

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12998 of 2021

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Sanjay Kumar Arya, Son of Hira Lal Arya residence of Mahalla - ward no. -
12 In front of post office Bhabhuwa, District - Kaimur - 821101.

... .. Petitioner/s

Versus

1. The State of Bihar through the - Chief Secretary, Government of Bihar, Sachiwalya, Patna.
2. The Principal Secretary tourist Department, Government of Bihar, Sachiwalya Patna.
3. The Chairman of Bihar Hindu religions Trust Board, Patna Vidya Patti Marge Patna.
4. The Commissioner Patna, near Golghar Patna.
5. The District Officer Bhabhuwa (Kaimur).
6. The Sub-Divisional Officer Bhabhuwa, District - Kaimur.
7. The Executive Officer Nagar Perished Bhabhuwa, District - Kaimur.
8. The Block Development Officer Bhabhuwa, District - Kaimur.
9. The Adhayaksh Late Kanniram Kejriwal Chairete trust Samiti Dharmshala Bhabhuwa (Kaimur), Akta Chawk, Bhabhuwa.
10. The Secretary Late Kanniram Kejriwal Chairete Trust Dharmshala Bhabhuwa (Kaimur) Akta Chawk Bhabhuwa.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Surendra Kumar Singh, Advocate
For the Respondent/s : Mr. Sarvesh Kumar Singh (AAG-13)

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(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 : 02-08-2021

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

“That the present writ petition craves indulgence of this Hon’ble Court in representatives capacity for issuance of

writ in the nature of mandamus for violation of Articles 19 & 26 of the Constitution of India with Section-28, 30, 32 of the Bihar Hindu Religious Trust Act, 1950 alongwith judgment on 13.08.2018 passed in C.W.J.C. No. 10060 of 2014 passed by Hon'ble Court in favour of order of the Chairman of Bihar Hindu Religious Trust Board, Patna. Again further corruption & scam has start in Dharmsala property from Mis-Management by present trust samiti of late Kanniram Kejriwal Chairate Trust Samiti Dharmshala Bhabhuwa (Kaimur). As Mis-Management has started by earlier Manager Gopal Prasad & present manager as Deepak Kumar both related own father & son. When respondent no. 3 has a passed order on 26.09.2013 for remove to earlier manager of trust committees Bhabhuwa (Kaimur) alongwith direction to no entry in a late Kanniram Kejriwal Charity trust Dharamshala. Hence this order direction has not consider by respondents as yet. Because present trust committee has stand after remove to earlier old manager Gopal Prasad. But no verify to every members name motive & aim by respondents. Again return to power of earlier remove manager Gopal Prasad through son as namely Deepak Kumar present Manager and always entry and done to mis management in Kanniram Dharamshala. As growth corruption every time by Deepak Kumar Manager from illegal new construction on old building in Dharamshala Katra & new market. As change to structure nature of Dharamshala for stay of long roots pilgrims religions travellers coming on the chief the best stay place (Dharmshala).

Where there trust property has transfer to five persons as namely (1) Shiv Govind Shah, (2) Chandrashekhar Singh, (3) Ram Ashish Singh, (4) Usha Agrawal and (5) Esrail Ansari and others side six persons has constructed new room on the SBI Bank which has painting in yellow.

Where there trust property has transfer to five persons as namely (1) Shiv Govind Shah, (2) Chandrashekhar Singh, (3) Ram Ashish Singh, (4) Usha Agrawal and (5) Esrail Ansari and others side six persons has constructed new room on the SBI Bank which has painting in yellow colour as namely (1) Anil Shah, (2) Uttam Devi, (3) Saroj Kumar Chaurasiya, (4) Pushpa Kumar, (5) Madhubala Shrivastav and (6) Ramawati Devi. As Uttam Devi is wife of Gopal Prasad as earlier remove manager and mother of Deepak Kumar as present manager. Saroj Kumar Chaurasiya is posted in Postal department. Pushpa Kumari acquire 2 decimal

land in plot no. 406 since 2011 without permission by trust Board, Patna. Anil Kumar is acquire east side of Dharamshala in back side. Madhu bala Srivastwa is wife of Lalan Prasad Secretary of Kanniram Dharmshala Bhabhuwa (Kaimur) As middle vacant portion vacant land of shree Janki Market Dharamshala only 4' space North side & east-west side length has closed to air of room & made to dark room problem to stand. No repair to Dharamshala any time for clean & comfortable. Only view for money loot from illegal construction new without map. If no attention or alert at presently then will be harass to property of Dharamshala.

And further for issuance of writ or writs direction or directions as it may deem fit and proper to the facts and circumstances of this case.”

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 petitioner, under instructions, states that petitioner shall be content if a direction is issued to the authority concerned i.e. Chairman of Bihar Hindu religions Trust Board, Patna Vidya Patti Marge Patna to consider and decide the representation which the petitioner 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.

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

(a) Petitioner shall approach the authority concerned i.e. Chairman of Bihar Hindu religions Trust Board, Patna Vidya Patti Marge Patna 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 petitioner to take recourse to such alternative remedies as are otherwise available in accordance with law;

(e) We are hopeful that as and when petitioner takes 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 petitioner 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)

veena/rajiv-

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