

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.20614 of 2013

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1. Suraj Deo Bhagat, S/o Ramjit Bhagat, Resident of Village- Nimia Tola, Bargaon, P.S.- Mairwa, District- Siwan
 2. Chandradeo Bhagat, S/o Ramjit Bhagat, Resident of Village- Nimia Tola, Bargaon, P.S.- Mairwa, District- Siwan
 3. Jagat Bhagat, S/o Ranjit Bhagat, Resident of Village- Nimia Tola, Bargaon, P.S.- Mairwa, District- Siwan
 4. Subash Chandra Sah, S/o Chandrika Sao, Resident Of Village- Nimia Tola, Bargaon, P.S.- Mairwa, District- Siwan

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate/Collector, Siwan
3. The Sub Divisional Officer, Siwan
4. The Circle Officer, Mairwa, District- Siwan
5. Shyam Bahadur Nonia, S/o Late Raj Kumar Nonia, Resident of Village- Bargaon, P.S.- Mariwa, District- Siwan

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Maheshwar Prasad, Advocate
For the State : Mr. Umesh Narayan Dubey, AC to GP-27
For the Respondent No. : Mr. Prabhakar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date: 11-08-2017

Heard Mr. Maheshwar Prasad, learned counsel
for the petitioners, Mr. Umesh Narayan Dubey, learned AC to GP-27,
learned counsel for the State-respondents and Mr. Prabhakar Singh,
learned counsel for respondent no. 5.

The present writ application has been filed for a
direction to the respondent authorities to get the encroachment
removed over Khata No. 270, Plot No. 943, Gairmajarua Malik Parti
Kadim land situated in village Nimia Tola Bargaon, P.S. – Mairwa,



District – Siwan.

It is submitted by learned counsel for the petitioners that the land in question is being used by the petitioners and other villagers as Aam Rasta and the same has been encroached upon by respondent no. 5. However, from the counter affidavit filed on behalf of respondent nos. 1 to 4 and 5, it reflects that the land in question has been settled with respondent no. 5 through Case No. 2/82-83, but vide Memo No. 696 dated 01.10.2013 issued by the Circle Officer, Mairwa during a proceeding under Section 144 Cr.P.C. to the Deputy Collector, Land Reforms, Siwan that the land has wrongly been settled with respondent no. 5 and the question of settlement to respondent no. 5 which obstructs the right of way of the public at large.

It is submitted by learned counsel for respondent no. 5 that the counter affidavit on behalf of respondent nos. 1 to 4 has been sworn by the Circle Officer, Mairwa, respondent no. 4, where a specific stand of respondent no. 4 is that the purcha has been issued in favour of respondent no. 5 in pursuance to Case No. 2/82-83.

Having heard the learned counsel for the parties, this Court is of the view that under the provisions of Bihar Public Land Encroachment Act (hereinafter referred to as the 'Act') encroachment can be removed from a public land as defined in



Section 2 (3) of the Act and it is not in dispute that for the land in question, a purcha has been issued in favour of respondent no. 5 in pursuance to Case No. 2/82-83 which has not been challenged by the petitioner till date.

So far as the question whether respondent no. 5 was entitled for such settlement for issuing parcha or the settlement was made in accordance with the provisions of the law that requires leading of evidence which cannot be decided 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 restrain to exercise the discretionary remedy. 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 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 question of facts or mixed questions of fact and law are involved.

The Apex Court in the case of State of Rajasthan Vs. Bhawani Singh and others, AIR 1992 SC 1018, hold that disputed questions relating to title cannot be satisfactorily gone into or adjudicated upon in a writ proceeding. Paragraph 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. In 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.”

Similarly 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, this fact has not been controverted by the petitioners that the parcha has been issued in favour of respondent no. 5 in pursuance to Case No. 2/82-83 and the same has not been challenged at appropriate forum. Moreover, from the pleadings of the parties, there is nothing on record to suggest that the land in question is recorded in the records of rights as a public road. Hence, such an issue cannot be decided in exercise of power under Article 226 of the Constitution of India.



Accordingly, this writ application is disposed of with liberty to the petitioners to seek remedy in appropriate proceeding.

(Dinesh Kumar Singh, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.08.2017
Transmission Date	NA

