

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11159 of 2016

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Bhimsen Singh, Son of Ramchandra Singh, Resident of Vill- Mokama, Moldiar Tola, Ward No-1, P.S. Mokama, Dist- Patna

.... Petitioner/s

Versus

1. The State of Bihar through Collector, Patna
2. The Executive Engineer, Urban Development & Housing Department, DUDA-1, Vikas Bhawan, Patna
3. The Circle Officer, Mokama
4. The Chairman, Nagar Parishad, Mokama.
5. The Executive Officer, Nagar Parishad, Mokama.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abhay Kumar Roy, Adv
For Nagar Parishad : Mr. Arasind Nath Pandey, Adv
For the Respondent/s : Mr. Sita Ram Yadav GP-16

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date: 18-04-2017

Heard learned senior counsel for the petitioner,
learned counsel for the Mokama Nagar Parishad and learned counsel
for the State.

The prayer of the petitioner in this writ application
reads as follows:-

*a. For setting aside the tender dated
29.07.2015, issued by the Executive Engineer, Urban
Development & Housing Department, Patna, for
construction of Chhatdar Chabutra Near Peepal Tree
in Ward No. 12, at Mokama Nagar Parishad, Patna
(Annexure-6).*

b. For setting aside the Contract for



above mentioned tender, which has been executed by the Executive Engineer, Patna, on 25.01.2016, without any authority on petitioners' land (Annexure-7).

c. For the declaration that the land in question is Raiyati Land on which the above mentioned tender has been notified by the department."

I.A. No. 5765 of 2016, has been filed for amendment of the prayer in the writ petition. Amendment sought for in paragraph no. 2 of the interlocutory application reads as follows:-

"a. for the removing of the structure/construction, which has been going on the raiyati land of the petitioner, in pursuance of the tender dated 29.07.2015, notified by the respondent no. 2 by which construction of the Chhatadar Chabutra near Peepal Tree in Ward No. 12 at Nagar Parisad, Mokama.

b. For the removing of the road, which is under construction, adjacent to the Chhatadar Chabutra, on the petitioner's land. The road has been started after filing of the instant writ application."

The prayer made in I.A. No. 5765 of the 2016, was allowed by a co-ordinate bench of this Court vide order dated



06.09.2016 in following terms:-

"Accordingly, the amendment is allowed. The writ petitioners are allowed to pursue the writ application with respect to the relief mentioned in paragraph no. 2(a)(b) of the interlocutory application concerned."

I.A. No. 6204 of 2016 has been filed for impleading Nand Kishore Prasad Singh as party respondent to this writ application.

Learned senior counsel appearing on behalf of the petitioner is not pressing I.A. No. 6204 of 2016.

Accordingly, I.A. No. 6204 of 2016 is dismissed as not pressed.

It is submitted by the learned counsel for the petitioner that Kheshra No. 5796 and 6022 are situated in Mouza Mokama, bearing an area of 4 Acres 44 decimals (Annexure-1), which are gair majarua malik land and by operation of Section 6 of the Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, such type of land remains in possession of that individual provided he makes payment of rent fixed by the authorities. In this connection, reliance has been placed in the case of ***Suraj Ahir vs Prithinath Singh*** reported in ***AIR 1963 S.C. 454***. The petitioner



has claimed the land on the basis of information supplied under Right to Information Act on 23.03.2012, as contained in Annexure-3, whereby the Revenue Karamchari suggested that the land is recorded in the name of Bajrang Singh @ Narshingh Singh @ Laddu Singh. The petitioner claimed to be the heir of Bajrang Singh. The rent receipt dated 16.03.2012, has been brought on record as Annexure-4, which suggests that the rent was paid by Bajrang Singh, hence on the land of the petitioner, the road cannot be constructed. It is submitted by learned counsel for the State that Jamabandi has not been created in favour of the petitioner and his ancestors. The land is recorded in the Register-II as Gair Majarua Parti Kadim. Annexure-3 is the information provided by the Revenue Karamchari concerning the rent receipt, which was forged and consequently, FIR was lodged being Mokama PS Case No. 6 of 2017 on 18.01.2017, for the offences punishable under Sections 466, 467, 468, 471 and 409 of the Indian Penal Code. The fraudulent character of the information provided under Right to Information Act about the rent receipt as contained in Annexure-3, is apparent on the face of record and as such the plot numbers mentioned therein appears to be interpolated. Moreover, statement has been made in paragraph no. 12 of the writ petition that on 05.05.2016, a petition before the D.C.L.R., Barh for declaration of raiyat of land in question has been filed but till date the same is



pending. The same has been brought on record as Annexure-8 to the writ application.

Learned counsel for the Mokama Nagar Parishad submits that there is nothing on record to suggest that any Jamabandi was opened in the name of the petitioner or his ancestors.

Considering the rival submission of the parties and keeping in view, the fact that the petitioner claims the land in question on the basis of the land being earlier recorded as Gair Majarua and by virtue of operation of Section 6 of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act, 1961, but by operation of Section 6 the land only can remain in possession of the intruder if the rent is being paid to the authorities.

In the present case, the payment of rent is under dispute. It is well settled legal proposition that adjudication of any complex and disputed question of facts cannot be resolved in exercise of power conferred under Article 226 of the Constitution of India. A useful reference may be had to the case of *City and Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwalla and Ors.* reported in (2009) 1 Supreme Court Cases 168, wherein the parameters have been laid down for exercising the 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 court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly and accurately for the consideration of the court and particularly in cases where public revenue and public interest are involved. Such directions always are required to be complied with by the State. No relief could be granted in a public law remedy as a matter of course only on the ground that the State did not file its counter affidavit opposing the writ petition. Further, empty and self-defeating affidavits or statements of Government spokesmen by themselves do not form basis to grant any relief to a person in a public remedy to which he is not otherwise entitled to in law.”



In such circumstances, this writ application is disposed of with a liberty to the petitioner to seek remedy before appropriate forum/court in accordance with law. It is made clear that none of the observations in the writ application will have any bearing on the respective right of the parties concerning the land in question.

(Dinesh Kumar Singh, J)

Ranjan/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

