

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23931 of 2013

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Raj Kishore Singh, S/O-Sri Rajnandan Singh, Resident of Village-
Paimarghat, P.S- Punpun, District- Patna

.... Petitioner

Versus

1. The State of Bihar
2. The District Magistrate, Patna
3. The D.C.L.R. Patna Sadar Sub Division, Patna Sadar, Patna.
4. The C.O. Sampatchak, Patna
5. The Senior Superintendent of Police, Patna.
6. The S.D.M. Sadar, Patna.
7. The Officer Incharge, Gopalpur, P.S- Sampatchak, District- Patna
8. Deo Sharan Singh, S/o Late Bhagwat Singh, Resident of Village- Sipara,
P.S- Beur, District- Patna.
9. Anil Kumar Singh, S/o Deo Sharan Singh, Resident of Village- Sipara,
P.S- Beur, District- Patna.
10. Avinash Kumar, S/o Sri Mahima Sharan Singh, Resident of Village-
Sipara, P.S- Beur, District- Patna.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Satya Ranjan Sinha
For the Respondent/s : Mr. GP 20

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR
SINGH**
ORAL ORDER

2 23-06-2017 Heard Mr. Satya Ranjan Sinha, learned counsel for

the petitioner and learned AC to G.P. 20 for respondent nos. 1 to

7.

The nature of order this Court intends to pass does

not require issuance of notice to private respondent nos. 8 to 10.

The present writ application has been filed for a

direction to the respondent authorities to get the encroachment

removed from the petitioner's purchased land appertaining to



Khata Nos. 230, Plot No. 1075 and 1505 situated in village Sona Gopalpur, Survey Thana Phulwarisharif at present Thana Gaurichak, in the District of Patna.

Learned counsel for the petitioner submits that the petitioner purchased the land in question. Subsequent to the purchase, name of the petitioner was mutated in pursuance to order passed in Mutation Case No. 1527/3(248) 2008 and accordingly Jamabandi was created in his favour. Demarcation of the land was made by the Anchal Amin in presence of the Circle Officer and Circle Inspector, but subsequently, part of the land was encroached by the private respondent nos. 8 to 10. On 5.2.2012, when the petitioner went to start construction work on the land in question, the private respondents abused him and threatened of dire consequences, whereupon the petitioner filed a representation before respondent no. 2, the District Magistrate, Patna, and respondent no. 5, the Senior Superintendent of Police, on 28.1.2009. The District Magistrate, vide letter no. 1207, dated 5.2.2009, transmitted the representation of the petitioner to the respondents, Superintendent of Police and the Sub Divisional Officer, but no action has been taken till date. Hence, the present writ application.

Learned AC to AAG-9 submits that the land in



question is a raiyatee land of the petitioner which has been encroached upon by the private respondent nos. 8 to 10, hence, no proceeding can be initiated under the Bihar Public Land Encroachment Act, 1956 (hereinafter called as ‘the Act’), and the issue can only be decided through a suit by a competent Civil Court.

Having heard learned counsel for the parties, this is not in dispute that the land in question is raiyatee land of the petitioner. The provisions of the Bihar Public Land Encroachment Act is applicable only to the public land. The public land has been described in sub-section (3) of Section 2 of the Act, which reads as follows:-

“2. Definitions – In this Act unless there is anything repugnant in the subject or context –

(1)...

(2)...

(3) “public land” means any land [managed by or] vested in the Union of India or the State of Bihar, or in any local authority [or statutory body], [public undertaking,] educational institution recognized by the Government or by any University established under any law for the time being in force, Railway Company or Gram Panchayat established under, section 3 of the Bihar Panchayat Raj Act, 1947 (Bihar Act VII of 1948),



and includes any land over which the public or the community has got a right of user, such as right of way, burials, cremation, pasturage or irrigation.”

Hence, the encroachment on the raiyatee land of the petitioner cannot be directed to be removed through a proceeding being initiated under the Act.

So far as, giving any direction in exercise of discretionary jurisdiction under Article 226 of the Constitution of India, for removal of encroachment from a private land is concerned, 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 the present case, no direction can be given for removal of encroachment under the Act, since the land in question is not a public land, hence this case falls under the jurisdictional or preliminary facts. Moreover, the Court in exercise of Article 226 of the Constitution of India cannot decide the disputed question of fact, since, it requires determining of the title and possession of the petitioner over the land in question.

The Apex Court 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 State or its instrumentalities 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 individuals. 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.”

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 fact 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 the present case, the issue raised cannot be decided in a summary proceeding under the provisions of the Act, since the fundamental facts have not been brought on record through pleadings and counter pleadings whether the land in question is a public land or still it is a private land. Such issue can be decided only after leading of evidence properly in a suit before Civil Court.

Accordingly, this writ application is disposed of with liberty to the petitioner to avail remedy before appropriate forum.

(Dinesh Kumar Singh, J)

Anil/Amrendra/-

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