

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2321 of 2016

Jaywanti Devi, wife of Dukhan Chaudhary, Resident of Mohalla- Manpur Pehani, P.S. Buniyadganj, Distt. - Gaya

... .. Petitioner/s

Versus

1. The State of Bihar,
2. The District Magistrate, Gaya,
3. The Sub - Divisional officer, Sadar, Gaya,
4. The Circle Officer, Manpur, Gaya,
5. The Officer In Charge, P.S. Buniyadganj, Distt. - Gaya,
6. The Secretary, Pollution Control Board, Bihar, Patna,
7. Om Prakash Patwa,
8. Akhileshwar Patwa, 7 to 8 are sons of late Pyare Lal, Resident of Mohalla - Dakghar Lane, P.S. Byuniyadganj, Distt. - Gaya

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar, Advocate
For the Respondent/s	:	Mr. Sanjay Kumar, AC to GA-13
For Respondent No.6	:	Mr. Shivendra Kishore, Sr. Advocate

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT
Date : 26-02-2019

Heard learned counsel for the petitioner, learned counsel for the State as well as Bihar State Pollution Control Board.

This writ application has been filed for issuance of *mandamus* for giving direction to respondent No.3 to stop/close the operation of power loom machine and 30 cylinder generator set in compliance of enquiry report submitted under Section 133 Cr.P.C. by the concerned Police Station, which are being run by respondent Nos.7 & 8 in residential area just behind the house of petitioner in illegal manner without taking permission or consent from the authority concerned and also in violation of Air



(Prevention and control of Pollution) Act, 1981. It has also been prayed for giving direction to respondent Nos.3 and 6 to take immediate steps for closing the illegal operation of power loom machine and generator set being run by respondent Nos.7 & 8 so as to ensure safety of life and property of the petitioner and his members and the citizen of Mohalla and to pass final order in Misc. Case No.01 of 2015 within stipulated time.

Counsel for the State as well as counsel for the Bihar State Pollution Control Board have appeared.

Counsel for the Bihar State Pollution Control Board submits that petitioner himself has stated in para 10 of the petition that he has filed Misc. Case No.01 of 2015 under Section 133 Cr.P.C. for removal of nuisance and stoppage of operation of power loom being run by respondent Nos.7 & 8. Xerox copy of the petition of Misc. Case No.01 of 2015 under Section 133 Cr.P.C. is annexed as Annexure-4 series. Counsel for the Bihar State Pollution Control Board has submitted that petitioner has already availed alternative remedy and, accordingly, this writ application is not maintainable.

Counsel for the petitioner submits that he has also sought relief to give necessary direction to the Sub Divisional Officer, Gaya, to dispose off Misc. Case No.01 of 2015 filed under Section 133 Cr.P.C. in accordance with law within a fixed period.



Having heard counsel for the parties, this Court finds that petitioner has already filed Misc. Case No.01 of 2015 under Section 133 Cr.P.C. for removal of nuisance and stoppage of operation of power loom being run by respondent Nos.7 & 8. This Court finds that no final order has been passed by the authority in the aforesaid proceeding under Section 133 Cr.P.C.

Since petitioner has already adopted alternative remedy, this writ application is not maintainable.

This writ application is, accordingly, disposed off with direction to respondent No.3 i.e. Sub Divisional Officer, Gaya, to dispose of Misc. Case No.01 of 2015 in accordance with law filed under Section 133 Cr.P.C. for removal of nuisance and stoppage of operation of power loom being run by respondent Nos.7 & 8 within a period of three months from the date of receipt/production of a copy of this order after giving proper opportunity of hearing to the petitioner and taking into consideration all the relevant documents and evidence produced by the petitioner

This writ application is, accordingly, disposed off.

(Sanjay Priya, J)

J. Alam/-

AFR/NAFR	N/A
CAV DATE	N/A
Uploading Date	28-02-2019
Transmission Date	N/A

