

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No. 546 of 2017**

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1. Brij Nandan @ Siya Ram Yadav Son of Late Pitambar Yadav,
  2. Bechan Singh @ Shaligram Singh, Son of Late Ram Kripal Singh,
- Both are residents of Village- Pakahi Police Station- Kusheshwar Asthan, District- Darbhanga.
- ... .. Petitioner/s
- Versus
1. The State Of Bihar through Principal Secretary, Department of Panchayati Raj, Government of Bihar, Patna.
  2. The Principal Secretary, Department of Panchayati Raj, Govt. of Bihar, Patna.
  3. The Divisional Commissioner, Darbhanga.
  4. The District Magistrate, Darbhanga.
  5. The District Panchayati Raj Officer, Darbhanga.
  6. The Sub Divisional Officer, Birol District- Darbhanga.
  7. The Circle Officer Kusheshwar Asthan, Police Station Kusheshwar Asthan, District- Darbhanga.
  8. The Block Development Officer, Kusheshwar Asthan Police Station Kusheshwar Asthan, District- Darbhanga
  9. The Mukhiya, Gram Panchayati Raj Pakahi Jhajhara Police Station Kusheshwar Asthan District Darbhanga
  10. The Panchayat Secretary, Gram Panchayat Raj Pakahi Jhajhara Police Station Kusheshwar Asthan District Darbhanga.
  11. The Engineer in Chief Department of Yojna and Development, Govt. of Bihar, Patna.
  12. The Executive Engineer, Local Area Engineering Organization, Work Division 2 Benipur, P.S.- Benipur, District-Darbhangha.
  13. Head Master Middle School Jhajhara Police Station Kusheshwar Asthan District Darbhanga.
  14. Sri Gauri Shankar Yadav, Son of Buchi Yadav, Resident of Village-



Pakahawa, Police Station- Kusheshwar Asthan District Darbhanga  
Sanwedak (Contractor) for Construction of Panchayat Sarkar Bhawan at  
Pakahi Jhajhara.

... .. Respondent/s

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**Appearance:**

For the Petitioner/s	:	Mr. Janardan Prasad Singh, Sr. Adv. Mr. Jagdish Prasad Singh, Adv.
For the State	:	Mr. Kameshwar Pd. Gupta, GP-10 Mr. Virendra Kuar, AC to GP-10
For the Respondent No. 9	:	Mr. Rantan Kumar, Adv.
For the Respondent No. 14	:	Mr. Abhay Shankar Singh, Adv. Mr. Barun Kumar Singh, Adv.

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**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**

**CAV JUDGMENT**

**Date: 07-04-2025**

The present writ petition has been filed for setting aside the decision of Aam Sabha dated 02.08.2016, issued under the signature of the Mukhiya of Gram Panchayat Raj Pakahi-Jhajhara, whereby and whereunder the land selected earlier for construction of Panchayat Sarkar Bhawan has been cancelled and a decision has been taken unanimously to construct Panchyat Sarkar Bhawan at land situated at Mauza-Jhajhara, P.S. No. 261, appertaining to Khata No. 2 (old), Khesra No. 885 (old), corresponding to Khata No. 346 (new), Khesra No. 1019 (new) [hereinafter referred to as “Mauza-Jhajhara, Plot No. 1019”], ad-measuring 1 acre. The petitioners have further prayed for setting aside the order dated 06.12.2016, issued by the District Magistrate, Darbhanga, whereby and whereunder he has given approval for construction of Panchayat Sarkar



Bhawan at land situated at Mauza-Jhajhara, Plot No. 1019, ad-measuring 1 acre, instead of the previous selected land situated at Mauza-Pakahi, appertaining to Khata No. 718, Khesra No. 1204 [hereinafter referred to as “Mauza- Pakahi, Plot No. 1204”]. Lastly, the petitioners have prayed for directing the Respondents to construct Panchayat Sarkar Bhawan at the land situated at Mauza-Pakahi, appertaining to Khata No. 718, Khesra No. 1204.

2. The brief facts of the case, according to the petitioners are that there are six panchayats in Cluster No. 51 including Pakahi Jhajhara Gram Panchayat. The then Mukhiya of Pakahi Jhajhara Panchayat, vide application dated 21.9.2012 had requested the concerned Circle Officer to grant approval for construction of Panchayat Sarkar Bhawan at the land situated at Mauza Pakahi, appertaining to Khata No. 718, Khesra No. 1204, ad-measuring 4 acres 37 decimals. Thereafter, the Anchal Amin had measured the land on 15.10.2012 and submitted a report along with the trace map as also had demarcated the land for construction of Panchayat Sarkar Bhawan. The Block Development Officer and Circle Officer had then inspected the land on 6.11.2012 and had submitted a report in the prescribed format. The Circle Officer, Kusheshwar Asthan i.e. the Respondent No. 7 had intimated the



factual aspect of the matter pertaining to construction of Panchayat Sarkar Bhawan to the District Panchayati Raj Officer, Darbhanga i.e. the Respondent No. 5, vide letter dt. 28.11.2012. The respondents had, after considering the entire facts and circumstances, accorded sanction for construction of Panchayat Sarkat Bhawan at Mauja-Pakahi and then the Executive Engineer, Department of Yojna and Development, Government of Bihar, had issued tender notice No. 2/14-15 for five works including construction of Panchayat Sarkar Bhawan at Pakahi at an estimated cost of Rs. 95,38,455/- and the time prescribed for completion of work was twelve months. Only one person, namely Gauri Shankar Yadav i.e. the Respondent No. 14 had submitted his bid, hence he was declared to be the successful bidder. Nonetheless, he delayed the construction of the aforesaid Panchayat Sarkar Bhawan since the Ex-Mukhiya and the persons having vested interest were trying to change the site of Panchayat Sarkar Bhawan.

