

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7828 of 2021

1. Mahendra Sah son of Late Madhav Sah, Resident of Village- Gadhwa, P.O.- Dumra via Dariyapur, P.S.- Kotwa, District- East Champaran.
2. Arun Kumar Pandey, son of Sachidanand Pandey Resident of Village and P.O.- Dumra Ward No. 06, P.S.- Kotwa, District- East Champaran.
3. Naresh Ram, son of Nathu Ram Resident of Village- Gadhwa Machhar Ganwan, P.O.- Dumara, P.S.- Kotwa, District- East Champaran.
4. Mohit Sah, son of Ramchandra Sah Resident of- Dumara Gadhwa, Machhar Ganwan, P.O.- Dumra, District- East Champaran.
5. Rajendra Sah, son of Laldev Sah, Resident of- Gadhwa, Machhar Ganwan, P.O.- Dumra, District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Panchayati Raj Department, Government of Bihar, Patna.
2. The Principal Secretary, Fishery Resource Department, Government of Bihar, Patna.
3. The Principal Secretary, Planning and Development Department, Government of Bihar, Patna.
4. The Divisional Commissioner, Muzaffarpur.
5. The Superintending Engineer, Local Area Engineering Organization, Tirhut Division, Muzaffarpur.
6. The District Magistrate, East Champaran, Motihari.
7. The Deputy Development Commissioner, East Champaran, Motihari.
8. The District Fishries Officer-cum- Chief Executive Officer, East Champaran, Motihari.
9. The District Panchayati Raj Officer, East Champaran, Motihari.
10. The Executive Engineer, Local Area Engineering Organization (LAEO), Work Division- 1, Motihari.
11. The Block Development Officer, Kotwa, District East Champaran, Motihari.
12. The Circle Officer, Kotwa, District East Champaran, Motihari.
13. The Circle Inspector, Kotwa Anchal, District East Champaran, Motihari.
14. Mukhiya, Gram Panchayat Raj Dumra, Block- Kotwa, District East Champaran.
15. The Anchal Amin, Kotwa Anchal, Kotwa, District East Champaran, Motihari.
16. The Panchayat Secretary, Gram Panchayat Raj, Dumra, Block- Kotwa, East Champaran, Motihari.

... .. Respondent/s



Appearance :

For the Petitioner/s : Mr. Ayush Kumar, Advocate
For the Respondent/s : Mr. Anjani Kumar, AAG-4.

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

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 13-07-2021

Heard learned counsel for the parties.

Petitioners have prayed for the following relief(s).

“(i) For issuance of direction to the District Magistrate, East Champaran Motihari to ensure construction of Panchayat Sarkar Bhawan at Dumara Panchayat, Block Kotwa, District East Motihari strictly as per Guideline as contained in Letter no. 1436 dated 26.02.2019 issued by the Principal Secretary, Panchayat Raj Department, Government Bihar, Patna which clearly prescribes that a Panchayat Sarkar Bhawan shall not be constructed within 30 metre of any Pokhra, Jalashya, Talab and Nadi, whereas the aforementioned proposed Sarkar Bhawan is being constructed just at the Bank of a Government Talab namely Dumra Gheghayee Talab.

Petitioners also prays for direction to the District Magistrate, East Champaran Motihari to ensure construction of said Panchayat Sarkar Bhawan also as per the site plan approved by the Panchayati Raj Department Government of Bihar, Patna which prescribes that the land for construction of Panchayat Sarkar Bhawan shall be in rectangle shaped 51.82 metre X 39.63 metre in size, whereas the present land for the construction of said Panchayat Sarkar



Bhawan, Dumra is being constructed two pieces L shaped land which are situated at North and Eastern boundary within 2 metre of Kotwa Gheghai Talab.

