

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11651 of 2015

1. Suresh Mehta, Son of Late Bimal Mehta
2. Basant Kumar Mehta, Son of Late Bimal Mehta
3. Suman Kumar @ Suman Kumar Mehta, Son of Suresh Mehta
4. Sachchidanand Mehta, Son of Late Bimal Mehta
5. Mani Kant Mehta, Son of Late Bimal Mehta
6. Murlidhar Mehta, Son of Late Bimal Mehta
All Resident of Village & P.O.- Bajraha, P.S.- Alamnagar,
District- Madhepura
7. Manendra Singh, Son of Late Brij Lal Singh, Residents of
Village Alam Nagar, Karna Basa, P.O. & P.S.- Alam Nagar,
District- Madhepura

... .. Petitioner/s

Versus

1. The State of Bihar
 2. The Superintendent of Police, Madhepura
 3. The Collector, Madhepura
 4. The Deputy Superintendent of Police, Uda Kishunganj, Madhepura
 5. The Sub Divisional officer, Uda Kishunganj, Madhepura
 6. The Officer-in-Charge of Alam Nagar, Madhepura
 7. The Block Development Officer, Alam Nagar, Madhepura
 8. The Circle Officer, Alam Nagar, Madhepura
 9. Brahmchari Paswan, son of Ram Bilash Paswan
 10. Rajo Paswan, Son of Muski Paswan
 11. Mangal Paswan, Son of Sita Ram Paswan
 12. Bihari Sharma, Son of Jaggan Sharma
 13. Dipan Paswan, Son of Basdeo Paswan
 14. Pramod Paswan, Son of Ram Bilash Paswan
 15. Suchit Paswan, Son of Muski Paswan
 16. Sita Ram Paswan, Son of Bhukhan Paswan
- Respondent Nos. 9 to 16 are resident of Etahri, P.S. Alam Nagar,
District Madhepura

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ranjit Kumar Singh, Adv.
For the Respondent/s : Mr. Kumar Pankaj, AC to SC-5

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date : 05-03-2018

Heard Mr. Ranjit Kumar Singh, learned Counsel for

the petitioners and Mr. Kumar Pankaj, learned AC to



SC-5 appearing on behalf of the respondent – State.

In view of the nature of order this Court intends to pass, this Court is not inclined to issue notice to private respondent nos. 9 to 16, namely, Brahmchari Paswan, Rajo Paswan, Mangal Paswan, Bihari Sharma, Dipan Paswan, Pramod Paswan, Suchit Paswan and Sita Ram Paswan.

The present Writ application has been filed by the petitioners with following reliefs as stipulated in paragraph one of the Writ application, which reads as under :-

“i) For that the concerning respondents may be directed to release the land of the petitioners from the custody of private respondents Nos.9 to 16 in favour of the petitioners.

ii) For that the concerning respondents may be directed to deliver possession upon the land in question after releasing the land in question from the custody of respondent Nos. 9 to 16 in favour of the petitioners.

iii) For that any other relief or reliefs may also be provided to the petitioners if they deserve the same.”

The dispute relates to the land which is subject matter of



proceeding under Sections 144 and 145 of the Cr.P.C. being Misc. Case No. 755 of 1997. The detail of the land has not been given in the petition, hence, for the detail, reference has been made to Annexure-3. The petitioners claim the land in question by virtue of being a Bataidar of the original land owner. The petitioners preferred Bataidari Case Nos. 126 of 1996-97, 127/1996-97, 128/1996-97, but during pendency of the Bataidari Case, it is claimed that respondent nos. 9 to 16 and others captured the land and made certain constructions, leading to initiation of 144 of the Cr.P.C. proceeding vide Misc Case No. 775 of 2017. Subsequently, by virtue of an ex parte order dated 21.05.2001, passed by the Sub-Divisional Officer, Uda-Kishunganj, the possession of the petitioners on the said land was declared. The order dated 21/05/2001 was challenged by encroachers, in Cr. Revision No.44 of 2001, but the same was also dismissed by the learned Sessions Judge.

However, the further case of the petitioners is that they purchased the land in question through registered sale deed during pendency of the Bataidari case. Subsequently, their names were mutated and they are paying rent accordingly and, are in cultivating possession of the land in question. The petitioners preferred Cr. W.J.C. No. 900 of 2007 claiming the



possession over the land in question in pursuance to order passed in Sections 144-145 of the Cr.P.C. proceeding. The said Cr. W.J.C. No. 900 of 2007 was allowed by a co-ordinate Bench of this Court vide order dated 10.11.2008 with a direction to the District Magistrate to dispose of the application of the petitioners within a period of two months on receipt of a copy of this order taking into consideration that the order passed by the S.D.M. confirming the possession of the petitioners has not been unsettled by any other Court or forum. Subsequently, the petitioners filed contempt application being MJC No. 961 of 2010 for violation of order dated 10.11.2008 passed in CWJC No. 900 of 2007. The said contempt application was disposed of vide order dated 06.10.2010 by a Bench of this Court with an observation that the petitioners will file a detailed application before the District Magistrate, Madhepura annexing copy of the earlier order as well as instant order within 6 weeks from the date of receipt of this order, which would be disposed of within a period of six weeks.

Thereafter, the private respondent preferred CWJC No. 1669 of 2011 claiming therein that he got the land in question in pursuance to the said land declared surplus in a ceiling proceeding. Subsequently, the order passed in ceiling



proceeding was unsettled and the land in question went in favour of the original land holder, but the encroacher has been claiming the land, hence, this Court vide order dated 19.04.2012, as contained in Annexure1/2 directed the State Government to take alternative solution in following terms :-

“The solution to the problem is that the State Government may again approach the Kameshwar Singh or any other person for sale of his land or they may fill mud on the proposed land with the help of the petitioners, so that it can become habitable. In any event, the petitioners will be required to vacate the land of respondent nos. 5 to 10 as they have no right on the said land. It is the responsibility of the Government to manage the same within six months from the date of receipt of a copy of this order.”

Consequent thereto for violation of the order dated 19.04.2012, passed in CWJC No. 1669 of 2011, a contempt application was filed being MJC No.282 of 2013, as contained in Annexure-1/3, but the same was disposed of by a Bench of this Court vide order dated 14.10.2014 on the ground that encroachers have been removed from the land in question.



A counter affidavit has also been filed on behalf of respondent nos. 3 and 8 to the effect that encroachment has been removed from the land in question. Now the present application is for getting possession over the land in question.

Learned Counsel for the petitioners submits that from the orders passed by this Court, on two earlier occasions, as referred above, it appears that the land of the petitioners was encroached upon by the private respondents though they have vacated it, but the possession have not been restored to the petitioners.

Learned Counsel appearing on behalf of the respondent State submits that for restoration of the possession, the petitioners have the alternative remedy of filing suit.

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.

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 present case, the petitioners claimed his possession over the land in question, but the foundation facts are not on record for allowing this Court to reach to the conclusion that the petitioners has right, title over the land in question or the private respondents have no right, title over the land in question.

The Apex Court elaborated the view in the case of Real Estate Agencies Vs. State of Goa and Ors. (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 same or its instrumentality 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 individual. 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 and in exercise of 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.

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 facts 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 facts and legal aspects pertaining thereto, this Court does not find any merit in the Writ application.

Accordingly, this Writ application is disposed of with liberty to the petitioners to seek alternative remedy before appropriate forum.

(Dinesh Kumar Singh, J)

Ashwini/-

AFR/NAFR	
CAV DATE	
Uploading Date	05.03.2018
Transmission Date	

