

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.34 of 2015
IN
Civil Writ Jurisdiction Case No. 20002 of 2013

- =====
1. The State of Bihar, Through The Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna
 2. The Principal Secretary, Department Of Revenue and Land Reforms, Government of Bihar, Patna
 3. The District Collector, Patna
 4. The Circle Officer, Patna Sadar, Patna

.... Respondents -Appellants

Versus

Chandrabanshi Singh, Son of Late Shital Singh, Resident of Mauja Digha, P.S. Digha, P.O. Digha Ghat, Town and District Patna

.... Petitioner- Respondents

WITH

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Civil Writ Jurisdiction Case No. 11544 of 2015

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1. Yadu Mahto . S/o Bndhan Mahto
2. Rohit Mahto S/o Late Dina Nath Mahto
3. Ram Bharosa Mahto S/o late Deoparshan Mahto
4. Lal Dhari Mahto S/o late Gobardhan Mahto
5. Haricharan Mahto S/o late Aggani Mahto
6. Kishori Mahto S/o late Srikrishun Mahto
7. Shambhu Mahto s/o late Aygni Mahto
- All residents of Village Bindtoli, Dhigha, P.S. Dhiga, Distt. Patna.

.... Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reform, Government of Bihar, Patna.
2. The Principal Secretary, Department of Revenue and Land Reforms, Govt. Of Bihar Patna
3. The District Collector, Patna.
4. The Circle Officer, Patna Sadar, Patna.

.... Respondents

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Appearance :

(In LPA No. 34 of 2015)

For the Appellants	:	Mr. Lalit Kishore, Sr. Advocate, PAAG
For the Respondents	:	M/s PKP Singh and Sanjay Kumar. Advocates
For Intervener Respondent	:	Mr. S D Sanjay, Sr. Advocate Mr. Anil Sinha, Advocate

(In CWJC No. 11544 of 2015)

For Petitioners	:	Mr. Umesh Prasad Singh, Sr. Advocate
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For the State : Mr. Dinbandhu Mishra, Advocate
Mr. Lalit Kishore, Sr. Advocate, PAAG
Mr. Raj Nandan Prasad, SC 9
For the Railways : Mr. S D Sanjay, Sr. Advocate
Mr. Bijay Kumar Sinha, Advocate

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)
Date: 15-12-2015

We will be discussing the circumstances, whereunder the present appeal and the writ petition have come to be heard together.

2. At the outset, we have considered it appropriate to mention that the dispute, in the present proceeding s between the parties, is in respect of a part of the land, which falls within *Touzi No. 17554*, in Mouja Digha Diara Khas Mahal, in the district of Patna, which is in occupation of certain persons, covering an area of 6.52 acres. The small habitation has been described in the proceedings as "Bind Toli". The Government of India, Department of Railway, has planned and constructed a rail-cum-road bridge connecting Patna and Pahleja (Sonepur) on Ganga river with an expenditure of Rs.2,921.46 crores. The bridge is, accordingly, at the advanced stage of being commissioned. A '*guide bundh*' is, accordingly, essential for the safety of the bridge and its approaches on both sides, which have been constructed, so far as it relates to Pahleja

(Sonepur side). However, on the Digha side, the said construction of *guide bundh* is complete, but for small stretch of 200 meters, because of the said habitation known as Bind Toli.

3. The existence of Bind Toli, thus, is admittedly a stumbling block in commissioning of the said rail bridge. The case of the appellants, State of Bihar, is that the land, in question, is a Khas Mahal land of the State of Bihar, whereas the respondent of LPA No. 34 of 2015 and petitioners of CWJC No. 11544 of 2015 claim to be the settlees of the land.

Facts giving rise to LPA No. 34 of 2015

4. One Chandrabanshi Singh (sole Respondent in LPA No. 34 of 2015) approached this Court by filing a writ petition, under Article 226 of the Constitution of India, giving rise to CWJC No. 20002 of 2013, seeking a direction to the respondents, State of Bihar, to accept payment of land rent from him, with respect to Khatiyani lands, which, according to him, were settled by the British Crown in favour of his ancestors and Jamabandi (i.e., mutation) was opened in their name and rent receipts were accordingly granted to them. He took the stand that from the time of settlement, his ancestors had been in possession of the said land, cultivating the lands and paying land rent to the Crown



and Jamabandi was also running in their names. It was his case that in the land survey proceedings held in 1928-29 under the Bengal Tenancy Act, 1885, those lands were shown as separate Mouja Digha Diyara Khas Mahal, *Touzi No. 17554*. The lands were not part of any estate and were not permanently settled by the British Crown and the Mouja was shown directly under the Crown. He brought on record a photocopy of Khatiyani, dated 18.5.1929, in support of his plea that in the column of Raiyat, names of the ancestors of the petitioner were recorded on the basis of survey conducted under the Bengal Tenancy Act, 1885. He took a plea that the Crown had settled the land in favour of the Raiyat (tenant) and the tenant used to deposit rent directly in the Government account. The lands were, therefore, called Khas Mahal lands and the petitioner, thus, acquired the right of occupancy as a Raiyat.

5. He also pleaded, in the writ application, that Title Suit Nos. 27/1 29/3 of 1941/47 were filed by the proprietors of one Panapur Estate against the State of Bihar through Collector, Patna, wherein Panapur Estate had claimed their proprietorship right over the land of Mouja Digha Diara Khas Mahal land in which the ancestors of the petitioner were also made defendants as settlees of the Crown (Province of Bihar). The suits, however, came to be



dismissed by the judgment of the learned Additional Subordinate Judge 3rd Court, Patna, dated 21.2.1947, and decided in favour of State of Bihar, which was brought on record by way of Annexure-3 to CWJC No. 20002 of 2013. Appeals preferred against the original decree passed in the said title suits were also dismissed by a Division Bench of this Court in First Appeal Nos. 289/47 and 291/47 by judgment dated 11th February, 1958.