3. The Respondent Engineer-in-Chief, Local Area Engineering Organization, Department of Yojna and Development, Government of Bihar, had then granted approval for awarding tender to Sri Gauri Shankar Yadav for construction of Panchayat Sarkar Bhawan at Kusheshwar Asthan, Pakahi-Jhajhara,



Darbhanga, vide letter dated 11.05.2016. However, in the meantime, the newly elected Mukhiya had issued a letter, containing the unanimous decision of the Aam Sabha dated 02.08.2016, whereby and whereunder the land selected earlier for construction of Panchayat Sarkar Bhawan was cancelled and a decision was taken to construct the same at the land situated at Mauza-Jhajhara, Plot No. 1019, ad-measuring 1 acre. At this juncture, it has been pointed out that the said Plot No. 1019 belongs to the Middle School, Jhajhara, nonetheless the Circle Officer had recommended the matter to the Sub-Divisional Officer, Biraul, who in turn vide letter dated 15.09.2016 had made recommendation for change of the site chosen earlier for construction of Panchayat Sarkar Bhawan to the Respondent No. 5, subject to the Education Department having no objection and it was stated therein that the Panchayat Sarkar Bhawan can be constructed at Plot No. 1019. The District Magistrate, Dharbhanga had then, vide order dated 06.12.2016 granted approval for construction of the Panchayat Sarkar Bhawan at the land situated at Mauza-Jhajhara, Plot No. 1019, ad-measuring 1 acre. The petitioners and others had then objected to the said decision dated 6.12.2016, taken by the District Magistrate, Darbhanga.



4. The learned Senior Counsel for the petitioners has submitted that the earlier land situated at Mauja-Pakahi, appertaining to Plot No. 1204, where Panchayat Sarkar Bhawan was originally slated to be constructed is a big area, which would suffice the space required for construction of Panchayat Sarkar Bhawan, whereas the new land appertaining to Plot No. 1019 is a small plot not suitable for construction of Panchayat Sarkar Bhawan and moreover, Plot No. 1019 is also situated near the tola of the schedule caste people apart from the fact that the same is much lower than the attached road, which would require filling of soil causing unnecessary expenditure. It is also submitted that it has been wrongly stated that the aforesaid Plot No. 1204 is having water logging problem whereas the fact is that the same is a normal land suitable for habitation. It is also submitted that the new land, appertaining to Plot No. 1019 belongs to a school and no permission has been taken from the Education Department, as such the action of the Respondents to construct Panchayat Sarkar Bhawan at Plot No. 1019 is illegal. It is also submitted that only after the State-Respondents had become fully satisfied that the earlier selected Plot No. 1204 is suitable for construction of Panchayat Sarkar Bhawan, approval was granted, estimate was prepared, tender was floated



and finally the tender was also awarded to the Respondent No. 14 for construction of Panchayat Sarkar Bhawan at Khesra No. 1204, nonetheless persons having vested interest have changed the site of Panchayat Sarkar Bhawan to another land appertaining to Plot No. 1019 illegally and with oblique motives. It is stated that if Panchayat Sarkar Bhawan is constructed at Plot No. 1019, which is the land of middle school Jhajhara and is a ditch type of land attached to the school, political activities taking place at the Panchayat Sarkar Bhawan would also adversely affect the students of the school and the educational fabric, hence construction of Panchayat Sarkar Bhawan near a school is not justified.

5. The learned senior counsel for the petitioners has also referred to a letter dated 23.01.2017, written by the Chief Engineer, Local Area Engineer Organization, Planning and Development Department, Government of Bihar, Patna to the Superintending Engineer, Local Area Engineering Organization, Work Circle, Darbhanga, instructing him to enquire into the allegation of change of site of Panchayat Sarkar Bhawan to be constructed at Plot No. 1204 and till he had directed to stop the construction work. It is also submitted that as per the guidelines, the Panchayat Sarkar Bhawan should be situated at the



headquarter village of the Gram Panchayat in question. It is stated that village Pakahi is headquarter of Pakahi Jhajhara Panchayat and about 70% voter of Pakahi Jhajhari Panchayat are from Pakahi village, which is having complete road connectivity. It is submitted that only after the aforesaid Plot No. 1204 was found suitable in all respect by the Circle Officer and the District Magistrate, Darbhanga, approval was granted for construction of Panchayat Sarkar Bhawan at the said plot No. 1204, situated at Mauza-Pakahi, however, after the new Mukhiya was selected, he has got the site changed to Plot No. 1019 with oblique motives. The learned Senior Counsel for the petitioners has next submitted that the Deputy Secretary, Department of Panchayati Raj, Government of Bihar, vide letter dated 27.2.2012, had directed the District Magistrates to furnish a certificate that the proposed land for construction of Panchayat Sarkar Bhawan is situated at Panchayat Headquarter, whereafter the Additional Collector, Darbhanga, vide letter dated 25.6.2012, had directed all the Circle Officers to send the requisite certificate, as aforesaid and in pursuance thereof, the Circle Officer, Kusheshwar Asthan, vide letter dated 4.10.2012, had informed the Additional Collector, Darbhanga that the proposed land for Panchayat Sarkar Bhawan bearing Khata No.



718, Khesra No. 1204, is situated at Panchayat Headquarter.

