

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6529 of 2000

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Dr. Hem Narayan Agrawal, son of late Ram Narayan Agrawal, aged about 65 years, resident of Mohalla Golghar, P.S. Gandhi Maidan, Dist. Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Collector, Patna.
3. The Patna Regional Development Authority, Patna through its Vice-Chairman.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Binod Kr. Sinha, Adv.

For the State : Mr. Sushant Praveer, AC to SC-27

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

20 09-09-2015

Heard learned counsel for the parties.

2. The prayer of the petitioner in this writ application

reads as follows:-

“1. That this writ application is being filed for issuance of writ of mandamus commanding the respondents authorities to not to demolish the structure of the petitioner standing over plot no. 613 situated at Mohalla-Dujara in the Town and District- Patna for the purpose of taking forcible possession over the said land and/or for issuance of any other writ/writs, direction/ directions, order/orders as it may deem fit and proper to your lordships.”

3. The case of the petitioner is that the land of the petitioner of plot no. 613 Tauzi no. 5225, Khata No. 121 situated at Mohalla Dujra, P.S. Budha Colony, Patna measuring 1 Bigha 2



Kathas and 13 Dhurs is the land of the family of the petitioner by which he is the Karta. According to the petitioner, the said land was given on permanent lease to one Smt. Radha Pyari Devi by Babu Dulari Sharan Singh, ex-landlord on a Salami of Rs. 601 by fixing annual rent including cess amounting to Rs. 6/10/4 and in the Hookumnama, the quality of the land was mentioned as Gairmajaura Malik. The further case of the petitioner is that Smt. Radha Pyari Devi came in possession of the aforementioned land and started paying rent to the ex-landlord which were proven by the petitioner by a number of documents. The further case of the petitioner is that the portion of the land was acquired by the State Government for widening the Patna-Danapur road vide L.A. Case No. 26 of 1922 and a compensation was paid to the ex-landlord who had preferred First Appeal No. 215 of 1923 and, as such, compensation was paid to some of the persons in L.A. Case No. 53 of 1975-76. It is in this way that the petitioner claims right, title and interest in the land and is of the view that effort of demolition of the structure raised by the petitioner by way of go-downs and offices cannot be taken by the respondents.

4. When this case was taken up on 19.3.2009, a stand was taken that the Jamabandi, standing in the name of the petitioner, had already been cancelled in Case No. 14 of 1997-98

under the order of the D.C.L.R., Patna and the respondent no.2 was directed to file his counter affidavit. The order of this Court dated 19.3.2009 reads as follows:-

“List this case in order to enable the counsel for the State to take fresh instruction and file counter affidavit enclosing order sheet of Case No. 14/1997-98 of the Court/office of the Deputy Collector Land Reforms, Patna whereby and whereunder it is said that the Jamabandi standing in the name of the petitioner was cancelled. Counsel for the petitioner would also advert to such counter affidavit and inform this Court as to whether the said order of cancellation of Jamabandi was allowed to become final and thus binding on the petitioner or has been assailed before any authority.

List this case after six weeks as a tied up matter.”

5. Thereafter a supplementary counter affidavit has been filed on 5.11.2009, relevant portion reads as follows:-

- “4. That the present supplementary counter affidavit is being filed pursuance to order dated 19.3.2009 passed by this Hon’ble Court regarding which at the outset it is stated that the land in question is Gairmajrua Aam ‘Pokha’ land. It has never been settled to the petitioner or his family by a competent authority. The Jamabandi created in their favour has been finally cancelled by the D.C.L.R. after deed enquiry vide case No. 14/97-98. The Major portion of the plot still retains its character as described in the Khatiyani. It appears as a depression, ditch and is “Parati” for the Most part.
5. That the nature of the plot no. 613 Khata no. 121 of Mauza Dujra is still almost the same as



mentioned in the cadastral Khatian. It is pertinent to mention that it is a well settled policy of the Govt. that G.M. Aam land should be rarely settled and only when the nature has finally changed due to efflux of time and the settlement of such lands should not impunge adversely on public usage. In this instant however the plot works as a natural sink and affluently from the nearby colony flow naturally into the said depression. Moreover such settlement can be done only at the level of the Govt. The petitioner however have not produced any such settlement orders of a competent authority.

6. *That it is pertinent to mention that revenue records of the said "Halka" were badly damaged by the massive floods of the year 1975 and the present Jamabandi was a shadow creation of the year 1976, when it was created on the basis of production of past revenue receipts (R.R) The revenue receipt were obviously issued without prejudice, and thus the Jamabandi was not created on the basis of any mutation/settlement case order of a competent authority. Though the receipt were issued only up to 1992-93, the Jamabandi was ultimately cancelled under section 4(H) of Bihar land reforms Act 1950 by the than DCLRA under case No. 14/97-98. A close scrutiny of the present Jamabandi brings out of the fact that the receipt on the basis of which the Jamabadi was created was of the year 1967. As per policy letter no. 8/Kha M. Miti-10/90-198/Ra issued by the land reforms commissioner states that revenue receipts in such matter issued after 1961 can be considered of dubious value and*

require deep inquiry.

