

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 9332 of 2021

1. Manju Devi, Wife of Rajendra Paswan, resident of Mohalla-Pokhariya, Ward No. 38, Begusarai Town, P.S. Begusarai Town, District Begusarai.
2. Binod Rai, son of Lal Prasad Rai, resident of Mohalla-Pokhariya, Ward No. 38, Begusarai Town, P.S. Begusarai Town, District Begusarai.
3. Manoj Paswan, son of Ram Khelawan Paswan, resident of Mohalla-Pokhariya, Ward No. 38, Begusarai Town, P.S. Begusarai Town, District Begusarai.
4. Sanjeev Paswan, son of RamCharitra Paswan, resident of Mohalla-Pokhariya, Ward No. 38, Begusarai Town, P.S. Begusarai Town, District Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Revenue and Land Reforms Department, Govt. of Bihar, Patna-1.
2. The Director, Department of Revenue and Land Reforms Department, Govt. of Bihar, Patna-1.
3. The Principal Secretary, Urban Development Department, Govt. of Bihar, Patna-1.
4. The Director, Urban Development Department, Govt. of Bihar, Patna-1.
5. The Commissioner, Munger Division, Munger.
6. The Collector, Begusarai.
7. The Sub-Divisional Officer, Begusarai Sadar, District-Begusarai.
8. The Begusarai Nagar Nigam, Begusarai through the Municipal Commissioner.
9. The Chairman, Begusarai Nagar Nigam, Begusarai.
10. The Executive Officer, Begusarai Nagar Nigam, Begusarai.
11. The Circle Officer, Begusarai Sadar Anchal, District-Begusarai.
12. The Block Development Officer, Begusarai Sadar Block, District-Begusarai.

...Respondents 1st party.

13. Ashok Kumar Singh, son of Late Gulab Singh, resident of M/s Gunjan Market, Nagar Thana Chowk, Begusarai Town, P.S. Begusarai Town, District-Begusarai. resident of Nagar Thana Chowk, Begusarai Town, P.O. Begusarai, P.S. Begusarai Town, Anchal and Block-Begusarai Sadar, District-Begusarai, PIN Code-851101.
14. Viyomkesh Singh, son of Late Arbind Singh, resident of M/s Gunjan Market, Nagar Thana Chowk, Begusarai Town, P.S. Begusarai Town, District-Begusarai. resident of Nagar Thana Chowk, Begusarai Town, P.O. Begusarai, P.S. Begusarai Town, Anchal and Block-Begusarai Sadar, District-Begusarai, PIN Code-851101.
15. Prabhat Kumar Kumar, son of name not known to the petitioners, resident of



