

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18410 of 2021

1. Rajesh Kumar S/o Dashrath Singh, Resident of Mohalla - Fazalganj Durga Chowk, Gali No. 2, Fazalganj, Sasaram, P.O. and P.S. - Sasaram, Dist. - Rohtas, Bihar.
2. Surendra Kumar Singh, Son of Markat Singh, Resident of Mohalla - Fazalganj Durga Chowk, Gali No. 2, Fazalganj, Sasaram, P.O. and P.S. - Sasaram, District - Rohtas, Bihar.
3. Rana Pratap Singh, S/o Ramrup Singh, Resident of Mohalla - Fazalganj, Ward No. 10 P.O. and P.S. - Sasaram, Dist. - Rohtas, Bihar.
4. Pritam Azad Kumar, S/o Ramashankar Chourasia Resident of Mohalla - Bhartiganj, Takiya Maidan Sasaram, Dist. - Rohtas, Bihar.
5. Rajesh Kumar Choudhary, S/o Hira Lal Choudhary, Resident of Mohalla - Lakhnusrarai, P.O. and P.S. - Sasaram, District - Rohtas, Bihar.
6. Arjun Singh, S/o Jamuna Singh, Resident of Village - Biyarbandh, P.O. - Dumri Sahpur, Rohtas, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Rohtas, Sasaram.
2. Principal Secretary, Land and Revenue Reforms Department, Government of Bihar, Patna.
3. Commissioner, Patna Division, Patna.
4. Sub Divisional Officer, Sasaram, Rohtas.
5. Executive Magistrate, Nagar Parishad, Sasaram, Rohtas.
6. Circle Officer, Sasaram, Rohtas.
7. Suraj Singh, Son of Late Jalim Singh, Resident of Mohalla - Fazalganj (Sasaram), Ward No. 11, P.O. and P.S. - Sasaram, Dist. - Rohtas, State-Bihar.
8. Sachchitanand Ram, Son of Late Ram Ji Ram, Resident of Mohalla - Fazalganj (Sasaram), Ward No. 11, P.O. and P.S. - Sasaram, Dist. - Rohtas, State- Bihar.
9. Dharmendra Sah, Son of Moti Sah, Resident of Mohalla - Fazalganj (Sasaram), Ward No. 11, P.O. and P.S. - Sasaram, Dist. - Rohtas, State-Bihar.
10. Diwakar Pathak, Son of Dayanath Pathak, Resident of Mohalla - Fazalganj (Sasaram), Ward No. 11, P.O. and P.S. - Sasaram, Dist. - Rohtas, State-Bihar.
11. Arun Dubey, Son of Umashankar Dubey, Resident of Mohalla - Fazalganj