6. The Circle Officer, Patna Sadar, is said to have granted ownership and possession certificate in favour of the petitioner and some other persons on 22.9.1982. A proceeding was subsequently initiated, in the year 2007-2008, for cancellation of Jamabandi vide Cancellation Case No. 4 of 2007-2008. The proceeding was, however, dropped. The petitioner and others are said to have filed a representation before the District Magistrate through *Adhyaksh, Digha-Rajivnagar Krishibhoomi Awas Banchao Sangharsh Samiti*, raising a grievance that rent receipts were not being issued to them without any valid reason. Evidently, the petitioner of CWJC No. 20002 of 2013, the said Chandrabanshi Singh, claimed himself to be the author of the said representation to the District Magistrate, Patna.

7 The State of Bihar, in their counter affidavit, took the stand that the petitioner had failed to annex any



document in support of his claim that Jamabandi was ever created or mutation of the land was done in the name of the petitioner or his predecessors-in-interest. The State denied existence of any evidence to support the case of the petitioner that the land, in question, was settled by British Crown in favour of his ancestors. They also took a plea that in any case, no Jamabandi could have been created with respect to the land appertaining to Touzi in question, the same being Khas Mahal land. The State further took a plea that there was no evidence to show that Jamabandi was created by valid orders in favour of the petitioner. The State denied any finding in the judgment, passed in Title Suit Nos. 27/1 29/3 of 1941/47, to the effect that the land, in question, was settled in favour of the ancestors of the petitioner.

8. The learned Single Judge allowed the writ application by the order under appeal, dated 15.5.2014, passed in CWJC No. 20002 of 2013, by issuing a writ, in the nature of writ of *mandamus*, to the State for issuance of rent receipts upon payment of rent by the petitioner for the entire period during which the State had refused to issue rent receipts and not to disturb possession of the petitioner except by authority of law and procedure established by law. Before allowing the writ application, the learned Single

Judge, referring to the judgment passed in Title Suit Nos. 27/1 29/3 of 1941/47, observed as follows:-

"Upon contest, the suit was dismissed and it was held that the lands were of the Province of Bihar and the petitioner's, who were co-defendants, were settlees from the State of Bihar."

9. The State of Bihar has preferred the appeal under Clause 10 of the Letters Patent of this Court, giving rise to LPA No. 34 of 2015, assailing the aforesaid order of the learned Single Judge, dated 15.5.2014, passed in CWJC No. 20002 of 2013.

An application seeking condonation of delay has been filed by the State of Bihar vide IA No. 87 of 2015.

We have perused the said petition vide IA No. 87 of 2015 and we are satisfied, for the reasons stated therein, that the appellants have been able to make out a case that there existed sufficient cause, which prevented them from preferring the appeal within time and it would be expedient, in the interest of justice, to condone the delay in filing the appeal. The delay of 177 days, in preferring the appeal, is accordingly condoned. IA No. 87 of 2015 stands allowed.

Filing of CWJC No. 11544 of 2015

10. Seven persons have approached this Court by filing the writ application under Article 226 of the Constitution of India, giving rise to CWJC No. 11544 of



2015, seeking direction, *inter alia*, to the respondents to treat the land of Mouja Digha Diyara PS No. 1/2, Khata No.82, 71, 36, 93, 196 (Part) of Khesra No. 272 to 276 (Part), *Touzi No. 17554* as Rraiylati land, following the order of this Court, dated 15.5.2014, passed in CWJC No.20002 of 2013 (supra). Issuance of notices by the Circle Officer, Patna Sadar, to them in Encroachment Case No. 5 of 2015-16, dated 25.05.2015, appears to be the cause of action for institution of CWJC No. 11544 of 2015. The notices were issued on 25.5.2015, which have been brought on record by way of Annexure-2 series to CWJC no. 11544 of 2015. They have taken a plea that their houses were also situated on the land covered by *Touzi No. 17554* of the said Mauja Digha Diara in Bind Toli and took a stand that they were entitled to the same relief as granted to Chandrabanshi Singh, by order, dated 15.5.2014, passed in CWJC No. 20002 of 2013, which is under appeal in LPA No. 34 of 2015.

11. CWJC No. 11544 of 2015 was taken up by a learned Single Judge of this Court on 4.8.2015. In the meanwhile, a Division Bench of this Court, vide order, dated 29.7.2015, while admitting LPA No. 34 of 2015, had stayed the operation of the judgment and order under appeal, passed by the learned Single Judge in CWJC No. 20002 of

2013, in the following terms:-

"Admit.

I A No. 6032 of 2015

It is brought to our notice that in respect of the very land, which is the subject matter of the writ petition, earlier, a suit was filed in the year 1941 by another person and on dismissal of the same the appeal was filed and throughout the litigation the right of the State over the land was upheld. Further, there cannot be a separate litigation for acceptance of the rent and the title does not depend upon that.

We suspend the operation of the order under Appeal. We further direct that if the land is identified for the construction of bridge, the District Magistrate, Patna shall take necessary steps as are required within two weeks. The same shall, however, be subject to the result of the Appeal.

I.A. stands allowed."

In view of the facts and circumstances indicated above, the learned Single Judge, by order, dated 4.8.2015, desired that CWJC No. 11544 of 2015 be heard along with LPA No. 34 of 2015.

12. This is how LPA No. 34 of 2015 and CWJC No. 11544 of 2015 have been placed and heard together. The two cases are being accordingly disposed of by the present common judgment.

Discussions

13. We have heard Mr. Umesh Prasad Singh, learned Senior Counsel, and Mr. Dinbandhu Mishra, learned counsel, appearing on behalf of the petitioners, and Mr. Lalit Kishore, learned Principal Additional Advocate General, Mr.

