

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10569 of 2014

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Subhash Kumar Son of Mahendra Yadav Resident of Village Kinduee, P.S-
Parasbigha, P.O- Abgila, District- Jehanabad.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Collector, District Jehanabad.
3. The Sub- Divisional Officer, Jehanabad.
4. The Circle Officer, Ratani- Faridpur Block, District- Jahanabad.
5. Nagendra Yadav, Son of Rambriksh Yadav Resdient of Village Kinduee, P.S-
Parasbigha, P.O- Abgila District- Jehanabad.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Paras Nath

For the Respondent/s : Mr. AC to GP 11

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date: 18-07-2017

Heard learned counsel for the petitioner and AC
to GP-11.

The present writ application has been filed for a
direction to the respondent authorities to get the encroachment
removed from Plot Nos. 653/655 and 803/655, bearing Khata Nos.
178/474 and 120/178, measuring an area of 18 decimals of land out of
which 5 dhurs of land has been encroached upon by respondent no. 5
Nagendra Yadav.

It is submitted by learned counsel for the
petitioner that 18 decimals of land appertaining to abovementioned
plot numbers was purchased by the mother of the petitioner through



sale deed dated 12.05.2006, upon which house was constructed by the petitioner, but out of 18 decimals of land 5 decimals have been encroached upon by respondent no.5. The petitioner filed a representation before the Sub-divisional Officer, Jehanabad, respondent no. 3, as contained in Annexure-1, and consequently measurement case was initiated vide Measurement Case No. 7/13-14 and notices were issued to respondent no. 5. Consequently, in presence of the parties, the measurement was done by Anchal Amin on 30.12.2013 and a report dated 30.12.2013 as contained in Annexure-2, was submitted to Circle Officer, Ratani-Faridpur, respondent no. 4. The report suggests that respondent no. 5 has encroached upon the land of the petitioner. Hence, the present writ application.

Counter affidavit has been filed on behalf of respondent nos. 2, 3 and 4 stating therein that there is encroachment by respondent no. 5 on the private land of the petitioner, but, since the land in question is not a public land, such issue can be decided by a competent civil court in a suit. It is further submitted that the C.O. has no jurisdiction to decide the right and title over the land in question.

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. 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.

The Supreme Court in the case of State of Rajasthan Vs. Bhawani Singh and Others AIR 1992 SC 1018, held 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.”

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 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 view of the above discussions, it is apparent that the encroachment on private land of the petitioner has been claimed to have been made by respondent no. 5 and such issue, based on serious disputed question of fact cannot be decided in a summary



proceeding under Bihar Public Land Encroachment Act, rather it can be decided by leading of evidence through a proper suit.

Hence, this writ application is disposed of with liberty to the petitioner to get the issue decided by filing appropriate suit.

(Dinesh Kumar Singh, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.08.2017
Transmission Date	NA

