



IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.57 of 2016

IN

Civil Writ Jurisdiction Case No.1646 of 2014

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Smt. Pramila Devi, Wife of Nityanand Singh, resident of Village-Dumrawan, P.S.-Pakribarawan, District-Nawadah.

.... (Respondent No.5 in the writ petition)

.... Appellant

Versus

1. The State of Bihar.
2. The District Magistrate-cum-Collector, Nawadah.
3. The Sub-Divisional Officer, Nawadah, District-Nawadah.
4. The Circle Officer, Pakribarawan, P.S.-Pakribarawan, District-Nawadah.

.... (Respondents in the main writ petition)

.... Respondents 1st Set

5. Shidheshwar Sharma, Son of Late Lakhan Singh, resident of Village-Dumrawan, P.S.-Pakribarawan, District-Nawadah.

.... (Petitioner in the main writ petition)

.... Respondent 2nd Set

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Appearance :

For the Appellant : Mr. Arun Kumar, Advocate

For the State : Mr. Ranjeet Kr. Pandey, AC to GP-23

For the Respondent No.5: Mr. Devendra Pd. Singh, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 25-01-2016

Heard Mr. Arun Kumar, learned Counsel, appearing on behalf of the appellant, and Mr. Ranjeet Kumar Pandey, learned Assistant Counsel to Government Pleader No.23, appearing on behalf of the respondents-State of Bihar. We have also heard Mr. Devendra Prasad Singh, learned Counsel, appearing on behalf of respondent No.5.

2. The present *intra* Court appeal, under Clause 10 of the Letters Patent of this High Court, has been preferred by the appellant, aggrieved by the order, dated 06.08.2015, passed by a learned single Judge of this Court, in C.W.J.C. No.1646 of 2014, whereby a writ application, made under Article 226 of the Constitution of India, filed by respondent No.5 to this appeal, has been allowed with certain directions.

3. The appellant herein was impleaded as respondent No.5 in the writ proceeding. Respondent No.5 had approached this Court, under Article 226 of the



Constitution of India, seeking a direction to the Circle Officer, Pakariwarawan, in the district of Nawada, to take the Encroachment Case No.1 of 2008-09 to its logical conclusion. The said encroachment case came into being on a petition, filed by respondent No.5 herein, for removal of encroachment from public land, bearing Khata No.656 Plot No.2682, admeasuring 2 decimals in Mauza Dumrawan, in the district of Nawada, which is registered in the revenue register as 'Anabad Bihar Sarkar'.

4. From the order, under appeal, we find that learned single Judge has recorded certain facts over which there is no dispute. All such facts are being extracted from relevant portion of the order, under appeal, as under:-

".....

Certain factual aspects are undisputed and that is:

- (a) *The private respondent did not choose to contest the encroachment proceedings even after registering her appearance on 10.12.2010.*
- (b) *The final order passed by the Circle Officer on 20.12.2010 and the notice issued pursuant thereto, although was questioned before this Court by the private respondent in*



C.W.J.C. No.8727 of 2012 but this Court declined to interfere with the order passed in the encroachment proceedings while reserving liberty to the private respondent to take appropriate steps in the suit or other recourse available to her in law.

- (c) Despite the liberty granted by the writ Court, neither the private respondent filed any statutory appeal to question the order passed in the encroachment case nor there is any proceeding pending before the civil court for declaration of the right of the private respondent over plot No.2682; and*
- (d) The Title Suit No.115 of 2004 so filed by the petitioner herein does not concern with Plot No.2682.*

5. In the background of the admitted facts, learned single Judge arrived at the conclusion that there was no occasion for the Circle Officer to keep his hands up in implementation of the order passed in the encroachment proceedings, particularly, when the said order was not under

challenge before any superior Court; rather, this Court, even while granting liberty to respondent No.5 to question it before appropriate forum, had declined to interfere with the said order.

6. Learned single Judge, in such circumstances, as indicated above, passed the following order:-

"In the circumstances discussed, the Circle Officer, Pakaribarawan is directed to take the Encroachment Case No.1 of 2008-09 to its logical conclusion within a period of 3 months from the date of receipt/production of a copy of this order. The period of three months may also be utilized by the private respondent to exhaust the liberty so granted to her by the writ Court in C.W.J.C. No.8727 of 2012.

The writ petition is allowed with the direction and observation aforementioned."

7. Learned Counsel, appearing on behalf of the appellant, contends that Circle Officer is not Collector within the meaning of Bihar Land Encroachment Act, 1956, and, therefore, he did not have any jurisdiction to entertain the encroachment case. He has relied upon a composite order of this Court, dated 04.07.2013, passed in C.W.J.C. Nos.5480 of



2013 and 5056 of 2013, whereby the question has been referred to for consideration by a Division Bench. However, from the materials available on the record and the order, under appeal, we find that no such plea, in any manner whatsoever, was taken by the appellant before the learned single Judge. There is neither such pleading on the records of the writ proceeding nor is it evident from the order, under appeal, that the said ground was taken by the appellant. We also find from the order, under appeal, that the appellant was noticed in the encroachment proceedings and she had entered appearance on 10.12.2010. The final order, passed by the Circle Officer, dated 20.12.2010, and the notice, issued pursuant thereto, were also challenged before this Court, by the appellant, by way of filing a writ application, under Article 226 of the Constitution of India, giving rise to C.W.J.C. No.8727 of 2012. This Court declined to grant any relief and by an order, dated 22.03.2013, gave liberty to the appellant to take appropriate steps in the suit filed by her or any other recourse available to her under law.

8. Learned single Judge, taking into account all the above facts and circumstances, has, by the order, under appeal, while directing the Circle Officer to take encroachment case to its logical conclusion within a period of three months,

observed that the appellant may utilize the liberty, so granted, to her, by this Court *vide* order, dated 22.03.2013, passed in C.W.J.C. No.8727 of 2012.

9. In the facts and circumstances as noted and discussed above, we do not find any infirmity, legal or factual, in the order, under appeal, warranting our interference in the present *intra* Court appeal.

10. The appeal stands dismissed accordingly.

(I. A. Ansari, ACJ.)

(Chakradhari Sharan Singh, J.)

Praveen-II/-

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