(ii) For issuance of direction to the respondent authorities to immediately stop wastage and mis-utilization of Public money of Rs. 1.24,79,700/- which is being used for construction of Panchayat Sarkar Bhawan at Dumra, Kotwa Block, District East Champaran, Motihari, which is being constructed illegally in gross violation of clause-3 of the direction of the Principal Secretary, Panchayat Raj Department, Government Bihar, Patna as contained in letter no. 1436 dated 26.02.2019 which clearly prescribes that a Panchayat Sarkar Bhawan shall not be constructed within 30 metre of any Pokhra, Jalashya, Talab and Nadi, whereas the said Panchayat Bhawan is being constructed upon Plot No. 835 and 837, which are situated both side at the boundary of plot no. 836 which is admittedly a pokhra namely Dumra Gheghai Talab and further the said talab is a Government Talab and has been settled by Fishery Resource Department for the financial year 2019-20 to 2021-22 in favour of Kotwa Prakhand Matsyajivi Sahyog Samittee.

(iii) For issuance of direction to the Block Development Officer, Kotwa, East Champaran, Motihari as well as Circle Officer Kotwa, East Champaran, Motihari to consider the letter of District Fishery Officer-Cum-Chief Executive Officer, East Champaran, Motihari, hearing Letter No. 1964 dated 10.09.2020, whereby it was communicated that Khata No 159, Plot No. 836, 878, Area- 3 Acre, Dumra Gheghai Talab, Kotwa,(Government Sairaat), has been settled in favour of Kotwa Prakhand Matasya Jivi Samiti Limited for the year



2019-2020 to 2021-2022 and an application / complaint has been received from Mahendra Sah and others, that the land for construction of Panchayat Sarkar Bhawan has been selected just at the bank of Dumra Gheghai Talab and a wrong and concocted report has been submitted to the District Panchayat Raj Officer, Motihari by concealment of the existence of the Talab.

(iv) The petitioner further prays for issuance of direction to the District Panchayat Raj Officer East Champaran, Motihari to direct the Block Development Officer, Kotwa and Circle Officer, Kotwa to immediately submit a joint report on the basis of his letter no. 1064 dated 12 August, 2020, whereby the Block Development Officer, Kotwa and Circle Officer, Kotwa East Champaran, Motihari, was directed to submit a joint report on the representation of the petitioners wherein they have specifically highlighted that the land which has been selected for the Panchayat Sarkar Bhawan Dumra is in fact situated just at the bank of Pokhra, Plot No. 836 and report has been submitted by concealment of existence of the Pokhra which also violate the mandatory condition of the direction of the Principle Secretary, Panchayati Raj Department, Government of Bihar, Patna as contained in Letter No. 1436 dated 26.02.2019, wherein paragraph no. 3, clearly prescribes that there should not be any pokhra within 30 Metre. from the boundary of the land selected for Panchayat Sarkar Bhawan.

In the present case a Pokhra namely Dames Gheghayee Talab is situated just within 2 metre from the boundary of proposed Panchayat Sarkar Bhawan, Dumra.

(v) For setting aside the report submitted by the Circle Officer, Kotwa, East Champaran, as contained in Letter no. 655 dated



06.08.2019 which contains one check list relating to a piece of land for construction of Panchayat Sarkar Bhawan in the Gram Panchayat Raj Dumra, Block Kotwa District East Champaran, Motihari and the check list column 5 state that no pokhra, Jalashya, Aahar, Nahar and Nadi are situated within 30 metre but as a matter of fact one Pokhra namely Dumra Gheghai Talab is situated in the boundary of the selected land itself i.e., Plot No. 836.

(vi) For taking action against the The Block Development Officer, Kotwa, District East Champaran, Motihari, The Circle Officer, Kotwa, District East Champaran, Motihari, The Circle Inspector, Kotwa Anchal, District East Champaran, The Anchal Amin, Kotwa Anchal, Kotwa, District East Champaran, Motihari prepared a false report of the proposed site of the Panchayat Sarkar Bhawan, Dumra, Kotwa, District East Champaran Motihari to District Panchayat Raj Officer, East Champaran, Motihari under the influence of Mukhiya, Gram Panchayat Raj Duntra, Block — Kotwa, District East Champaran, as the report as contained in Letter no. 655 dated 06.08.2019 and check list wrongly mention that no TALAB, NADI, NAHAR is situated within 30 metre of the proposed site, whereas a Government talab namely Dumra Gheghyee talab is admitted sited within two metre of the said site

(vii) For any other relief / reliefs for which the petitioner may be deemed entitled too.”

After the matter was heard for some time, learned counsel for the petitioners, under instructions, states that petitioners 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 petitioners, 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 petitioner 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