6. The learned Senior Counsel for the petitioners has next referred to the guidelines issued by the Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna, vide letter dated 21.08.2015 to all the District Magistrates of the State of Bihar pertaining to construction of Panchayat Sarkar Bhawan, to submit that the same categorically postulates that Panchayat Sarkar Bhawan has to be invariably constructed at the headquarter village of the Gram Panchayat in question as per the decision of the Cabinet of the State of Bihar and any decision to construct Panchayat Sarkar Bhawan contrary to the same is illegal and cannot be validated. In fact, by the said letter dated 21.08.2015, all the District Magistrates of the State of Bihar were directed to review the status of all the Panchayat Sarkar Bhawans, which are being constructed and get reassured that the Panchayat Sarkar Bhawans are being constructed and have been constructed at the headquarter village of the concerned Gram Panchayat. In the said letter dated 21.08.2015, it has also been stated that where Panchayat Sarkar Bhawans are being constructed in some other village other than the headquarter village, contrary to the Government orders, the construction work should be suspended immediately and a



report should be sent to the Panchayati Raj Department as to how such construction is being done.

7. The learned Senior Counsel for the petitioners, by referring to the aforesaid guidelines contained in letter dated 21.08.2015, has submitted that the Respondent-District Magistrate, Darbhanga has acted contrary to the said guidelines and though village Pakahi is the headquarters of Gram Panchayat Raj Pakahi-Jhajhara, where land was originally selected for construction of the Panchayat Sarkar Bhawan, nonetheless he has illegally accorded approval to change of site for construction of the Panchayat Sarkar Bhawan, to a land situated at Mauza-Jhajhara, appertaining to Plot No. 1019 and the work of construction of the said Panchayat Sarkar Bhawan is going on illegally. In fact, the Respondent Engineer-in-Chief had, vide letter dated 3.3.2017 intimated the Superintending Engineer, Local Area Engineering Organization, Work Circle Darbhanga about illegal construction of Panchayat Sakar Bhawan at Jhajhara in place of Pakahi, however, to no avail. Thus, it is the submission of the learned Senior counsel for the petitioners that the entire action of the State Respondents in changing the site for construction of Panchayat Sarkar Bhawan from Mauza-Pakahi to Mauza-Jhajhara is illegal and contrary to the aforesaid



guidelines, contained in letter dated 21.8.2015, issued by the Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna, hence, the decision of the Aam Sabha dated 02.08.2016 as also the order dated 06.12.2016, passed by the District Magistrate, Darbhanga, are fit to be set aside.

8. At the outset, the learned counsel for the Respondents-State has raised the issue of maintainability of the present writ petition, inasmuch as neither the petitioners have any locus nor any of their legal right has been infringed, thus it is submitted that on this ground alone, the present writ petition is fit to be dismissed.

9. The learned counsel appearing for the Respondent-State has submitted, by referring to the counter affidavit filed in the present case that the Mukhiyas of different village Panchayats of Kusheshwar Asthan Block filed objection petitions before the Circle Officer, Kusheshwar Asthan and the District Panchayat Raj Officer, Darbhanga in connection with the site selected earlier for construction of Panchayat Sarkar Bhawan of Gram Panchayat Raj, Pakahi-Jhajhara under Block Kusheshwar Asthan in the district of Darbhanga, stating therein that the land situated at Mauza-Pakahi Plot No. 1204 is not suitable for construction of Panchayat Sarkar Bhawan since the same is a low land, there is



water logging problem and there is communication problem. Thereafter, the District Panchayat Raj Officer, Darbhanga, vide letter dated 30.5.2015, had asked the Circle Officer, Kusheshwar Asthan to make an enquiry, whereafter the Circle Officer, Kusheshwar Asthan, had submitted his enquiry report, vide letter dated 22.6.2015, stating therein that it has been pointed out by the Mukhiyas of Panchayat Chigri, Simraha, Harauli and Gothani that the selected land is not suitable inasmuch as the same is part of a river where water logging is prevalent for several days, hence the Mukhiyas of Gram Panchayat Chigri, Simraha and other villages have suggested an alternative land for construction of Panchayat Sarkar Bhawan i.e. the land situated at Mauza-Jhajhara, Thana No. 261, Plot No. 1019 and the principal of the school in question as also the Chairman, Secretary and five members of the School Management Committee have given their no objection for construction of Panchayat Sarkar Bhawan at the said land.

10. It is further submitted by the learned counsel for the Respondent-State that thereafter, another representation annexing the proceedings of the Aam Sabha dated 02.08.2016 was filed before the Respondent Sub-Divisional Officer, Biraul, stating therein that the place selected earlier for construction of



Panchayat Sarkar Bhawan has been cancelled by the decision taken in the Aam Sabha held on 02.08.2016 and a new site, which is more suitable, has been selected at Mauza-Jhajhara, Plot No. 1019. Thereafter, the Sub-Divisional Officer, Biraul, vide letter dated 27.08.2016, asked the Circle Officer, Kusheshwar Asthan to enquire into the matter and submit his report, which was submitted by the said Circle Officer on 07.09.2016, wherein it has been stated that the earlier land selected for construction of Panchayat Sarkar Bhawan i.e. the one situated at Mauza-Pakahi, Plot No. 1204 is an Anabad Bihar Sarkar Land, Type-Bandh where 20-25 families of Dalit community are residing as also the said land is far away from the main road. It has also been stated in the said report that on account of protest by the people of Dalit community, the present Mukhiya of Gram Panchayat Raj Pakahi-Jhajhara had organized an Aam Sabha on 02.08.2016, wherein proposal was passed regarding cancellation of the earlier selected land and new land, situated at Mauza-Jhajhara, Plot No. 1019, ad-measuring 1 acre, was selected for construction of Panchayat Sarkar Bhawan, which at the moment is recorded in the survey khatiyani in the name of Education Department, Bihar Sarkar, Purushotam Middle School, Jhajhara and its type has been mentioned as



Ghanhar-II apart from the said land being adjacent to road and being suitable for construction of Panchayat Sarkar Bhawan. It is further submitted that the land selected earlier, i.e the one situated at Mauza- Pakahi, Plot No. 1204 is recorded in the revisional survey khatiyani as Kisma-Bandh, which is far away from the main road. The learned Counsel for the Respondent-State has next submitted that the said Plot No. 1204 is in the occupation of Dalit community, who are also objecting to their removal, hence the said place is not suitable for construction of Panchayat Sarkar Bhawan. Thus, for the aforesaid reasons, the earlier selected site has been cancelled.

