

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.443 of 2017

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1. Ram Briksh Mandal, Son of Late Moko Mandal,
 2. Arun Kumar, Son of Sri Ramdeo Sah,
 3. Randhir Paswan, Son of Sri Ramchandra Paswan
 4. Nasima Khatoon, Wife of Md. Mumtaz,
 5. Upendra Mandal, Son of Late Moko Mandal,
 6. Md. Manjoor, Son of Md. Habib,
- All are Resident of village - Dihalahi, P.S. Bishanpur, District - Darbhanga

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Land Reforms, Government of Bihar, Patna
2. The Commissioner, Darbhanga Pramandal, Darbhanga
3. The District Magistrate, Darbhanga.
4. The Additional District Magistrate, Darbhanga
5. The Land Reforms Deputy Collector, Darbhanga
6. The Sub Divisional Magistrate, Sadar, Darbhanga
7. The Sub - Divisional Police Officer, Sadar, Darbhanga
8. The Block Development officer, Bishanpur, District Darbhanga
9. The Circle officer, Bishanpur, District Darbhanga
10. The Station House Officer, Bishanpur, P.S. District Darbhanga
11. Mohan Yadav, Son of Sri Yogendra Yadav,
Resident of village + P.O. Dihalahi, P.S. Bishanpur, District - Darbhanga

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dilip Kumar Roy, Adv.

For the Respondent/s : Mr. Raj Kishore Roy-GP18

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

5 04-07-2017 Heard Mr. Dilip Kumar Roy, learned counsel appearing on behalf of the petitioners, Mr. Raj Kishore Roy, learned GP-18 appearing on behalf of the respondent nos. 1 to 10 and learned counsel for the respondent no. 11.

The present application has been filed for a direction to the respondent authorities to get the encroachment removed



from an area of 3 ½ dhur of land appertaining to Khata Nos. 469/1159, Plot Nos.1114/2066, situated in Mauza-Dihalahi, P.S.- Bishanpur, in the District of Darbhanga.

It is submitted by learned counsel for the petitioners that one Md. Muslim transferred 3 ½ dhurs of land appertaining to Khata Nos. 469/1159, Plot Nos.1114/2066 to the Government of Bihar through its Karta Arun Kumar for the purpose of public road through Sale Deed No. 16339 dated 20.11.2015 for a consideration of Rs.35000/- but the same has been encroached upon by respondent no. 11. Subsequently, a Panchayat was also held but the encroachment has not been removed. Hence, the present Writ application.

It is submitted by learned G.P. 18 that the very Annexure 1 appears to be doubtful as the land is usually gifted to the State Government by executing gift deed in favour of the Hon'ble Governor of the State and the same is not executed for consideration in favour of the State through its Karta. Hence, the very transfer appears to be a sham transaction. The total area of the land as has been admitted by the petitioner also, is 5 katha, out of which, respondent no.11 purchased 3 1/2 katha from one Md. Manjoor and 1 1/2 katha from one Md. Muslim. Hence, there was no occasion for Md. Muslim to transfer 3 ½ dhurs of land by



executing sale deed in favour of the State of Bihar through its agent Arun Kumar. Hence, the Writ application discloses a serious disputed question of facts which cannot be resolved in exercise of discretionary jurisdiction under Article 226 of the Constitution of India.

Similar is the stand of respondent no. 11 who suggests that the total area of the land is 5 kathas and purchase of the petitioner from two persons has also been admitted. Hence, there was no land left, for being transferred by way of sale deed in favour of the State of Bihar by Md. Muslim.

Considering the rival submissions of the parties, this Court feels necessary to deliberate upon the issue whether such issue 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 Civil 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 exercising the 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.

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. When the petitioner raises complex question of law and facts which may, for determination, require oral evidence to be taken then in that case the court should ordinarily refrain to exercise the discretionary jurisdiction.

The Apex Court elaborated the same view in the case of Real Estate Agencies Vs. State of Goa and Ors. Reported in (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.”

The 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.

The same view has been reiterated by the Supreme Court in the case of State of Rajasthan Vs. Bhawani Singh and Others, reported in 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.”

In view of the discussions made above, the petitioner is not entitled for any relief in the present proceeding since it is not apparent that the land in question is a public land or it has been validly transferred to the State of Bihar, since specific case of the State is that the land in question is still recorded in the Revenue Records as Raiyati land.

In the circumstances, this writ application is disposed of with a liberty to the petitioner to seek alternative remedy before the appropriate forum.

(Dinesh Kumar Singh, J)

Ashwini/-Anil/

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