

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5840 of 2015

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1. Jay Parkash Mahto @ Prakash Mahto, Son of Late Tak Narayan Mahto, Resident of Mohalla- Khanpar, Police Station and District - Sheikhpura.
 2. Dilip Kumar @ Deepak Kumar, Son of Jay Prakash Mahto @ Prakash Mahto, Resident of Mohalla- Khandpar, Police Station and District- Sheikhpura.

.... Petitioner/s

Versus

1. The State of Bihar through the Executive Officer Nagar Parishad, District - Sheikhpura.
2. The Circle Officer (C.O.) Anchal and District- Sheikhpura.
3. The Sub -Divisional Magistrate (S.D.O.) District - Sheikhpura.
4. The District Magistrate (D.M.) District- Sheikhpura.
5. Basudeo Mahto, Son of Late Shibu Mahto, Resident of Mohalla- Khandpar, Police Station and District- Sheikhpura.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Satish Kumar, Advocate

For the Respondent/s : Mr. Sunil Kumar Singh, AC to SC-24

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date: 07-09-2017

Heard Mr. Satish Kumar, learned counsel for the petitioner and Mr. Sunil Kumar Singh, learned AC to SC-24.

The nature of order this Court intends to pass, does not require issuance of notice to respondent no. 5, Basudeo Mahto.

The present Writ application has been filed for a direction to respondent no. 1, Nagar Parishad, Sheikhpura to get the encroachment removed from the land appertaining to Khata No. 52, Plot No. 59, measuring an area of 7 decimals and to stay the construction of boundary wall on the land in question. Further prayer



of the petitioners is to decide the right, title over the land in question and respondent no. 5 has received amount of compensation in land acquisition case on the basis of forged document.

I.A. No. 5598 of 2015 has been filed for stay of construction made by Nagar Parishad, Sheikhpura over the land in question.

Learned counsel for the petitioners submits that the land in question was obtained by ancestor of the petitioners, namely, Mosmat Sitabo Devi on Hibbanama on 17th March, 1948 from one Mosmat Dainyee Kurminee and thereafter on the basis of Hibbanama, return was submitted to the Revenue Department in respect of land in question and the petitioners have been in possession of the land in question and the name of the petitioners have also been incorporated in Register-II. The ancestors of the petitioners and respondent no. 5 are the same. However, Shibu Mahto, the father of respondent no. 5 gave the land in question to the government, in a land acquisition proceeding and consequently received compensation on the basis of forged documents as the land in question, on partition, fell in the share of the petitioners, but in spite of filing representations, no action has been taken by the respondent authorities, hence, the present writ application.

A counter affidavit has been filed on behalf of



respondent nos. 1 to 4 from which it reflects that the land in question was acquired by the government and consequently Nagar Parishad, Sheikhpura is constructing boundary wall over the land in question.

Having heard the learned counsels for the parties, this Court is of the view that the foundational facts, which may be required for determination of the issue involved is not on record. Moreover, to decide the disputed question of fact it requires leading evidence, which cannot be done in exercise of discretionary jurisdiction under Article 226 of the Constitution of India.

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 this view in the case of Real Estate Agencies Vs. State of Goa and Ors., reported in (2012) 12 Supreme Court Cases 170, wherein 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 reported in 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.”

In the case of D.L.F. Housing Construction (P) Ltd Vs. Delhi Municipal Corpn. and Others, reported in (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 view of this Court, the petitioners claimed title over the land in question on the basis of Hibbanama, whereas respondent no. 5 has transferred the land in question in favour of the Government, in a land acquisition proceeding and has already received compensation and on that basis the respondent no. 1, by treating it as a public land has got the boundary constructed. Hence, the right, title of the petitioner vis-à-vis the respondent nos. 1 and 5 cannot be decided in exercise of discretionary jurisdiction under Article 226 of the Constitution of India, which can only be settled through a suit before competent Civil Court.

Accordingly, this Writ application is disposed of with liberty to the petitioners to avail alternative remedy at appropriate forum.

(Dinesh Kumar Singh, J)

DKS/-

AFR/NAFR	NA
CAV DATE	NA
Uploading Date	19.09.2017
Transmission Date	NA

