

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12778 of 2022

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Keshav Kumar Gupta Son of Devendra Prasad Gupta, resident of Mohalla -
Sikandapur, behind S.P. Kothi, P.S. Muzaffarpur Town, District - Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Urban Development and Housing Department,
Government of Bihar, Patna.
3. The Divisional Commissioner, Tirhut Division, Muzaffarpur.
4. The District Magistrate, Muzaffarpur, District - Muzaffarpur.
5. The Sub-Divisional Officer, Muzaffarpur, District - Muzaffarpur.
6. The Municipal Commissioner Muzaffarpur Municipal Corporation,
Muzaffarpur.
7. Dhiraj Kumar Gupta Son of Sri Bhola Sah, Resident of Mohalla -
Sikandarpur, Ward No. 14, P.S. Muzaffarpur Town, District - Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Santosh Kumar, Advocate
For the Respondent/s	:	Mr.Yogendra Prasad Sinha (AAG 7) Mr. Awadhesh Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

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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.)**

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Date : 02-09-2022

Heard learned counsel for the parties.

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



- (I) For issuance of an appropriate writ in the nature of **MANDAMUS** commanding and directing the Respondent Authorities to stop the illegal construction under the territorial jurisdiction of Muzaffarpur Municipal Corporation as also to take proper action against the owner of the illegal constructed house .
- (II) For issuance of an appropriate writ in the nature of **MANDAMUS** commanding and directing the Respondent Authorities ,particularly the Respondent no.6 to remove the illegal construction as well as encroachment made by the Respondent no.7 on the ground that in the enquiry ,it has been found that the Respondent no.7 had encroached 72 square feet land ,therefore, vide order contained in letter no. 613 dated 28.04.2021 , the Respondent no.6 ordered for deposit of Rs.3,12,320/- as fine as also directed to remove the encroachment over the land of 72 square feet but even after lapse of about one and half years the Respondent no.7 neither deposited the amount of fine in the Respondent Corporation nor removed the encroachment over the encroached land neither the Respondent Authorities removed the encroachment made by the Respondent no.7 at their own level.
- (III) For issuance of any other appropriate writ/writs ,order / orders, direction/directions for which the writ petitioner shall be found entitled under the facts and circumstances of the case.

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.

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.

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 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)

P.K.P./-

AFR/NAFR	
CAV DATE	
Uploading Date	06.09.2022
Transmission Date	

