

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2869 of 2017

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Dr. Sanjiv Ranjan Kumar Singh, S/o Late Vijoy Kumar Singh, Resident of Village- 38/60, Officer's Flat, near Hartali Chowk, Bailey Road, P.S.- Kotwali, Distt.- Patna.

.... Petitioner/s

Versus

1. The State of Bihar, through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Home, Government of Bihar, Patna.
3. The District Magistrate, Gaya.
4. The Superintendent of Police, Gaya.
5. The S.D.O., Gaya.
6. The Circle Officer, Sherghatti Block, Amas, Gaya.
7. The Block Development officer, Sherghatti Block, Amas, Gaya.
8. The Dy. S.P. Sherghatti Amas, Gaya.
9. The Officer in charge of Amas Police Station, Sherghatti, Gaya.
10. Gopal Paswan, S/o Kailash Paswan.
11. Suresh Prasad, S/o Babulal Prasad.
12. Naresh Mandal, S/o Kauleshwar Mandal.
13. Jitendra Paswan, S/o Rameshwar Paswan.
14. Krishna Mandal, S/o Gaya Mandal.
15. Ravindra Paswan, S/o Andhar Paswan.
16. Chotu Paswan, S/o Nanhku Paswan.
17. Jhulandhari Paswan, S/o Gyani Paswan.
18. Jai Ram Kumar, S/o Munshi Prasad Sharma.
19. Ranesh Chaudhary, S/o Ramdeo Chaudhary.
20. Sachha Das, S/o Ram Das.
21. Jai Prakash, S/o - Upendra Prasad.

Respondent nos. 10 to 21 are resident of Village- Akauna, P.S.- Amas, Distt.- Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vijay Kumar Sinha, Adv.
For the State : Mr. Partha Sarthi- GA-4

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 05-07-2017 Heard Mr. Vinay Kumar Sinha, learned Counsel appearing on behalf of the petitioner and Mr. Partha Sarthi, learned G.A.-4 appearing on behalf of the respondent nos. 1 to 9.



The nature of order this Court intends to pass does not require issuance of notice to private respondent nos. 10 to 21.

Since the present writ application was registered on 20.02.2017, and till date no counter affidavit has been filed, this Court is not inclined to adjourn the matter any further for filing of the counter affidavit.

The present application has been filed for directing the respondent 1st set, *i.e.*, respondent nos. 1 to 9, to get the encroachment removed and to restrain respondent 2nd set *i.e.*, respondent nos. 10 to 21, from further encroaching the private land of the petitioner, as respondent 2nd set has forcibly constructed shops and temples in front portion of the land of the petitioner, as a result, the ingress and egress of the petitioner from his own land pertaining to Khata No.148, Plot Nos. 749, 759, 763, 764, 768, 769, situated in Mauza-Akauna, P.S.-Amas, Thana No. 455, District of Gaya, has been blocked.

It is submitted by the learned counsel for the petitioner that he purchased the land in question, measuring about 57 decimals, through two registered sale deeds dated 17.08.2010 and 05.10.2004, from Madan Prasad and Umera Khatoon. Consequently, the land in question was mutated in favour of the petitioner and he is paying rent to the State of



Bihar. On 23.09.2015 at 6 PM, the petitioner went to his land and found that some unknown persons were constructing temple on his land. Thereafter, the petitioner intimated the matter to the Officer-in-Charge, Amas Police Station, who intervened and construction work was stopped. Subsequently, some wooden shops were also created in front of the land of the petitioner facing the main road, which completely obstructed ingress and egress of the petitioner to his land in question. Thereafter, on 18.10.2015, the petitioner again came to know that some shops were constructed, leading to registration of Amas P.S. Case No. 165 of 2015 with accusation under Sections 147, 148, 149, 341, 323, 379, 384, 504 and 506 of the IPC and 27 of the Arms Act. After registration of the case, the shops were further constructed. The petitioner made representation before the District Magistrate, Gaya, S.D.O., Gaya, Block Development Officer, Sherghatti, Circle Officer, Sherghatti, Superintendent of Police, Gaya and Deputy Superintendent of Police, Sherghatti through registered representation dated 02.12.2015, but no action has been taken for removal of the encroachment, since the respondent 2nd set belong to the Schedule Caste community.