- M/s Shital Sweets, Nagar Thana Chowk, Begusarai Town, P.S. Begusarai Town, District Begusarai. resident of Nagar Thana Chowk, Begusarai Town, P.O. Begusarai, P.S. Begusarai Town, Anchal and Block-Begusarai Sadar, District-Begusarai, PIN Code-851101.
16. Vikash Kumar Singh, son of name not known to the petitioners, resident of M/s New Market, Nagar Thana Chowk, P.S. Begusarai Town, Begusarai Town, District Begusarai. resident of Nagar Thana Chowk, Begusarai Town, P.O. Begusarai, P.S. Begusarai Town, Anchal and Block-Begusarai Sadar, District-Begusarai, PIN Code-851101.
 17. Dr. Sheo Shankar Prasad, son of name not known to the petitioners, M/s Homeopathic Medicine Shops. resident of Nagar Thana Chowk, Begusarai Town, P.O. Begusarai, P.S. Begusarai Town, Anchal and Block-Begusarai Sadar, District-Begusarai, PIN Code-851101.
 18. Pankaj Kumar, son of Ram Balak Bhagat, M/s. Shital Shringar, Begusarai. resident of Nagar Thana Chowk, Begusarai Town, P.O. Begusarai, P.S. Begusarai Town, Anchal and Block-Begusarai Sadar, District-Begusarai, PIN Code-851101.
 19. Sanjeev Kumar, son of Late Suresh Prasad Singh, M/s New Paper House, Nagar Thana Chowk, Begusarai Town. resident of Nagar Thana Chowk, Begusarai Town, P.O. Begusarai, P.S. Begusarai Town, Anchal and Block-Begusarai Sadar, District-Begusarai, PIN Code-851101.
 20. Nigam Kumar, son of Shankar Singh, M/s Fashion Park, Nagar Thana Chowk, Begusarai Town. resident of Nagar Thana Chowk, Begusarai Town, P.O. Begusarai, P.S. Begusarai Town, Anchal and Block-Begusarai Sadar, District-Begusarai, PIN Code-851101.
 21. Amit Shankar Singh, son of Ram Udgar Singh, M/s Savita Enterprises, Nagar Thana Chowk, Begusarai Town, resident of Nagar Thana Chowk, Begusarai Town, P.O. Begusarai, P.S. Begusarai Town, Anchal and Block-Begusarai Sadar, District-Begusarai, PIN Code-851101.
 22. Ashok Kumar Singh, son of Late Upendra Singh, M/s Ashok Shoe Complex, Nagar Thana Chowk, Begusarai Town. resident of Nagar Thana Chowk, Begusarai Town, P.O. Begusarai, P.S. Begusarai Town, Anchal and Block-Begusarai Sadar, District-Begusarai, PIN Code-851101.
 23. Lakshman Ram, son of Late Paltan Ram, Litti Shop, Nagar Thana Chowk, Begusarai Town, resident of Nagar Thana Chowk, Begusarai Town, P.O. Begusarai, P.S. Begusarai Town, Anchal and Block-Begusarai Sadar, District-Begusarai, PIN Code-851101.
 24. Bank of India through the Branch Manager, Nagar Thana Chowk, Begusarai Town. resident of Nagar Thana Chowk, Begusarai Town, P.O. Begusarai, P.S. Begusarai Town, Anchal and Block-Begusarai Sadar, District-Begusarai, PIN Code-851101.
 25. Sahara India through the Branch Manager, Nagar Thana Chowk, Begusarai Town. resident of Nagar Thana Chowk, Begusarai Town, P.O. Begusarai, P.S. Begusarai Town, Anchal and Block-Begusarai Sadar, District-Begusarai, PIN Code-851101.
 26. Umang Agrawal, son of Late Shyam Sundar Agrawal, M/s Shyam Sales Corporation, Nagar Thana Chowk, Begusarai Town. resident of Nagar Thana



- Chowk, Begusarai Town, P.O. Begusarai, P.S. Begusarai Town, Anchal and Block-Begusarai Sadar, District-Begusarai, PIN Code-851101.
27. Gopal Agrawal, son of Late Shyam Sundar Agrawal, M/s Vijay Book Agency, Nagar Thana Chowk, Begusarai Town. resident of Nagar Thana Chowk, Begusarai Town, P.O. Begusarai, P.S. Begusarai Town, Anchal and Block-Begusarai Sadar, District-Begusarai, PIN Code-851101.
 28. Bhramar Kumar Singh, son of Late Nawal Kishore Singh, M/s Geet Bahar, Nagar Thana Chowk, Begusarai Town. resident of Nagar Thana Chowk, Begusarai Town, P.O. Begusarai, P.S. Begusarai Town, Anchal and Block-Begusarai Sadar, District-Begusarai, PIN Code-851101.
 29. Navin Kumar, son of Late Umesh Sharma, M/s Sriman Juta Shopt, Nagar Thana Chowk, Begusarai Town. resident of Nagar Thana Chowk, Begusarai Town, P.O. Begusarai, P.S. Begusarai Town, Anchal and Block-Begusarai Sadar, District-Begusarai, PIN Code-851101.
 30. Sachin Kumar, son of Saroj Kumar Singh, M/s. New Kumar Electric, Nagar Thana Chowk, Begusarai Town. resident of Nagar Thana Chowk, Begusarai Town, P.O. Begusarai, P.S. Begusarai Town, Anchal and Block-Begusarai Sadar, District-Begusarai, PIN Code-851101.
 31. Manoj Kumar, son of Ram Shankar Singh, M/s Jan Aushidhi, Nagar Thana Chowk, Begusarai Town. resident of Nagar Thana Chowk, Begusarai Town, P.O. Begusarai, P.S. Begusarai Town, Anchal and Block-Begusarai Sadar, District-Begusarai, PIN Code-851101.
 32. Shambhu Kumar, son of not known to the petitioners, M/s Shiva Venture, Nagar Thana Chowk, Begusarai Town. resident of Nagar Thana Chowk, Begusarai Town, P.O. Begusarai, P.S. Begusarai Town, Anchal and Block-Begusarai Sadar, District-Begusarai, PIN Code-851101.
 33. Anil Kumar, son of name not known to the petitioners, Nagar Thana Chowk, Begusarai Town. resident of Nagar Thana Chowk, Begusarai Town, P.O. Begusarai, P.S. Begusarai Town, Anchal and Block-Begusarai Sadar, District-Begusarai, PIN Code-851101.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Chandra Mauli Chaurasia, Advocate Mr. Deepak Kumar, Advocate
For the Respondent/s	:	Mr. Md. Khurshid Alam, AAG-12 Ms. Nutan Sahay, AC to AAG-12

