

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12064 of 2016

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Mahesh Jha, S/o- Late Yogendra Jha, Resident of Village- Dharampur, P.O.-
Jakhar, P.S.- Rosera, District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, Samastipur.
3. The Sub-Divisional Officer, Rosera, Samastipur.
4. The Circle Officer, Anchal Shivaji Nagar, District- Samastipur.
5. Jiwachh Jha, Son of Late Yshodhar Jha
6. Ram Naresh Jha, Son of Sri Jiwachh Jha
7. Prakash Jha, Son of Sri Ram Naresh Jha, Respondent nos. 5 to 7 are resident
of Village- Dharampur, P.S.- Rosera, District- Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Umeshanand Pandit
For the Respondent/s : Mr. ARVIND UJJWAL- SC25

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 06-12-2017 Heard Mr. Umeshanand Pandit, learned counsel for the
petitioner and Mr. Upendra Pratap Singh, learned AC to SC-4
for the respondent-State.

The present writ application has been filed for a direction
to the respondent authorities to restrain private respondent nos.
5 to 7 from encroaching upon the land of Ram Janki Thakur
Bari, appertaining to C.S. Khatiyani Khata No. 109, Plot No.
217, Thana No. 109, R.S. Khatiyani Thana No. 109, Khata No.
593, Plot No. 1372, measuring an area of 27 decimals, situated
in Mauza Dharampur, P.S. Rosera, District Samastipur.

It is submitted by learned counsel for the petitioner that the



land in question is recorded in the Khatiyan as Gairmajarua Khas and on part of the land in question, a pond is situated, which is being used by the villagers for the purpose of drinking water of cattle and irrigation. In the Cadestral Survey Khatiyan, the land in question was recorded in the name of Mahanth Basudeo Das, but in the Revisional Survey Khatiyan, it is recorded in the name of Satyadeo Das, but subsequently, the son of Satyadeo Das, namely Mahanth Mithilesh Das transferred the land by executing the sale deed in favour of private respondent nos. 5 to 7, who are restraining the villagers from using the pond, as a result of which, the villagers are facing problems in usage of water.

It is further submitted that proceeding under Section 144 Cr. P.C. was initiated and the Sub-Divisional Officer, Rosera, vide order dated 21.02.2014, restrained the private respondent nos. 5 to 7 from going on the land in question for their private purpose. Title Suit No. 162 of 2013 is going on with regard to land in question.

It is submitted by learned counsel for the respondent-State that since the title suit is pending with regard to the land in question in which the petitioner and private respondents are party, hence, the issue cannot be resolved in the present



proceeding.

Considering the rival submissions of the parties, since the relief prayed for by the petitioner is based on the disputed question of fact, in view of this Court, 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 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.”

High Court exercises very wide power under Article 226 of the Constitution of India in exercise of the said power, it can issue a writ, direction or order for enforcement of fundamental rights as also for any other right or purpose. At the same time, however, High Court is not expected to convert itself into a fact finding authority or a court of first instance in cases where seriously disputed questions of fact or mixed questions of fact and law are involved. In a petition under Article 226 of the Constitution of India, High Court has jurisdiction to try issues of facts and laws but this jurisdiction is discretionary in nature, hence such discretion must be exercised on sound judicial principles. Similarly, the Apex Court in the case of Union of India and Others Vs. Ghaus Mohammad AIR 1961 Supreme



Court 1526, held that a proceeding under Article 226 of the Constitution of India is not an appropriate forum to seek relief if such relief is based on disputed question of facts. Paragraph 9 reads as follows:

“9.The question whether the respondent is a foreigner is a question of fact on which there is a great deal of dispute which would require a detailed examination of evidence. A proceeding under Art. 226 of the Constitution would not be appropriate for a decision of the question. In our view, this question is best decided by a suit and to this course neither party seems to have any serious objection. As we propose to leave the respondent free to file such a suit if he is so advised, we have not dealt with the evidence on the record on the question of the respondent's nationality so as not to prejudice any proceeding that may be brought in the future.”

In view of this Court, the High Court is not expected to convert itself into a fact finding authority or a court of first instance in cases where seriously disputed questions of fact or mixed questions of fact and law are involved.

In the present case, the issue raised cannot be decided in a summary proceeding under the provisions of Bihar Public Land Encroachment 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 proper evidence in a suit before a Civil Court of competent jurisdiction.



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

(Dinesh Kumar Singh, J)

Amrendra/-

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