

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10870 of 2013

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Sipahi Mandal S/O Late Jagadish Mandal R/O Sahabad, P.O.- Gangapur,
P.S.- Sultanganj, District- Bhagalpur

.... Petitioner/s

Versus

1. The State of Bihar, through the Secretary the Administrative Land and Reforms, Government of Bihar, Patna
2. The Collector Cum District Magistrate, Bhagalpur
3. The Deputy Collector, Land Reforms, Bhagalpur
4. The Superintendent Of Police, Bhagalpur
5. The D.S.P., Sultanganj, District- Bhagalpur
6. The Officer In-charge, Sultanganj, Bhagalpur
7. The Anchaladhikari, Sultanganj

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 21-04-2017 Heard learned counsel appearing on behalf of the petitioner and learned AC to AAG-4 appearing on behalf of respondent State.

The present application has been filed for a direction to the respondent authorities for getting the encroachment removed, existing over the land situated at Mauza Gangapur, P.S.- Kishunganj, in the District of Bhagalpur, appertaining to Khata Nos. 118, 481, 457, Plot No. 4452, 438, 439, 440, 378 (new) corresponding to old Plot Nos. 1874, 274, 274, 274, 368, Thana No.83, Tauzi No.3308, admeasuring an area of 302 decimals.

The petitioner claims the land to be his ancestral



land, but from the representations submitted by him before the District Magistrate, Bhagalpur, on 27.10.2011, as contained in Annexure-1, and, thereafter before the Hon'ble Chief Minister of Bihar, on 18.04.2012, as contained in Annexure-2, that the same has been settled with some anti-social elements.

It is well settled legal proposition that where there is dispute with regard to title which cannot be resolved without leading of evidence, the discretionary jurisdiction under Article 226 of the Constitution of India cannot be exercised.

In view of the fact that the present writ application has been preferred on the basis of serious disputed question of fact and the same cannot be decided in the present proceeding. 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** lays down the parameter 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.

The court in appropriate cases in its discretion may direct the State or its instrumentalities as the case may be to file proper affidavits placing all the relevant facts truly and accurately for the consideration of the court and particularly in cases where public revenue and public interest are involved. Such directions always are required to be complied with by the State. No relief could be granted in a public law remedy as a matter of course only on the ground that the State did not file its counter affidavit opposing the writ petition. Further, empty and self-defeating affidavits or statements of Government spokesmen by themselves do not form basis to grant any relief to a person in a public remedy to which he is not otherwise entitled to in law.”

In view of the fact that the disputed question of facts are involved, this Court is not inclined to grant any relief to the petitioner.

Accordingly, the present writ application is disposed of with a liberty to the petitioner to seek remedy at the appropriate forum.

(Dinesh Kumar Singh, J)

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