

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.5780 of 2022**

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Utkarsh Kumar S/o Lalan Kumar, resident of Navrastra Press Lane, R.K.  
Bhattacharya Mod, Rajendra Path, Patna- 800 001.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Urban Development Department, Secretariat, Bailey Road, Patna- 800 015.
2. The Principal Secretary, Health Department, Vikash Bhawan, Secretariat, Government of Bihar, Bailey Road, Patna- 800 015.
3. The Secretary, Co-operative Department, Government of Bihar, Vikash Bhawan, Bailey Road, Patna- 800 015.
4. The District Magistrate, Collector at, Gandhi Maidan, Patna- 800 004.
5. The District Co-operative, Government of Bihar, Chhajubagh, Patna.
6. The Municipal Commissioner, Patna Municipal Corporation, Maurya Complex, Kotwali Thana, Dakbunglow Road, Patna.
7. The Municipal Corporation through the Municipal Commissioner, Maurya Complex, Kotwali Thana, Dakbunglow Road, Patna.
8. The Executive Engineer, Kankarbagh, Division, Patna Municipal

Corporation, Kankarbagh, Patna- 800 020.

9. The Secretary, 46, L.I.C. Housing Cooperative Society, Kankarbagh, Patna- 800 020.
10. Dr. Anupam W/o Dr. Sakil Kumar Singh, Resident of 51, L.I.C. Colony, P.O.- Lohiya Nagar, Police Station- Patrakar Nagar, Kankarbagh, Patna- 800 020.

... .. Respondent/s

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**(The proceedings of the Court are being conducted by Hon'ble the Chief Justice /Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences /offices.)**

**Appearance :**

For the Petitioner/s : Mr.Lal Babu Singh, Adv  
For the Respondent/s : Mr.Yogendra Prasad Sinha ( AAG 7 )

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

**Date : 24-06-2022**

Heard learned counsel for the parties.

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

- i. That through under banner of Public Interest Litigation this writ petition, petitioner craves indulgence of this Hon'ble Court for issuance of

the appropriate writ(s)/Direction(s) commanding the respondents to take appropriate action against respondent No. 10 restraining him to construct his Mental and Gaynce Hospital over Plot No. 51, in L.I.C. Co-operative Society (herein-after referred as Society, Kankarbagh, Patna which has been constructing complete violative of building bye-laws without sanctioning the map, pollution certificate from society and Next neighbor as well as complete ~~defiance~~<sup>defiance</sup> of the terms and conditions of the Lease-Deed as also contrary to the provisions of society Bye-laws which regulates the affairs of the society and such action of the respondent no. 10 adversely effects the right to life and property of the ~~petitioner~~<sup>petitioner</sup> and local people at large as granted by the Constitution of India to the citizens for that petitioner has highlighted her grievances before the authorities at different levels and Patna inquiry was also made by the Sub Divisional Officer, Patna Sadar and as well as

Patna Municipal Corporation who found that illegal construction are being made and report was also sent to Patna Municipal Corporation (Annexure-3) despite of that authorities are sitting tight over the matter and illegal constructions are being erected day by day in hurry.

- ii. For issuance of any other relief/reliefs which the Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

Learned counsel for the State submits that the issue raised in this PIL can be best resolved at the local level by the appropriate authorities.

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 The Municipal Commissioner, Patna Municipal Corporation, Maurya Complex, Kotwali Thana, Dakbungalow Road, Patna**, 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)**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)**

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