

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6706 of 2014

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Ashok Kumar, Son of Sri Ram Bilash Yadav, Resident of Village-
Sagarpur, Police Station- Sakari, District- Madhubani, Authorized Legal
Representative of Kumar Kaplishewar Singh

.... Petitioner

Versus

1. The State of Bihar
2. The Collector, Madhubani
3. The Anchal Adhikari, Jaynagar, District- Madhubani
4. Bhanu Pratap Mandal, Son of Sri Ram Pratap Mandal
5. Rameshwar Mandal, Son of Sri Ram Pratap Mandal
6. Virendra Sah, Son of Laxmi Narayan Sah
7. Satto Raut, Son of Matuk Raut
8. Lalbabu Raut, Son of Matuk Raut
9. Baidyanath Panjiyar, Son of Dhuplal Panjiyar
10. Tej Narayan Singh, Son of Janak Singh
11. Arvind Singh, Son of Janak Singh
12. Virendra Singh, Son of Janak Singh. All Are Residents of Village-
Jaynagar, Police Station- Jaynagar, District- Madhubani
13. Mahavir Sureka Son of Sri Nivas Sureka Resident of Village-
Jaynagar, Police Station- Jaynagar, District- Madhubani

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kritya Nand Jha
Mr. R.R.K. Pandey, Advocates
For the Respondent/s : Ms. Kumari Amrita, G.P.-10

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR
SINGH**
ORAL ORDER

2 07-07-2017 Heard Mr. Kritya Nand Jha, learned counsel for the

petitioner and Ms. Kumari Amrita, learned G.P.-10 for the

respondent State.

The present writ application has been filed for a

direction to the respondent authorities to get the encroachment

removed from the ancestral land of Kumar Kapileshwar Singh,



appertaining to Khata No. (old) 2K,381, Plot No. (old) 171,161/10,160/14,171/13,169/5,170,171/5,163,343/3,355/11,355/6,P/355,158/11,158/22,340,340/8,169/4,160,165/9,169/12,158/3, 156/4,171/3,173/6,176/6,176/7,172, total area 2 bighas 8 kathas and 13 ½ dhoors, situated in Mauza Jaunagar, which has been encroached upon by private respondent nos. 4 to 13. Further prayer has been made to restrain the private respondents from making any further construction over the land in question. The petitioner is an authorized agent of the land owner, Kumar Kapileshwar Singh, the grand-son of Raja Bahadur Visheshwar Singh, son of Subheshwar Singh. The petitioner, by virtue of authority letter no. 12 dated 06.03.2014, is pursuing the litigation on behalf of the land owner. The owner of the land is Kumar Kapileshwar Singh, who is the descendant of Late Darbhanga Maharaja Rameshwar Singh, who had two sons, namely Maharaja Kameshwar Singh and Raja Visheshwar Singh. Raja Visheshwar Singh had three sons, namely Jibeshwar Singh, Yagneshwar Singh and Subheshwar Singh. Subheshwar Singh had two sons, namely Rajeshwar Singh and Kapileshwar Singh. The petitioner claims that the land in question was granted to Raja Bahadur Visheshwar Singh as a Babuana Grant made by Maharajadhiraj Sir Kameshwar Singh, since Raja Bahadur



Visheshwar Singh was the junior member of the Raj family and the ascendancy of the descendant used to go to the eldest son. Later, Raja Bahadur Visheshwar Singh got his properties partitioned among his three sons including himself through registered partition dated 29.10.1957 and the property in question of Jayanagar Mauza went in the share of Raja Bahadur Visheshwar Singh and after his death in the year 1958, the land went in the share of Raja Kumar Subheshwar Singh, father of Kapileshwar Singh, who is paying rent of the land in question regularly, whereas, respondent nos. 4 to 13 made a construction by virtue of their tenancy right and settlement. In spite of representation made to the authorities, the encroachment has not been removed and hence, the present writ application.

It is submitted by learned counsel appearing for private respondent nos. 4 to 13 that Maharajadhiraj Rameshwar Singh died in the year 1929 and according to culture of the family, the eldest son Maharajadhiraj Dr. Sir Kameshwar Singh Bahadur succeeded to the Gaddi of Raj Darbhanga. The proprietary interest of Maharajadhiraj Dr. Sir Kameshwar Singh Bahadur's estates vested in the State of Bihar on 03.11.1951 and Dr. Maharaja Kameshwar Singh died on 01.10.1962 intestate of his entire movable and immovable properties. It is further



submitted that Raj Darbhanga was governed by the rule of 'Kulachar' of the Raj family. As per rule of the estate of Raj Darbhanga, the eldest son used to be the heir apparent to the Gaddi of Raj Darbhanga and the younger son used to be granted maintenance which was called Babuana Grant. The Maharaja Gaddi nasin used to be proprietor of the estate and the Babuanadars were the tenure holders who used to pay the rent in lieu of the revenue, payable to the Government. Each of the Babuandars used to be granted 3 tenure of the Pargana besides other movable and immovable properties for his and his family members' maintenance. The Babuana grant was heritable on the male line only and on failure of male line, it used to revert to Raj and on such reversion, it again became united with the main corpus of Raj Darbhanga. The land in question, situated in Mauza Jainagar, never came into possession of Subheshwar Singh, which gets apparent from the various orders of Ceiling Case No. 234 of 1975-76, which suggests that Subheshwar Singh, under ceiling case, was allotted 27.95 acres of land according to his choice in Keoti Circle, District Darbhanga.

Contention of the private respondents has been supported by the counsel for respondent-State. Moreover, it is submitted that the land in question is a private land and hence, no



proceeding under the Bihar Public Land Encroachment Act, 1956 (hereinafter referred to as 'the Act') can be initiated for removal of such encroachment.

So far as exercise of jurisdiction under Article 226 of the Constitution of India for removal of encroachment is concerned, the same cannot be exercised, since the petitioner claimed the land in question by virtue of successor-in-interest of Darbhanga Raj property, whereas, respondent nos. 4 to 13 are claiming the land by virtue of vesting of the land in question in State of Bihar after abolition of Jamindari, hence, such issue can only be resolved by leading of evidence through a suit by a competent Civil Court.

Considering the rival submissions of the parties, this is not in dispute that the petitioner has prayed for removal of encroachment from his private land for which the provisions of the Act cannot be resorted. Though, this is not in dispute that the land in question is not a public land but a citizen cannot be deprived of his property by any scrupulous person forcibly.

However, to resolve the issue, the Court has to come to a conclusive finding that the land in question belongs to the petitioner and his right of easement has substantially been obstructed, which can only be done through leading of evidence



and the same cannot be decided in exercise of 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.

The Apex Court in 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 parameters for exercise of 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 Apex Court in the case of **Real Estate Agencies Vs. State of Goa and Ors. (2012) 12 Supreme Court Cases 170** dealt with the issue, 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 in 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 226 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 view of the relief prayed for, removal of encroachment cannot be granted, either by directing the respondent authorities initiate a proceeding under the Act, which only applies to the public land or by exercising the discretionary jurisdiction under Article 226 of the Constitution of India, since



for grant of such relief, this Court has to step into the shoes of a fact finding committee.

In view of the discussions made above, the present writ application is disposed of without expressing any opinion on the merits of the case, with liberty to the petitioner to pursue remedy by filing appropriate suit before appropriate Civil Court.

(Dinesh Kumar Singh, J)

Anil/Amrendra/-

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