Raj Nandan Prasaad, learned Standing Counsel -9, Mr. S D Sanjay, learned Assistant Solicitor General, and Mr. Bijay Kumar Sinha, learned Counsel, appearing on behalf of the respondents in CWJC No. 11544 of 2015.

14. We have heard Mr. Lalit Kishore, learned Principal Additional Advocate General, and Mr. Ranjit Kumar, learned Counsel, appearing on behalf of the appellants, and Mr. R K P Singh, Mr. Sanjay Kumar and Mr. Amit Kumar Sinha, learned Counsel, appearing on behalf of the respondents. Heard also Mr. S D Sanjay, learned Senior Counsel, and Mr. Sanjay Kumar, learned Counsel, appearing for intervener respondents in LPA No. 34 of 2015.

15. We are taking up, first, the pleadings made and rival submissions advanced on behalf of the parties in LPA No. 34 of 2015 because the order, under appeal, dated 15.5.2014, passed in CWJC No.20002 of 2013, is the foundation stone for the reliefs sought for by the petitioners of CWJC No. 11544 of 2015. Merit of the claims of the petitioners of CWJC No. 11544 of 2015 is, thus, largely dependent upon the decision in LPA No. 34 of 2015.

16. Mr. Lalit Kishore, learned Principal Additional Advocate General, appearing on behalf of the appellants, State of Bihar, in LPA No. 34 of 2015, while assailing the order under appeal, dated 15.5.2014, has contended that



the learned Single Judge ought not to have gone into the disputed questions of facts to hold title of the respondent to the land in question. He has submitted that the respondent, though claimed that Jamabandi had been in his name, did not bring on record any document in the writ proceedings regarding creation of Jamabandi or mutation of land. He has also submitted that there is absolutely no evidence available on record to show that the land, in question, was settled by the British Crown in favour of the ancestors of the writ petitioner/respondent nor did he enclose any document regarding payment of rent to the Crown. The learned Principal Additional Advocate General has also submitted that the writ petitioner/respondent having not produced even a single chit of paper as regards settlement of land in question or regarding payment of rent to the Crown, the learned single Judge ought not to have issued direction to the State Government and its functionaries to issue rent receipts declaring the petitioner to be Raiyat of land in question.

17. Mr. Lalit Kishore has placed reliance on the decision of the Supreme Court, in the case of ***Union of India & Ors. Vs. Ghaus Mohammad (AIR 1961 SC 1526)***, to contend that a proceeding, under Article 226 of the Constitution, is not an appropriate forum to seek a relief

if such relief is based on disputed questions of fact. For the same proposition, he has relied on the decision of the Supreme Court in the case of ***DLF Housing Construction (P) Ltd. Vs. Delhi Municipal Corporation & Ors. (AIR 1976 SC 386)*** and in the case of ***State of Rajasthan vs. Bhawani Singh & Ors. [1993 Supp (1) SCC 306]***.

18. Mr. R K P Singh, learned counsel, appearing on behalf of the respondents, on the other hand, contends that the cases relied upon on behalf of the appellants, have no application to the facts and circumstances of the case at hand as the facts, material for adjudication, were not in dispute. He has, at the same time, contended that there is no bar for the High Court to go into the disputed questions of facts in a proceeding under Article 226 of the Constitution of India. In support of his proposition, Mr. R K P Singh, learned Senior counsel, has relied on the decisions of the Supreme Court in ***Real Estate Agencies vs. State of Goa, (2012) 12 SCC 170; NTPC Ltd. Vs. Mahesh Dutta, (2009) 8 SCC 339*** and ***ABL International Ltd. Vs. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553.***

19. According to Mr. R K P Singh, learned Senior counsel, the land, in question, was surveyed and the survey record of right was finally published, on 18.8.1929, which



contains names of the Raiyats. According to Mr. R K P Singh, learned Senior counsel, entries, made in the Khatian, copy whereof was brought on record by way of Annexure-1 to the writ application, was sufficient evidence to hold that the ancestors of the petitioner were Raiyats in the capacity of settlees of those lands mentioned in the Khatian despite non-availability of any document of settlement in their favour. Mr. R K P Singh, learned Senior counsel, has also contended that the State of Bihar, having accepted rent receipts in respect of the land, in question, as per entry in the Khatian and having granted rent receipts, amounts to acknowledging relationship of landlord and tenant between the State and the predecessors-in-interest of the writ petitioners. He has further contended that the learned single Judge rightly took note of the fact that the lands, in question, were settled with the ancestors of the respondent, during the year 1926-27, on the basis of which their names were recorded in survey record of rights and Jamabandi was opened. Mr. R K P Singh, learned Senior counsel, has supported the finding recorded by the learned single Judge that the land, in question, was simply given nomenclature of *Digha Diyara Khas Mahal* land, though it was not a *Khas Mahal land*, which was being used for agricultural purpose after having been settled by the Crown. Mr. R K P Singh,



learned Senior counsel, has made elaborate submission on various other issues on the aspect as to how the writ petitioner acquired occupancy right as settled Raiyat under various provisions of the Bihar Tenancy Act, 1885, and has, in support of these contentions, relied upon the Full Bench decision of this Court in the case of ***Most. Ugni vs. Chowa Mahto (AIR 1968 PAT 302)***.

20. Mr. R K P Singh, learned Senior counsel, has submitted that even in the absence of any document of settlement, the relationship of landlord and tenant may be proved by actual possession, payment of rent and grant of rent receipts. Mr. R K P Singh, learned Senior counsel, has also submitted that in the absence of any direct evidence of real settlement, it would be impliedly presumed, if it is proved that Raiyat paid rent and the landlord accepted the rent and granted rent receipt, that there existed relationship of landlord and tenant between the Respondent and the State of Bihar. Such act, according to him, would constitute creation of valid Raiyati tenancy rights.