It is submitted by Mr. Partha Sharthi, learned GA-4 appearing on behalf of the respondent nos. 1 to 9, that the dispute



is between the respondent 2nd set and the petitioner with regard to the private land of the petitioner.

Considering the rival submissions of the parties, this is not in dispute that the petitioner has prayed for removal of encroachment from his private land for which the provisions of Bihar Public Land Encroachment Act, 1956 (herein after referred to as 'the Act') cannot be resorted. Though, this is not in dispute that the land in question is not a public land but a citizen cannot be deprived of his property by any scrupulous person forcibly.

However, to resolve the issue, the Court has to come to a conclusive finding that the land in question belongs to the petitioner and his right of easement has, substantially, been obstructed, which can only be done through leading of evidence and the same cannot be decided in exercise of discretionary jurisdiction under Article 226 of the Constitution of India. There is no binding rule that the High Court cannot try the issue of facts in a writ application, but in such cases where relief has been prayed for on the basis of disputed question of facts which cannot be determined without leading of evidence, the Court should ordinarily relegate the parties aggrieved to agitate the issue before Civil Court. This is, however, a rule of practice and not an incidence of jurisdiction of the High Court.



The Apex Court in the case of **City and Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwalla and Ors.** reported in **(2009) 1 Supreme Court Cases 168** has laid down the parameters for exercise of jurisdiction under Article 226 of the Constitution of India. Paragraph no.30 of the judgment reads as follows:-

“The court while exercising its jurisdiction under Article 226 is duty bound to consider whether :

- (a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;
- (b) petition reveals all material facts;
- (c) the petitioner has any alternative or effective remedy for the resolution of the dispute;
- (d) person invoking the jurisdiction is guilty of unexplained delay and laches;
- (e) ex facie barred by any laws of Limitation;
- (f) grant of relief is against public policy or barred by any valid law; and host of other factors.

The Apex Court in the case of **Real Estate Agencies Vs. State of Goa and Ors. (2012) 12 Supreme Court Cases 170** dealt with the issue, where certain development works/raising construction over some plot of land was in dispute though the title over the land was not in dispute but it was held that the writ court may refuse to interfere if the process of determination of the issue, the disputed question of fact or title would be required to be adjudicated. Paragraph 16 reads as follows:-



“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 26 of the Constitution is fully empowered to interdict the State or its instrumentalities from embarking upon a course of action to 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.”

High Court exercises very wide power under Article 226 of the Constitution of India in exercise of the said power, it can issue a writ, direction or order for enforcement of fundamental rights as also for any other right or purpose. At the



same time, however, High Court is not expected to convert itself into a fact finding authority or a court of first instance in cases where seriously disputed questions of fact or mixed questions of fact and law are involved. In a petition under Article 226 of the Constitution of India, High Court has jurisdiction to try issues of facts and laws but this jurisdiction is discretionary in nature, hence such discretion must be exercised on sound judicial principles.

In view of the relief prayed for, removal of encroachment cannot be granted, either by directing the respondent authorities to initiated a proceeding under the Act which only applies to the public land or by exercising the discretionary jurisdiction under Article 226 of the Constitution of India, since for grant of such relief, this Court has to step into the shoes of a fact finding committee.

The issue can only be resolved through a suit by a competent Civil Court, however, this does not mean that the respondent authorities, particularly the District Magistrate and Superintendent of Police, Gaya are exonerated from their duties to provide the security and safety to a citizen like the petitioner.

It is expected from respondent no.3, the District Magistrate, Gaya to dispose of the representation of the



petitioner, as contained in Annexure-6(series).

Accordingly, the present writ application is disposed of.

(Dinesh Kumar Singh, J)

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