(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 : 20-07-2021



Heard learned counsel for the parties.

Petitioners have prayed for the following relief(s):-

“(i) For issuance of writ in the nature of mandamus commanding the respondents authorities concerned directing the respondents 3rd party to remove their respective illegal encroachments done over Keshre Hindi Public land bearing kheshra no. 1513 appertaining to Khata No. 190, area 10 kathas 4 dhurs i.e. 41 decimals of land recorded as Keshre Hind land in the Cadestral Survey as well as in the revisional survey khatian immediately situated in Mauja-Mokimpur, Thana No. 348 in the Begusarai Town, which are being used by the respondents 3rd party as shop and market over the same.

(ii) For issuance of writ in the nature of mandamus commanding the respondents concerned to restrain respondents 2nd party to collect rent per month from the respondents 3rd party forcibly without any legal right over the same.

(iii) For direction to the respondents authorities concerned to collect rent from the respondents 3rd party of their respective pucca shops illegally constructed by them over the aforesaid public land in question and deposit the same in the Account of the State Govt. or in the Account of Begusarai Nagar Nigam in accordance with law.

(iv) For direction to the respondents authorities concerned either to settle the respondents 3rd party as tenant holder of their respective shops or market situated over the aforesaid public land in question and to collect rent from them per month in accordance with law or direct the respondents 3rd party and the respondents 2nd party to remove their illegal encroachments over the aforesaid public land in question immediately, otherwise the same will be vacated through the police force as per the law at the cost of the respondents 3rd party and the respondents 2nd party, since they have illegally encroached the said public land in collusion with the respondents 2nd party by constructing their respective pucca shops and market over the same without any legal right over the same.

(v) For direction to the respondents authorities concerned to restrain the respondents 3rd party to make payment of the rent of their respective shops or market per month to the respondents 2nd party and instead thereof to deposit the rent in the Account of the State Govt. or in the Account of Begusarai Nagar Nigam after due permission obtained from the respondents State Govt. concerned in accordance with the law.

(vi) For direction to the respondents authorities concerned to restrain the general public to encroach the aforesaid public land in future since it belongs to the State Government in the



Begusarai Nagar Nigam, who is the original owner of the same with full right, title and interest over the same.

(vii) For direction to the respondents authorities concerned to take legal and appropriate action against the respondents 2nd party and the respondents 3rd party in accordance with law since they have illegally and arbitrary encroached and occupied the area of Keshre Hind public land in question by constructing their respective shops and markets in collusion with the respondents 2nd party and they are paying rent of their respective shops to the respondents 2nd party per month in place of the State Govt. or Nagar Nigam, Begusarai and hence the respondents authorities concerned be directed to remove the illegal encroachment done by the respondents 3rd party over the same immediately in accordance with law otherwise the encroachment will be removed through the process of law under the Bihar Public Land Encroachment Act, 1956.

(viii) And further for grant of any other relief or reliefs to the petitioners for which they are entitled for in the facts, law and circumstances of the case of the petitioners on record as stated below in this writ application.”

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.”

After the matter was heard for some time, learned counsel for the petitioners, under instructions, state that petitioners shall be content if a direction is issued to the authority concerned i.e. Sub-Divisional Officer, Begusarai Sadar, District- Begusarai, 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.

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

(a) Petitioners shall approach the authority concerned i.e. Sub-Divisional Officer, Begusarai Sadar, District-Begusarai, 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 arises subsequently on the same and subsequent cause of action;

(g) Liberty also reserved to the petitioners to make a mention for listing of the petition on priority basis. As and when any such mention is made, Registry shall take steps for listing the petition at the earliest.

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

(i) 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)

Rajiv/veena-

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