21. From the order under appeal, we find that the conclusion arrived, at by the learned Single Judge as regards the title of the respondent over the land in question, is based on the judgment and decree passed by the learned Additional Subordinate Judge III, Patna, in Title Suit Nos.



27/1 29/3 of 1941/47. The learned Single Judge has recorded that it was specifically held in the said suit that the petitioners, who were co-defendants, had been settlees from the State of Bihar. The learned Single Judge appears to have accepted that the persons, who were co-defendants in the said suits were ancestors of the writ petitioner.

22. It is true that the said judgment and decree passed by the learned Additional Subordinate Judge III, Patna, was subsequently affirmed by a Division Bench of this Court. Upon close and careful scrutiny of the judgment of the learned trial Court, we do not, however, find that there is any finding to the effect that the ancestors of the petitioner were the settlees from the State of Bihar. As a matter of fact, there was no issue before the learned trial Court, in the said suits, as to whether the co-defendants were settlees from the Crown/State of Bihar or not. The dispute, in the said suits, was primarily between the Panapur Estate and the Provinces of Bihar.

23. In our considered view, the conclusion arrived at by the learned single Judge, as regards the finding reached by the learned trial Court in the suits mentioned above that the petitioners were the settlees from the State of Bihar, is an error of record. Learned Senior Counsel, appearing on behalf of the respondent, has not

been able to point out from the judgment of the learned trial Court any such finding. (Emphasis added)

24. Further, the claim of the respondent/writ petitioner of his title to the land, in question, was based on complicated disputed questions of fact. It is true that few copies of rent receipts have been brought on record by the respondent/writ petitioner to show that the State Government accepted rent from him; but there is no material to show that Jamabandi was, in fact, created in his favour with respect to the land in question. We further find that the respondent claimed his title to the land covered by *Touzi No. 17554* of Mouja Digha Diara Khas Mahal. The claim was apparently too vague inasmuch as it did not refer to any plot number appertaining to Khata number over which the writ petitioner had been claiming his Raiyati right. The writ petition could not have claimed that the entire land, appertaining to *Touzi No. 17554* of Mouja Digha Diara Khas Mahal, belongs to him. Thirdly, even for the moment, it is accepted, as claimed by the private respondent, that the Crown had settled the land in favour of the ancestors of the respondent, this being a question of fact could have been decided only in a proper suit, by adducing evidence his genealogy proving that he was the rightful successor-in-interest. His title over the lands, in question, could not have

been decided in a proceeding under Article 226 of the Constitution of India.

25. From the counter affidavit filed on behalf of the State of Bihar in the writ proceedings, we find that they had raised the issue that the respondent did not bring on record any document to show creation of Jamabandi in his favour or in favour of his ancestors and that the land, in question, was a Khas Mahal land.

26. It is, thus, evident from the nature of the dispute raised in the writ proceeding that the dispute related to the writ petitioner's claim of title to the land in question. In his pleadings, the writ petition had failed to give description of the land, which, according to him, had been in his possession on the ground of being a Raiyat as a result of settlement of the land in favour of his ancestors several decades ago.

27. In our considered view, a proceeding, under Article 226 of the Constitution of India, is not an appropriate proceeding for adjudication of disputes relating to title. Mr. Lalit Kishore, Principal Additional Advocate General, has rightly relied on a Constitution Bench decision of the Supreme Court in the case of **Union of India & Ors. Vs. Ghaus Mohammad** (supra), paragraph 7 whereof reads thus :-

"(7) The question whether the respondent



is a foreigner is a question of fact on which there is a great deal of dispute which would require a detailed examination of evidence. A proceeding under Art. 226 of the Constitution would not be appropriate for a decision of the question. In our view this question is best decided by a suit and to this course neither party seems to have any serious objection. As we propose to leave the respondent free to file such a suit if he is so advised, we have not dealt with the evidence on the record on the question of the respondent's nationality so as not to prejudice any proceeding that may be brought in the future."

28.. In the case of ***DLF Housing Construction (P) Ltd. Vs. Delhi Municipal Corporation*** (supra), the Supreme Court held, in paragraph 18, as follows:-

"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."*

29. In the case of ***State of Rajasthan vs. Bhawani Singh*** (supra), the Supreme Court explicitly held that disputed questions, relating to title, cannot be satisfactorily gone into, or adjudicated upon, in a writ proceeding. Paragraph 7 of this decision is being reproduced

hereinbelow:-

"7. Having heard the counsel for the parties, we are of the opinion, that the writ petition was misconceived in so far as it asked for, in effect, a declaration of writ petitioner's title to the said plot. It is evident from the facts stated hereinabove that the title of the writ petitioner is very much in dispute. Disputed question relating to title cannot be satisfactorily gone into or adjudicated in a writ petition."

30. Reliance placed by learned Senior Counsel, appearing on behalf of the writ petitioner-private respondent, on a Full Bench decision of this Court in the case of ***Ugni vs. Chowa Mahto*** (supra), cannot be applied to the facts of the present case, which was delivered in a First Appeal arising out of a title suit. In the present case, claim of writ petitioner/private respondent of the title to the disputed land on the basis of his actual possession and acceptance of rent by the landlord is a question of fact, which can be proved only in a proper suit and not in a proceeding under Article 226 of the Constitution.

