

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11543 of 2013

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1. Shatrughn Pandit S/O Late Ramjee Pandit, Resident Of Village- Khanua, P.S. Vidyapati Nagar, District- Samastipur

.... Petitioner/s

Versus

1. The State Of Bihar Through Its Chief Secretary, Bihar, Patna
2. The Commissioner, Darbhanga Division, Darbhanga
3. The District Magistrate/Collector, Samastipur
4. The Sub-Divisional Officer, Dalsingsarai, District- Samastipur
5. The Block Development Officer, Block- Vidypati Nagar, District- Samastipur
6. The Circle Officer, Block- Vidyapati Nagar, District- Samastipur
7. Rambrichh Pandit Son Of Late Chchathu Pandit Resident Of Village- Khanua, Police Station- Vidyapati Nagar, District- Samastipur
8. Ramanuj Pandit Son Of Late Chchathu Pandit Resident Of Village- Khanua, Police Station- Vidyapati Nagar, District- Samastipur
9. Shankar Pandit Son Of Late Babulal Pandit Resident Of Village- Khanua, Police Station- Vidyapati Nagar, District- Samastipur
10. Bipati Devi Daughter Of Late Bodhan Pandit Resident Of Village- Khanua, Police Station- Vidyapati Nagar, District- Samastipur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date: 20-04-2017

Heard learned counsel for the petitioner and learned

A.C. to S.C.-1.

The present writ application has been filed for a direction to the respondent authorities to get the encroachment removed from a public road appertaining to Plot No. 4004, Khata No. 874, situated in Village-Harpur Bochaha, Tola Khanua under Vidyapati Nagar Block in Samastipur District.



It is submitted by the learned counsel for the petitioner that the order dated 10.01.2014, as contained in Annexure-7, passed in Case No. 103/2012 by the Land Reforms Deputy Collector, Dalsingsarai, clearly suggests that respondent no.7 and others have encroached the government land in question.

Though, the Encroachment Case No. 01 of 2011-12 was initiated but counter affidavit filed on behalf of respondent nos. 3 to 6 suggests that Title Suit No. 171 of 2014, with regard to land in question, has been preferred by respondent no.7 wherein petitioner is defendant no.3.

The present writ application has been preferred invoking disputed question of fact, which cannot be decided in exercise of discretionary jurisdiction under Article 226 of the Constitution of India. A useful reference may be made to the case of **City and Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwalla and Ors., (2009) 1 Supreme Court Cases 168** wherein the Apex Court has laid down the parameter for exercising the jurisdiction under Article 226 of the Constitution of India. Paragraph no.30 of the judgment reads as follows:-

“The court while exercising its jurisdiction under Article 226 is duty bound to consider whether :

- (a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;
- (b) petition reveals all material facts;
- (c) the petitioner has any alternative or effective remedy for



the resolution of the dispute;
(d) person invoking the jurisdiction is guilty of unexplained delay and laches;
(e) ex facie barred by any laws of Limitation;
(f) grant of relief is against public policy or barred by any valid law; and host of other factors.
The court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly and accurately for the consideration of the court and particularly in cases where public revenue and public interest are involved. Such directions always are required to be complied with by the State. No relief could be granted in a public law remedy as a matter of course only on the ground that the State did not file its counter affidavit opposing the writ petition. Further, empty and self-defeating affidavits or statements of Government spokesmen by themselves do not form basis to grant any relief to a person in a public remedy to which he is not otherwise entitled to in law.”

In view of the above discussion and the fact that title suit is pending between the parties, this Court does not find any ground to exercise the jurisdiction under Article 226 of the Constitution of India.

Accordingly, the present writ application is disposed of.

It is expected from the respondent authorities to conclude the title suit expeditiously.

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	08/05/2017
Transmission Date	N/A

