

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6643 of 2016

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Radha Devi, Wife of Praduman Singh, Resident of Village- Kath Bigha,
P.S. Khinjar Sarai, District Gaya.

.... Petitioner/s

Versus

1. The State of Bihar, through the District Magistrate, Gaya.
2. The Sub-Divisional Officer, Khijar Sarai, Gaya.
3. The District Planning Officer, Gaya.
4. The Circle Officer, Khijar Sarai, Gaya.
5. The Executive Engineer, Local Area Engineering Organization, Work's Division -1 Gaya.
6. Sri Anuj Kumar Sinha, Son of Parmeshwar Mahto, Resident of village - Pachruchi Circle, P.S. Khijar Sarai, District Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bindeshwar Prasad Singh
For the Respondent/s : Mr. Dhurjati Kr.Prasad, GP 14

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 11-07-2017 Heard learned counsel for the petitioner and learned
counsel appearing on behalf of the respondent State.

The present writ application has been filed for a direction to the respondent authorities, particularly, the respondent no.6 to remove Yatri shed which has been constructed at Lodipur in front of shop of the petitioner blocking the ingress and outgress of the petitioner, though as per the agreement the same was to be constructed at Khijar Sarai Dhura Par.

The factual matrix of the case would unveil that Tender Notice no.2 of year 2011-12 was issued vide memo no.121



dated 27.02.2012 for construction of Yatri shed at Khijar Sarai. Consequently, the respondent no.6 entered into an agreement with the respondent no.5, the Executive Engineer, Local Area Engineering Organization, Works Division – I, Gaya and the work order was issued on 11.09.2012, with a stipulation to complete the construction work by 10.12.2012. But, contrary to the terms of the agreement and the work order, the Yatri shed was constructed at Lodipur in front of the house of the petitioner, completely obstructing the frontage of the grocery shop of the petitioner, which is his only source of livelihood. The construction work was started at Lodipur, instead of Khijar Sarai.

It is submitted by learned counsel for the petitioner that the petitioner made a complaint before the Panchayat Mukhiya of the Gram Panchayat, Khijar Sarai, who requested the District Planning Officer in writing on 01.07.2013 requesting him to stay the construction, but the construction was completed in spite of protest made by the petitioner.

It is submitted by learned GP-14 that the agreement was made for construction of Yatri shed at Khijar Sarai Dhura Par and it was constructed at Khijar Sarai Dhura Par and this information was provided to the petitioner, on a query made by him under Right to Information Act and to that effect a statement



has been made in paragraph 9 of the counter affidavit filed on behalf of the respondent nos. 1 to 5, which reads as follows:-

“That from the aforesaid documentary evidence it is crystal clear that tender was notified for construction of Yatree Shade at Khizersarai Dhurapar agreement was made for construction of said Yatree Shade at Khizersarai Dhuraper, work was completed at Khizersarai, Dhuraper, and the fact was duly communicated to the writ petitioner by way of reply of RTI but with malice the writ petitioner now trying to frustrate the public utility project by filing the instant writ on purely wrong contentions. As such, the instant writ being devoid of merit is fit to be dismissed summarily.”

The information supplied through RTI Act has not been challenged. The work order, as contained in Annexure-B to the counter affidavit, reflects that it was issued vide memo no.684 dated 11.09.2012, wherein it was directed to complete the work by 10.12.2012. Though the specific date of completion of work has not been mentioned in the counter affidavit, but as per the instruction to the counsel for the respondent State, the work was completed in the year 2012-13, whereas it is contended by learned counsel for the petitioner that the work was completed in the year 2013-14. It is further submitted that the relief prayed for by the



petitioner is based on disputed question of fact, which cannot be decided in exercise of jurisdiction under Article 226 of the Constitution of India. Moreover, 8 feet space has been left, in between, the yatri shed and the land of the petitioner and information to this effect was also supplied to the petitioner, on information sought under Right to Information Act, on 14.9.2013.

Considering the rival submissions of the parties, the relief claimed by the petitioner cannot be granted without determining whether the petitioner has right over the land over which yatri shed has been constructed. From the submissions made and the pleadings in the writ application, it appear that the yatri shed has been constructed on a public land. So far as the fact whether yatri shed has been constructed at the place which is mentioned in the contract agreement, it is a disputed question of fact.

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 of evidence, the Court should ordinarily relegate the parties aggrieved to agitate the issue before the Civil Court. This is, however, a rule of practice and not an incidence of jurisdiction of the High Court.

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 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 the present case, for establishing the fact whether the yatri shed was constructed on the place mentioned in the



agreement or not or whether the same has obstructed the ingress and outgress of the petitioner requires leading of evidence which can only be decided through a proper suit. There is no reason for this court to disbelieve the statement by the respondent State on affidavit that the yatri shed was constructed at Khizersarai Dhurapar, the place mentioned in the contract agreement and 8 feet space has been left between the yatri shed and the shop of the petitioner. Paragraph 8 of the counter affidavit reads as follows:

“That it is humbly submitted that the writ petitioner had sought an information regarding the place of construction of said yatree Shade, under RTI in which Assistant Engineer vide his report dated 14.09.2013 submitted the reply to the Executive Engineer which clearly show that for the construction of the said Yatree shade site was selected at “Khizersarai Dhuraper” and construction of the said yatree Shade was done at the aforesaid selected site, and further it has also been informed that the said construction was made leaving a gap of 8 feet from the raiyati land.”

From the materials available on record, it appears that the yatri shed was constructed in the year 2013 and the information to that effect was supplied to the petitioner under Right to Information Act on 14.9.2013, as gets reflected from



Annexure 5, wherein it has been mentioned that the yatri shed is constructed at the place mentioned in the contract agreement i.e. Khizarsarai Dhurapar, but the writ application has been filed in 2016. Hence, on the ground of delay also, this court is not inclined to exercise the discretionary jurisdiction under Article 226 of the Constitution of India. Moreover, yatri shed has been constructed for the convenience of public at large, keeping in view the interest of general public, therefore, on this score also, this court is not inclined to interfere in the matter.

Accordingly, this writ application is dismissed, since, in view of this Court, the petitioner has not been able to make out a case for interference from this end.

(Dinesh Kumar Singh, J)

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