

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21764 of 2014

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Anil Kumar Sah, Son of Bikhari Sah, Resident of Village- Mirchaibari, P.S.
Janki Nagar, District-Purnia.

.... Petitioner

Versus

1. The State of Bihar
2. District Magistrate, Purnea.
3. Superintendent of Police, Purnea.
4. Sub Divisional Magistrate, Banmankhi, District-Purnea
5. Circle Officer, Banmankhi, District-Purnea.
6. Officer in-Charge of the Jankinagar Police Station District-Purnea.
7. Manju Devi, W/o - Anil Yadav
8. Kausalaya Devi, Wife of Rajo Sah
9. Bhulan Sah, Son of Dharamchand Sah, respondent nos. 7, 8 and 9 are Resident of Village-Mirchaibari, P.S. Janki Nagar, District- Purnea.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Dinesh Prasad Verma, Adv.
For the Respondent/s : Mr. Nikhil Kumar Agrawal, AC to GA-1

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 06-09-2017 Heard Mr. Dinesh Prasad Verma, learned counsel

for the petitioner and Mr. Nikhil Kumar Agrawal, learned A.C to

G.A.-1 for respondent nos. 1 to 6.

The present writ application has been filed for a

direction to the respondent authorities to restore the possession of

the petitioner over the land appertaining to Khata No. 483, Plot
Nos. 436, 482, 428, 442, 483, 445, 446, 440, Khata No. 483, Plot
Nos. 436, 432, 442, 443, 445, 456, Khata No. 487, Plot nos. 439,
440, Khata No. 485, Plot Nos. 152, 143, 156, situated in Mauza
Gangapur, District Purnea.



Learned counsel for the petitioner submits that the land in question was purchased by the petitioner and subsequently, the land was mutated in favour of the petitioner, but subsequently, respondent nos. 7 to 9 dispossessed the petitioner from the land in question and for getting it vacated, applications were submitted by the petitioner before respondent no.3, the Superintendent of Police, Purnea, but no action has been taken. Ultimately, the petitioner lodged Complaint Case No. 3015 of 2011 against private respondent no.7, which ultimately got registered as Janki Nagar P.S. Case No. 126 of 2011, after being transferred under Section 156(3) of the Cr. P.C., wherein final form (charge sheet) was submitted under Sections 166, 167, 420 and 120B of the IPC, the allegation being levelled that manipulation was made in register-II by respondent no. 5, the Circle Officer, on the basis of which, private respondents claimed the land in question.

Learned A.C. to G.A.-1 submits that admittedly the land in question is a raiyati land of the petitioner, hence the issue cannot be resolved in exercise of jurisdiction under Article 226 of the Constitution of India.

Having heard learned counsel for the parties, this Court feels necessary to deliberate upon the issue, whether factual issues and 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 Civil Court. This is, however, a rule of practice and not an incident of jurisdiction of the High Court.

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.”

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.

Same view has been reiterated by the Apex 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 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 a private land. Such issue can be decided only after leading of evidence properly in a suit before Civil Court.

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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