

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14364 of 2015

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Pramod Kumar Singh, Son of Late Sharda Mandal Bari Khanjarpur, P.S. -
Ravari, District - Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Bihar, Patna.
2. The Principal, Jawahar Lal Nehru Medical College and Hospital, Bhagalpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anupa Nand Jha, Adv.
For the Respondent/s : Ms. Shilpi Keshri, AC to AAG-10

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 09-10-2017 Heard Mr. Anupa Nand Jha, learned Counsel appearing on behalf of the petitioner and Ms. Shilpi Keshri, learned AC to AAG-10, appearing on behalf of the respondent – State.

The present Writ application has been filed with following relief as stipulated in paragraph no.1 of the Writ application, which reads as under :-

“(i) For issuance of his appropriate writ/writs, order/orders, direction/directions against the Respondent No.2 in which the respondent constructing boundary wall upon the land belongs from the petitioner without



measuring their area.

(ii) For restraining to the respondent to maintaining status quo till the direction/order in the Title Suit No.170 of 1997 pending before the learned Court below.

(iii) For passing an appropriate order/orders, writ/writs. Such other reliefs to the petitioner for which the petitioner are found to be entitled or as may be found just and proper by this Hon'ble High Court.”

It is submitted by learned Counsel appearing on behalf of the petitioner that the land pertaining to Khatiyan No.629, Plot Nos. 1334, 1356,1825, 1090 and 1091 is ancestral land of the petitioner and in 1967 survey lands were acquired for establishment of Jawahar Lal Nehru Medical College and Hospital, Bhagalpur. Out of the total 4.88 acres of land 2.42 acres of land was acquired for the aforesaid purpose through Reference Case No.216 of 1974 and 213 of 1974. The petitioner continuously remained in possession of non-acquired land to the extent of 2.42 acres, but in the survey record the land in question was recorded in the name of Medical College and consequently Title Suit No. 170 of 1997 was filed. An injunction application has also been filed during pendency of



the title suit for restraining the boundary wall which is still pending. During pendency of Title Suit the petitioner preferred CWJC No. 6843 of 2015 with prayer for disposal of the injunction application filed in Title Suit No.170/1997, pending before the Sub-Judge-VIII, Bhagalpur, but the same was dismissed vide order dated 31.03.2016 by a Co-ordinate Bench of this Court, hence, the present Writ application. The relevant portion of the order reads as under :-

“the Hon’ble Supreme Court in the case of Shalini Shyam Shetty and another Vrs. Rajendra Shankar Patil reported in (2010)8 Supreme Court Cases 329 has held that “The power to issue writs underwent a sea-change with the coming of the Constitution from 26th January, 1950. Now writs can be issued by High Courts only under Article 226 of the Constitution and by the Supreme Court only under Article 32 of the Constitution. No writ petition can be moved under Article 227 of the Constitution nor can a writ be issued under Article 227 of the Constitution. Recently, the Hon’ble Supreme Court in the case of Radhey Shyam and another Vs.



Chhabi Nath and others, reported in (2015) 5 SCC 423 has held that ‘all the Courts in the jurisdiction of a High Court are sub-ordinate to it and subject to its control and supervision under Article 227. Control of working of sub-ordinate Courts in dealing with their judicial orders is exercised by way of statutory appellate or revisional powers, or power of superintendence under Article 227. While appellate or revisional jurisdiction is regulated by the statutes, power of superintendence under Article 227 is constitutional. Therefore, in view of this decision, the order of the Civil Court against which neither there is forum of appeal nor there is forum of revision under the statute i.e. Code of Civil Procedure the order can be examined or supervised in exercise of supervisory jurisdiction under Article 227 of the Constitution as despite the curtailment or revisional jurisdiction under Section 115 CPC, the jurisdiction of High Court under Article 227 remains unaffected, and has not resulted in expanding High Court’s power of



superintendence. Now, therefore, if earlier to amendment, no revision application was maintainable under Section 115 CPC for direction to the Court below for expeditious disposal of any application or suit, how the application under Article 227 will be maintainable after amendment of the Code.

In view of the above facts and circumstances, this application under Article 227 of Constitution of India is not maintainable for the relief claimed and thus, it is dismissed.”

It is submitted by learned AC to AAG-10 that the present Writ application is not maintainable in view of the fact that title suit is pending and prayer for disposal of the injunction application has been rejected by a co-ordinate Bench of this Hon’ble 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.

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.

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 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.

The relief claimed by the petitioner is based on disputed question of facts and the 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.”

In the case of D.L.F. Housing Construction (P) Ltd. Vs.



Delhi Municipal Corpn. and Others, (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 facts 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 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 remedy before appropriate forum for early disposal of the injunction application.

(Dinesh Kumar Singh, J)

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