

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8756 of 2017

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Randhir Singh, Son of Gurudeo Singh, Resident of Village- Chatar, Police Station- Alouli, District- Khagaria.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Land and Revenue, Government of Bihar, Patna.
2. The District Magistrate-cum-Collector, Khagaria.
3. The Superintendent of Police, Khagaria.
4. The Sub-Divisional Magistrate, Khagaria.
5. The Circle Officer, Alauli, Khagaria.
6. The Station House Officer, Alauli, Khagaria.
7. Ram Udgar Mahto, Son of Late Ram Kishun Mahto, Resident of Village- Chatar, Police Station- Alauli, District- Khagaria.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manoj Kumar Singh, Advocate.

For the Respondent/s : Md. AC to AAG 12

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

2 06-07-2017 Heard Mr. Manoj Kumar Singh, learned counsel appearing on behalf of the petitioner and learned AC to AAG-12 appearing on behalf of the respondent nos. 1 to 6.

In view of the nature of the order this Court intends to pass, no notice is required to be issued to respondent no.7.

The present writ application has been filed for a direction to respondent authorities to restrain respondent no. 7 from illegal occupation of the land, appertaining to Khata No. 105, Plot No.304, situated in Mauza-Chatar, in the District of Khagaria since the land belongs to the petitioner and the Khatiyan as contained in Annexure 1 reflects that it is recorded in the name of



the petitioner.

It is submitted by learned counsel for the petitioner that the petitioner's grand father late Triveni Singh was tenant of the then Banaili Raj and after vesting of Jamindari, the land appertaining to Khata No. 105, Plot No.304 came in possession of the ancestors of the petitioner and consequently, Khatian, as contained in Annexure 1 was prepared and thereafter, Jamabandi No. 95(A) was also prepared in the name of the ancestors of the petitioner consequently the rent was paid. Recently, respondent no. 7, who is a muscle man of the area, took illegal possession of the land and started making construction over it. On an application filed by the petitioner, a proceeding under Section 144 of the Cr.P.C. was initiated vide Case No. 155(M)/2017 but the said proceeding was dropped by the respondent no. 4, Sub-Divisional Magistrate, Khagaria vide order dated 12.4.2017, as contained in Annexure 3. Hence, the present writ application.

It is submitted by learned AC to AAG-13 appearing on behalf of the respondent State that the petitioner has claimed possession over his raiyati land, which can only be resolved through a suit, as the issue requires determination of title between the parties.

Having heard learned counsels for the parties, this



Court is of the view that the 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, i.e., under the second category.

In view of this court, this case falls under both categories. The foundational facts which are required for deciding the issue of title and possession is not on record. Moreover, such a nature of dispute, for its resolution, requires leading of evidence, for which the petitioner has an alternative remedy of filing a suit before a competent Civil Court.

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.

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.

A useful reference may be made to 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 parameter 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 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.

Similarly, the Apex Court in the case of Union of India and Others Vs. Ghaus Mohammad AIR 1961 Supreme Court 1526, held that a proceeding under Article 226 of the Constitution of India is not an appropriate forum to seek relief if such relief is based on disputed question of facts. Paragraph 9 reads as follows:

“9. The question whether the respondent is a foreigner is a question of fact on which there is a great deal of dispute which would require a detailed examination of evidence. A proceeding under Art. 226 of the Constitution would not be appropriate for a decision of the question. In our view, this question is best decided by a suit and to this course neither



party seems to have any serious objection. As we propose to leave the respondent free to file such a suit if he is so advised, we have not dealt with the evidence on the record on the question of the respondent's nationality so as not to prejudice any proceeding that may be brought in the future.”

In the present case, it appears that the petitioner has claimed title over the land appertaining to Khata No. 105, Plot No. 304 and in support of the same he has brought on record the photo copy of the Khatiyani (Annexure 1) which reflects that the land of Khata No. 105 is recorded in the name of the father of the petitioner namely, Gurudeo Singh, son of Triveni Singh. Similarly, in the order dated 12.4.2017, passed in Case No. 155(M) of 2017, as contained in Annexure 3, which relates to a proceeding, under Section 144 of the Cr.P.C., initiated on the application of the petitioner, it has been recorded by the S.D.O., Khagaria that from the show cause, police report and the documentary proof submitted by the parties, it appears that the petitioner being the first party, claims his title over Khata No. 105 Plot No. 304 whereas the second party- respondent no. 7 in the present writ application, has claimed title of the pertaining to Tauzi No. 525 Khata No. 105 Plot no. 304 whereas the petitioner



filed an application for initiation of a proceeding under Section 144 of the Cr.P.C. for the land appertaining to Khata No. 105, as a result, the said proceeding was dropped. Hence, when the petitioner himself is not aware about the exact land on which he has claimed title, it is very difficult to pass any order in exercise of jurisdiction under Article 226 of the Constitution of India as has been held 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, from the discussions made above, it appears that the basic facts are in dispute. Accordingly, the present writ application is disposed of with a liberty to the petitioner to avail the remedy before the appropriate forum.

Ashwini/-Anil/

(Dinesh Kumar Singh, J)

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