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(2022) 12 PAT CK 0041

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 22336 Of 2019

Jitendra Kumar

APPELLANT

Vs

State Of Bihar

RESPONDENT

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**Date of Decision:** Dec. 13, 2022

**Acts Referred:**

- Constitution Of India, 1950 - Article 226

**Hon'ble Judges:** Sanjay Karol, CJ; Partha Sarthy, J

**Bench:** Division Bench

**Advocate:** Pankaj Kumar, Niranjana Kumar, Amar Nath Singh, Satya Prakash, Raghwendra Kumar, Om Prakash, Ranjeet Kumar Pandey

**Final Decision:** Disposed Of

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### Judgement

Heard learned counsel for the parties.

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

1. For issuance of an appropriate writ in the nature of certiorari for quashing the Kabja Notice issued under the signature of respondent Bank

Manager as well respondent Chief Manager Annexure 1 and 1/1 which were affixed on the door/Gate of the petitioner where by and where under

petitioner was asked to hand over the possession of house in question i. e Door No. 716 P.S. No- 116 P.S. Bihar Sharif ward No 20/16 Nalanda to the

Bank.

And the aforesaid letter/notice has been issued without following any rules of securitization and Reconstruction of financial Assets and Enforcement

security interest Act 2002" in short SAARFAESI Act

ii. Further for issuance of an appropriate writ in the nature of MANDAMUS Commanding and directing the respondent authorities to release the Door

No 716, P.S. No. 116 P.S. Bihar Sharif ward No-20/16 District Nalanda in favour of the petitioner, which is mortgaged land/house against which

petitioner is ready to deposited the loan amount with interest.

iii. Further for issuance of an appropriate writ in the nature of MANDAMUS commanding and directing the respondent authority to permit the

petitioner to deposited the loan amount with interest in 6-7 instalments and accordingly release the house of petitioner which was mortgaged land in

Bank.

iv. further for staying the operation of order impugned/notice impugned during pendency of the instant case.

v. Further for issuance of any other writ/writs and order/orders direction/direction which petitioner shall found entitled under the facts and

circumstances of the case under principle equitable Justice.â€

After the matter was heard for some time, finding the Bench not to be in favour of the submissions made across the Bar, learned counsel for the

petitioner, under instructions, seeks permission to withdraw the present petition reserving liberty to approach Respondent No. 4, namely, the Branch

Manager UCO Bank Kamruddinganj, Bihar Sharif, Nalanda 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 Honâ€™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:-

â€œ34. 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.â€

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)

â€œ24. â€| 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:

â€~198. Demand for performance must precede application.â€"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.â€™

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.â€

As such, petition stands disposed of as withdrawn with the following liberty/observation/direction:-

(a) Petitioner shall approach the authority concerned i.e. Respondent No. 4, namely, the Branch Manager UCO Bank Kamruddinganj, Bihar Sharif,

Nalanda within a period of four weeks from today by filing a representation for redressal of the grievance(s);

(b) The said authority shall consider and dispose it of expeditiously by passing 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) Also, liberty reserved to the petitioner to approach the 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 as withdrawn in the aforesaid terms.

Interlocutory Application(s), if any, shall stand disposed of.