

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16522 of 2013

=====

Jitendra Tiwary, Son of Late Surendra Tiwary, Resident of Village-
Bishunpur Horil, P.S. Baruraj, District- Muzaffarpur

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Muzaffarpur, District- Muzaffarpur
3. The Sub-Divisional officer, East Muzaffarpur, District- Muzaffarpur
4. The District Co-Operative Officer, Muzaffarpur, District- Muzaffarpur
5. The Block Co-Operative Officer, Motipur, District- Muzaffarpur
6. The Circle Officer, Motipur, District- Muzaffarpur
7. The Executive Engineer, Rural Works Department, Works Division,
Muzaffarpur
8. Sri Birendra Kumar Chaudhary, Son of Baidyanath Chaudhary, Presently
the Chairman of Primary Agriculture Credit Co-Operative Society, Pakari,
Block- Motipur, District- Muzaffarpur

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Vijay Kumar Singh, Adv.
For the State : Mr. Subodh Kumar, AC to SC-26
For the Respondent no.8 : Mr. Yogendra Mishra, Adv.

=====

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

6 03-08-2017 Heard Mr. Vijay Kumar Singh, learned counsel for

the petitioner, Mr. Yogendra Mishra, learned counsel for the

respondent no.8 and learned AC to SC-26 appearing on behalf of

the State.

The present writ application has been filed for a

direction to the respondent authorities to restrain the respondent

no.7, the Executive Engineer, Rural Works Department, Works

Division, Muzaffarpur, and the respondent no.8, Birendra Kumar

Chaudhary from constructing godown of Primary Agriculture



Credit Cooperative Society (hereinafter referred to as the 'PACS'), Pakari, over the land of the petitioner appertaining to Khata No.47, Khesra No.1271, Chak No.1071, area 30 decimals, Chak No.762, area 21 decimals and Chak No.762, area 21 decimals from the public fund.

Through I.A. No.3601 of 2017, additional prayer has been made to the effect that necessary directions be issued to the respondent authorities to remove the construction of the godown over the land in question and the cost of construction be recovered from the respondent no.8.

Counsel for the petitioner submits that the land appertaining to Khata No.47, Khesra No.1271, Chak Khesra No.1071 and 762 measuring an area of 80 decimals and 21 decimals, respectively, was recorded in the khatian in the name of Yugal Tiwary, Jagannath Tiwary and Rameshwar Tiwary, all sons of Uchawat Tiwary. Jagannath Tiwary had 1/3rd share of the entire land and he had executed gift deed of his share in favour of Indu Devi, i.e., the wife of the petitioner. On the basis of the gift deed, the wife of the petitioner was making payment of rent to the State. The respondent no.8, Birendra Kumar Chaudhary, son of Baidyanath Chaudhary, began making claim over the land in question on the basis of a forged sale deed and by virtue of sale



deed executed in the year 1982 by Surendra Tiwary, the father of the petitioner, claiming permission from the consolidation authorities since the consolidation scheme was in operation at the relevant time. Though, permission was challenged in appeal and the appeal was dismissed, but the same was challenged through Revision Case Nos.938 of 1983, 939 of 1983, 940 of 1983 and 941 of 1983. The revision was allowed and the permission granted by the Consolidation Officer, Motipur for selling the land was rejected vide order dated 12.10.1983, as contained in Annexure-3. The said order dated 12.10.1983 passed by the revisional authority was challenged by the father of the petitioner Surendra Tiwary, the vendor of respondent no.8, through four writ applications being CWJC No.5716 of 1983, 5717 of 1983, 5718 of 1983 and 5719 of 1983 and all the writ applications were dismissed vide orders dated 19.01.1984, 16.01.1984, 26.01.1984 and 16.01.1984 respectively, as contained in Annexure-4 series. Subsequently, the respondent no.8 got elected as Chairman of Pakari PACS and then, he started creating hurdles and consequently started constructing godown on the land of the petitioner, against which the petitioner requested to the authorities and consequently, an enquiry was conducted by the Sub-Inspector of Police, who submitted his report on 23.06.2013, as contained in Annexure-7, to



the effect that the respondent no.8 and his father are forcibly making construction over the land of the petitioner, but in spite of all efforts being made, the construction did not stop. Hence, I.A. No.3601 of 2017 was filed for amending the prayer for removal of the encroachment and recovery of public money from the respondent no.8. Hence, the present writ application.

It is submitted by learned counsel for the respondent no.8 that it is the case of the petitioner that his father Surendra Tiwary, who had 1/3rd share in the land in question, executed the sale deed in pursuance to the permission from the consolidation authorities, since the consolidation proceeding was in operation and he was in urgent need of money for the marriage of his daughter. After obtaining permission, the father of the petitioner, Surendra Tiwary, executed registered sale deed dated 01.10.1982 in favour of Baidyanath Chaudhary, the father of respondent no.8, who came in possession. Subsequently, the land was mutated in the name of father of the respondent no.8 and since then he is paying the rent to the State.

In the year 1985-86, the operation of consolidation proceeding was concluded and thereafter in the year 1986 again Surendra Tiwary executed a deed dated 28.08.1986, confirming the earlier sale deed in favour of father of the respondent no.8



executed in 1982. The father of the petitioner donated some part of the purchased land for construction of the building of primary school, which is running on the same and some part of the land was donated for construction of temple and temple has been constructed.

The construction of godown of PACS, Pakari was made in pursuance to a registered lease deed dated 06.05.2013 by Abhishek Ranjan, son of respondent no.8, since, the remaining area fell in his share. It is further submitted that Abhishek Ranjan has not been made party respondent in this writ application, who executed the sale deed and that revision, challenging the permission for executing the sale deed, was not maintainable. Moreover, the petitioner did not challenge the revisional order. It is further submitted that a proceeding under Section 144 of the Cr.P.C. was initiated on the application of the petitioner being Case No.M-1052/13, which was dropped by the Sub-Divisional Officer, West, Muzaffarpur vide order dated 31.08.2013, on the ground that the dispute relates to the right and title over the land in question between the petitioner and the respondent no.8, which can be resolved through a Suit by the Civil Court.

Having heard learned counsels 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.



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 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.”

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 right and title over the land in question through gift deed whereas the respondent no.8 is claiming over the land in question through sale deed executed after obtaining permission from the consolidation officer, since consolidation scheme was in operation at the relevant time. In such a case, the issue cannot be decided without leading of evidence. This Court is also not in a position to exercise discretion, since the lease deed was for 33 years executed by Abhishek Ranjan, the son of the respondent no.8, but he has not



been made party respondent in this writ application and above all, the registered sale deed can only be interfered with by a competent Civil Court.

Accordingly, this Court finds no merit in this writ application and the same is dismissed.

(Dinesh Kumar Singh, J)

Arvind/-

U			
---	--	--	--

