

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6585 of 2017

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Ramanand Prasad, Son of late Ramaekbal Sah, Resident of Village-Ashogi
P.S. Purnahia, Distt-Sitamarhi, At Present residing, Ward no-2,Riga road
Jankisthan, Sitamarhi Bazar, Roga. Sitamari, Bhabdepur

.... Petitioner/s

Versus

1. The State of Bihar
2. The Director Department of Revenue and Land Reforms Government of Bihar, Main Secretariat, Patna.
3. The District Magistrate, Com Collector, Sheohar
4. The District Land Acquisition Officer, Sheohar
5. Sub Divisional Officers Sheohar
6. Block Development officer, Sheohar
7. Circle Officer, Purnahiya.
8. Mahesh Prasad Son of Late Binda Sah
9. Lochan Sah
10. Swesh Sah
11. Vijay Sah Respondents no. 9 to 11, fathers name late Yadav Sah @ Prasad
12. Preni Sah
13. Bishawnath Sah Both Respondents no. 12 and 13 fathers namd jivan Sah
14. Rupchan Ram Son of Pachu Ram All Resident of Village-Ashogi, PS- Purnhiya-Sistt-Sitamarhi.
15. Nirbhay Niraj Jha Resident of Village-Katsaru, P.S. Purhiya Dist- Sheohar.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Devendra Kumar, Adv.
For the Respondent/s : Mr. S.C.Yadav-GP15

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH



ORAL ORDER

2 01-08-2017 Heard Mr. Devendra Kumar, learned Counsel appearing on behalf of the petitioner and Mr. S. C. Yadav, learned GP-15, appearing on behalf of Respondent Nos. 1 to 6.

The nature of order this Court intends to pass does not require issuance of notice to private respondent nos. 10 to 21.

Since the present Writ application was registered on 29.04.2017, and till date no counter affidavit has been filed, this Court is not inclined to adjourn the matter any further for filing of the counter affidavit

The present writ application has been filed for directing the official respondents to get the encroachment removed from the land appertaining to Khata No. 242, Plot Nos.396, 380, 1788 and 266 and Khata No.242, Plot Nos.396 and 400, which has been encroached by Respondent Nos. 8 to 15. This is not in dispute that the land in question is the raiyati land of the petitioner, but the same has been encroached by private respondents.

It is submitted by learned Counsel appearing on behalf of the petitioner that the petitioner submitted representation before Respondent No.3, the District Magistrate, Sheohar, Respondent No.5, the Sub-Divisional Officer, Sheohar and Respondent No.7, the Circle Officer, Purnahiya as contained in



Annexures-3 to 5, but the grievance of the petitioner has not been redressed till date. Hence, the present writ application.

It is submitted by learned GP-15 appearing on behalf of the respondent-State that this is not in dispute that the encroachment has been made on the *raiyati* land of the petitioner.

Considering the rival submissions of the parties, this is not in dispute that the petitioner has prayed for removal of encroachment from his *raiyati* land, for which the provisions of Bihar Public Land Encroachment Act, 1956 (herein after referred to as 'the Act') cannot be resorted. Though, this is not in dispute that the land in question is not a public land but a citizen cannot be deprived of his property by any scrupulous person forcibly.

However, to resolve the issue, the Court has come to a conclusive finding that the land in question belongs to the petitioner and his right of easement has, substantially, been obstructed, which can only be done through leading of evidence and the same cannot be decided in exercise of 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.

The Apex Court in the case of **City and Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwalla and Ors.** reported in **(2009) 1 Supreme Court Cases 168** has laid down the parameters for exercise of 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 Apex Court in the case of **Real Estate Agencies Vs. State of Goa and Ors.** **(2012) 12 Supreme Court Cases 170** dealt with the issue, 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.

In view of the relief prayed for, removal of encroachment from a private land cannot be granted, either by directing the respondent authorities to initiate a proceeding under the Act which only applies to the public land or by exercising the discretionary jurisdiction under Article 226 of the Constitution of India, since for grant of such relief, this Court has to step into the shoes of a fact finding committee.

The issue can only be resolved through a suit by a competent Civil Court; however, this does not mean that the respondent authorities, particularly the District Magistrate and Superintendent of Police, Gaya are exonerated from their duties to provide security and safety to the citizens, like the petitioner in the instant case.



It is expected from respondent no.3, the District Magistrate, Sheohar to dispose of the representation of the petitioner, as contained in Annexure-3 within a period of four weeks of receipt or production of this order, if the same has not been disposed of as yet.

Accordingly, the present Writ application is disposed of.

(Dinesh Kumar Singh, J)

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