

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10508 of 2013

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Madhuri Mahto @ Madhuri Rai Son Of Late Radhey Mahto Resident Of Mohalla -
Khabra Road, P.O. Ramna, P.S. Kazimohammadpur District - Muzaffarpur

.... Petitioner/s

Versus

1. The State Of Bihar
2. District Magistrate-Cum-Collector, Muzaffarpur
3. Superintendent Of Police, Muzaffarpur
4. Deputy Superintendent Of Police, Town Muzaffarpur
5. Sub-Divisional Magistrate, Muzaffarpur East
6. Anchal Adhikari Mushahari District - Muzaffarpur

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar, Adv.
For the Respondents : Mr. G.P. Ojha, G.A.-7
Mrs. Priya Gupta, A.C. to G.A.-7.

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL JUDGMENT

Date: 19-04-2017

Heard learned counsel for the petitioner and learned
A.C. to G.A.-7 for respondent nos. 1 to 6.

The present writ application has been preferred with a
prayer for a direction to respondent authorities not to demolish the
house of the petitioner situated on the land appertaining to Revisional
Survey Plot No. 907 situated at Mohalla-Islampur, P.S.-
Kaazimohamadpur presently known as Khabra Road Chamrupur,
Ward No. 27 in the Muzaffarpur District. The petitioner is basically
aggrieved by initiation of encroachment Case No. 05 of 2012-13. The
petitioner admits that the land in question being Revisional Survey



Plot No. 907 has been recorded in the revisional survey in favour of State of Bihar. The petitioner has filed Title Suit No. 05 of 2013 also for declaration of his title over the land in question.

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 discretionary 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 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 view of the above settled legal position, this Court cannot exercise the discretionary jurisdiction under Article 226 of the Constitution of India, considering the nature of grievance and in view of the pending title suit.

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
Transmission Date	N/A

