

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13607 of 2017

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1. Jageshwar Yadav Son of Late Khushi Lal Yadav resident of Village - Pari Koch, P.S. - Morauna, District - Supaul at present resident of Nirmali, Ward No. 12, P.S. Nirmali District Supaul.
 2. Ramesh Kumar Pandit Son of Late Ghuran Pandit @ Late Dhuran Pandit resident of Village Majhaura, P.S. Marauna, District Supaul at present resident of Nirmali Ward No. 12, P.S. Nirmali, District Suapul.

... .. Petitioner/s

Versus

1. The State of Bihar through the District Magistrate, Supaul.
2. The District Magistrate, Supaul.
3. The Superintendent of Police, Supaul.
4. The Sub Divisional Officer, Nirmali District Supaul.
5. The Circle Officer, Nirmali District Supaul.
6. The Station House Officer (S.H.O.) Nirmali, District Supaul.
7. Afsana Parveen wife of Md. Rizwan Jamauddin
8. Md. Rizwan Jamauddin Son of Md. Israiyl 7 & 8 are residents of Village and P.S. Nirmali, District Supaul.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Pankaj Kumar
For the Respondent/s	:	Mr. RISHI RAJ SINHA -SC19

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 09-01-2018 Heard learned counsels for the parties.

This writ application has been filed for a direction to the respondent authorities to declare that the petitioners have not made any encroachment on the public land appertaining to Plot No. 1520, 1522 (old), 249 (new), Khata No. 252 (old) 317 (new), situated in village Nirmali, District Supaul, since the petitioners have constructed their houses after purchasing the said land, pursuant to which Jamabandi No. 491 has been created. Further prayer has been made for not taking any



coercive step against the petitioners till the encroachment proceeding gets initiated pursuant to order dated 21.3.2017 passed in CWJC No. 13233 of 2015.

The factual matrix of the case would unveil that C.W.J.C. No. 13233 of 2015 was preferred by Afsana Parveen and Md. Rizwaan Jamauddin, who are respondent nos. 7 and 8 in the present proceeding, with a prayer for direction to the respondent authorities for removal of encroachment made by the present petitioner no. 1 and father of petitioner no. 2 who were respondent no. 9 and respondent no. 10, respectively, in the said writ application and others from the public land appertaining to Plot Nos. 1520,1522 (old), 249 (new) Khata No. 252 (old), 317 (new), situated in village Nirmali, District Supaul. In the said writ application, respondent no. 2, the Circle Officer, Nirmali was directed to execute the order dated 12.11.2013 passed in Encroachment Case No. 2 of 2013-14. Since the said order was passed only against respondent no. 6 of the said writ application Md. Sahjad and respondent nos. 7 to 10, namely, Kaushar Khatoon, Pramod Sahu, Jageshwar yadav and Dhuran Pandit, father of petitioner no. 2 was not party to the proceeding but they were allowed by respondent no. 6 to the said writ application to encroach upon the land in question, hence, the



petitioners of the said writ application were directed to file representation within four weeks, on which respondent no. 2, the Circle Officer, Nirmali (though wrongly recorded in the said order as respondent no.1) was directed to pass reasoned order on the representation of the petitioners and if, prima facie, it was found that there was further encroachment on the public land then the proceeding was directed to be initiated under the provisions of Bihar Public Land Encroachment Act and concluded after giving due opportunity to all the affected persons.

Though it is submitted by learned counsel for the petitioners that they have appeared in pursuance to the notice issued by the Circle Officer, but the said notice has not been brought on record nor any averment has been made with regard to any fresh proceeding being initiated. However, learned SC 19 drew the attention of the Court towards order dated 24.8.2015 passed by the DCLR, Nirmali in Land Dispute Resolution Case No. 77 of 2014-15 preferred by the father of petitioner no. 2, wherein the Circle Officer has been directed to demarcate the land after getting the land measured.

In that view of the matter, this Court feels that at present the petitioner has no cause of action to approach this Court. If



any notice has been issued in the fresh proceeding, the petitioners should appear before the Circle Officer, Nirmali and submit their defence as per the provision of section 4 of the Act.

So far as the right, title and interest of the petitioners on the land in question is concerned, the same cannot be decided in the present proceeding.

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, 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.

Similarly, the Apex Court in the case of Union of India and Others Vs. Ghaus Mohammad AIR 1961 Supreme Court 1526, held that a proceeding under Article 226 of the Constitution of India is not an appropriate forum to seek relief if such relief is based on disputed question of facts. Paragraph 9



reads as follows:

“9. The question whether the respondent is a foreigner is a question of fact on which there is a great deal of dispute which would require a detailed examination of evidence. A proceeding under Art. 226 of the Constitution would not be appropriate for a decision of the question. In our view, this question is best decided by a suit and to this course neither party seems to have any serious objection. As we propose to leave the respondent free to file such a suit if he is so advised, we have not dealt with the evidence on the record on the question of the respondent's nationality so as not to prejudice any proceeding that may be brought in the future.”

Same view has been reiterated by the Apex Court in the case of State of Rajasthan Vs. Bhawani Singh and Others, 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 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 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, that whether the land in question is a public land or not. 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 petitioners to seek remedy before appropriate forum.

This writ application is, accordingly, disposed of.

(Dinesh Kumar Singh, J)

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