

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11199 of 2013

=====

Naresh Kumar Bhagat S/O Saryug Bhagat Resident Of Village- Bishambrapur,
Police Station- Sahebganj, District- Muzaffarpur.

.... Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate, Muzaffarpur.
3. The Deputy Collector, Land Reforms, West Muzaffarpur, District- Muzaffarpur.
4. The Circle Officer, Sahebganj, District- Muzaffarpur.
5. Sita Ram Bhagat S/O Mathura Bhagat Resident Of Village- Bishambhrapur, P.O-
Madhubaninia Karnaul, P.S- Sahebganj, District- Muzaffarpur.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date: 20-04-2017

Heard learned counsel for the petitioner and learned
A.C. to S.C.-13 for respondent nos. 1 to 4.

The nature of order, this Court intends to pass does not
require issuance of notice to private respondent no.5.

The present writ application has been preferred with a
prayer for a direction to respondent authorities to prevent respondent
no.5 from constructing house on the land appertaining to Khata No.
104, Plot No. 318, situated at Village- Bishambhrapur, in the
Muzaffarpur District.

Learned counsel for the petitioner submits that the land
in question is being used as a public road.



A counter affidavit has been filed on behalf of respondent no.2 to 4 wherein a statement has been made in paragraph no. 4 to the effect that the land in question has been settled to respondent no.5 through Land Settlement Case No. 124 of 2002-03. Relevant portion of paragraph no.4 of the counter affidavit reads as follows:-

“That the answering respondents most humbly state and submit that the land in question has been settled by these answering respondent to the respondent no.5 namely Sita Ram Bhagat vide Land Settlement Case No. 124 of 2002-03 and therefore the said respondent no.5 is justified in constructing the house over his said settled land.....”

It is well settled legal position that where there is dispute with regard to title which cannot be resolved without leading of evidence, the discretionary jurisdiction under Article 226 of the Constitution of India can be exercised.

In view of the fact that the present writ application has been preferred on the basis of serious disputed question of fact and the same cannot be decided in exercise of jurisdiction under Article 226 of the Constitution of India. A useful reference may be made to the case of **City and Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwalla and Ors. (2009) 1 Supreme Court Cases 168** wherein the Apex Court has laid down the parameter for



exercising the jurisdiction under Article 226 of the Constitution of India. Paragraph no.30 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 view of the above settled legal position, this Court cannot exercise the discretionary jurisdiction under Article 226 of the Constitution of India, in view of the nature of grievances and also in view of pendency of title suit between the parties.

Accordingly, the present writ application is disposed of.

(Dinesh Kumar Singh, J)

Amrendra/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	08/05/2017

