

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15289 of 2017

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Sriram Ram, Son of Late Mana Ram, Resident of Village-Dhodhanpur, Police Station-Brahmpur, District-Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, of Home Department, Bihar, patna
2. The District Magistrate, Buxar.
3. The Sub-Divisional Officer, Dumraon, District-Buxar.
4. The Circle Officer, Brahmpur
5. Kamal Prasad Son of Jag Prasad
6. Vinmal Ram Son of Jag Prasad
7. Ramji Ram Son of Late Ramlal Ram
8. Surendra Ram Son of Late Ramlal Ram.
9. Ram Ashish Ram Son of Late Ganesh Ram.
10. Lal Mohar Ram Son of Late Dashrath Ram.
11. Vinod Ram Son of Late Dashrath Ram. Respondent no. 5 to 11 are resident of Village Dhodhanpur, P.S.-Brahmpur, District-Buxar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Santosh Kumar
For the Respondent/s : Mr. P.K. VERMA-AAG3

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 30-11-2017 Heard learned counsels for the parties.

The present writ application has been filed for a direction to the respondent authorities to get the encroachment removed from the land appertaining to Khata No. 58, Plot No. 161, situated in Village – Dhodhanpur, P.S. Brahampur, District – Buxar as the same has been forcefully grabbed by the private respondent nos. 5 to 11.

In view of the nature of order this Court intends to pass, this Court is neither inclined to issue notice to the private



respondents nos. 5 to 11 nor to adjourn the matter any further for filing of the counter affidavit.

It is submitted by learned counsel for the petitioner that the land in question has been grabbed by the private respondents and for getting the same released from the possession of private respondent nos. 5 to 11, an application was filed on 9.2.2016 as contained in Annexure 2 before the respondent no.4, the Circle Officer, Brahmpur. The Circle Inspector, after inspection, submitted a report on 16.3.2016, as contained in Annexure 3, confirming that the land in question has been encroached upon. The petitioner filed an application before the Public Grievance Redressal authorities which was numbered as Public Grievance Redressal Case No. 117 of 2016. Thereafter, the respondent no. 4 the Circle Officer, Brahmpur was directed to submit a report in this regard. Consequently, Measurement Case No.42 of 2016-17 was initiated by the Circle officer wherein also it was found that the land in question has been encroached upon by the private respondents. The petitioner also filed Case No. 117 of 2016 before the Sub-Divisional Public Grievance Redressal Officer, Dumraon who disposed of the same vide order dated 2.8.2017, as contained in Annexure 7 directing the petitioner to seek remedy before the appropriate forum.



Having heard learned counsel for the parties, this Court feels necessary to deliberate upon the issue, whether factual issues and disputed question of facts can be looked into, while exercising 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 incident of jurisdiction of the High Court.

Facts are of two types. (i) The facts which the court or an authority determines for the purpose of deciding the question before it; and (ii) the facts which must exist before the Court or a Tribunal for exercise of its jurisdiction which is called jurisdictional or preliminary facts. When the writ discretion cannot be exercised for deciding the question before the court in view of disputed question of fact, it falls in the first category but where alternative remedy is available to the party concerned then it falls under jurisdictional or preliminary facts.

In each case, the court has to consider whether the



party seeking relief has an alternative remedy which is equally efficacious. Hence, when the party claims title or possession over the property then in such case equally efficacious remedy is by way of suit.

In a petition under Article 226 of the Constitution of India the High Court has the jurisdiction to try the issue both on facts and law. Exercise of jurisdiction is, no doubt, discretionary but discretion must be exercised on sound judicial principle. When the petitioner raises complex question of law and facts which may, for their determination, require oral evidence to be taken, then in that case the court should ordinarily restrain to exercise the discretionary remedy.

The Apex Court elaborated the same view in the case of Real Estate Agencies Vs. State of Goa and Ors. (2012) 12 Supreme Court Cases 170 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 226 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.

Similarly, the Apex Court in the case of Union of India and Others Vs. Ghaus Mohammad AIR 1961 Supreme Court 1526, held that a proceeding under Article 226 of the Constitution of India is not an appropriate forum to seek relief if such relief is based on disputed question of facts. Paragraph 9 reads as follows:

“9. 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.”

Same view has been reiterated by the Apex Court in the case of State of Rajasthan Vs. Bhawani Singh and Others, AIR



1992 SC 1018, holding that disputed questions relating to title cannot be satisfactorily gone into or adjudicated upon in a writ proceeding. Paragraph 9 reads as follows:

“9. Having heard the counsel for the parties, we are of the opinion, that the writ petition was misconceived insofar 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.”

In the case of D.L.F. Housing Construction (P) Ltd Vs. Delhi Municipal Corpn. and Others, (1976) 3 Supreme Court Cases 160, the question related to the right of ownership over a land, a Four Judge Bench of the Apex Court held that in a case where the basic facts are disputed and complicated question of law and fact depending on evidence are involved, the writ court is not a proper forum for seeking relief. Paragraph 18 reads 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.”

In the present case, the issue raised cannot be decided in a summary proceeding under the provisions of Bihar Public Land Encroachment Act, since the fundamental facts have not been brought on record through pleadings and counter pleadings whether the land in question is a public land or a private land. Such issue can be decided only after leading of proper evidence in a suit before Civil Court.

Accordingly, this writ application is disposed of with liberty to the petitioner to seek remedy before appropriate forum

(Dinesh Kumar Singh, J)

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