7. *That the land in question as stated above was clearly G.M. Aam land and its nature being Pokhara was a community land. No orders regarding the said L.A. case of 1923 have been made available to the respondent. As far as the L.A. case of 1975-76 is concerned it is clear, as stated above that Jamabandi was opened in 1976 itself and it seems that taking advantage of those conditions the petitioners might have claimed compensation. The said Jamabandi however was cancelled after detailed enquiry and a prayer is being made to allow recovery of the payments made, if any to the petitioner. The Jamabandi was cancelled after deep inquiry by the then DCLR vide case No. 14/97-98.*
8. *That as far as final order passed by the D.C.L.R. in Case No. 14 of 97-98 is concerned, it is submitted that it is missing from the record. The deponent himself gave through the records of the case as well as verified from the office of the D.C.L.R. Patna but it could not be found. Although it the then then Anchal Adhikari in his order contained in annexure-E of the counter affidavit it is evident that D.C.L.R. vide letter no. 78 dated 23.1.99 communicated the then Anchal Adhikari, regarding cancellation of the Zamabandi of the petitioner. It is relevant to submit here that from perusal of register II it appears that the Zamabandi of the petitioner has been cancelled by the D.C.L.R. vide case no. 14/97-8.*
9. *That it is further submitted that from the facts and circumstances as stated above, it is evident that*



the said land was G.M. Aam land in the nature of Pokhra Major part of the Plot still its character. It has never been settled to the petitioners/or his family by a competent authority and the erstwhile Zamindars did not have authority to settle it. The Jamabandi was created under special conditions prevailing as detailed above, and after deep enquiry the same was cancelled by DCLR vide case no. 14/97-98. The R.R. were however suspended in 1992-93 itself when the matter came to light."

6. From the aforesaid averments made in the counter affidavit, it becomes absolutely clear that there are several disputed questions of fact such as crucial issues of right, title and possession of land, in question, which cannot be effectively and conclusively adjudicated without analyzing the oral and documentary evidence. Normally, in exercise of power under Article 226 of the Constitution of India, the High Court does not investigate such disputed questions of fact.

7. Way back this aspect as with regard to adjudication of disputed question of fact in relation to private competing rights under the aegis of Article 226 of the Constitution of India was gone into by a Constitution Bench of the Apex Court in the case of ***Shri Sohan Lal Vs. Union of India & Anr.*** reported in ***AIR 1957 SC 529*** wherein it was held that a proceeding under Article 226 of the Constitution of India will never be maintainable for declaration of

right, title and possession and restoration of the property to a private individual. The Apex Court in this regard had held as follows:-

“5. We do not propose to enquire into the merits of the rival claims of title to the property in dispute set up by the appellant and Jagan Nath. If we were to do so, we would be entering into a field of investigation which is more appropriate for a Civil Court in a properly constituted suit to do rather than for a Court exercising the prerogative of issuing writs. These are questions of fact and law which are in dispute requiring determination before the respective claims of the parties to this appeal can be decided. Before the property in dispute can be restored to Jagan Nath it will be necessary to declare that he had title in that property and was entitled to recover possession of it. This would in effect amount to passing a decree mentioned hereafter, it is a matter for serious consideration whether in proceedings under Art. 226 of the Constitution such a declaration ought to be made and restoration of the property to Jagan Nath be ordered.”

8. The same principle was again reiterated by the Apex Court in the case of ***D.L.F. Housing Construction (P) Ltd., Vs. Delhi Municipal Corpn. & Ors.*** reported in ***1976 SC 386*** wherein it was held that the dispute and complicated question of law and fact depending on evidence cannot be decided in a writ jurisdiction and the proper forum for such adjudication is the competent civil court. In this regard, the Apex Court had laid down the law in the following terms:-

“18. *In our opinion, in a case where the basic facts are disputed, and complicated questions of law and fact depending on evidence are involved the writ court is not the proper forum for seeking relief. The right course of the High Court to follow was to dismiss the writ petition on this preliminary ground, without entering upon the merits of the case. In the absence of firm and adequate factual foundation, it was hazardous to embark upon a determination of the points involved. On this short ground while setting aside the findings of the High Court, we would dismiss both the writ petition and the appeal with costs. The appellants may if so advised, seek their remedy by a regular suit.*”

9. Thus, the petitioner before successfully assails the proposed demolition of the structure, he will have to take recourse to the ordinary remedy in law i.e. by filing a civil suit as with regard to his right, title and possession over the land, in question. As of now, this Court does not find any clinching evidence which can straightway declare the petitioners to be the rightful owner of the plot in question, inasmuch as, whatever has been stated by the petitioner in the writ application has to be tested by leading of oral and documentary evidence in a properly constituted civil suit.

10. In that view of the matter, while this Court would refuse to pass any order in favour of the petitioner but, then, it will give liberty to the petitioner to file such a civil suit within a period of 60 days from today along with an injunction petition and, if it is

done so, the competent court shall pass an appropriate order on the injunction petition. For a period of sixty days, no coercive action shall be taken against the petitioner.

11. With the aforementioned observation, this application is disposed of.

(Mihir Kumar Jha, J)

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