

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12769 of 2016

=====

Badri Sao, Son of Late Vishnu Sao, Resident of Village- Kumharaw, P.S-
Rajauli District- Nawada.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Director General of Police, Bihar, Patna.
3. The Superintendent of Police, Nawada.
4. The District Magistrate, Nawada.
5. The Sub- Divisional Officer, Rajuali, Nawada.
6. Kajari Devi, Wife of Majhi Singh.
7. Sunil Singh
8. Gore Lal Singh
9. Yogendra Singh
10. Awadhesh Singh

All serial no. 7 to 10 are sons of Megha Singh and are resident of Village-
Kumharua, P.S- Rajauli, District- Nawada.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Jainendra Kumar, Adv.
For the State : Ms. Divya Verma- AC to AAG-3

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 07-11-2017 Heard Mr. Jainendra Kumar, learned Counsel appearing
on behalf of the petitioner and Ms. Divya Verma, learned AC to
AAG-3, appearing on behalf of the respondent – State.

In view of the nature of order this Court intends to pass,
this Court is not inclined to adjourn the matter for filing of the
counter affidavit or for issuance of notice to private respondent
nos. 6 to 10, namely, Kajari Devi, Sunil Singh, Gore Lal Singh,
Yogendra Singh and Awadhesh Singh.

The present Writ application has been filed for a direction
to the respondent authorities to protect the petitioner from the



private respondent nos. 6 to 10 as the private respondents are forcefully constructed the house on the land of the petitioner.

Learned Counsel for the petitioner submits that the petitioner has constructed his house over the land appertaining to Khata No.167, Plot No.2061, measuring an area 7 decimals old Khata No. 77, Plot No. 4446, situated in Mauza-Kumharua, P.S- Rajauli, District-Nawada, which is the Khatiyani land of the petitioner, which was purchased from one, Sanichar Singh, and Budhan Singh through Sale Deed no.391, dated 18.01.46. One decimal of the said land of the aforesaid plot has also been purchased by the petitioner from one Dasia Devi. The Khatiyani has been brought on record as Annexure-1. The petitioner is paying rent regularly, a photocopy of the rent receipts has been annexed as Annexure-2 (series). But the private respondents are deliberately disturbing the petitioner.

The petitioner filed an application for initiating a proceeding under Section 144 of the Cr.P.C. before the S.D.O., Nawada, on 11.11.2014, as contained in Annexure-3. During pendency of the said proceeding, a report was called for by the S.D.O., Nawada, from the local police, consequently a report was submitted by the local police to the effect that the petitioner is in possession and is having title over the land in question and



trying to evict the petitioner forcefully and, hence, recommended for initiation of proceeding under Section 144 of the Cr. P.C, as contained in Annexure-4. But, ultimately, the SDO, Rajauli, Nawada, vide order dated 16.01.2015, as contained in Annexure-5, disposed of the proceeding initiated under Section 144 of the Cr. P.C. on the ground that the nature of dispute can only be resolved through the Civil Court. Thereafter, the petitioner made representation before the local Police Station, S.D.P.O., Rajauli, as well as the Superintendent of Police, Nawada, on 20.01.2015, 25.01.2015 and 15.02.2015 respectively, but till date no action has been taken.

It is submitted by Ms. Divya Verma, learned AC to AAG-3 that the dispute is with regard to the raiyati land of the petitioner and admittedly it is not a public land and the issue involves dispute over title and possession over the land in question, hence, the same can be decided by competent Civil Court.

Having heard learned Counsel 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 the present case, the petitioner claimed his possession over the land in question, but the foundation facts are not on record for allowing this Court to reach to the conclusion that the petitioner has right, title over the land in question or the private respondents have no right, title over the land in question.

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 :-

“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."

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 :-

"Having heard the counsel for the parties, we are of the opinion, that the writ petition was misconceived in so far 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.”

The Apex Court further 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 same or its instrumentality 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 individual. 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 and in exercise of 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 view of the above facts and legal aspects pertaining thereto, this Court does not find any merit in the Writ application.

Accordingly, this Writ application is disposed of with liberty to the petitioner to seek alternative remedy before appropriate forum.

(Dinesh Kumar Singh, J)

Ashwini/-

U			
---	--	--	--