11. It is also submitted by the learned counsel for the Respondent-State that the new proposed site is adjacent to the main Road No. 81, which passes through Satighat to Jhajhara and is comparatively a much better site than the earlier selected place, for which recommendation has been submitted by the Sub-Divisional Officer, Biraul, Darbhanga, vide letter dated 15.09.2016, to construct the Panchayat Sarkar Bhawan at the new proposed Plot No. 1019. Even the District Magistrate, Darbhanga, vide letter dated 06.12.2016, has approved the construction of Panchayat Sarkar Bhawan of village Panchayat Pakahi-Jhajhara at the new site, whereafter substantial



construction work has also been completed. Thus, in nutshell it is submitted that the report submitted by the Circle Officer, Kusheshwar Asthan and the Sub-Divisional Officer, Biraul, vide letters dated 07.09.2016 and 15.09.2016 respectively, would show that the earlier selected place is not proper and out of reach of the common people as also is contrary to the aims and objects of the Government directions / guidelines. Thus, it is submitted that the present writ petition is fit to be dismissed.

12. This Court finds that a counter affidavit has been filed by the Mukhiya of the Gram Panchayat Pakahi-Jhajhara, elected in the year June 2016, who is successor of the Ex-Mukhiya Rajeev Singh, wherein it has been stated that the present writ petition is not maintainable at the instance of the writ petitioners, who are petty contractor and land brokers and have been set up by the Ex-Mukhiya, Rajeev Singh of village Pakahi to engage in proxy litigation with a view to deprive the residents of the benefit of Panchyat Sarkar Bhawan. It is also submitted that Gram Panchayat Pakahi-Jhajhara comprises of six villages, namely Jhajhara, Pakahi, Morkahi, Bahorba, Dubha and Kubotan, however, there is no Gram Panchayat Bhawan / Panchayat Sarkar Bhawan in the said Gram Panchayat. It is also stated that Panchayat Sarkar Bhawan has been proposed for a cluster of



seven Gram Panchayats, namely, Pakahi Jhajhara, Chigari Simraha, Bargaon, Gothani, Dinmo, Barna and Harauli, hence, the proposed Panchayat Sarkar Bhawan is not only for Gram Panchayat Pakahi-Jhajhara but is also meant for the said seven Gram Panchayats. It is averred that though the guidelines provide for construction of Gram Panchayat Sarkar Bhawan at the Gram Panchayat headquarter of any of the concerned Gram Panchayat where suitable land is available, however as far as Pakahi-Jhajhara Gram Panchayat is concerned, Mauza-Pakahi is not the headquarter of the said Gram Panchayat.

13. In fact, the Ex-Mukhiya Sri Rajeev Singh on his own, without the decision of the Aam Sabh of the Gram Panchayat and without the consent of the other six Gram Panchayats had proposed for construction of Panchayat Sarkar Bhawan at the land situated at Mauza Pakahi, Plot No. 1204, recorded in the name of Anabad Bihar Sarkar, Gair Majarua Khas, nature-bandh. Admittedly, the said land is engulfed with the problem of water logging, hence the said land is not suitable. Nonetheless, the Ex-Mukhiya got the proposal of construction of Panchayat Sarkar Bhawan at Plot No. 1204, Mauza-Pakahi approved, illegally by misleading the authorities. More than 25 families belonging to Dalit and Maha Dalit communities are settled over



the said land since more than 25-30 years and parcha of settlement have also been issued to some of them, who upon coming to know about the proposal of construction of Panchayat Sarkar Bhawan over the said land, had submitted representation on 22.1.2015 before the Collector, Darbhanga. Even the Mukhiya of Gram Panchayat Raj Chigari Simraha, Gothani, Barana Dinmo and Harauli had objected to the construction of Panchayat Sarkar Bhawan at village Pakahi, vide representation dt. 15.06.2015.

14. Accordingly, the said Mukhiya had also submitted a representation before the Divisional Commissioner, Darbhanga, on 13.7.2015, apart from submitting representation before the Sub-Divisional Officer, Biraul on 27.8.2016, who had called for a report from the Circle Officer, Kusheshwar Asthan, vide letter dated 27.8.2016, whereafter the Circle Officer, Kusheshwar Asthan had got the matter enquired and submitted his report to the Sub-Divisional Officer, Biraul on 07.09.2016, as has already been discussed herein above in the preceding paragraphs. In the meantime, Aam Sabha was held on 02.08.2016 and resolution was passed to the effect that Panchayat Sarkar Bhawan should be constructed at Plot No. 1019, situated at village Jhajhara. Not only the Mukhiyas of the rest of the Gram Panchayats but also



the school in question has given no objection. Thereafter, the Sub-Divisional Officer, Biraul submitted his report to the District Magistrate, vide letter dated 15.09.2016, recommending for allowing construction of Panchayat Sarkar Bhawan at Plot No. 1019, situated at village Jhajhara, leading to approval of the said proposal by the District Magistrate, Darbhanga, vide order dated 06.12.2016. Lastly, it is submitted that 80% of the work of Panchayat Sarkar Bhawan has been completed, inasmuch as the ground floor is entirely complete as also the first floor of the Panchyat Sarkar Bhawan upto the roof level has stood completed, hence grave prejudice would be caused apart from loss being caused to the exchequer of the State Government, in case construction of the said Panchayat Sarkar Bhawan is shelved.

