

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1266 of 2014

IN

Civil Writ Jurisdiction Case No. 1624 of 2011

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1. Binod Kumar Budhia son of Late Lakkhi Prasad Budhia Resident of Forte Road
No. 1, Nath Nagar, P.S. Nath Nagar, District - Bhagalpur

.... Appellant

Versus

1. The Bhagalpur Municipal Corporation, Bhagalpur through its Commissioner
2. The Chief Executive Officer, Bhagalpur Municipal Corporation, Bhagalpur
3. The Administrator, Bhagalpur Municipal Corporation, Bhagalpur
4. Most. Parwati Devi Budhia wife of Late Ram Swarup Budhia Resident of Forte
Road No.1, Nath Nagar, P.S. Nath Nagar, District - Bhagalpur

.... Respondents

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Appearance :

For the Appellant/s : Mr. Gautam Kumar Kejriwal, Advocate

For the Respondent/s : Mrs. Pravina Kumari, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 03-11-2015

This is an appeal preferred, under Clause 10 of
the Letters Patent of this High Court, by the appellant, who is
aggrieved by an order, dated 06.07.2012, passed by a learned
single Judge of this Court, whereby the writ application filed by

him, under Article 226 of the Constitution of India, seeking quashing of an order, dated 24.05.2002, passed by the Administrator, Bhagalpur Municipal Corporation, Bhagalpur, mutating the name of respondent No.4 with respect to 1/3rd of the house, in question, has been dismissed.

2. Learned single Judge has dismissed the writ application mainly on the ground of unexplained delay of nearly nine years in approaching this Court, under Article 226 of the Constitution of India, seeking quashing of an order by issuance of a writ in the nature of *certiorari*.

3. Before entering into the merit of the submissions advanced on behalf of the appellant for assailing the order under appeal passed by the learned single Judge, we must, on the basis of the materials on record, take note of such material facts, which had given rise to the present appeal, these facts are as under:-

(i) One Baldeo Prasad Budhia had three sons, namely, Lakhi Prasad Budhia, Ram Swarup Budhia and Ram Kumar Budhia. The appellant herein is son of Late Lakhi Prasad Budhia, who died in the year 1992; whereas respondent No.4 is the widow of Ram Swarup Budhia. All the three sons of Baldeo Prasad Budhia have died.

(ii) House bearing holding No. 17/31, Ward No. 27 (old)/6(new) at Forte Road No.-1, Nath Nagar, Bhagalpur,

was recorded in the name of Lakhi Prasad Budhia, father of the appellant. There is no dispute up to this stage.

(iii) It is the case of the appellant herein that Lakhi Prasad Budhia was the exclusive owner of the said house and, on the death of Lakhi Prasad Budhia, his legal heirs, including the appellant, succeeded to the estates of the said deceased and have since been in peaceful possession of the said residential house, which belong to Lakhi Prasad Budhia. It is his further case that it was out of sheer love and affection that legal heirs of Ram Swarup Budhia, one of the brothers of Lakhi Prasad Budhia including respondent No.4 were permitted by the appellant and other legal heirs of Lakhi Prasad Budhia to reside in a part of the first floor of the said residential house. On the other hand, it is the case of respondent No.4, as made out in the counter affidavit filed in the writ proceedings, that the house, in question, was a joint family property and that in the year 1982, a family partition had taken place, a memorandum of partition was prepared, which was accordingly acted upon and every coparcener came accordingly in possession of their respective share as per the memorandum of partition. In the year 1985, a land survey, in the Bhagalpur Municipal Area, was conducted and record of rights was prepared, wherein all the three sons of Baldeo Prasad Budhia, including the husband of respondent No.4,

were shown to be having equal share in the property. As per the said entry, a Jamabandi was created in the circle office of Nath Nagar and respondent No.4 had been paying Malgujari to the State of Bihar. It is her further claim that she has been in peaceful possession of the holding of her share since the year of partition and certain portion of the property had been sold to different persons.

(iv) It is the case of the appellant herein that he was not in the know of the fact that respondent No.4 had got her name mutated by procuring the impugned mutation order, dated 04.05.2002, from the respondent Corporation with respect to 1/3rd of the residential house standing on the aforesaid holding. It is his case that somehow or the other, he learnt about the said mutation in the month of August, 2010, whereafter, he obtained certified copy of the said order and approached this Court by filing a writ application under Article 226 of the Constitution of India giving rise to CWJC No. 1524 of 2011. The writ petition filed by the appellant having been dismissed by this Court by the order under appeal, dated 06.07.2012, the present Letters Patent Appeal has been preferred.

4. Mr. Gautam Kejriwal, learned counsel, appearing on behalf of the appellant, has contended that the learned single Judge committed an error, while dismissing the



writ application solely on the ground of unexplained delay without taking into account the fact that the appellant had explained, in his application, as to what had prevented him from approaching this Court immediately after the impugned order, dated 24.05.2002, was passed by the Administrator, Bhagalpur Municipal Corporation. Mr. Kejriwal contends and adds that the appellant had no knowledge of passing of the order, dated 24.05.2002, as the same had been obtained covertly and, immediately after the appellant learnt about it, he approached this Court.

