

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8409 of 2021

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M/s. Gupta Industries, through its proprietor Vijay Kumar Vikranta, Gender - Male, aged about 38 years Son of Shri Shivnath Prasad Gupta, R/o R.K. Puram, Lane No. 4, Bela, Moni Bhawan, R.K. Ashram, Muzaffarpur, P.S. Mithanpura, District- Muzaffarpur, Bihar – 843116. Petitioner/s

Versus

1. The State of Bihar through Additional Chief Secretary, Department of Industries, Government of Bihar, Patna.
 2. The Additional Chief Secretary, Department of Industries, Government of Bihar, 2nd Floor, Vikas Bhawan, Patna.
 3. The Principal Secretary, Department of Industries, Government of Bihar, 2nd Floor, Vikas Bhawan, Bailey Road, Patna.
 4. The Bihar Industrial Area Development Authority (BIADA) through its Managing Director, 1st Floor, Udyog Bhawan, East Gandhi Maidan, Patna.
 5. The Managing Director, Bihar Industrial Area Development Authority (BIADA), 1st Floor, Udyog Bhawan, East Gandhi Maidan, Patna.
 6. The Executive Director, Bihar Industrial Area Development Authority (BIADA), Regional Office, Muzaffarpur.
 7. The Development Officer, Bihar Industrial Area Development Authority (BIADA), Regional Office, Muzaffarpur.
 8. The Area Incharge, Industrial Area Muzaffarpur.
- Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajesh Ranjan, Advocate Mr. Arvind Kumar, Advocate
For the Respondent/s	:	Mr. Rajeev Kumar Sinha, AC to AAG 7 Mr. Pankaj Kumar Sinha, Advocate Mr. Devesh Shankaran, Advocate

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

Date : 21-04-2022

Heard learned counsel for the parties.

Petitioner has prayed for following relief:-

- i. For setting aside the order contained in letter no. 757 dated 11.07.2019, passed by respondent no. 7 (The

Development Officer, Muzaffarpur) whereby and where under it has been directed to the petitioner to deposit the transfer fee to the tune of Rs.16,56,260/- along with maintenance charge to the tune of Rs.3,77,556/- and GST of Rs. 69,760/- in order to transfer 10,890 Sq. Ft. and letter contained in Memo No. 1229 dated 03.12.2019 and Letter No. 134 dated 10.02.2020 of land bearing plot No. D-5 in the name of the petitioner in the records of BIADA, which is arbitrary, whimsical and in teeth of the order of BIADA Board of Directors contained in Memo No. 5640 dated 03.08.2013, as such impugned orders have no leg to stand in view of the settled principles of law as by the impugned order prevailing circle rate of industrial area Phase I i.e. urban area has been asked to pay instead of industrial area Phase II i.e. rural area despite being the fact the plot in question belongs to Phase II i.e. rural area.

- ii. To hold and declare that the petitioner can hardly be put under obligation to pay the transfer fee @ 15% of the prevailing circle rate of the industrial area Phase II (rural area) and maintenance charge @ 5% in terms of office order vide Memo No. 5640 dated 03.08.2013 and in terms of order dated 22.10.2019 passed in civil appeal No. 35887/2015, BIADA Vs. Amit Kumar by the Hon'ble Supreme Court.
- iii. For issuance of appropriate writ in the nature of mandamus commanding the respondent to refund the

differential amount of transfer fee, maintenance charge and GST so paid by the petitioner with interest and to treat the petitioner equitably with similarly situated other allottee wherein the prevailing circle rate is taken for the industrial area where the plot is situated and not on the basis of the adjoining area.

- iv. For a direction to the respondent authority to further compute the above mentioned transfer fee only for 61 years and 3 months i.e. for the proportionate period for which the land is being transferred and not for 90 years.
- v. The Hon'ble Court may award the cost of litigation and suitable compensation to the petitioner for the loss and damages on account of illegal and arbitrary action of respondents BIADA.
- vi. For any other relief or reliefs for which the petitioner be found entitled in the eye of law.

After the matter was heard for some time, finding the Bench not to be agreeable with the submissions made by learned counsel for the petitioner, learned counsel for the petitioner, under instructions, states that petitioner shall be content if a direction is issued to the authority concerned, respondent no.7. **the Development Officer, Bihar Industrial Area Development Authority (BIADA), Regional Office, Muzaffarpur** 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.

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) 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 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 petitioner;

(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 petitioner to take recourse to such alternative remedies as are otherwise available in accordance with law;

(g) 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;

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

(i) 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)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.04.2022
Transmission Date	NA