15. As far as the Respondent No. 12 i.e. the Executive Engineer, Local Area Engineering Organization, Government of Bihar is concerned, a counter affidavit has been filed on his behalf wherein it has been stated that the site for construction of Panchayat Sarkar Bhawan has been changed by the Aam Sabha, which has been duly approved by the competent authority, considering the fact that at the earlier selected site, 20-25 Mahadalit families are residing, who would have to be uprooted



as also the nature of land is Bandh, which remains water logged and is also far away from the road, thus a new site was selected by the Aam Sabha, which is situated adjacent to the main road No. 81 and is surrounded by post office, health center, high school, raised platform and market.

16. The learned counsel for the private Respondent No. 14 has submitted, by referring to the counter affidavit filed in the present case that the Respondent No. 14 is not concerned with the allegations and counter allegations being made in between the petitioners and the newly elected Mukhiya or for that matter with the decision of the Aam Sabha of the Gram Panchayat and he is the contractor who has been awarded the project of construction of Panchayat Sarkar Bhawan, which was being constructed by him at the selected site, situated at Mauza-Jhajhara, Plot No. 1019, as per the approval granted by the District Magistrate, Darbhanga, vide order dated 06.12.2016. It is submitted that the work for construction of the aforesaid Panchayat Sarkar Bhawan was allotted to the Respondent No. 14, vide letter dated 16.7.2016, issued by the Superintending Engineer, Local Area Engineering Organization, Benipur, Darbhanga and he was asked to complete the work within one year of the date of starting the work, vide letter dated



14.12.2016, issued by the Executive Engineer, LAEO, Work Division-II, Benipur, Darbhanga. It is next submitted that the Respondent No. 14 has already completed the structure of ground floor of the said Panchayat Sarkar Bhawan as also the brick work of first floor up to the lintel level has also been completed, however thereafter work has been stopped on account of the interim order passed by this Court. It has also been stated that though the Respondent No. 14 has already completed more than 60-65% of the contract work but has received payment of only Rs. 37,07,407/-, which is merely 40% of the work done by the Respondent No. 14. It is thus submitted that huge public money will be wasted if the work is delayed or the construction site is changed at such a belated stage and moreover, completion of the construction work of the said Panchayat Sarkar Bhawan is in the interest of all concerned. It is contended that the present writ petition is not maintainable in the present form as it is not a public interest litigation and moreover, no personal injury has been caused to the writ petitioners, thus they do not have any locus standi to file the present case.

17. At this juncture, the learned counsel appearing for the present Mukhiya of Gram Panchayat Raj Pakahi-Jhajhara,



elected in the year, 2021 has referred to the counter affidavit filed in the present case and has reiterated the averments made by the petitioners in the writ petition and supplementary affidavits filed in the present case. It has been further stated that the construction of Panchayat Sarkar Bhawan at Mauza-Pakahi was sanctioned by the then District Magistrate, Darbhanga, vide memo dated 22.2.2013, however by the time, the construction work could start, the newly elected Mukhiya, in collusion with the officials, got the site changed from Mauza-Pakahi to Mauza-Jhajhara, which has now been approved illegally by an order dated 06.12.2016, issued by the District Magistrate, Darbhanga.

18. I have heard the learned counsel for the parties and gone through the voluminous pleadings made by the parties in the present case. At the outset, it would be relevant to consider the issue of maintainability of the present writ petition in view of the preliminary objection raised by the Respondents, as aforesaid to the effect that since no personal injury has been caused to the writ petitioners, they do not have any locus to file the present writ petition. This Court finds that it is a well-settled law that a person who raises a grievance, must show as to how he has suffered legal injury and in absence thereof, a stranger having no right whatsoever cannot be permitted to invoke the



writ jurisdiction of the High Court under Article 226 of the Constitution of India. A legal right means an entitlement arising out of legal rules meaning thereby that it can be said to be an advantage or a benefit conferred upon a person by the rule of law. Thus, existence of legal right of a person, who complains of infraction of such right is the foundation for exercise of jurisdiction by the High Court under Article 226 of the Constitution of India. It is equally a well-settled law that a person shall have no locus standi to file a writ petition if he is not personally affected by the impugned order or his fundamental rights have neither been directly or substantially embodied nor is there any eminent danger of such rights being embodied. Thus, the relief under Article 226 of the Constitution of India is based on the existence of a right in favor of person invoking the jurisdiction and the exception to the general rule is only in cases where the writ applied for is a writ of habeas corpus or quo warranto or filed in public interest, which is not the case herein. In this regard, it would be apt to refer to a judgment, rendered by the Hon'ble Apex Court in the case of *Ayaaubkhan @ Noorkhan Pathan vs. State of Maharashtra & Others*, reported in (2013) 4 SCC 465, paragraphs no. 9 to 17 whereof are reproduced herein below:-



*“9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the authority/court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order, etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. [Vide State of Orissa v. Madan Gopal Rungta [1951 SCC 1024], Saghir Ahmad v. State of U.P. [AIR 1954 SC 728], Calcutta Gas Co. (Proprietary) Ltd. v. State of W.B. [AIR 1962 SC 1044], Rajendra Singh v.*



*State of M.P. [(1996) 5 SCC 460] and Tamilnad Mercantile Bank Shareholders Welfare Assn. (2) v. S.C. Sekar [(2009) 2 SCC 784] .*

*10. A “legal right”, means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, “person aggrieved” does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardised. (Vide Shanti Kumar R. Canji v. Home Insurance Co. of New York [(1974) 2 SCC 387] and State of Rajasthan v. Union of India [(1977) 3 SCC 592].*

