi, Advocate Mr. Akshat Arghya, Advocate Ms. Swarna Roy, Advocate Mr. Sanjeev Kumar, Advocate
For the Respondent/s	:	Mr. Raj Kishore Roy (GP18)
For the Respondent No. 8	:	Mr. Baidyanath Thakur

CORAM: HONOURABLE MR. JUSTICE SOURENDRA PANDEY
CAV JUDGMENT

Date : 29-04-2026

Heard Ms. Archana Sinha, learned senior Advocate on behalf of the petitioner, Mr. Baidynath Thakur, learned counsel on behalf of Respondent No. 8 and the learned counsel for the State.

2. The present writ application has been preferred by the petitioner seeking following relief(s):



(i) For protecting the interest of the petitioner by directing the respondents to remove the illegal construction of road from the private/khatiyani land of the petitioner;

(ii) For directing the respondents to remove the illegal construction of the road which was constructed in connivance with the authorities without acquiring the land and also without taking consent from the petitioner;

(iii) For directing the respondents to take action against the encroachers/respondents as per law and;

(iv) For any other consequential relief or reliefs for which the petitioner is found entitled during the course of hearing of this writ petition.

3. The facts giving rise to the present writ application is to the effect that the petitioner is the owner of the land namely 8732 (old) 15521, 16335 (new) situated at Itharwa, Block Bisfi, Madhubani and is in possession of the same however the private respondent in connivance with Ward Commissioner/Zila Parshad has constructed a P.C.C. road on the Raiyati land of the petitioner without taking any consent/acquisition of land by the Government, which was exclusively for the personal use of the private respondent.

4. Ms. Archana Sinha, learned senior counsel for the petitioner, submits that the petitioner has acquired the land through *Bandobasti* and is paying rent to the government, which also finds mention in *Khatiyani*. (Annexure-1). It is submitted that upon several representations filed by the son of the petitioner before officer-in-charge, Bishfi P.S., before Lok Shikayat Nivaran



Padadhikari, Benipatti Sub-Division, Madhubani and also before *Janta Darbar* of Hon'ble the Chief Minister, who, thereafter, directed Circle Officer to send Government appointed Amin to measure the land, who submitted the report which was found in favour of the petitioner. It is next submitted that Deputy Development Commissioner (DDC), Madhubani directed the Circle Officer, Bishfi, Madhubani to provide possession of land to the petitioner, who did not take action for the same and upon inquiry stated that he is seeking legal opinion of ADC, Madhubani. It is further submitted that District Magistrate, Madhubani instructed the Circle Officer, Bishfi, Madhubani to comply with the same whereafter the said Circle Officer, Bishfi, Madhubani fixed specific date for the petitioner to be present at site, so that encroachment be removed and possession be given but the Circle Officer, Bishfi, Madhubani, himself, did not turn up.

5. It is next submitted that subsequently again Circle Officer, Bishfi, Madhubani failed to provide any information and allegedly the land was encroached by respondents for giving benefit to one person and more so, no objection signature has fraudulently been taken from Binay Kumar Jha (private respondent) and he has also presented false facts before SDM Court.



6. It is submitted through the rejoinder that the construction took place on 06/07.02.2021 and an application was submitted with wrong *Panchnama* on 29.10.2021. The *Panchnama* itself suffers from a number of infirmities which cannot be legally acceptable. It is submitted that the petitioner acquired the land legally and has been paying rent to the Government of Bihar. It is further submitted that no subsequent mention about use of land for transport was ever mentioned by respondents. The learned senior counsel submitted that since the land was not closed, the same was being used by people as a passage but that does not give right to the Mukhiya to use government funds to construct a concrete road over the same.

7. Ms. Archana Sinha, learned senior counsel thus has prayed that the illegal construction of P.C.C. road be demolished.

8. The learned G.P.-18 making submissions on behalf of Respondent No. 1 to 3 submitted that the present petition is barred by principle of estoppel, waiver and acquiescence. It is submitted that the land appertaining to Khata No. 801 is recorded as *Gairmajarua Khaas* under cadastral survey and is not a *raiyati* land as claimed by the petitioner and the land was being used as passage for time immemorial and thus no consent was required for construction of P.C.C. road. It is submitted that Binay kumar Jha



and Yoganand Jha filed an application before Circle Officer, Bishfi, Madhubani on 29.10.2021, wherein they have produced a copy of panchnama dated 08.01.1979 stating that petitioner has admitted the passage for ingress and outgress and allowed the land to be used as road.

