

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16724 of 2021

1. Prakash Chaudhary, Son of Raghunandan Chaudhary @ Raghunandan Chaudhai Resident of Village-Piri Basti Losghani, P.S. Piri Bazar, District-Lakhisarai.
2. Babita Devi W/o Ajay Sao, Resident of Village-Abgil Rampur, P.S. Medani Chowki, District-Lakhisarai.
3. Ram Pravesh Kumar, Son of Mathura Pd. Singh, Resident of Village-Rampur, Rajpur, P.S. Piri Bazar, District-Lakhisarai.

... .. Petitioner/s

Versus

1. The D.R.M. Eastern Railway D.R.M. Office Malda, 249-JW3H Malda West Bengal.
2. The General Manager, Eastern Railway, Kolkata G.M. Office E.R.17 Netaji Subhash Chandra Road Eastern Railway, Kolkata.
3. The Principal Secretary, General Administration General Administrative Department, Government of Bihar, Patna.
4. The District Magistrate, Lakhisarai.
5. The Superintendent of Police, Lakhisarai.
6. The Sub-Divisional Officer, Lakhisarai. Sadar, District-Lakhisarai.
7. The Block Development Officer, Surajgarha, District-Lakhisarai.
8. The Circle Officer, Surajgarha Anchal, District-Lakhisarai.
9. The S.H.O. Piri Bazar Police Station District-Lakhisarai.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Jai Prakash Singh, Advocate
For the State	:	Mr. Nadim Seraj, Advocate
		Mr. Shailesh Kumar, Advocate
For the Railways	:	Mr. Ramadhar Shekhar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 27-09-2021

This petition was filed on 18.09.2021, which was
registered and listed immediately, and is taken up today for

hearing.

Heard learned counsel for the parties.

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

“ (I) For issuance of a writ in the nature of mandamus directing and commanding to the respondents authorities to remove the encroachment of Kaisre Hind land which has been situated near Railway Line and P.W.D. Road is as follows:

(b) Kajra Bazar and Piri Bazar Market area from Kajra Railway Sampar Fatak to Khaira Railway Gumti and from Bariyarpur Railway Gumti to Railway Gumti Benipur Sampar Fatak under the Abhaypur Railway Station under Piri Bazar Police Station, District-Lakhisarai.

(II) For issuance of a writ in the nature of mandamus directing and commanding to the respondents authorities to remove the encroachment from the Kaisre Hind Land situated at Mauza Ghosaith Khatiyani raiyat Kaisre Hind bearing Khata No. 379, Khesra No. 2529, 2530, 2531 an area 0.68 decimal, 1.95 decimal, 0.79 decimal respectively and khata No. 388, Plot No. 2526, 2527, 2528 an area 1.16 decimal 0.78 decimal, 1.59 decimal respectively. This Kaisre Hind land has been situated at South to P.W.D. Road and North to the Railway Line from Kajra Railway Station to Abhaypur Railway Station near Rampur Bridge.

(iii) For issuance of a writ in the nature of directing and commanding to the respondents authorities to remove the encroachment from Kaisre Hind land bearing Mauza Losghani 69 Kaisre Hind land bearing Khata No. 264, Plot No. 1263 an area 94 decimal and Khata No. 265, Plot No. 1279 area 2.76 and 3.70 decimal of the land from Kajra to Abhaypur Railway Station. In this land

which is situated near Railway Track the public was constructed latrine and also constructed Godown and building by one Ashish Gupta S/o Late Ashok Gupta, R/o Village Kashichak, P.S. Piri Bazar, District- Lakhisarai and another person namely Anil Sao, S/o Late Kartik Sao, R/o Village Babua Bazar, P.S. Piri Bazar, District- Lakhisarai constructed oil Mill near 3 feet away from Railway Line Wall near Railway Gumti.

(iv) For issuance of a writ in the nature of directing and commanding to the respondents authorities to remove the encroachment from Kajra Railway Station Sampar Fatak to Benipur Sampar Fatak under Abhaypur Railway Station. The local people namely (1) Gopal Sah S/o Ram Chandra Sah, R/o Piri Bazar, P.S. Piri Bazar, District- Lakhisarai (2) Manoj Kumar S/o Mathura Prasad, R/o Piri Bazar, P.S. Piri Bazar, District- Lakhisarai (3) Binod Sao, Son of Ram Swaroop Sao, R/o Piri Bazar, P.S. Piri Bazar, District- Lakhisarai (4) Mahendra Gupta Son of Late Kishun Gupta R/o Piri Bazar, P.S. Piri Bazar, District- Lakhisarai have constructed underground Godown and building, Multistoried building, Sirhi, Latrine by which encroached the Kaisre Hind Land as well as P.W.D. Road from Kajra to Abhaypur and blocked the flow of water.

(v) For issuance of a writ in the nature of directing and commanding to the respondents authorities to remove the encroachment from Kajra Railway Station to Kajra Railway Gumti by constructed the Bharat Gas Godown on the Kaisre Hind land from the 5 meter of the Railway Track. This Gas Godown is namely Kamta Pd. Gupta S/o Krishnandan Pd. Gupta.

(vi) For issuance of a writ in the nature of directing and commanding to the respondents authorities to remove the encroachment of Thana No. 72, Tauzi No. 1412 of Mauza Ghosaith in Khata No. 350, Plot No. 2423, 2420,

2121 & 2422 in respect of Kaisre Hind land from the Devendra Medical Hall to Kaushal Singh's house in respect of Road, Nala and P.W.D. Road.

(vii) For issuance of a writ in the nature of directing and commanding to the respondents authorities to remove the encroachment from Devendra Medical Hall to Shiv Mandir Ghosaith (Pond).

(viii) For issuance of a writ in the nature of directing and commanding to the respondents authorities to remove the encroachment from Ghosaith PACS Bhawan to Samudayik Bhawan.

(ix) For issuance of a writ in the nature of directing and commanding to the respondents authorities to remove the encroachment of the road area, drainage, pond, Aahar, river and Gair Mazarua land situated in the village of Ghosaith under the Piri Bazar police station in the District of Lakhisarai.

(x) To grant any other relief or reliefs for which the petitioner is entitle from the facts and circumstances of the present 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 petitioners, under instructions, states that petitioners shall be content if a direction is issued to the authority concerned (**Circle Officer, Surajgarha Anchal, District-Lakhisarai**) or any of the statutory authority 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.

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 four 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 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)

veena/PKP-

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