31. It is true that there is no bar, in a proceeding under Article 226 of the Constitution, to enter into a disputed question of facts if such questions can be adjudicated upon on the basis of affidavits and documents. In the present case, we, however, find that the entire case of the private respondent was based on a judgment and decree passed in title suit by the learned trial Court. The



learned Single Judge, while allowing the writ application, arrived at a conclusion that there was specific finding in the judgment passed in the said suits that the writ petitioner (i.e., private respondent) was a co-defendant in the said title suit and the learned trial Court had held that the petitioner was settlee from the State of Bihar. It was never the case of the writ petitioner that he was the co-defendant in the said suit; rather, his case was that his ancestors were co-defendants in the said suit. Secondly, it was not the writ petitioner's case that he was settlee from the State of Bihar. His case was that his ancestors were settlees of the Crown. There is no dispute that not even a chit of paper or document was brought on record to demonstrate that the land, in question, was settled by the Crown in favour of the ancestors of the writ petitioner. In any view of the matter, this fact could have been proved in a case of present nature in a proper suit and not in a proceeding under Article 226 of the Constitution of India.

32. Mr. R K P Singh, learned Senior counsel, has referred to the Supreme Court's decision in the case of ***Real Estate Agency vs. State of Goa*** (supra). It would be apt to quote the relevant portion of paragraph 24 of the said decision, where the Supreme Court made it clear that no part of the order shall be construed to be an expression of

opinion of the Court with regard to ownership or any other right or entitlement of the property, which has to be treated in accordance with law

"24. Naturally, if any such claim of compensation is required to be founded on proof of title/ownership or any other such relevant fact(s), the petitioner will have to establish the same. No part of the present order shall be construed to be an expression of any opinion of this Court with regard to the ownership or any other right or entitlement of the petitioner which has to be proved in accordance with law."

Paragraph 16 of the decision in the case of **Real Estate Agency** (supra), also needs to be referred to, which reads thus :-

"16. A reading of the order of the High Court would go to show that its refusal to interdict the developmental works undertaken or about to be undertaken is on the ground that the petitioner has an efficacious alternative remedy i.e. a suit for injunction. The writ court exercising jurisdiction under Article 226 of the Constitution is fully empowered to interdict the State or its instrumentalities from embarking upon a course of action to the detriment of the rights of the citizens, though, in the exercise of jurisdiction in the domain of public law such a restraint order may not be issued against a private individual. This, of course, is not due to any inherent lack of jurisdiction but on the basis that the public law remedy should not be readily extended to settlement of private disputes between individuals. Even where such an order is sought against a public body the writ court may refuse to interfere, if in the process of determination disputed questions of fact or title would require to be adjudicated."

(Emphasis added)

33. There cannot be two opinions on the well



accepted legal proposition that if a disputed question of facts can be determined on the basis of affidavit and/or documents, the High Court may entertain writ application under Article 226 of the Constitution of India and decide the dispute. In a given case, that he may also examine witnesses. However, reliance placed by Mr. Singh on the Supreme Court's decision in the case of **NTPC Ltd.** (supra) is not applicable to the facts of the present case. The decision in the case of **NTPC Ltd.**(supra), arose out of acquisition of land under the Land Acquisition Act, 1894, the only issue being as to whether the possession of the acquired land had actually been taken over or not. It was in such circumstances, that in the case of **NTPC Ltd.** (supra), the Supreme Court refused to interfere with the judgment and decision of Allahabad High Court, which was based on certificate of possession admittedly issued by the Collector under the provisions of the Act, which was apparent from the material brought on record, during the land acquisition proceeding, culminating in passing of the award as also from the award of reference court and judgment of the High Court in the First Appeal.

34. We are, therefore, of the considered view that the judgment, under appeal passed by the learned single Judge, requires interference by us for two main



reasons; firstly, the writ petitioner-private respondent, in effect, had sought for a declaration in the writ proceeding as regards his title to the land in question. The writ petitioners' title having been disputed by the State of Bihar in the writ proceeding, it was not required to be determined by the learned Single Judge. It cannot be said, on the basis of the material, which the writ petitioners brought on record in the writ proceeding, that the High Court could have declared his title over the land in question. Secondly, there is error apparent on record in the order under appeal inasmuch as the learned single Judge, while referring to the judgment and decree passed in Title Suit Nos. 27/1 29/3 of 1941/47, has mentioned that the petitioner was held to be settlee by the Government of Bihar in the said title suit as co-defendants. We could not notice any finding to this effect, in the said judgment and decree of the learned trial Court brought on record by way of Annexure-3 to the writ petition nor such a finding could be pointed out by the learned Senior counsel appearing on behalf of the writ petitioner.

35. The order under appeal is accordingly set aside. CWJC No. 20002 of 2013 is dismissed as not maintainable the LPA No. 34 of 2015 stands allowed. The respondent shall, however, be at liberty to approach the competent court of civil jurisdiction by filing proper suit, if

so advised.

CWJC No. 11544 of 2015

36. There are 7 petitioners in CWJC No. 11544 of 2015 including Yadu Mahto (petitioner No.1) and Shambhu Mahto (petitioner No. 7). They have sought for issuance of a writ *in the nature of certiorari* quashing notices, dated 25.5.2015, issued by the Circle Officer, Patna Sadar, in Encroachment Case No. 5/15-16. It has been mentioned in the said notices that they (petitioners) have encroached upon the land of Mouza Digha Diyara, Thana No. ½, which is a Khas Mahal land of the State of Bihar, which has been transferred to Railways for Digha Rail Bridge Project. The proceeding for removal of encroachers has been initiated under the provisions of the Bihar Public Land Encroachment Act, 1956. By the said notices, the writ petitioners had been asked to show cause as to why steps be not taken for their eviction from the land in question.

37. In the writ application, the writ petitioners have pleaded that they have been living in the Bind Toli since 1926. Pursuant to the notice, dated 25.5.2015, they appeared before the Circle Officer, Patna Sadar, Patna, to establish their right, title and possession of the residential land, which came under Touzi No. 17554 of Mouja Digha Diara. They have referred to the order of this Court, dated

15.5.2014, passed in CWJC No. 20002 of 2013 and have claimed that the lands, in question, are their Raiyati lands. We consider it necessary to quote the relevant paragraphs of the pleadings in the writ application, which read as follows:-

"(7) That it is relevant to mention here that respondent authorities earlier also tried to declare the Raiyati Land of Tauzi No. 17554 as a land of Khas Mahal and stopped to give the land rent receipt to the Raiyat and one of the Raiyat Chandrabanshi Singh knocked the door of Hon'ble Patna High Court through CWJC No.20002/2013.