5. Mr. Kejriwal, learned counsel, appearing on behalf of the appellant, has endeavoured hard to convince us that respondent No.4, stealthily and fraudulently, obtained order mutating her name against 1/3rd of the property, in question, without even impleading the appellant as a party to the proceeding before the Corporation.

6. We have perused the enquiry report brought on record by way of Annexure-2 to the writ application submitted by the Tax Daroga of the Corporation, which is the basis for the Administrator for passing the order, dated 24.05.2002. It has been incorporated in the said report that the appellant's father and husband of respondent No.4 and one Ram Kumar Budhia were in the state of jointness and a partition, in the family, had taken place on 19.11.1982,

whereafter, the names of three brothers were recorded in the record of rights having Khata No. 445, Keshra No. 975. It is also recorded therein that respondent No. 4 was in exclusive possession of 1/3rd of the property in question.

7. Mr. Kejriwal, learned counsel appearing on behalf of the appellant, would, however, contend that the appellant is still in possession over the entire property and the respondent No.4, on the strength of an order fraudulently obtained, misrepresenting herself to be the owner of the property, is selling the property, which does not belong to her.

8. We are unable to accept the submissions advanced on behalf of the appellant inasmuch as we find that the controversy, in present case, apparently involves disputed questions of facts over respective claims of the appellant and respondent No.4 with regard to their title and possession of the property, in question. Such a dispute cannot be gone into, and adjudicated upon, in a proceeding under Article 226 of the Constitution of India. The scope of judicial review under Article 226 of the Constitution of India has its own limitations and it is guided by well settled principles of judicial restraint, which the High Court exercise, while considering the legality of an order passed by a quasi judicial authority.

9. In a five Judge Constitution Bench decision, the Supreme Court, in case **of Deep Chand V. the State of**

Rajasthan reported in **AIR 1961 SC 1526**, has held that proceeding, under Article 226 of the Constitution of India, would not be appropriate for decision upon disputed questions of facts, when there is a great deal of dispute, which would require examination of evidence.

10. The Apex Court, while dealing with the question of scope of judicial review, under Article 226 of the Constitution of India, in the cases involving disputed questions of facts, in case of **Chairman, Grid Corporation of Orissa Ltd, (GRIDCO) & Ors. V. Sukamaini Das and Others**, reported in **(1997) SCC 298**, reiterated that disputed questions of facts ought not to be entertained in a proceeding under Article 226 of the Constitution of India.

11. Again, in the case of **Food Corporation of India V. Pala Ram** reported in **(2008) 14 SCC 32**, the Supreme Court held, in paragraph 47, that writ petition was not maintainable as a series of disputed questions of facts were raised.

12. In case of **Hindustan Coca-Cola Beverages Pvt. Ltd. V. Sangli Miraja Kupward Municipal Commissioner & Ors** reported in **(2011) 7 SCC 645**, the Supreme Court held in paragraph 21 that there being disputed questions of facts, they should not have been gone into by the High Court exercising writ jurisdiction under Article 226 of the

Constitution of India.

13. The law, on the scope of jurisdiction of the High Court under Article 226 of the Constitution of India in the cases involving disputed questions of facts, has succinctly been laid down by the Supreme Court in case **of Shubhashree Das @ Milli V. The State of Orissa and Others**, reported in **(2012) 9 SCC 729**, holding that such claim, under Article 226 of the Constitution of India, could not have been determined on the basis of disputed facts. The Supreme Court held that *"in a case where the petitioner/appellant wishes to press his/her claim before a High Court under Article 226 of the Constitution of India, the claim raised by such petitioner/appellant must be determined on the basis of factual position as acknowledged by the respondent"*. The Supreme Court has observed that this was so, because a High Court, in exercise of writ jurisdiction under Article 226 of the Constitution of India, would, ordinarily, not adjudicate a matter, where foundational facts are disputed.

14. In view of judicial pronouncements, as noted above, we do not feel inclined to go into the disputed questions of facts involved in the present case by the contesting parties.

15. Coupled with the above, the appellant has not been able to convince us that the delay of nearly nine

years, in approaching Writ Court, against an order passed in the year 2002, was for good and sufficient reasons inasmuch as there is, we find, no convincing, plausible and acceptable explanation in this regard.

16. We do not, therefore, find any reason to interfere with the order under appeal, passed by the learned single Judge.

17. This appeal is, accordingly, dismissed.

18. Dismissal of this appeal will not come in way of the appellant taking recourse to any other provision of law for adjudication of his claim including taking recourse to institution of a suit in a civil Court of competent jurisdiction.

(Chakradhari Sharan Singh, J.)

I. A. Ansari, ACJ.: I agree.

(I. A. Ansari, ACJ.)

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