

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8151 of 2021

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1. Pankaj Kumar Singh Son of Ram Avadhesh Singh Resident of Village-Gorasara, P.O. and P.S.- Ramgarh, District- Kaimur at Bhabua.
 2. Jagat Singh Son of Ram Narayan Singh Resident of Village- Ramgarh, P.O. and P.S.- Ramgarh, District- Kaimur at Bhabua.
 3. Yogesh Kumar Pandey Son of Rameshwar Pandey Resident of Village-Ramgarh, P.O. and P.S.- Ramgarh, District- Kaimur at Bhabua.
 4. Shyam Mohan Chaudhary Son of Badhu Chaudhary Resident of Village-Gorasara, P.O. and P.S.- Ramgarh, District- Kaimur at Bhabua.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development Department, Govt. of Bihar, Patna.
2. The Secretary, Urban Development and Aawash Department, Govt. of Bihar, Patna.
3. The District Magistrate, Kaimur at Bhabua.
4. The D.C.L.R., Mohania, Kaimur at Bhabua.
5. The Block Development Officer, Block- Ramgarh, Kaimur at Bhabua.
6. The Circle Officer, Block- Ramgarh, Kaimur at Bhabua.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Parwej Khan, Advocate
For the Respondent/s : Mr.Pushkar Narain Shahi (AAG-6)

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 19-07-2021

Heard learned counsel for the parties.

Petitioners have prayed for the following relief(s).

“(I) For issuance of an appropriate writ in the nature of Mandamus, commanding and directing the respondents not to declare village/panchayat Ramgarh as Nagar Panchayat in district of Kaimur at Bhabua as this village does not complete all parameter for becoming Nagar Panchayat and as till now more than 85% population of the village/Panchayat is depend on agriculture.



(ii) For issuance of an appropriate writ in the nature of Mandamus. commanding and directing the respondents not to declare village/Panchayat Ramgarh as Nagar Panchayat in district of Kaimur at Bhabua as population of this particular village/ Panchayat as per 2020 State Assembly Election is approx 9500 and as such this village/Panchayat does not complete mandatory characteria for declaring any village as Nagar Panchayat as, as per law minimum 12,000 (Twelve Thousand) population is required to declare a village as Nagar Panchayat.

(iii) For issuance of an appropriate writ in the nature of Mandamus. commanding and directing the respondents that prior to declare the Ramgarh as Nagar Panchayat make physical verification of the population of the village Ramgarh as per 2020 State Election voter list and also to gather detail regarding occupation of the resident of the Ramgarh and till completing the process the respondents should be restrained from declaring Ramgarh as Nagar Panchayat.

(iv) For issuance of an appropriate writ in the nature of Mandamus, commanding and directing the respondents if half of the population of Ramgarh is not involve in business then this village can't be declare as Nagar Panchayat.

(v) For issuance of an appropriate writ in the nature of Certiorari for setting aside the Press Vigyapti issued by Urban Development and Aawash Department. Govt. of Bihar in respect of declaration of the Ramgarh as Nagar Panchayat Ramgarh as this village does not fulfill the basis characteria to declare Nagar Panchayat and also to call for a detail report regarding notification of Nagar Panchayat of other village.

(vi) For issuance of an appropriate writ in the nature of Certiorari for setting aside the letter dated 20.05.2020 issue by B.D.O.. Ramgarh (Annexure-2). which has been issued without any proper verification and this letter has been issued by the B.D.O. in such period when in state of Bihar as well as in whole India lock down was going on and this fact itself shows that the B.D.O.. Ramgarh has made a forge and fabricated report to make please his higher authority and as such report is fit to be quashed.

(vi) For issuance of any other writ(s)/ orders/direction(s) for which the writ petitioners are legally found entitled on behalf of his community and poor villagers under the facts and circumstances of the case and also to direct the respondents to make status quo till final decision of this case.”

After the matter was heard for some time, learned counsel for the petitioners, under instructions, states that petitioner shall be content if a direction is issued to the



authority concerned to consider and decide the representation which the petitioners shall be filing within a period of four weeks from today for redressal of the grievance(s).

Learned counsel for the respondents states that if such a representation is filed by the petitioner, the authority concerned shall consider and dispose it of expeditiously and preferably within a period of three months from the date of its filing along with a copy of this order.

Statement accepted and taken on record.

The Hon'ble Supreme Court in ***D. N. Jeevaraj Vs.***

Chief Secretary, Government of Karnataka & Ors, (2016) 2

SCC 653, paragraphs 34 to 38 observed as under:-

“34. The learned counsel for the parties addressed us on the question of the bona fides of Nagalaxmi Bai in filing a public interest litigation. We leave this question open and do not express any opinion on the correctness or otherwise of the decision of the High Court in this regard.