*11. In Anand Sharadchandra Oka v. University of Mumbai [(2008) 5 SCC 217], a similar view was taken by this Court, observing that, if a person claiming relief is not eligible as per requirement, then he cannot be said to be a person aggrieved regarding the election or the selection of other persons.*

*12. In A. Subash Babu v. State of A.P. [(2011) 7 SCC 616], this Court held: (SCC pp. 628-29, para 25)*

*“25. ... The expression ‘aggrieved person’ denotes an elastic and an elusive concept. It cannot be confined within the bounds of a rigid, exact and comprehensive definition. Its scope and meaning depends on diverse, variable factors such as the content and intent of the statute of which the contravention is alleged, the specific circumstances of the case, the nature and extent of the complainant's interest and the nature*



*and the extent of the prejudice or injury suffered by the complainant.”*

*13. This Court, even as regards the filing of a habeas corpus petition, has explained that the expression “next friend” means a person who is not a total stranger. Such a petition cannot be filed by one who is a complete stranger to the person who is in alleged illegal custody. [Vide Charanjit Lal Chowdhury v. Union of India [1950 SCC 833 : AIR 1951 SC 41], Sunil Batra (2) v. Delhi Admn. [(1980) 3 SCC 488], Nilima Priyadarshini v. State of Bihar [1987 Supp SCC 732], Simranjit Singh Mann v. Union of India [(1992) 4 SCC 653], Karamjeet Singh v. Union of India [(1992) 4 SCC 666] and Kishore Samrite v. State of U.P. [(2013) 2 SCC 398]*

*14. This Court has consistently cautioned the courts against entertaining public interest litigation filed by unscrupulous persons, as such meddlers do not hesitate to abuse the process of court. The right of effective access to justice, which has emerged with the new social rights regime, must be used to serve basic human rights, which purport to guarantee legal rights and, therefore, a workable remedy within the framework of the judicial system must be provided. Whenever any public interest is invoked, the court must examine the case to ensure that there is in fact, genuine public interest involved. The court must maintain strict vigilance to ensure that there is no abuse of the process of court and that, “ordinarily meddlesome bystanders are not granted a visa”. Many societal pollutants create new problems of non-redressed*



*grievances, and the court should make an earnest endeavour to take up those cases, where the subjective purpose of the lis justifies the need for it. (Vide P.S.R. Sadhanantham v. Arunachalam [(1980) 3 SCC 141], Dalip Singh v. State of U.P. [(2010) 2 SCC 114], State of Uttaranchal v. Balwant Singh Chauhal [(2010) 3 SCC 402] & Amar Singh v. Union of India [(2011) 7 SCC 69].*

*15. Even as regards the filing of a public interest litigation, this Court has consistently held that such a course of action is not permissible so far as service matters are concerned. (Vide Duryodhan Sahu v. Jitendra Kumar Mishra [(1998) 7 SCC 273], Dattaraj Nathuji Thaware v. State of Maharashtra [(2005) 1 SCC 590] and Neetu v. State of Punjab [(2007) 10 SCC 614].*

*16. In Ghulam Qadir v. Special Tribunal [(2002) 1 SCC 33], this Court considered a similar issue and observed as under: (SCC p. 54, para 38)*

*“38. There is no dispute regarding the legal proposition that the rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person except in the case where the writ prayed for is for habeas corpus or quo warranto. Another exception in the general rule is the filing of a writ petition in public interest. The existence of the legal right of the petitioner which is alleged to have been violated is the foundation for invoking the jurisdiction of the High Court under the aforesaid article. The orthodox rule of interpretation regarding the locus standi of a person to reach the court has*



*undergone a sea change with the development of constitutional law in our country and the constitutional courts have been adopting a liberal approach in dealing with the cases or dislodging the claim of a litigant merely on hypertechnical grounds. ... In other words, if the person is found to be not merely a stranger having no right whatsoever to any post or property, he cannot be non-suited on the ground of his not having the locus standi.”*

*17. In view of the above, the law on the said point can be summarised to the effect that a person who raises a grievance, must show how he has suffered legal injury. Generally, a stranger having no right whatsoever to any post or property, cannot be permitted to intervene in the affairs of others.”*

19. It would also be gainful to refer to yet another judgment, rendered by the Hon’ble Apex Court in the case of ***Vinoy Kumar vs. The State of U.P. & Others***, reported in ***(2001) 4 SCC 734***, paragraph No. 2 whereof is reproduced herein below:-

*“2. Generally speaking, a person shall have no locus standi to file a writ petition if he is not personally affected by the impugned order or his fundamental rights have neither been directly or substantially invaded nor is there any imminent danger of such rights being invaded or his acquired interests have been violated ignoring the applicable rules. The relief under Article 226 of the Constitution is based on the existence of a right in favour*



*of the person invoking the jurisdiction. The exception to the general rule is only in cases where the writ applied for is a writ of habeas corpus or quo warranto or filed in public interest. It is a matter of prudence, that the court confines the exercise of writ jurisdiction to cases where legal wrong or legal injuries are caused to a particular person or his fundamental rights are violated, and not to entertain cases of individual wrong or injury at the instance of third party where there is an effective legal aid organisation which can take care of such cases. Even in cases filed in public interest, the court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal burden is threatened and such person or determined class of persons is, by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the court for relief.”*

20. Having regard to the law laid down by the Hon'ble Apex Court in the cases of **Ayaaubkhan @ Noorkhan Pathan** (supra) and **Vinoy Kumar** (supra), apart from the fact that the petitioners have nowhere in the writ petition made any statement as to how they have been personally effected by the impugned order dated 6.12.2016 or as to what personal/legal injury has been caused to them and moreover, there is complete absence of any pleading in the writ petition with regard to existence of any legal right, which has been violated, this Court



finds that the present writ petition is not maintainable at the behest of the writ petitioners, hence, is liable to be dismissed on this ground alone.