(8) That the Hon'ble Patna High Court vide order dated 15.05.2014 disposed of the writ petition and gave the direction to the respondent authorities to give the land rent receipt to the petitioner because petitioner is a Raiyat.

(9) That the Hon'ble Patna High Court has explained the history of land specially Tauzi No. 17554 of Mauza Digha Diyara and declared the Tauzi No. 17554 as a raiyati land and the houses of present petitioners are situated on Tauzi No. 17554, Khata No. 82, 71,36, 93, 196 (part) Khata No. 272 to 276.

(10) *That the petitioners are submitting the land rent from beginning to year 2003.*

(11) *That the respondent authorities are trying to declare the land on which the Vind Toli is situated land of khas mahal and all villagers are encroachers.*

(12) *That the local administration wants to remove the villagers of Vind Toli on the basis of land of khasmahal and do not want to give the compensation.*

(13) *That the petitioners are ready to hand over their Raiyati land to the Railway administration or State Govt. but process of land acquisition should be started and appropriate compensation must be paid to the raiyat of Tauzi No. 17554 and its owner.*

(14) *That the petitioners are poor persons and belong to weaker section of the society and their economic position is not very strong."*

38. The writ application was filed on 14.07.2015. During the pendency of this application, the Circle Officer passed final order in the aforesaid encroachment proceedings on 10.6.2015. By way of amendment, through IA No. 7395 of 2015, the petitioners



have sought to challenge the final order, dated 10.6.2015, passed in the encroachment proceedings taken under the provisions of the Bihar Public Land Encroachment Act, 1956, whereby they have been asked to vacate the land in question, else they would be evicted by use of force. A preliminary objection has been taken on behalf of the respondents, State of Bihar, as regards maintainability of the writ application and the challenge put by the petitioners to the final order passed by the Circle Officer under the Bihar Land Encroachment Act, 1956, on the ground that there exists statutory alternative remedy of appeal under Section 11 of the said Act.

39. A counter affidavit has been filed on behalf of the respondents, State of Bihar, stating, *inter alia*, that the writ petitioners have not only suppressed the material facts from this Court in their pleadings in the writ application, they have made false statement on oath in order to obtain order in their favour from this Court.

40. Mr. Lalit Kishore, learned Principal Additional Advocate General, appearing on behalf of the State of Bihar, has submitted that the writ application deserves to be dismissed on this ground alone as the conduct of the petitioners has disintitiled them to seek relief of any nature from this Court in the present proceedings under Article 226



of the Constitution of India. In support of this contention, Mr. Lalit Kishore, learned Principal Additional Advocate General, has drawn out attention to Annexure A to the counter affidavit, which is a representation, dated 25.7.2006, filed by the Mukhiya of Gram Panchayat Raj Nakta Diara, addressed to the Additional Collector, Patna, which bears the signature of petitioner No. 1, Yadu Mahto, and petitioner No.7, Shambhu Mahto. In the said representation, request had been made for rehabilitating the inhabitants of Bind Toli before handing over the land to the Railways. Similar request was, later on, made in another representation filed by the residents of the said Bind Toli, which, too, bears the signatures, of among others, the present petitioners. Mr. Lalit Kishore, learned Principal Additional Advocate General, submits that in the said representations, the petitioners did not claim that they had Raiyati rights over the lands, in question; rather they simply made a request for making an alternative arrangement by way of rehabilitation on the ground that they were living there since long. It is his contention that the petitioners deliberately suppressed these material facts in their pleadings in order to make out a false claim of having Raiyati rights, i.e., tenancy rights over the lands in question.

41. Mr. Umesh Prasad Singh, learned Senior



counsel, representing the petitioners, has submitted, assailing the impugned notice and subsequent final order passed in the land encroachment case by the Circle Officer, that Jamabandis were created in the name of these petitioners with respect to the lands, in question, which could not have been cancelled or treated to be void by the officers exercising quasi-judicial authority. He has submitted that the rent receipts had been issued since the vesting of intermediaries/zemindaries in the State of Bihar and predecessors-in-interest/ forefathers of the petitioners had been in possession of these lands since before the date of vesting of the estate on 1.1.1955. He has submitted that rent receipts were also issued in favour of the petitioners by the concerned authority.

42. In view of what we have already discussed and held while considering merits of LPA No. 34 of 2015 (supra) we hold without any hesitation that the merit of the claim of the petitioners, as regards right over title, or title to, the lands, in question, on the basis of the pleadings and materials on record, cannot be adjudicated upon in a proceeding under Article 226 of the Constitution of India. Such title, if any, can be adjudicated upon only in an appropriate proceeding by way of suit. On the dispute over creation of Jamabandi in favour of the petitioners, no

material has been brought to our notice to show that Jamabandi was, in fact, created in their favour. Secondly, merely issuance of rent receipts cannot create title to the land, in question, in the petitioners.

43. We find force in submissions made by Mr. Lalit Kishore, learned Principal Additional Advocate General, that the petitioners are guilty of suppressing material facts from this Court in their pleadings, which amounts to misrepresentation. The petitioners have not denied the specific averments made in the counter affidavit as regards submission of the representations, dated 25.7.2006 and 29.7.2006, wherein they merely requested for their rehabilitation, because of the decision of the State Government to hand over the land to the Railways for construction of the rail over bridge and did not utter even a single word as regards their title, on any basis, to the said land. These facts were, in our opinion, material and since the petitioners found it inconvenient to bring to the notice of this Court these material facts, they intentionally suppressed these facts.

