

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14980 of 2015

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Surendra Prasad Singh, Son of late Babu Lal Singh, Resident of village-
Bishunpur Dhannu, P.S.- Sarai, District- Vaishali.

.... Petitioner/s

Versus

1. The State of Bihar.
2. District Magistrate, Vaishali, District- Vaishali.
3. The Superintendent of Police, Vaishali, District- Vaishali.
4. Sub-Divisional Officer, Mahua, District- Vaishali.
5. Circle Officer, Block- Rajapakar, District- Vaishali.
6. Circle Inspector, Block- Rajapakar, District- Vaishali.
7. Officer-in-charge of Sarai Police Station, District- Vaishali.
8. Karamchandra Ram, Son of late Narayan Ram, Resident of village-
Bishunpur Dhannu, P.S.- Sarai, District- Vaishali.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajeev Ranjan
For the Respondent/s : Mr. R.K.Priyadarshi, S.C.-22

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 04-07-2017 Heard learned counsel for the petitioner and learned
A.C. to G.P.-6 for respondent nos. 1 to 7.

The present writ application has been filed for directing the respondent authorities to comply the order dated 04.06.2015 passed by respondent no.5, the Circle Officer, Rajapakar, issued vide Memo No. 415, as contained in Annexure-1, whereby direction has been given to the Karamchari to demarcate the area of encroachment made by respondent no.8, Karamchandra Ram over the land in question and to remove the encroachment in presence of the Police force. Further prayer has



been made for giving possession of the land, appertaining to Khata No. 45, Plot No. 272 and 273, to the petitioner.

Admittedly, the petitioner claims the removal of encroachment from his raiyati land made by private respondent no.8.

The land in question is not a public land, moreover, prima facie, there appears a civil dispute between the petitioner and respondent no.8. The issue involved, thus, appears to be based on disputed question of fact, which cannot be resolved in exercise of discretionary jurisdiction under Article 226 of the Constitution of India. Such dispute can be resolved through a civil suit by competent Civil Court.

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.”

Accordingly, the present writ application is disposed of with a liberty to the petitioner to seek remedy before appropriate forum.

(Dinesh Kumar Singh, J)

Amrendra/-

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