

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12045 of 2013

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1. Bhogilal Rishidev, Son of late Sokhi Lal Rishidev, Resident of Village and P.O. Paikpor, Anchal- Bhargawan, District- Araria
 2. Jogendra Rishidev, Son of Late Sokhi Lal Rishidev Resident of Village And P.O. Paikpor, Anchal- Bhargawan, District- Araria

.... Petitioner/s

Versus

1. The State of Bihar through the Collector and District Magistrate, Araria
2. The Collector Cum District Magistrate, Araria
3. The Additional Collector, Araria
4. The Sub Divisional Officer at Forbesganj, District- Araria
5. The Deputy Collector Land Reforms, Forbesganj, District- Araria
6. The Circle Officer, Bhargama, District- Araria
7. Sahadur Rishidev, S/O Parmeshwar Rishidev, R/O Village And PO Paikpur, P.S. Bhargama, District- Araria
8. Bahadur Rishidev, S/O Parmeshwar Rishidev, R/O Village and P.O. Paikpur, P.S. Bhargama, District- Araria
9. Aanandi Rishidev, S/O Late Kari Rishidev, R/O Village and P.O. Paikpur, P.S. Bhargama, District- Araria

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kameshwar Prasad Singh, Advocate
For the State : Mr. Ram Babu Rai, AC to SC-14

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date: 21-04-2017

Heard learned counsel for the petitioners and Mr. Ram Babu Rai, learned AC to SC-14 for the respondent State.

The present application has been filed for quashing of the order dated 27.10.1992 issued under the signature of Collector, Araria, whereby the Basgit Parcha has been issued in favour of Masina Devi, wife of Sahadur Rishidev and daughter-in-law of Parmeshwar Rishidev vide Abhilekh No.20 of 1992-93. Further



prayer has been made to declare the land measuring 11 decimals appertaining to Plot No.1623, Khata No.902, P.S.-103, Circle – Bhargama, in the District of Araria, as the *raiyati* land of the petitioner since the said land is recorded in Khatian in the name of grand-father of the petitioner. Further prayer has been made to get the encroachment made by respondent nos. 8 to 9 over the land in question removed.

The petitioners have challenged the Basgit Parcha issued on 27/10/1992, almost after 21 years by filing the present writ application in 2013. In view of the fact that the actual settlees have not been made party respondents and also in view of the 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 not be exercised.

The present writ application has been preferred on the basis of serious disputed question of fact and the same cannot be decided in the present proceeding. A useful reference may have to the case of **City and Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwalla and Ors.** reported in (2009) 1 Supreme Court Cases 168 where 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 fact that the disputed question of facts are involved which cannot be resolved in the present proceeding, accordingly, the present writ application is disposed of with a liberty to the petitioners to seek remedy in appropriate proceeding.

(Dinesh Kumar Singh, J)

Ashwini/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

