

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17182 of 2017

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Shushila Devi, Wife of Ravidra Mahto, Resident of Village-Bandarjhula
Ward no.10, P.S.-Sonbarsa, District-Sitamarhi.

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary, Revenue Department Bihar, Patna.
2. The District Magistrate, Sitamarhi.
3. The Sub-Divisional Officer, Sitamarhi Sadar, Sitamarhi.
4. The Superintending of Police, Sitamarhi.
5. The Block Development Officer, Sonbarsa
6. The Circle Officer, Sonbarsa.
7. The Officer-in-Charge, Sonbarsa.
8. Julum Mahto, Son of Ramashish Mahto
9. Sato Mahto, Son of Ramashish Mahto
10. Kishori Mahto, Son of Ramashish Mahto
11. Pramod Rai, Son of Ramashish Mahto
12. Pun Pratap Mahto, Son of Ramashish Mahto Res. no. 8 to 12, Resident of Village-Bandarjhula, Ward no. 10, P.S.-Sonbarsa, District-Sitamarhi
13. Renu Devi, Wife of Gulab Mahto, Resident of Village-Bandarjhula, Ward no.10, P.S.-Sonbarsa, District-Sitamarhi

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Devendra Kumar, Advocate
For the Respondent/s : Mr. Raj Kishore Roy, GP-18
Miss. Surekha Kumari, AC to GP-18

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

02/ 30-11-2017

Heard Mr. Devendra Kumar, learned counsel for
the petitioner and Miss. Surekha Kumari, learned AC to GP-18.

In view of the nature of the order this Court
intends to pass, issuance of notice to private respondent nos. 8 to
13 is not required.

The present Writ application has been filed for a



direction to the respondent authorities to get the encroachment removed from the raiyati land of the petitioner appertaining to Khata No. 314, Plot Nos. 613 and 620 situated in Village – Bandarjhula, Ward No. 10, P.S. – Sonbarsa, District – Sitamarhi.

It is submitted by learned counsel for the petitioner that the raiyati land of the petitioner has been encroached upon by private respondent nos. 8 to 13 and they forcibly took possession of the same. For removal of the encroachment, the petitioner submitted representations before Officer-in-Charge, Sonbarsa, S.D.O., Sitamarhi and Superintendent of Police, Sitamarhi between 2015 to 2017, as contained in Annexure-1 series. The petitioner also transmitted representation to the District Magistrate, Sitamarhi on 15.02.2017 and 21.05.2017 through registered post, as contained in Annexure-2 series and in the similar manner to the Officer-in-Charge, Sonbarsa, as contained in Annexure-3 and 4, but the grievance of the petitioner has not been redressed. Hence, the present Writ application.

Learned AC to GP-18 submits that it is not in dispute that the raiyati land of the petitioner is under the forceful possession of private respondent nos. 8 to 13 and the same can only be removed by filing an appropriate suit before the competent



Civil Court.

Having heard the learned counsel for the parties, this Court feels necessary to deliberate upon the issue, whether factual issue and the 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 evidence, the Court should ordinarily relegate the parties aggrieved to agitate the issue before the Civil Court. There is, however, a rule of practice and not an incident of jurisdiction of the High Court.

The Apex Court elaborated the issue with regard to disputed question of fact in the case of Real Estate Agencies Vs. State of Goa and Ors., reported in (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 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 the present case, for deciding the issue this Court has come to the conclusive finding that the issue whether the petitioner is having a right and title over the land in question, cannot be ascertained without leading of evidence. In the circumstances, this Court is not inclined to exercise discretionary jurisdiction under Article 226 of the Constitution of India.

Accordingly, this Writ application is disposed of with liberty to the petitioner to seek remedy before the appropriate forum for redressal of the grievance.

(Dinesh Kumar Singh, J)

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