

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7902 of 2014

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Ramcharitar Pandit, Son of Late Trilok Pandit, Resident of Village -
Shivnagar, Bhawanandpur, P.S. - Birpur, District - Begusarai.

.... Petitioner

Versus

1. The State of Bihar
2. Collector Begusarai.
3. Sub-Divisional Officer, Begusarai.
4. Block Development Officer, Begusarai.
5. Zila Parishad, Begusarai through one of its member.
6. Circle Officer, Birpur, District - Begusarai.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Kapil Deo Singh
For the Respondent/s : Mr. Rishi Raj Sinha, SC-19
Mr. Akhilesh Kumar Sinha, AC to SC-19

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 10-07-2017 Heard Mr. Kapil Deo Singh, learned counsel for the

petitioner and Mr. Akhilesh Kumar Sinha, learned A.C. to S.C.-

19.

The present writ application has been filed for
restraining the respondent authorities from acquiring/taking
over/constructing Anganbari Centre on petitioner's raiyatee land
appertaining to Khata Nos.399 and 408, Plot Nos.57 and 58,
measuring an area of 1 katha, 15 dhurs, on part of which, the
house of the petitioner is situated and part of the same is vacant,
situated in Village Shivnagar, Block Birpur, District-Begusarai.

It is submitted by learned counsel for the petitioner



that the land in question was given by ex-Jamindar to the father of the petitioner in the year 1934, Jamabandi receipt has been brought on record as Annexure-1 to the reply to the counter affidavit. Thereafter, the land was settled by ex-Jamindar in favour of the father of the petitioner through Hukumnama in 1937, the same has been brought on record as Annexure-2 to the reply to the counter affidavit. The petitioner is paying rent to the State of Bihar and the rent receipt with regard to Khata Nos.399 and 408, Thana No.424, Khesra Nos.57 and 58 of Mauza Birpur for the year 2011-12, issued in favour of Trilok Pandit, whom the petitioner claims to be his father, has been brought on record as Annexure-3 to the reply to the counter affidavit. The authorities started constructing Anganbari centre on the vacant land of the petitioner against which the petitioner represented before the authorities. Respondent no.4, Block Development Officer, Birpur, vide Memo No. 234, dated 25.03.2014, directed the petitioner to produce the evidence or documentary proof with regard to his claim over the land in question, the same has been brought on record as Annexure-3 to the writ application. Thereafter, on 27.03.2014, the petitioner produced the proof in support of his claim by submitting an application, as contained in Annexure-4 to the writ application, that the Jamabandi was opened in the name of Trilok Pandey, the



father of the petitioner, with regard to land in question and the petitioner is paying rent, but authorities failed to stop the construction of Anganbari Centre.

Learned A.C. to S.C.-19 has drawn attention of the Court to the statements made in the counter affidavit filed on behalf of respondent nos. 2 to 4 and 6 to the effect that the land in question belongs to one Medni Prasad. The total area of Survey Plot Nos. 57 and 58 is 1.89 decimals, which was acquired much earlier in 1959 and for which compensation was paid to the land lord. The rent receipt, brought on record as Annexure-3 to the reply to the counter affidavit, is forged and fabricated one, as the land in question is situated in Mauza Bhawanandpur, Thana No.445, whereas, rent receipt is of land situated in Mauza Birpur, Thana No.424. Hence, the construction of Anganbari Centre was made on an acquired land.

Having heard learned counsel for the parties, this Court feels necessary to deliberate upon the issue, whether factual issues and 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 Civil Court. This is, however, a rule of practice and not an incident of jurisdiction of the High Court.

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.

A useful reference may have to the case of Smt. Rekha Singh and Others Vs. State of Bihar and Others, 1992 (2) PLJR 854 wherein the petitioners were claiming right title over the land which was recorded in records of right as 'Gair-Abad Malik' lands of Jharia Raj and were in khas possession of Jharia Raj. The



petitioners of the said writ application claimed the land through permanent settlement in the year 1947 and 1949, and thereafter, they become the permanent occupancy raiyat and after vesting of the Zamindari, they continued in khas cultivating possession over the settled lands. The State of Bihar tried to evict the settlee through a proceeding under the Bihar Public Land Encroachment Act, 1956, where it has been held that where the title is in dispute, the Government cannot take unilateral decision in its own favour.

Paragraph no.8 reads as follows:-

“It has been well settled by now that the summary remedy for eviction under the Act can be resorted to by the Government only against the persons who are in unauthorized occupation of any land which is “the property of Government”. If there is a *bona fide* dispute regarding the title of the Government to any property, the Government cannot take unilateral decision in its own favour that the property belongs to it, and, on the basis of such decision take recourse to the summary remedy provided for evicting the person who is in possession of the property under a *bona fide* claim or title.”

Though, in the counter affidavit it has been stated that the land was acquired by the Government, but no document



has been brought on record to that effect. The respondent authorities have also not disputed this fact that the house of the petitioner is situated on the land in question. Hence, such issue of disputed question of fact can only be dealt with by a competent Civil 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.”

Same view has been reiterated by the Apex Court in the case of **State of Rajasthan Vs. Bhawani Singh and Others, AIR 1992 SC 1018**, holding that disputed questions relating to title cannot be satisfactorily gone into or adjudicated upon in a writ proceeding. Paragraph 9 reads as follows:

“9. Having heard the counsel for the parties, we are of the opinion, that the writ petition was misconceived insofar as it asked for, in effect, a declaration of writ petitioner's title to the said plot. It is evident from the facts stated hereinabove that the title of the writ petitioner is very much in dispute. Disputed question relating to title cannot be satisfactorily gone into or adjudicated in a writ petition.”

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 is claiming the land through Hukumnama executed by the Ex- Jamindar, whereas, the respondent State is claiming the land on the basis of the fact that it has been acquired but to decide the claim of either party



requires leading of evidence. Moreover, the foundational facts which would be required for deciding the issue involved have not been brought on record by either side.

This Court is not in a position to decide whether the Hukumnama was issued in favour of the petitioner and he came in possession of that or he is paying the rent to the State of Bihar with regard to land in question or whether the land in question was acquired by the State of Bihar in accordance with the procedure of acquisition.

Accordingly, this writ application is disposed of with liberty to the petitioner to get the issue decided through a suit by a competent Civil Court.

(Dinesh Kumar Singh, J)

Arvind/Amrendra/-

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