21. Now coming to the merits of the case, this Court finds that the earlier Mukhiya had recommended for construction of Panchayat Sarkar Bhawan at a land situated at Mauza- Pakahi, Plot No. 1204, which was though approved, however the tender could only be awarded to the Respondent No. 14 by the Chief Engineer on 11.05.2016, nonetheless in the meantime time, i.e in the month of June, 2016 new Mukhiya of Gram Panchayat Raj Pakahi-Jhajhara was elected. It is apparent from the submissions made by the learned counsel for the Respondent-State as also from the counter affidavit filed by the Mukhiya, who had occupied the office of Mukhiya of Gram Panchayat Raj Pakahi-Jhajhara in the month of June, 2016 that the earlier land selected for construction of Panchayat Sarkar Bhawan at Mauza-Pakahi is Anabad Bihar Sarkar land, type (kism)-Bandh, which is a way/part of a river and remains water logged for most part of the year as also is situated far away from the main road, apart from more than 20-25 Dalit families residing over the said land since a long time. In such view of the matter, the new Mukhiya had objected to construction of Panchayat Sarkar



Bhawan at village Pakahi. The Gram Panchayat Raj Pakahi Jhajhara is a cluster of six villages, namely Jhajhara, Pakahi, Morkahi, Bahorba, Dubha and Kubotan. In fact, the Mukhiya of all the said villages had objected to construction of Panchayat Sarkar Bhawan at Mauza-Pakahi by filing their objections on 15.6.2015, whereafter the then Mukhiya of Gram Panchayat Raj Pakahi-Jhajhara had also filed his separate objection on 13.07.2015, before the Divisional Commissioner as also before the Circle Officer and the Sub-Divisional Officer, Biraul, whereafter the Sub-Divisional Officer, Biraul, vide letter dated 27.08.2016 had called for a report from the Circle Officer, Kusheshwar Asthan, who had in turn submitted his enquiry report dated 07.09.2016, finding the land situated at Mauza-Pakahi, Plot No. 1204 to be Anabad Bihar Sarkar, Type-Bandh, which remains water logged for considerable time, is situated away from the main road and 20-25 Dalit families are residing there whereas he had found the new proposed land situated at Mauza-Jhajhara, Plot No. 1019 to be more suitable, being near the road.

22. In the meantime, the Aam Sabha of Gram Panchayat Raj Pakahi-Jhajhara was held on 02.08.2016 and a unanimous resolution was passed to cancel the earlier land selected for



construction of Panchayat Sarkar Bhawan, situated at Mauza-Pakahi, Plot No. 1204 and instead it was decided to construct Panchayat Sarkar Bhawan at Mauza-Jhajhara, appertaining to Plot No. 1019 (new). Thereafter, the Sub-Divisional Officer, Biraul had submitted his detailed report dated 15.09.2016 before the District Magistrate, Darbhanga and the Respondent No. 5, stating therein that the earlier land selected for construction of Panchayat Sarkar Bhawan at Mauza-Pakahi is Anabad Bihar Sarkar land, Type-Bandh where 20-25 Dalit / Mahadalit families are residing by constructing their houses and the said land is far away from the main road as also the Dalit families have raised objections, leading to passing of a unanimous resolution by the Aam Sabha of the Gram Panchayat Raj Pakahi-Jhajhara whereby and whereunder, the land selected earlier, i.e the one situated at Mauza-Pakahi has been cancelled and instead a decision has been taken to construct Panchayat Sarkar Bhawan at the land situated at Mauza-Jhajhara, Plot No. 1019 (new), which belongs to the Education Department, more particularly to the State Government's Purushottam Middle School Jhajhara and is more suitable for construction of Panchayat Sarkar Bhawan. The District Magistrate had then considered the aforesaid facts and approved the proposal of the



Aam Sabha for construction of Panchayat Sarkar Bhawan at Mauza-Jhajhara, Plot No. 1019 (new) by the impugned order dated 06.12.2016. Thus, this Court finds that there is no ambiguity much less illegality in the decision / order of the District Magistrate, Darbhanga dated 06.12.2016, especially in view of the submission of the learned counsel for the Respondents-State to the effect that the land situated at village-Jhajhara, appertaining to Plot No. 1019 (new), is a more suitable land, is free from any encumbrance, is not having any water logging problem, is adjacent to the main road No. 81 and moreover, post-office, health center, high school, raised platform and market are situated nearby, apart from the fact that there is a serious dispute as to whether village / Mauza-Pakahi is the village headquarter of Gram Panchayat Raj Pakahi-Jhajhara, hence, there is no violation of the guidelines, issued by the Panchayati Raj Department, Government of Bihar, Patna. Thus, this Court does not find any ambiguity in the decision of the District Magistrate, Darbhanga, dated 06.12.2016 whereby he has granted approval for construction of Panchayat Sarkar Bhawan at Mauza Jhajhara, appertaining to Plot No. 1019, ad-measuring 1 acre, hence, even on merits, the writ petitioners do not have any case.



