

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16794 of 2022

Reyaz Ahmad son of Md. Abdullah Ansari, resident of Village-Sonasati, Tola-Mohammadpur, Ward No. 06, Post-Rajapur Madan, P.S.-Shikarpur, District-West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms Development, Govt. of Bihar, Patna.
2. The Director, Department of Revenue and Land Reforms Development, Govt. of Bihar, Patna.
3. The Principal Secretary, Rural Development Department, Govt. of Bihar, Patna.
4. The Commissioner, Tirhut Division, Muzaffarpur.
5. The Collector, West Champaran, Bettiah.
6. The Additional Collector, West Champaran, Bettiah.
7. The Sub-Divisional Officer, Narkatiyaganj, West Champaran.
8. The Anchal Adhikari, Narkatiyaganj Anchal, Narkatiyaganj, District-West Champaran.
9. Mukhi Ram, son of Late Jagu Ram, resident of Village-Kathgarwa, P.S. Shikarpur, Post-D.K. Shikarpur, District-West Champaran, PIN Code-845455.
10. Bhutan Ram, son of Late Jagu Ram, resident of Village-Kathgarwa, P.S. Shikarpur, Post-D.K. Shikarpur, District-West Champaran, PIN Code-845455.
11. Magni Ram, son of Late Jagu Ram, resident of Village-Kathgarwa, P.S. Shikarpur, Post-D.K. Shikarpur, District-West Champaran, PIN Code-845455.

... .. 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 PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

(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.)

Date : 09-12-2022

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

“(i) For issuance of a writ in the nature of 'Mandamus' commanding the Respondents Authorities concerned directing them to cancel or set aside the purcha or license issued in the name of the father of the Respondents No. 9 to 11 contained in Annexure 2 of this Writ Application as well as the purchas issued in the names of several persons of village Kathgharwa, whose names are not known to the petitioner in accordance with law issued by the Respondents authorities concerned with respect to the land of kheshra no. 292 of khata no. 03, an area of 1.83 Acres of land of Mouza - Kathgharwa, Thana No. 335 recorded as Parti Kadim gair majaura malik land in C.S. khatiyani situated within Shikarpur Police Station and Narkatiyaganj Anchal and Block in the district of West Champaran for plantation of the trees in the same by the aforesaid purcha holders knowing full well that the Kabristan and Idgah of the muslim community of the areas concerned are situated in the said land in question since several years till date in which the general public at large of the muslim community of about five surrounding villages use to bury the dead bodies as per their rituals since time immemorial till date but due to illegal



intervention of the aforesaid purcha holders in Kabaristan (graveyard) and Idgah situated in the aforesaid land in question on the basis of their respective purchas issued by the respondents authorities concerned illegally in order to plant trees in the same, the situation over the land in question has become very sensitive and tense and there is always apprehension of breach of peace and communal riots with respect to the aforesaid Kabristan and Idgah situated in the aforesaid land in question in the facts and circumstances of the case on record.

(ii) For issuance of a writ in the nature of "Mandamus" commanding the respondents authorities concerned directing them to settle the Kheshra No. 292 of Khata No. 03, an area of 1.83 Acres of land of Mouza-Kathgharwa, Thana No. 335 situated in Shikarpur Police Station and Narkatiyaganj Anchal and Block in the district of West Champaran recorded as Parti Kadim gair majaura malik land in C.S. Khatiyani in the name of kabristan and Idgah without rent in accordance with law immediately since the same are situated in the aforesaid land in question since long till date in pursuant to the letters contained in Annexure-4, 5, 6, 9, 10, and 11 series of this Writ Application in the facts and circumstances of the case on record as the dispute is very sensitive in the locality due to illegal interference of the purcha holders with respect to the land in question issued by the



respondents Authorities concerned to them for plantation in the Kabristan and Idgah situated in the aforesaid land in question of the Muslim Community of the local areas concerned.

(iii) For direction to the respondents authorities concerned to restrain the Respondents No. 9 to 11 o 11 and other purcha holders concerned for plantation of trees in the said Kabristan and Idgah of the muslim community of the areas concerned situated in the aforesaid land in question since long till date on the basis of their respective purchas issued by the respondents authorities concerned illegally knowing full well that the Kabristan and Idgah are situated in the land in question since time immemorial till date and the said purcha holders including the respondents No. 9 to 11 may not intervene and create any obstacle in the land in question in any manner at any time for the same.

(iv) Further for direction to the respondents Authorities concerned to allow the petitioner to erect the boundary wall around the said Kabristan and Idgah situated in Kheshra No. 292 of Khata No. 03, an area of 1.83 Acres of land of Mouza- Kathgarwa, Thana No. 335 situated within Narkatiyaganj Anchal and Block in the district of West Champaran for safety and protection of the same after making settlement of the said land in question in the name of Kabristan and Idgah without rent in accordance with law.



(v) And further for grant of any other Relief or Reliefs for which the petitioner is entitled for in the facts, law and circumstances of the case on keeping in view of the fact that the issue in this public interest litigation is very sensitive and the situation over the land in question is very tense with respect to illegal interference of the Purcha Holders in the Kabristan and Idgah of the muslim community of the areas concerned in the facts and circumstances of the case on record.”

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.

After the matter was heard for some time, finding the Bench not to be agreeable with the submissions made across the Bar, learned counsel for the petitioner, under instructions, states that petitioner shall be content if a direction is issued to the authority concerned 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



dwelling 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
i.e. Respondent No.5, namely The Collector, West
Champaran, Bettiah 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, shall stand disposed of.

(Sanjay Karol, CJ)

(Partha Sarthy, J)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	14.12.2022
Transmission Date	