44. It is well accepted and repeatedly invoked an applied rule that a person, who does not disclose all the materials, has no right to be heard on merits of his grievance in a proceeding under Article 226 of the



Constitution of India. Applications, under Article 226 of the Constitution of India, are decided on the basis of affidavits and the Courts, while deciding such applications, presume correctness of the facts stated on oath. It will certainly amount to betrayal of the confidence of the Court if untrue statements are made or facts are suppressed by the parties in such proceeding. Suppression of material fact, in a proceeding under Article 226 of the Constitution of India by a party, disentitles him to seek hearing of his grievance on merits. Reference may be made, in this regard, to the Supreme Court's decisions in the cases of ***State of Haryana vs. Karnal Distillery Limited (1997) 2 SCC 431; Vijay Kumar Kathuria(Dr.) vs. State of Haryana (1983) 3SCC 333; Welcom Hotel vs. State of A.P. (1987) 4 SCC 575; G.Narayanaswamy Reddy vs. Govt. of Karnataka (1991) 3 SCC 261; S P Chengalavaraya Naidu vs. Jagannath (1994) 1 SCC 1; Agricultural & Processed Food Products vs. Oswal Agro Furane (1996) 4 SCC 297; Union of India vs. Muneesh Suneja (2013) 3 SCC 92; Prestige Lights vs. SBI (2007) 8 SCC 449; Sunil Poddar vs. Union of India (2008) 2 SCC 326; K D Sharma vs. SAIL (2008) 12 SCC 481; G. Jayashree vs. Bhagwandas S Patel (2009) 3 SCC 141; Dalip Singh vs. State of U.P. (2010) 2 SCC 114; and***

Hari Narain vs. Badri Prasad (AIR 1963 SC 1558).

45. We may also refer to a passage from the decision of the Supreme Court in the case of **Oswal Fats and Oils Limited vs. Additional Commissioner (Administration) Bareilly Division, (2010) 4 SCC 728**, wherein the Apex Court held an act of suppression or misrepresentation by a party before a Court to be contumacious in nature. Paragraph 19 of the said decision is relevant and, therefore, reproduced hereinbelow:-

"19. *It is quite intriguing and surprising that the lease agreement was not brought to the notice of the Additional Commissioner and the learned Single Judge of the High Court and neither of them was apprised of the fact that the appellant had taken 27.95 acres land on lease from the Government by unequivocally conceding that it had purchased excess land in violation of Section 154(1) of the Act and the same vested in the State Government. In the list of dates and memo of special leave petition filed in this Court also there is no mention of lease agreement dated 15.10.1994. This shows that the appellant has not approached the Court with clean hands. The withholding of the lease agreement from the Additional Commissioner, the High Court and this Court appears to be a part of the strategy adopted by the appellant to keep the quasi-judicial and judicial forums including this Court in dark about the nature of its possession over the excess land and make them believe that it has been subjected to unfair treatment. If the factum of execution of lease agreement and its contents were disclosed to the Additional Commissioner, he would have definitely incorporated the same in the order dated 30.5.2001. In that event, the High Court or for that reason this Court would have non-suited the appellant at the threshold. However, by concealing a material fact, the appellant succeeded in persuading the High Court and this Court to entertain adventurous litigation*

instituted by it and pass interim orders. If either of the Courts had been apprised of the fact that by virtue of lease deed dated 15.10.1994, the appellant has succeeded in securing temporary legitimacy for its possession over excess land, then there would have been no occasion for the High Court or this court to entertain the writ petition or the special leave petition."

46. In the case of **A. Shanmugam vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam (2012) 6 SCC 430**, the Supreme Court deprecated making false statements of fact before the Court and held that dishonest and unscrupulous litigants have no place in law courts. It further held that once the Court discovers falsity, concealment, obstruction or confusion in pleadings and documents, the Court should impose appropriate costs. It has been consistent view of the Courts that there can be no incentive for a litigant, whose case is based on misrepresentation and/or concealment of material facts, more particularly, in a proceeding under Article 226 of the Constitution of India.

47. A Full Bench of this Court, in the case of **Ram Sewak Yadav vs. State of Bihar [2013 (1) PLJR 964]**, has held as follows, in paragraphs 9 to 14, reiterating the principle that a party must approach the Court honestly and with clean hands:-

"9. A litigant approaching the Court for relief has the foremost duty to honestly and faithfully present the correct facts. He cannot be permitted

to distort and misrepresent essential facts. The stream of justice has to be kept clean and unpolluted. Any laxity can lead to complete subverting of judicial procedure with an unscrupulous litigant obtaining orders contrary to law, as observed in (2010) 4 SCC 728 [Oswal Fats and Oils Limited vs. Additional Commissioner (Administration), Bareilly Division]:

"20. It is settled law that a person who approaches the court for grant of relief, equitable or otherwise, is under a solemn obligation to candidly disclose all the material/important facts which have bearing on the adjudication of the issues raised in the case. In other words, he owes a duty to the court to bring out all the facts and refrain from concealing/suppressing any material fact within his knowledge or which he could have known by exercising diligence expected of a person of ordinary prudence. If he is found guilty of concealment of material facts or making an attempt to pollute the pure stream of justice, the court not only has the right but a due to deny relief to such person."

10. The observations in (2012) 6 SCC 430 (A. Shanumugam vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam) are also apposite holding:-

"43.1. It is the bounden duty of the court to uphold the truth and do justice.

43.2. Every litigant is expected to state truth before the law court whether it is pleadings, affidavits or evidence. Dishonest and unscrupulous litigations have no place in law courts.

43.3. The ultimate object of the judicial proceedings is to discern the truth and do justice. It is imperative that pleadings and all other presentations before the court should be truthful.

