

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17636 of 2021

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Seema Patel W/o Omkar Nath Patel R/o Village Datiyaon, P.O. Kurasan,
Ward No. 5, Datiawan, P.S. Bhabhua, District (Kaimur) Bhabhua, Bihar
821101.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Minor Water Resources
Department, Vikas Bhawan, District Patna, Bihar.
2. The Chief Engineer, Minor Irrigation Division, Bhabhua, Bihar.
3. The Superintendent Engineer, Minor Irrigation Division, Bhabhua, Bihar.
4. The Executive Engineer, Minor Irrigation Division, Bhabhua, Bihar.
5. The Vigilance Officer, Minor Irrigation Division, Bhabhua, Bihar.
6. The District Magistrate, Bhabhua Kaimur, Bihar.
7. The Circle Officer, Kaimur, Bhabhua, Bihar.
8. The Senior Deputy Collector, Revenue Department, Kaimur, Bhabhua,
Bihar.
9. The DCLR, Kaimur, Bhabhua, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ashutosh Nath, Advocate
For the Respondent/s : Mr.Ajit Kumar (GA 9)

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

Date : 05-10-2021

Heard learned counsel for the parties.

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



A. For issuance of an appropriate writ in the nature of Mandamus, directing the respondents to measure the subject encroached pokhars/ponds situated at plot no. 514, thana 503 at Village Datiyaon, Betri Panchayat, Bhabhua Block, Bihar having an area about 5.14 Acres, Plot no. 364 chack Khata no. 335 having area about 2.93 acres, plot no. 316 khesara 654 having area about 1.29 hectare and plot no. 316 khesara no. 452 having area about 0.8 hectare Village Datiyaon, which originally being a pond/pokhar have been illegally encroached upon by land mafias by illegally filling soil therein and thereby, to remove the encroachment thereupon reinstating the pond to its original structure Pokhar.

B. For issuance of an appropriate writ in the nature of Mandamus, directing the respondents to take action in compliance of Order dated 12.07.2018 was passed by the District Magistrate, Bhabhua in Bihar Jan Lok Shikayat case no. 999960107061705210/2A for removal of encroachment over encroached Pond at Plot no. 335 khesara no. 364 in village Datiyaon, Betri Panchayat, Bhabhua, Bihar.



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- C. For issuance of an appropriate writ in the nature of Mandamus, directing the respondents to take action in compliance of the report dated 28.04.2014, issued by the DDC on the directions by the additional collector, Bhabhua in report dated 28.02.2014, thereby to remove any encroachment on the subject plot no. 514, Datiaon, Kaimur Bhabhua, Bihar and to initiate legal action against the then Mukhiya of Betri Panchayat for misuse of public funds..
- D. For issuance of an appropriate writ in the nature of Mandamus, directing the respondent authorities to restore the subject Pokhar /Water Reservoirs to their original dimension by dredging the same to their original depth and width, more particularly to area originally allotted in land records by removing their encroachment along all sides.
- E. For issuance of an appropriate writ in the nature of Mandamus, directing the respondents to initiate enquiry into misutilisation/ embezzlement of public money and fabrication of records on behest of Gram Panchayat in purported illegal exercise of its power in the encroachment and illegal filling of the said pokhars



and thereby to take strict legal actions subject to the outcome of the said enquiry/report.

F. Any other relief or reliefs which the petitioner may be found entitled to in the facts and circumstances of the case.

G. Cost of the litigation throughout may be directed to be paid to the petitioner.

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 respondent No. 6 District Magistrate, Bhabhua, Kaimur, Bihar 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.

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) Petitioner 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 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 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)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	07.10.2021
Transmission Date	

