

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5862 of 2022

1. Pushpa Devi Wife of Sri Amit Kumar Singh, resident of Village-Rudauli, Ward No. 13, Post-Rudauli, P.S. and Anchal-Bachchwara, District-Begusarai, PIN code-851111.
2. Chandra Bhushan Singh, son of Late Damodar Singh, resident of Village-Rudauli, Ward No. 13, Post-Rudauli, P.S. and Anchal-Bachchwara, District-Begusarai, PIN code-851111.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Govt. of Bihar, Patna.
2. The Director, Department of Revenue and Land Reforms, Govt. of Bihar, Patna.
3. The Principal Secretary, Rural Development Department, Govt. of Bihar, Patna.
4. The Director, Rural Development Department, Govt. of Bihar, Patna.
5. The Commissioner, Munger Division, Munger.
6. The District Magistrate, Begusarai.
7. The Sub Divisional Officer, Teghra, Begusarai.
8. The Anchal Adhikari, Bachchwara Anchal, District-Begusarai.
9. The Block Development Officer, Bachchwara Block, District-Begusarai.
10. Dr. Shashi Bhushan Singh, son of Late Bhubneshwar Singh, resident of Village-Rudauli, Ward No. 13, Post-Rudauli, Via-Bachchwara, P.S. and Anchal-Bachchwara, District-Begusarai, PIN Code-851111.
11. Sri Shailendra Prasad Singh, son of Late Shatrughan Prasad Singh, resident of Village-Rudauli, Ward No. 13, Post-Rudauli, Via-Bachchwara, P.S. and Anchal-Bachchwara, District-Begusarai, PIN Code-851111.
12. Sri Satyendra Prasad Singh, son of Late Shatrughan Prasad Singh, resident of Village-Rudauli, Ward No. 13, Post-Rudauli, Via-Bachchwara, P.S. and Anchal-Bachchwara, District-Begusarai, PIN Code-851111.
13. Sri Jitendra Prasad Singh, son of Late Shatrughan Prasad Singh, resident of Village-Rudauli, Ward No. 13, Post-Rudauli, Via-Bachchwara, P.S. and Anchal-Bachchwara, District-Begusarai, PIN Code-851111.
14. Sri Sharda Prasad Singh, son of Late Suryadeo Narain Singh, resident of Village-Rudauli, Ward No. 13, Post-Rudauli, Via-Bachchwara, P.S. and Anchal-Bachchwara, District-Begusarai, PIN Code-851111.
15. Sri Bibhuti Prasad Singh, son of Late Bachchu Singh, resident of Village-Rudauli, Ward No. 13, Post-Rudauli, Via-Bachchwara, P.S. and Anchal-Bachchwara, District-Begusarai, PIN Code-851111.
16. Sri Kumar Achutanand Singh, son of Late Sri Narain Singh, resident of



Village-Rudauli, Ward No. 13, Post-Rudauli, Via-Bachchwara, P.S. and Anchal-Bachchwara, District-Begusarai, PIN Code-851111.

17. Sri Sachidanand Prasad Singh, son of Late Sri Narain Singh, resident of Village-Rudauli, Ward No. 13, Post-Rudauli, Via-Bachchwara, P.S. and Anchal-Bachchwara, District-Begusarai, PIN Code-851111.
18. Sri Nalin Kumar Singh, son of Late Sri Narain Singh, resident of Village-Rudauli, Ward No. 13, Post-Rudauli, Via-Bachchwara, P.S. and Anchal-Bachchwara, District-Begusarai, PIN Code-851111.
19. Sri Kumar Vivekanand Singh, son of Late Sri Narain Singh, resident of Village-Rudauli, Ward No. 13, Post-Rudauli, Via-Bachchwara, P.S. and Anchal-Bachchwara, District-Begusarai, PIN Code-851111.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Chandra Mauli Chaurasia, Advocate
For the Respondent/s : Mr.Md. Khurshid Alam (AAG 12)

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

(Per: HONOURABLE THE CHIEF JUSTICE)

2 24-06-2022 Petitioner has prayed for the following relief(s):-

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- i) For issuance of a writ in the nature of 'Mandamus' commanding the Respondents authorities concerned to direct the Respondent Nos. 10 to 19 and other illegal encroachers of the village-Rudauli, Ward No. 13 to remove their respective illegal encroachments done over the kheshra no. 1357 appertaining to khata no. 458 having an area of 2 kachas, 17 dhurs of land recorded as the gairmajarua Aam public land in the Cadestral Survey Khatiyon as well as in the Revisional Survey Khatiyon and also over the kheshra no. 1358 appertaining to khata no. 457 having an area of 4 kachas, 8



dhurs of land recorded as gairmajarua khash land in the C.S. as well as in the R.S. Khatiyani along with one survey kuan (well) situated in the said kheshra no. 1353 of khata no. 457 immediately in accordance with law situated in mouza-Rudauli, Ward no. 13, Thana no. 221 within Bachchwara Anchal and Police Station in the district of Begusarai, which were used as the public road (aam rasta) by the general public at large of the village in question since the time immemorial but the same has been illegally and arbitrarily stopped by the Respondents no. 10 to 19 and some other villagers due to their respective illegal encroachments done over the said two public lands in question by constructing their respective parts of their houses, bathan-cum-sahan etc. by erecting boundary over the same, which is evident



from Annexure – 1, 2 and 5 series of the Writ Application itself and only an area of about two feet wide space on the said public land has been left out by the Respondent Nos. 10 to 19 and some other villagers for the use of the general public at large as footpath (pagdandi) and hence the general public of the village in question are facing great difficulties to go by over the same since no any vehicle, Ambulance, Auto, Rickshaw, four wheelers can enter in the ward no.- 13 of village- Rudauli for want of any link Road in the emergency situation even for the patients in their critical situation of life.