9. It is next submitted that petitioner has never acquired land from an ex-landlord or from the State and rent receipt does not create or extinguish the title. It is also submitted that in C.S, Khatiyan land was entered as *Gairmajarua Khaas* while in revisional survey Records of Rights, land is mentioned as raiyati land and no NOC was obtained from Circle Officer, Bishfi, Madhubani hence direction was sought from Additional Collector for vacating the land in question. It is lastly submitted that upon question being posed on Circle Officer as to why the direction of Deputy Development Commissioner (DDC), Madhubani was not complied it has been stated that the same could not be done on account of non availability of police force. The State has relied on the panchnama dated 08.01.1979, whereby the petitioner has allowed passage and earlier Kharanja road was constructed and later P.C.C. road was constructed over the same.

10. Mr. Baidyanath Thakur, learned counsel representing Respondent No. 8 submits that the petitioner has tried to mislead



this court by stating that the passage was his personal land however the same was being used for more than 40 years as Rasta, which the petitioner has himself permitted to the father of the answering respondent. It has been submitted that with the efflux of time the said land being permitted to be used as Rasta (Passage) has created a right of easement and therefore the same cannot be disturbed only because a P.C.C. road has been constructed upon the same. He has emphatically asserted that once the petitioner has allowed the passage to be used for others the right of easement has accrued to the respondents and as there was a Khranja road existing on the said land the same has been converted into a concrete road and therefore there is no new change to the usage of the land and hence the writ petition is fit to be dismissed.

11. Having heard the learned counsels for the parties, two issues come out which need adjudication in the present writ application. One is as to whether government funds can be used to construct a P.C.C. Road over a Raiyati land? The other, whether a right of easement granted by the petitioner through a Panchnama can be withdrawn subsequently by getting the P.C.C. road demolished?

12. The land in question is a Raiyati land of the petitioner, has not been denied though the State has raised a vague



question as to how a Gair Majarua Khas entry was converted into a Raiyati land. The ownership and possession of the petitioner has not been denied and in fact the same is admitted, if the Panchnama is taken into consideration. The land being Raiyati Land and if there is no 'No Objection' from the petitioner granting permission to construct a Concrete road, government funds could not have been used for such construction. Such construction of road using raiyati lands of people are permissible only when the persons agree and willingly give their no objection for such construction. Hence, the construction of a road on such land is not permitted and has thus rightly been directed to be removed.

13. The other question with regard to the right of easement raised by the private respondent no. 8 on the basis of some Panchnama said to be executed way back in 1979 can be answered simply that the right of easement is enforceable and if the respondent no. 8 is aggrieved by any such action of the petitioner of denying him the right of passage as decided in the year 1979 then he can move a competent court of civil jurisdiction and claim his right. From the prayers made in this writ petition and also the pleadings this writ petition has not been filed to decide the rights of the parties and claim and counter claims with respect to the land in question and the same cannot also be decided in a writ



jurisdiction hence the arguments being raised by the learned counsel for the respondent no. 8 cannot be looked into in the present proceedings, which is not even dealing with the said issue.

14. The petitioner is only aggrieved by the fact of construction of a pacca (concrete) road constructed on his land by government funds and it is the said issue which needs to be adjudicated.

15. As already observed herein above, the construction of a Pacca road over the raiyati lands of the petitioner cannot be permitted, if the same has been done without any consent and willingness by the petitioner and the same needs to be demolished.

16. The District Magistrate, Madhubani is directed that he shall ensure that the concrete construction made on the land of the petitioner is demolished within a period of one month from the date of production/communication of this order. The state shall be at liberty to recover the amount used in such construction of road from the erring persons after fixing the liability.

17. The writ application is allowed.

(Sourendra Pandey, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	20.04.2026
Uploading Date	29.04.2026
Transmission Date	NA

