

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19781 of 2013

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Vijay Kumar Shrivastava, Son of Late Sahdeo Prasad, Resident of Village Nagdahan, P.S. Malahi, District - East Champaran. At present residing, 104 Share Apartment, Punaichak, Patna

.... Petitioner

Versus

1. The State of Bihar through the Secretary Land Reform Department, Govt. of Bihar, Patna
2. The Collector cum District Magistrate, District - West Champaran
3. The Commissioner Tirhut Division, Muzaffarpur
4. The Superintendent of Police at Bettiah, West Champaran
5. The Officer-In-Charge, Lawkaria P.S. District - West Champaran

.... Respondents

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Appearance :

For the Petitioner : Mr. Jitendra Kumar Giri
For the Respondents : Mr. Neeraj Nandan

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 22-06-2017 Heard learned counsels for the parties.

The present writ application has been filed for a direction to the respondent authorities to get the encroachment removed over the land appertaining to Khata No. 97/848, Plot No. 27/64, admeasuring 3 bighas, 7 kathas situated in Mauza Rampurwa, Thana No. 53, District Bagaha, West Champaran.

It is submitted by the learned counsel for the petitioner that the land in question was settled to the father of the petitioner who was a freedom fighter but the same has been encroached by anti-social elements.

Learned G.P. 20 submits that there is nothing on



record to suggest that the land in question was settled with the petitioner's father and the claim of the petitioner is based on a disputed question of fact which can be only decided through a suit by the Civil Court. As per own admission of the petitioner, the land in question is not a public land. Hence, encroachment cannot be removed by resorting to the provisions of Bihar Public Land Encroachment Act, 1956.

Having heard learned counsels for the parties, this Court feels necessary to deliberate upon the issue, whether factual issue and the disputed question of facts can be looked into, while exercising discretionary jurisdiction under Article 226 of the Constitution of India. Though, 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 the Civil Court.

Same 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:

“9. Having heard the counsel for the parties, we are of the opinion, that the writ petition was misconceived insofar 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.”

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 26 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 view of the discussions made above, since the land in question is not a public land, no relief can be granted to the petitioner without deciding the claim of the petitioner, whether the land in question was settled with him or not, which can only be decided after leading evidence in a proper suit before the competent Civil Court.

Accordingly, the present writ application is



disposed of with liberty to the petitioner to avail the alternative
remedy before an appropriate forum.

(Dinesh Kumar Singh, J)

Amrendra/-Anil/

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