35. However, we note that generally speaking, procedural technicalities ought to take a back seat in public interest litigation. This Court held in *Rural Litigation and Entitlement Kendra v. State of U.P.* [*Rural Litigation and Entitlement Kendra v. State of U.P.*, 1989 Supp (1) SCC 504] to this effect as follows: (SCC p. 515, para 16)

“16. The writ petitions before us are not inter parties disputes and have been raised by way of public interest litigation and the controversy before the court is as to whether for social safety and for creating a hazardless environment for the people to live in, mining in the area should be permitted or stopped. We may not be taken to have said that for public interest litigations, procedural laws do not apply. At the same time it



has to be remembered that every technicality in the procedural law is not available as a defence when a matter of grave public importance is for consideration before the court.”

36. A considerable amount has been said about public interest litigation in *R&M Trust* [*R&M Trust v. Koramangala Residents Vigilance Group*, (2005) 3 SCC 91] and it is not necessary for us to dwell any further on this except to say that in issues pertaining to good governance, the courts ought to be somewhat more liberal in entertaining public interest litigation. However, in matters that may not be of moment or a litigation essentially directed against one organisation or individual (such as the present litigation which was directed only against Sadananda Gowda and later Jeevaraj was impleaded) ought not to be entertained or should be rarely entertained. Other remedies are also available to public spirited litigants and they should be encouraged to avail of such remedies.

37. In such cases, that might not strictly fall in the category of public interest litigation and for which other remedies are available, insofar as the issuance of a writ of mandamus is concerned, this Court held in *Union of India v. S.B. Vohra* [*Union of India v. S.B. Vohra*, (2004) 2 SCC 150: 2004 SCC (L&S) 363] that: (SCC p. 160, paras 12-13)

“12. Mandamus literally means a command. The essence of mandamus in England was that it was a royal command issued by the King's Bench (now Queen's Bench) directing performance of a public legal duty.

13. A writ of mandamus is issued in favour of a person who establishes a legal right in himself. A writ of mandamus is issued against a person who has a legal duty to perform but has failed and/or neglected to do so. Such a legal duty emanates from either in discharge of a public duty or by operation of law. The writ of mandamus is of a most extensive remedial nature. The object of mandamus is to prevent disorder from a failure of justice and is required to be granted in all cases where law has established no specific remedy and whether justice despite demanded has not been granted.”

38. A salutary principle or a well-recognised rule that needs to be kept in mind before issuing a writ of mandamus was stated in *Saraswati Industrial Syndicate Ltd. v. Union of India* [*Saraswati*



Industrial Syndicate Ltd. v. Union of India, (1974) 2 SCC 630] in the following words: (SCC pp. 641-42, paras 24-25)

“24. ... The powers of the High Court under Article 226 are not strictly confined to the limits to which proceedings for prerogative writs are subject in English practice. Nevertheless, the well-recognised rule that no writ or order in the nature of a mandamus would issue when there is no failure to perform a mandatory duty applies in this country as well. Even in cases of alleged breaches of mandatory duties, the salutary general rule, which is subject to certain exceptions, applied by us, as it is in England, when a writ of mandamus is asked for, could be stated as we find it set out in *Halsbury's Laws of England* (3rd Edn.), Vol. 11, p. 106:

‘198. *Demand for performance must precede application.*—As a general rule the order will not be granted unless the party complained of has known what it was he was required to do, so that he had the means of considering whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce, and that that demand was met by a refusal.’

25. In the cases before us there was no such demand or refusal. Thus, no ground whatsoever is shown here for the issue of any writ, order, or direction under Article 226 of the Constitution.”

As such, petition stands disposed of in the following terms:-

- (a) Petitioners shall approach the authority concerned within a period of four weeks from today by filing a representation for redressal of the grievance(s);
- (b) The authority concerned shall consider and dispose



it of expeditiously by a reasoned and speaking order preferably within a period of three months from the date of its filing along with a copy of this order;

(c) Needless to add, while considering such representation, principles of natural justice shall be followed and due opportunity of hearing afforded to the parties;

(d) Equally, liberty is reserved to the petitioners to take recourse to such alternative remedies as are otherwise available in accordance with law;

(e) We are hopeful that as and when petitioners take recourse to such remedies, as are otherwise available in law, before the appropriate forum, the same shall be dealt with, in accordance with law and with reasonable dispatch;

(f) Liberty reserved to the petitioners to approach the Court, if the need so rises subsequently on the same and subsequent cause of action;

(g) We have not expressed any opinion on merits. All issues are left open;

(h) The proceedings, during the time of current Pandemic- Covid-19 shall be conducted through digital mode, unless the parties otherwise mutually agree to meet in person i.e. physical mode;



The petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, stands disposed
of.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/rajiv-

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

