

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14315 of 2016

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Arun Kumar Mahto, Son of Late Gauri Shankar Mahto, Resident of Village - Sukhet, P.S. - Jhanjharpur, Distt - Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Dept. of Home, Patna.
2. The Collector, Madhubani.
3. The Superintendent of Police, Madhubani.
4. The Sub Divisional Officer, Jhanjharpur, District Madhubani.
5. The Sub Divisional Police Officer, Jhanjharpur, District - Madhubani.
6. The Development Commissioner, Land Reforms, Jhanjharpur, District - Madhubani.
7. The Circle Officer, Jhanjharpur, District - Madhubani.
8. The Station House Officer, Police Station - Jhanjharpur , District - Madhubani.
9. Bechan Paswan, Son of Bouku Paswan, Son-in-law of Gonour Paswan
10. Babloo Paswan, Son of Bechan Paswan
11. Umesh Paswan
12. Madan Paswan, both Sons of Kari Paswan
13. Buchi Lal Paswan, Son of Gangai Paswan
14. Satya Narayan Paswan, Son of Buchi Lal Paswan
15. Mahabir Kamat, Son of Kuar Kamat, All residents of Village and P.O. - Sukhet, P.S. - Jhanjharpur, District - Madhubani.
16. Sri Chand Paswan, Son of Monu Paswan, Resident of Village - Bhakhrouli, P.O. - Berma, P.S. - Jhanjharpur, District - Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Baleshwar Kamat
For the Respondent/s : Dr. Mankeshwar Tiwari, AC to AAG 3

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 15-09-2017 Heard learned counsels for the parties.

The present writ application has been filed for a direction to the respondent authorities to restore the possession of the petitioner over the land appertaining to Plot No. 4644 measuring an area 1 bigha 4 kathas 2 dhurs and Plot no. 4643 measuring an area 1 bigha 5 kathas 2 dhurs, situated in Mauza – Sukhet,



Anchal – Jhanjharpur in the District of Madhubani, as the same has been encroached upon by private respondent nos. 9 to 16.

It is submitted by learned counsel for the petitioner that the land in question is either ancestral or purchased land of the petitioner, but the same has been encroached upon by the private respondent nos. 9 to 16.

The petitioner submitted an application on 30.4.2015, before the respondent no. 5, the S.D.P.O., Jhanjharpur, as contained in Annexure 1 for redressal of his grievance. When no action was taken, the petitioner filed an application for redressal of the grievance before the respondent no.2, the Collector, Madhubani on 7.5.2015, which was registered as Application No. 2000 of 2015, as contained in Annexure 2. The said application was sent to the respondent no.7, the Circle Officer, Jhanjharpur. Consequently, vide letter no. 348 dated 8.6.2015, as contained in Annexure 3, the respondent no. 6, the D.C.L.R, Jhanjharpur directed the respondent no.7, the Circle Officer, Jhanjharpur to enquire into the matter and take appropriate action in that regard. The respondent no.7, the Circle Officer, Jhanjharpur got an enquiry conducted through the Revenue Karmchari, who after conducting an enquiry, submitted his report on 2.7.2015, as contained in Annexure 4, to the effect that



the land in question belongs to the petitioner and the same has been encroached upon by the private respondents. Thereafter, notices were issued by the respondent no.7, the Circle officer on 9.7.2015, 24.9.2015 and 21.12.2015 to the private respondents, but they deliberately did not appear before the respondent no.7, the Circle officer nor the encroachment has been removed.

AC to AAG 3 submits that the encroachment has been claimed on the private land of the petitioner by private respondent nos. 9 to 16. Hence, no proceeding under the Bihar Public Land Encroachment Act (hereinafter referred to as the 'Act') can be initiated.

Since the writ application was filed in 2016 and no counter affidavit has been filed by the respondent State, this Court is not inclined to adjourn the matter any further.

In view of the nature of order this Court intends to pass, does not require issuance of notice to private respondent nos. 9 to 16.

In order to consider the relief claimed by the petitioner, this Court cannot come to a conclusive finding with regard to the right, title and interest of the petitioner vis-a-vis private respondents over the land in question. The foundational facts to the above effect are not on record.



Facts are of two types. (i) The facts which the court or an authority determines for the purpose of deciding the question before it; and (ii) the facts which must exist before the Court or a Tribunal for exercise of its jurisdiction which is called jurisdictional or preliminary facts. When the writ discretion cannot be exercised for deciding the question before the Court in view of disputed question of fact, it falls in the first category but where alternative remedy is available to the party concerned then it falls under jurisdictional or preliminary facts.

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 a 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., reported in (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.”

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 the case of D.L.F. Housing Construction (P) Ltd Vs. Delhi Municipal Corpn. and Others, reported in (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 relief claimed by the petitioner is of recovery of possession and removal of encroachment made by the private respondents. The same cannot be decided in exercise of discretionary jurisdiction under Article 226 of the Constitution of India, as neither the foundational facts for deciding the rival claims of the parties



are on record nor the same can be resolved without leading evidence.

Accordingly, the present writ application is disposed of with liberty to the petitioner to avail the alternative remedy available in law before appropriate forum. However, the present order will not preclude the respondent no. 7, the Circle Officer, Jhanjharpur to dispose of the proceeding pending before him, if any.

(Dinesh Kumar Singh, J)

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