

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12014 of 2013

=====

Pramod Singh, Son of Late Rajo Singh, Resident of Village - Chak, P.O. + P.S. Naya Gaon, Distt. Begusarai, presently residing at Lohia Nagar, P.S. Nagar Thana, District - Begusarai

.... Petitioner

Versus

1. The State of Bihar through the District Magistrate, District - Begusarai
2. The Superintendent of Police, District - Begusarai
3. The Officer-In-Charge, Nagar Thana, District - Begusarai
4. Smt. Madhuri Kumari W/O Dhananjay Kumar Resident of Village - Sadipur Diara, P.S. Balia, Distt. Begusarai
5. Smt. Priti Kumari W/O Sri Sunil Kumar Choudhary Resident of Village - Vishunpur, P.S. Barauni, Distt. Begusarai

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. J. K. Giri, Advocate
For the Respondent/s :

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT
Date: 27-04-2017

Heard learned counsel for the petitioner and learned AC
to AAG-12 for the respondent State.

The present writ application has been filed for a direction
to the State authorities to restrain the private respondent nos. 4 and 5
to make construction over the *raiya* land of the petitioner
appertaining to Khata No. 26, Plot No.150, Tauzi No.2911, Thana
No.384, Ward No.16, situated at Mauza -Nauranga, Pragana-Malaki,
in the District of Begusarai. Further prayer has been made to remove
the encroachment from the land in question.

From the pleadings of the parties, it appear that there is



dispute between the petitioners and respondent nos. 4 and 5 i.e., the private respondents is with regard to *raiya land and not a public land*, hence, no order for removal of encroachment under the Bihar Public Land Encroachment Act can be passed. It further appears that Title Suit No.86 of 1983 was filed by the grand-mother of the petitioner, namely, late Ramrati Devi with regard to land in question and the said suit was decreed in favour of the petitioner against the same opposite parties have preferred appeal.

It is well settled legal proposition that adjudication of any complex and disputed question of facts cannot be resolved in exercise of Article 226 of the Constitution of India. A useful reference may have to the case of **City and Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwalla and Ors.** reported in **(2009) 1 Supreme Court Cases 168** 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.”

Hence, this court cannot adjudicate the grievance of the petitioner and accordingly the writ application is disposed of with a liberty to the petitioner to raise all the contentions in the appropriate proceeding.

(Dinesh Kumar Singh, J)

Ashwini/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