43.4. Once the court discovers falsehood, concealment, distortion, obstruction or confusion in pleadings and documents, the court should in addition to full restitution impose appropriate costs. The court must ensure that there is no incentive for wrongdoer in the temple of justice. Truth is the foundation of justice and it has to be the common endeavour of all to uphold the truth and no one should be permitted to pollute the

stream of justice.

43.5.It is the bounden obligation of the court to neutralize any unjust and/or undeserved benefit or advantage obtained by abusing the judicial process."

11. The petitioners, in the earlier application as also the present, have filed typed copies of their termination orders. Any error in either of them only could have been considered inadvertent. But if the same has persisted in both applications it loses the quality of inadvertence. Reading the impugned orders, finding inconsistency of language, the Court requested Counsel for the petitioners to place the original letter of termination for perusal. The typed copy states that show cause notice was issued on 21.5.2001 which was replied by them. Both the writ applications nonetheless contended that the termination was ex parte in violation of the principles of natural justice. Reading the original termination letter, it reveals, show cause notice was issued on 21.5.2001 but the petitioners did not file any reply. Confronted with the correct facts in the present proceedings, the only explanation forthcoming during submissions was of an inadvertent error.

12. The presentation of a distorted official document and thereby obtaining advantage from the Court is a contemptuous act as held in (1995) 1 SCC 421 (Chandra Shashi vs. Anil Kumar Verma). Awarding imprisonment it was held:-

"14. The legal position thus is that if the publication be with intent to deceive the court or one made with an intention to defraud, the same would interfere with administration of justice. It would, in any case, tend to interfere with the same. This would definitely be so if a fabricated document is filed with the aforesaid means rea. In the case at hand the fabricated document was apparently to deceive the court; the intention to defraud is writ large. Anil Kumar is, therefore, guilty of contempt."

13. Once show cause notice had been issued, not replied to, the question for violation of the principles of natural justice or any prejudice does not arise. Counsel for the petitioner fairly acknowledged that show cause notice was issued

but not replied. Natural justice is no abstract principle. Its applicability depends on the facts of each case. In (2004) 6 SCC 299 (N K Prasada vs. Govt. of India) it was held:-

"24. The principles of natural justice, it is well settled, cannot be put into a straightjacket formula. Its application will depend upon the facts and circumstances of each case. It is also well settled that if a party after having proper notice chose not to appear, he at a later stage cannot be permitted to say that he had not been given a fair opportunity of hearing."

14. The issue has been considered more recently in (2013) 1 SCC 1 (Sahara India Real Estate Corp. Ltd. vs. Securities and Exchange Board of India) holding as follows:-

"266. A person who has repulsed earlier opportunities (as the appellant companies have), has no right to demand any further opportunity under the rules of natural justice ... one would therefore have no hesitation in concluding that a party which has not been fair, cannot demand a right based on a rule founded on fairness."

48. As has been noticed above, we are satisfied that the submission, made on behalf of the State-respondents, that the petitioners have suppressed material facts and have attempted to obtain an order from this Court by suppressing facts and by way of misrepresentation, is correct.

49. Keeping in view the conduct of the parties, we would have dismissed the writ application at the very outset imposing heavy costs. However, in the facts and circumstances of the present case and in view of the status of the petitioners, we refrain from doing so with the only

observation that the manner in which the application has been presented and claim is sought to be made on the strength of judgment of learned single Judge of this Court passed on 15.5.2015, in CWJC No. 20002 of 2013 **(Chandrabanshi Singh vs. State of Bihar & Ors.)**.

50. In paragraph 10 of the counter affidavit filed on behalf of the respondent, State of Bihar, it has been stated that the Cabinet of Ministers of the Government of Bihar, in its meeting, dated 25.3.2013, have decided and sanctioned to rehabilitate the poor and landless persons of the Bind Toli on a Government land situated at Mouja Digha of Patna Sadar. The list of beneficiaries of scheme of rehabilitation has been brought on record by way of Annexure B to the counter affidavit. We find from the said list that names of all the present petitioners figure as beneficiaries of the scheme of the State Government to rehabilitate them.

51. It has been vehemently submitted on behalf of the petitioners that they are being denuded of their rights title and interest are without following the procedure prescribed under the law and if at all the said land was required to be acquired for any public purpose, it could have been done by following the procedure for acquisition of land and after paying compensation to the



petitioners. As has been indicated, right, title and interest of the petitioners over the said land cannot be adjudicated upon in the present proceeding, under Article 226 of the Constitution of India. Keeping in view their conduct as noticed above, we are not at all inclined to entertain the merit of their claims for compensation in the present proceeding. They will be at liberty to raise their claim by instituting proper suit before a civil court of competent jurisdiction, if so advised. We have not made any observation on the merits of their claim in the present proceeding. The observations, if any, made in the present order as regards the petitioners shall remain confined to the present order.

52. We do not find any merit in the writ application. The writ application is accordingly dismissed with the observations as above.

53. It is also observed that the petitioners shall not create any further hindrance to the execution of the Digha Railway Bridge Project and the respondents shall be at liberty to proceed, in accordance with law, for removal of encroachment. The State-respondents are, at the same time, directed to ensure that the scheme for rehabilitation of the displaced persons of the said Bind Toli, including these petitioners, is implemented in terms of the decision, dated

25.3.2013, of the State Cabinet as mentioned in the letter issued, under Memo No. 524, dated 8.4.2013, by the Revenue and Land Reforms Department, Government of Bihar, addressed to the Accountant General, Bihar (Accounts and Entitlement), Patna.

54. In the result, LPA No. 34 of 2015 stands allowed and, consequently, CWJC No. 20002 of 2013 stands dismissed. CWJC No. 11544 of 2015 stands dismissed and disposed of in terms of the observations as above.

(Chakradhari Sharan Singh, J)

I A Ansari, ACJ:- I agree.

(I A Ansari, ACJ)

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