

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15988 of 2015

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Birendra Tiwary son of Late Rameshwar Tiwary resident of Village -
Bhasurari, Police Station - Shikarpur, Anchal - Narkatiaganj, District - West
Champaran at Bettiah.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, West Champaran at Bettiah.
3. The Additional Collector, West Champaran at Bettiah.
4. The Sub-Divisional Officer, Narkatiaganj, District - West Champaran at Bettiah.
5. The Land Reforms Deputy Collector, Narkatiaganj, District - West Champaran at Bettiah.
6. The Circle Officer, Narkatiaganj, District - West Champaran at Bettiah.
7. The S.H.O. Shikarpur Police Station, District West Champaran at Bettiah.
8. Krishna Prasad son of Late Deo Narayan Prasad resident of Village - Bhasurari, Police Station - Shikarpur, Anchal - Narkatiaganj, District - West Champaran at Bettiah.
9. Kanhaiya Prasad son of Ramayan Lal Sah resident of Village - Bhasurari, Police Station - Shikarpur, Anchal - Narkatiaganj, District - West Champaran at Bettiah.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raghunandan Kumar Singh
For the Respondent/s : Mr. Raj Kishore Ray, GP 18

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date : 13-10-2017

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 Raiyati land of the petitioner appertaining to Khata No. 167, Plot No. 794/1 measuring 19 dhurs, situated in village Bhasurari, Circle – Narkatiaganj in the District of West Champaran at Bettiah. The same has been encroached upon by the private respondent



nos. 8 and 9. Further prayer has been made for declaring the land in question as Raiyati land of the petitioner, used as cattle shed by private respondents and further to implement the order dated 25.5.2012 passed by respondent no.5, the DCLR, Narkatiaganj in Circle Misc. Case No. 10 of 2010-11, whereby he has directed respondent no.6, the Circle Officer, Narkatiaganj to make enquiry and get the encroachment removed.

In view of the nature of order this Court intends to pass, it does not require issuance of notice to private respondent nos. 8 and 9.

It is submitted by learned counsel for the petitioner that the land in question is the purchased land of the petitioner by virtue of registered sale deed in favour of his mother Bhagmati Devi and wife namely Hridaya Devi. After purchase, the land was mutated in their favour and the the land possession certificate were issued vide Land Possession Certificate No. 310 and 311, as contained in Annexure 1 and 1/1. The petitioner filed a Misc. Petition No. 10 of 2010-11 before the respondent no. 6, the Circle Officer, Narkatiaganj, stating therein that the private respondent nos. 8 and 9 are constructing cattle shed over the said land. Consequently, the respondent no. 6, the Circle Officer, Narkatiaganj vide letter no. 645 dated 20.10.2011, as contained in Annexure 2, directed the



S.H.O., Shikarpur to get the ongoing construction stopped and vide notice dated 20.10.2011 as contained in Annexure 3 directed the private respondents to appear in his court within three days of receipt of the notice to put up their defence.

Private respondents were again noticed but they failed to produce any document. Subsequently, Anchal Amin submitted a report dated 4.1.2012, as contained in Annexure 5 which suggests that the land in question is the raiyati land of the petitioner. The respondent no.5, the DCLR, Narkatiaganj vide order dated 25.5.2012, as contained in Annexure 7, passed in Circle Misc. Case No. 10 of 2011-12 specifically specified that the land in question is the raiyati land of the petitioner and directed the respondent no. 6, the Circle Officer, Narkatiaganj to make enquiry and get the encroachment removed but the said order has not been implemented. Hence, the present writ application.

A counter affidavit has been filed on behalf of respondent nos. 2 to 6. Learned G.P. 18 submits that private respondents are claiming the land in question on two grounds. One, by virtue of the land in question being raiyati land and secondly, that the land in question was allotted to them under Bihar Privileged Person Homestead Tenancy Act. On the basis of the application made on behalf of the private respondents, Jamabandi



Rectification Case No. 461 of 2013-14 was initiated and vide order dated 16.2.2015 passed by the ADM, Bettiah, the Jamabandi in favour of respondent nos. 8 and 9 was set aside and consequently, respondent no. 9 has preferred Title Suit No. 193 of 2015 wherein the petitioner is defendant no. 4. Hence, the nature of relief as claimed by the petitioner is absolutely civil in nature and the same cannot be granted in exercise of jurisdiction under Article 226 of the Constitution of India.

Having heard learned counsel for the parties, this Court is of the view that the relief prayed for by the petitioner is based upon the disputed question of facts. The foundational facts which are required for deciding the right, title of the petitioner are not on record.

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 undisputed 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.”

Similarly, 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 petitioner has suppressed the fact that Jamabandi was earlier in favour of the private respondent nos. 8 and 9 and the same was cancelled, however, the Jamabandi was created in favour of the petitioner with regard to the land in question just before filing of the writ application vide order dated 16.2.2015 passed in Jamabandi Rectification Case No. 461 of 2013-14 by the ADM, Bettiah, whereas the writ application was filed on 5.10.2015. More over, Title Suit No. 193 of 2015 was filed by respondent no. 9 on 25.6.2015 and thereafter, the present writ



application was preferred. Respondent no. 9 also claims title over the land in question. Hence, the right, title and possession of the petitioner vis-a-vis private respondents, over the land in question, can only be decided after leading evidence before the Civil Court. However, the prayer of the petitioner with regard to execution of the order dated 25.5.2012 passed by the respondent no. 5, the DCLR, Narkatiaganj in Misc. Case No. 10 of 2011-12, is misconceived.

Accordingly, this writ application is dismissed with liberty to the petitioner to avail remedy before the appropriate forum.

(Dinesh Kumar Singh, J)

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CAV DATE	
Uploading Date	
Transmission Date	

