

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1408 of 2022

1. Shushil Kumar Sarawgi S/o-Shankar Lal Sarawgi, R/o-Nakul Chandra Lane, Mundi Chak, P.S.-Tilka Manjhi, Distt.-Bhagalpur.
2. Gopal Prasad Sah S/o Ganga Prasad Sah R/o-Radha Devi Lane, Mundi Chak, P.S.-Tilka Manjhi, Distt.-Bhagalpur.
3. Pranav Kumar S/o-Pashupati Jaiswal, R/o-Deep Nagar, Kotwali, P.S.-Adampur, Distt.-Bhagalpur.
4. Pratik Kumar S/o-Pashupati Jaiswal R/o-Deep Nagar, Kotwali, P.S.-Adampur, Distt.-Bhagalpur.
5. Ajay Kumar Khandelwal S/o-Prabhu Narayan Khandelwal, R/o-Radha Devi Lane, Mundi Chak, P.S.-Tilka Manjhi, Distt.-Bhagalpur.
6. Ranjit Kumar S/o-Mahendra Tiwari, R/o-G.C.B. Road. Mundi Chak, Bhagalpur, P.S.,-Tilka Manjhi, Distt.-Bhagalpur.
7. Reeta Kumari S/o-Mahendra Tiwari R/o-Chhoti Khanjarpur, P.S.-Barari, Distt.-Bhagalpur.
8. Rakesh Kuar Gupta S/o-Hira Lal R/o-Red Cross Road, Admapur, P.S.-Ishak Chak, Distt.-Bhagalpur.
9. Sangita Devi W/o-Rajesh Kumar, R/o-Baijani, Jagdishpur, P.S.-Adampur, Distt.-Bhagalpur.
10. Anjali Devi W/o-Kapildeo Mahto R/o-Gokul, Mathura, P.S.-Pirpaiti Distt.-Bhagalpur.
11. Khushbu Kumari W/o-Manoranjan Kumar Resident of Station Road, Sultanganj, P.S.-Sultanganj Station Road, Distt.-Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Bhagalpur.
2. The In-Charge Officer, District Nazarat Cell, Bhagalpur Collectorate, Bhagalpur.
3. The Sub-Divisional Officer-Cum-Controller, Sadar, Bhagalpur.
4. The Collector-Cum-Appellate Authority, Bhagalpur.
5. The Divisional Commissioner-Cum-Revisional Authority, Bhagalpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Mukesh Kumar, Advocate
For the Respondent/s : Mr. Sajid Salim Khan, SC-25

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



(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 08-03-2022

Heard learned counsel for the parties.

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

- (i) For quashing the order dated 23.9.2016 passed in Misc. Case No.13/2015 by the House Controller, Sadar Bhagalpur whereby and whereunder the rent of the shop has been enhanced and fixed at the rate of Rs.30/- per sq.ft. and accordingly monthly rent of the shop has been calculated to be paid by the petitioners without taking into consideration the rent being realised by other Govt. premises adjacent to the shop of the petitioners.
- (ii) For quashing the order dated 1.6.2020 passed by the learned Collector-cum-Appellate Authority, Bhagalpur in H.C. Appeal Case N.182/2016-17 whereby the order of fixation of enhance rent by the Controller has been confirmed and the appeal has been rejected.
- (iii) For quashing the order dated 30.4.2021 passed by the Learned Divisional Commissioner, Bhagalpur in House Control Revision Case No.01 of 2020-21 whereby the Revision Application has been rejected and the order passed by Collector, Bhagalpur dated 1.6.2020 has been affirmed.
- (iv) For direction to the respondent authorities to enhance the rent of the shop in question, if necessary after taking into consideration the rent of other shops situated adjacent to the shops of the petitioners.
- (v) For restraining the respondent authorities from taking any co-ercive steps against the petitioners during pendency of the writ application.
- (vi) For any other relief/reliefs for which the petitioners are found entitled to.

After the matter was heard for some time, finding the Bench not to be in favour with the submissions made across the Bar, learned counsel for the petitioners, under



instructions, states that petitioners shall be content if a direction is issued to the authority concerned 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 four 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 on the following terms:-

(a) Petitioners shall approach the authority concerned i.e. Respondent No. 4 namely the Collector-cum-Appellate Authority, Bhagalpur within a period of four weeks from today by filing a representation for redressal of the grievance(s);

(b) The said authority shall sympathetically 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) The order assigning reasons shall be



communicated to the petitioners;

(d) Needless to add, while considering such representation, principles of natural justice shall be followed and due opportunity of hearing afforded to the parties;

(e) Also, opportunity to place on record all relevant materials/documents shall be granted to the parties;

(f) Equally, liberty is reserved to the petitioners to take recourse to such alternative remedies as are otherwise available in accordance with law;

(g) 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;

(h) Liberty reserved to the petitioners to approach the appropriate forum/Court, should the need so arise subsequently on the same and subsequent cause of action;

(i) Until disposal of the representation filed by



the petitioners, no coercive steps be taken against the petitioners;

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

The petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

P.K.P./Amrendra

AFR/NAFR	
CAV DATE	
Uploading Date	10.03.2022
Transmission Date	