- (Sasaram), Ward No. 11, P.O. and P.S. - Sasaram, Dist. - Rohtas, State-Bihar.
12. Kedar Soni, Son of Late Bharat Seth, Resident of Mohalla - Fazalganj (Sasaram), Ward No. 11, P.O. and P.S. - Sasaram, Dist. - Rohtas, State-Bihar.
 13. Laxman Keshri, Son of Hira Prasad Keshri, Resident of Mohalla - Fazalganj (Sasaram), Ward No. 11, P.O. and P.S. - Sasaram, Dist. - Rohtas, State-Bihar.
 14. Shyama Sah, Son of Late Vidya Chandra Sah, Resident of Mohalla - Fazalganj (Sasaram), Ward No. 11, P.O. and P.S. - Sasaram, Dist. - Rohtas, State-Bihar.
 15. Ayodhya Sah, Son of Late Ram Chandra Sah, Resident of Mohalla - Fazalganj (Sasaram), Ward No. 11, P.O. and P.S. - Sasaram, Dist. - Rohtas, State-Bihar.
 16. Sanjay Sah, Son of not known, Resident of Mohalla - Fazalganj (Sasaram), Ward No. 11, P.O. and P.S. - Sasaram, Dist. - Rohtas, State-Bihar.
 17. Shiv Ram, Son of not known Resident of Mohalla - Fazalganj (Sasaram), Ward No. 11, P.O. and P.S. - Sasaram, Dist. - Rohtas, State-Bihar.
 18. Prince Kumar, Son of Raju Ram, Resident of Mohalla - Fazalganj (Sasaram), Ward No. 11, P.O. and P.S. - Sasaram, Dist. - Rohtas, State-Bihar.
 19. Gautam Kumar, Son of Ramashankar Tiwari, Resident of Mohalla - Fazalganj (Sasaram), Ward No. 11, P.O. and P.S. - Sasaram, Dist. - Rohtas, State-Bihar.
 20. Om Prakash Pandey, Son of Late Arjun Pandey, Resident of Mohalla - Fazalganj (Sasaram), Ward No. 11, P.O. and P.S. - Sasaram, Dist. - Rohtas, State-Bihar.
 21. Prem Pathak, Son of Late Bikau Pathak, Resident of Mohalla - Fazalganj (Sasaram), Ward No. 11, P.O. and P.S. - Sasaram, Dist. - Rohtas, State-Bihar.
 22. Ashok Pathak P.N. Pathak, Son of Late Bikau Pathak, Resident of Mohalla - Fazalganj (Sasaram), Ward No. 11, P.O. and P.S. - Sasaram, Dist. - Rohtas, State-Bihar.
 23. Guddu Yadav, Son of Sudarshan Singh, Resident of Mohalla - Fazalganj (Sasaram), Ward No. 11, P.O. and P.S. - Sasaram, Dist. - Rohtas, State-Bihar.
 24. Guddu Singh, Son of Janeshwar Singh, Resident of Mohalla - Fazalganj (Sasaram), Ward No. 11, P.O. and P.S. - Sasaram, Dist. - Rohtas, State-Bihar.
 25. Sunil Sinha, Son of Bindeshwari Prasad Sinha, Resident of Mohalla - Fazalganj (Sasaram), Ward No. 11, P.O. and P.S. - Sasaram, Dist. - Rohtas, State-Bihar.
 26. Vishwanath Sah, Son of not known Resident of Mohalla - Fazalganj (Sasaram), Ward No. 11, P.O. and P.S. - Sasaram, Dist. - Rohtas, State-Bihar.



27. Kashi Sah, Son of not known Resident of Mohalla - Fazalganj (Sasaram), Ward No. 11, P.O. and P.S. - Sasaram, Dist. - Rohtas, State- Bihar.
28. P.N. Pathak, Son of not known Resident of Mohalla - Fazalganj (Sasaram), Ward No. 11, P.O. and P.S. - Sasaram, Dist. - Rohtas, State- Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Nagendra Kumar, Advocate
Mr. Indradeo Prasad, Advocate
For the Respondent/s : Mr. Md. Khurshid Alam, AAG-12

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE A. M. BADAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 26-10-2021

Heard learned counsel for the parties.

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

- (i) वार्ड नं० - 11 में जी० टी० रोड से प्रजा निकेतन स्कूल से बादशाही पुल, सासाराम नदी पर से अधिकतम हटाने हेतु निम्न उत्तराधिकारों के विरुद्ध अधिकतम राय संस्थित करने का आदेश पारित किया जाय।
- (ii) कोई अन्य आदेश / आदेशों / निदेश / निदेशों / रीट / रीटों जो वार्ड नं०-11 जी० टी० रोड से प्रजा निकेतन स्कूल से बादशाही पुल पर से अधिकतम हटाने को उचित हो, उसे पारित किया जाय।

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 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 four 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 respondent no.1, namely the District Magistrate, Rohtas, Sasaram within a period of four weeks from today by filing a representation for redressal of the grievance(s);

(b) Respondent No.1, namely the District Magistrate, Rohtas, Sasaram 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 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)

(A. M. Badar, J)

P.K.P./Amrendra

AFR/NAFR	
CAV DATE	
Uploading Date	27.10.2021
Transmission Date	

