

Hari Narayan Yadav Vs. the State and ors.

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Court : Patna

Decided On : Jan-04-2002

Judge : Chandramauli Kumar Prasad, J.

Appeal No. : C.W.J.C. Nos. 9537 and 9909 of 2001

Appellant : Hari Narayan Yadav

Respondent : The State and ors.

Advocate for Pet/Ap. : Mr. Amit Shrivastava

Disposition : Writ Applications Dismissed

Judgement :

Chandramauli Kumar Prasad, J.

1. Both the writ applications have been preferred by one and the same person.
2. Bhagalpur Station ferry was given, on lease, to the petitioner for collection of toll for three years from 18-6-2001. During the subsistence of the lease, State of Bihar has constructed a bridge over the river Ganga and according to the petitioner the bridge falls and forms part of Bhagalpur Station Ferry. It is the stand of the petitioner that although the bridge in question was not inaugurated and opened 'for traffic, people have started using the same and on account of the diversion of the traffic petitioner is unable to collect the tolls. The petitioner, accordingly, filed

C.W.J.C. No. 9537 of 2001, inter alia, praying to facilitate collection of toll from the bridge as the same falls within Bhagalpur Station Ferry.

3. Further stand of the petitioner is that on 23-7-2001 the said bridge has been formally inaugurated and opened to traffic but without any barrier and as such he is unable to collect the toll from the said bridge. His grievance is that later on an advertisement has been issued in the daily newspaper for settlement of the bridge, namely, Vikramshila Setu for collection of toll by public auction. Prayer of the petitioner in

C.W.J.C. No. 9909/2001 is to quash the advertisement issued for the purpose of settlement of the bridge for collection of toll by public auction and permit him to collect toll from the bridge, on the same plea that the bridge comes within Bhagalpur Station Ferry which has been settled with him for a period of three years and during the said period he has right to collect the toll.

4. Mr. Amit Shrivastava, learned Counsel for the petitioner contends that Vikramshila Setu forms part of the duly declared public ferry, namely, Bhagalpur Station Ferry under Section 6 of the Bengal Ferry Act, 1885 (hereinafter referred to as 'the Act') and same having been settled with the petitioner under Section 9 of the Act by the District Magistrate, he has right to collect toll from the bridge and advertisement made for its settlement is illegal. In support of his submission, learned Counsel has placed reliance on a judgment of this Court in the case of Jeobaran Singh v. Ramkishun

Lal AIR 1925 Patna 623, and my attention has been drawn to the following passage of the said judgment:

In order to constitute a ferry such as is contemplated by the Act in this country it is necessary that there should be two points on both the sides of the river so that people and property may be conveyed from one side of the river across the other. It must be connected on both the sides with land on the bank of the river. In order to give full significance to this meaning of the term the Act has included in it 'any other appliance by which the water is connected with the land'. This purpose may be served by a bridge of boats, pontoons or rafts, etc. In this sense the public ferry

is created and leased on behalf of the authorities, and to protect the rights granted under the lease with respect to a public ferry the Act has made it illegal to maintain a regular ferry on a river within two miles of a public ferry so as not to interfere with or affect the peaceful working of and making profit out of the public ferry leased to the contractor

5. Yet another decision on which Sri Shrivastava has placed reliance is a Division Bench judgment of this Court in the case of Baban Chaubey and Ors. v. State of Bihar and

Ors. 1989 (2) BLJ 1, and he contends that the District Magistrate is competent to make settlement of the ferry.

6. Mr. S.K. Ghosh, Additional Advocate General-2, however, appearing on behalf of the State contends that the real issue in the case is not as to whether Vikramshila Setu falls within Bhagalpur Station Ferry but the real question in the case is as to whether the bridge in question is a ferry and if so whether same was settled with the petitioner.

7. On consideration of the rival submissions, I am of the firm opinion that the petitioner is not entitled for the reliefs claimed in these writ applications and the reasons which weighed with me, to decline the relief are mentioned hereinafter.

8. Section 6(d) of the Act which is relevant for the purpose reads as follows: (6) Power to declare establish, define and discontinue public ferries- It shall be lawful for the Lieutenant-Governor from time to time

(a) x x x x

(b) x x x x

(c) x x x x

(d) define the limits of any public ferry.

(e) x x x x

(f) x x x x

9. Section 6 of the Act inter alia confer powers to define the limits of any public ferry. It is a common ground that the bridge in question has been constructed within the limits of Bhagalpur Station Ferry but that in my opinion itself shall not make the bridge a ferry, so as to entitle the petitioner to collect toll from the bridge. For that it would be apt to refer to the definition of ferry, as explained in Section 5 of the Act. Relevant part of this section reads as follows:

Ferry' includes a bridge of boats, pontoons or rafts, a swing-bridge, a flying-bridge, a temporary bridge and a landing stage.

10. It is not the stand of the petitioner that the bridge in question is a bridge of boats, pontoons or rafts, a swing-bridge, a flying-bridge, a temporary bridge and a landing stage. In that view of the matter, I am of the opinion that the right given to the petitioner to collect toll from Bhagalpur Station Ferry shall include collect ion of toll from the bridge, in question.

11. The next question falls for determination is as to whether the bridge was ever settled to the petitioner for collection of toll. In this connection, it would be advisable to refer to the agreement of lease entered between the Government of Bihar through the District Magistrate and the petitioner dated 30th June, 2001. In the said lease the description of the property reads as follows:

Lease of public ferry called the Bhagalpur Station Ferry under the Bengal Ferries Act, 1885 across the river Ganga, the limits of which are described fully in notification No. 5, dated 1-5-2000 published in Bhagalpur District Gazette.

12. The description of the property, thus, referred to in the lease-cum-deed does not include the bridge in question. Right given to the petitioner to collect toll from Bhagalpur Station Ferry shall not, in my opinion, ipso facto confer him, the right to collect tolls from the bridge.

13. Having found that the bridge in question is not of a ferry and further the same having never been settled with the petitioner the submission of the learned Counsel for the petitioner is without any substance and the reliance on the

authorities absolutely misconceived. Resultantly, the claim made by the petitioner to collect toll from the bridge in question cannot be granted. The bridge in question having not been settled with the petitioner, nothing prevents the State Government to initiate process for its settlement by issuing advertisement. Hence, the advertisement issued for the purpose of settlement of the bridge cannot be said to be illegal.

14. In the result, I do not find any merit in these applications. Both the writ applications are devoid of any substance and are dismissed accordingly. In the facts and circumstances of the case, there will be no order as to costs.

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