- ii) For issuance of a writ in the nature of mandamus' commanding the Respondents Authorities concerned to direct the respondents no. 10 to 19 and some other illegal encroachers of the village- Rudauli to



remove their respective illegal encroachments done over the kheshra no.- 254 appertaining to khata no.- 439 recorded as gair majarua Aam Rasta (Public Road) in the C.S. Khatiyana as well as in the R.S. Khatiyana situated in mouza - Rudauli, Thana No.- 221 within Bachchwara Anchal and police station in the district of Begusarai which begins from the house of one Dr. Shashi Bhushan Singh (Respondent No.- 10) to Hashminiya Bar in Khilha chour i.e. a distance of about one and half K.M. long Survey Road having about 30 feet wide as the same has also been illegally encroached by the respondents no.- 10 to 19 and some other villagers from both the sides of the aforesaid public road in question which were used by the general public of the village in question at large since long for cultivating their respective lands situated in



Khilha chour and only an area of about two feet wide space of the same has been left out by the said illegal encroachers for the use of the general public at large of the village in question as footpath only over the said public survey Road in question and hence the general public particularly the farmers and labourers face great difficulties in farming of their lands since no any tractor or any tools of ploughing can go to Khilha Chour for cultivating purposes, which would be evident from Annexure-2 and 5 series of the writ application itself.

- iii) For issuance of a writ in the nature of 'Mandamus' Commanding the Respondents authorities concerned to remove the illegal encroachments done by the Respondents No. 10 to 19 and some other villagers over the aforesaid Kheshra No. 1357 of Khata No. 458



and the Kheshra No. 1353 of Khata No. 457 recorded as Gair Majarua Aam and Gair Majaura Khash lands respectively in the C.S. Khatiyan as well as in the R.S. Khatiyan and the Kheshra No. 254 of Khata No. 439 recorded as the Gair Majarua Aam Rasta (Survey Public Road) situated in Mauza-Rudauli, thana No. 221 within Bachchwara Anchal and Police Station in the district of Begusarai immediately as per the provisions of the Bihar Land Encroachment Act, 1956 with the help of the Police Force at the cost of the illegal encroachers since the aforesaid public lands in question under the encroachments were used by the general public of the village as Aam Rasta since long but the same have been illegally and arbitrarily encroached by the Respondents No. 10 to 19 and some other villagers, which



are evident from Annexure-2 and 5 series of the Writ Application itself and the general public of the Village in question are facing great difficulties for want of any link Road there in the facts and circumstances of the case on record.

- iv) For issuance of a writ in the nature of 'Mandamus' commanding the respondents authorities concerned to construct the pitch Road over the aforesaid public lands in question immediately after removal of the illegal encroachments over the same immediately in accordance with law in the facts and circumstances of the case on record.
- v) For direction to the respondents authorities concerned to renovate or repair or reconstruct the survey well situated in Kheshra No. 1353 of Khata No. 457 recorded



as Gair Majarua Khash land in C.S. as well as in the R.S. Khatiyar situated in Mouza-Rudauli, Thana No. 221, Ward No. 13 within Bachchwara Anchal and Police Station in the district of Begusarai immediately after removal of the illegal encroachment done over the aforesaid public lands by the respondents no. 10 to 19 and some other villagers so that the general public may use the said Survey well like earlier for the purposes of drinking water and also for irrigation of their lands surrounding the aforesaid well in question in the facts and circumstances of the case on record.

- vi) For direction to the respondents authorities concerned to take legal appropriate actions against the respondents No. 10 to 19 and some other illegal encroachers of the village in question in accordance with law since they



have illegally and arbitrarily encroached and occupied the aforesaid three public lands in question of the Government of Bihar, which were used by the general public at large of the village in question as Aam Rasta since long but they have been restrained to use the same as public road by the Respondents No. 10 to 19 and some other illegal encroachers of village-Rudauli forcibly by tampering in the Jamabandi and records of right of the Government of Bihar in collusion with the staffs of the Anchal upto the district level and hence a direction be issued to the respondents authorities concerned to remove the illegal encroachments over the said three public lands in question done by the respondents No. 10 to 19 immediately after cancellation of their respective Jamabandi, if any, in accordance with law with respect to



the aforesaid Government lands in question in the facts and circumstances of the case on record.

- vii) And further for grant of any other relief or reliefs for which the petitioners are entitled for in the facts, law and circumstances of the case of the petitioners on record for the construction of the link pitch road over the aforesaid three public lands in question for the use of the general public at large of village Rudauli since there is no any link road to connect the ward no.- 13 of the said village till date.

We find that petitioner has an alternative remedy, equally efficacious in term of and under the provisions of the Bihar Public Land Encroachment Act, 1956.

Confronted as to why the petitioner has not taken recourse to such remedies, we see no answer forthcoming.

We see that the present petition is in the nature of private interest litigation and not public interest litigation, inasmuch as dispute between the private parties stands highlighted. As such, we refrain from issuing any notice.



Learned counsel for the State opposes the petition stating that the petition is misconceived; raises disputed question of fact; is not in public interest; and that the issue can be best resolved at the local level by the appropriate authorities.

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) Liberty reserved to the petitioner to take recourse to such remedies as are otherwise available in accordance with law;

(b) 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;

(c) The authority concerned shall consider and dispose of



the matter expeditiously by a reasoned and speaking order preferably within a period of four months from the date of approaching the petitioner before the appropriate authority;

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

(e) 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;

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

(g) 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, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

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