23. Yet another aspect of the matter is that it has been pleaded in paragraph No. 23 of the counter affidavit filed by the Mukhiya, who had been elected in the month of June, 2016, at running page No. 133 of the brief, that 80% work of the Panchayat Sarkar Bhawan being constructed at Mauza-Jhajhara, Plot No. 1019, has been completed inasmuch as the entire ground floor is complete and the first floor thereof has also been completed up to the roof level, whereafter work has been stopped because of the interim order of this Court. However, though the writ petitioners have filed rejoinder to the said counter affidavit, but paragraph No. 18 of the rejoinder affidavit, at running page no. 168 of the brief, would show that the said fact has not been denied. In fact, even the Respondent No. 14 in his counter affidavit has stated that 60-65% of the contract work is complete, the entire structure of ground floor is complete and the brick work of the first floor upto the lintel level has also been completed but thereafter, the work has been stopped because of the interim order of this Court and that he has been paid only a sum of Rs. 37,07,407/-, which is merely 40% amount of the contract work already carried out by him. Thus, this Court finds that huge sums of money has already been invested and the construction work of Panchayat Sarkar Bhawan



in question is at an advanced stage, hence stalling the same at this juncture would not only cause further delay in construction of the Panchayat Sarkar Bhawan but will also result in huge cost escalation of the project apart from wastage of huge sums of public money and loss to the State exchequer, thus it would be injudicious and improper to shelve the project. In a judgment dt. 26.6.2015, passed in CWJC No. 9939 of 2012 (*Ashok Kumar vs. The State of Bihar & Ors.*), reported in *2015(3) PLJR 265*, though the learned Division Bench of this Court arrived at a finding that construction of the museum in question at Patna is not at all in public interest, nonetheless considering the fact that the construction was stated to be near completion, it refrained from stalling the project in question. In this regard, it would be relevant to reproduce paragraph nos. 24 to 29 herein below:-

*“24. It is a matter of common knowledge that even the projects like National Highways are being entrusted to private agencies on build, operate and transfer or other similar arrangements, wherein the private agencies are required to spend the amount and then recover the same by operating the facility. The objective is to ensure that the limited resources of the State are made available for other important purposes to benefit the people, particularly, the poor. Similar practices are adopted for other important projects meant for public benefit. The construction of a museum by spending such huge amount*



*that too when such facilities are already existing, cannot said to be a matter of immediate necessity or public concern. Even from what is spelt out in the counter affidavit, the objective of constructing a museum is to attract foreign visitors and tourists. This, at a time when the basic facilities such as roads, sanitation, schools, hospitals in the State of Bihar, are in miserable condition and generating frustration and pity, if not anger. The amount of 500 crores, if utilized properly could have provided permanent shelters for lakhs of people or Medical & Educational services to the people of the State.*

*25. Even if the State wanted such a facility to come up, it could have entrusted the same to an intending agency that can finance the project and recover the amount from the generated revenue. However, it thought it fit to allocate 17 acres of prime land between the Secretariat and the Patna High Court by forcibly evicting several Government establishments and spending Rs. 500 crores public money. Lack of transparency in the award of contract is already demonstrated, from what is stated in the counter affidavit itself. The existing century old museum was treated as almost useless just because it is not new or attractive. The decision makers were attracted mostly by modernity of the building of the museum than what is available to be preserved and displayed in it. Even as a commercial venture, the project would be an utter failure.*

*26. It is a matter of common knowledge that the airport at*



*Patna is in primitive condition. There is no hope that it would be developed in the near future, because the State is not prepared to provide land. In contrast, the Airport in Ranchi, the capital of Jharkhand, carved out of Bihar recently, recorded phenomenal development. The roads to the monuments and museums situated in various parts of the State are only to be experienced. The planners also lost sight of the fact that a monument becomes attractive mostly on account of location, representing the history of that place and when shifted to a fabulous building; it becomes just a show piece bereft of any historical importance.*

*27. On behalf of the State, reliance is placed upon several judgments of the Supreme Court such as Narmada Bachao Andolan v. Union of India [(2000) 10 SCC 664]; Balco Employees' Union (Regd) v. Union of India [(2002) 2 SCC 333]; Guruvayoor Devaswom Managing Committee v. C.K. Rajan [(2003) 7 SCC 546]; State of Madhya Pradesh v. Narmada Bachao Andolan [(2011) 7 SCC 639]; S. Subramaniam Balaji v. State of Tamil Nadu [(2013) 9 SCC 659]; Jal Mahal Resorts P. Ltd. v. K.P. Sharma [(2014) 8 SCC 804]; State of Karnataka v. Arun Kumar Agarwal [(2000) 1 SCC 210]; Secretary, Minor Irrigation & Rural Engineering Services, U.P. v. Sahngoo Ram Arya [(2002) 5 SCC 521]; Mahadaji Scindia Smarak Samiti, Gwalior v. State of M.P. [1980 MPLJ 704]; and Suo Motu-In Re : Preservation of Antiquities involved in Criminal Trial [AIR 1999 Ori 53].*

*28. We are conscious of the principles laid down by the*



*Supreme Court. Though the facts of the case were sufficient to stall the project at the initial stage, even if one is guided by those principles, the question of stalling the project does not arise since the construction is said to be nearing completion. At the same time, we cannot remain oblivious to the gross illegality on the part of the State, not only taking up the project by wasting limited public resources, but also in awarding the contract in a manner which is far from transparent.*

*29. We, therefore, dispose of the writ petition holding that the project of construction of world class museum in Patna at the cost of about Rs. Five hundred crores in a prime land of 17 ½ acres between the Secretariat and the Patna High Court is not at all in public interest and that the manner in which the contracts of consultancy etc. were awarded is far from transparent and objective. However, we are not intending to stall the project which is nearing completion. We direct that in case the museum becomes unviable, the building and other infrastructure shall not be alienated to private firms, but shall be utilized for public institutions or purposes.”*

24. Having regard to the facts and circumstances of the case, for the foregoing reasons and taking into account the law laid down by the Hon’ble Apex Court in the cases of ***Ayaubkhan @ Noorkhan Pathan*** (supra) and ***Vinoy Kumar*** (supra) as also by the Ld. Division Bench of this Court in the case of ***Ashok Kumar*** (supra), which squarely cover the present case, I do not



find any merit in the present writ petition, hence, the same stands dismissed.

**(Mohit Kumar Shah, J)**

Ajay/-

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