

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.9507 of 2016**

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Bhuna Devi, Wife of Nandan Sahani, Resident of Village- Koeria Khas, Post Office and Police Station - Paru, District - Muzaffarpur.

... .. Petitioner

Versus

1. The State of Bihar.
2. The Commissioner, Tirhut Division, Muzaffarpur.
3. The Collector, Muzaffarpur.
4. The Deputy Collector Land Reforms, Western, Muzaffarpur.
5. The Circle Officer, Anchal Paru, District Muzaffarpur.
6. The Officer-In-Charge, Paru Police Station, Muzaffarpur.
7. The Circle Inspector, Paru Anchal, District Muzaffarpur.
8. Bhag Narayan Sahani, Son of Late Mahraj Sahani, Resident of Village-Koeria Khas, Police Station & Post Office- Paru, District- Muzaffarpur.

... .. Respondents

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**Appearance :**

For the Petitioner/s : Mr. Sanjay Kumar  
For the Respondent/s : Mrs. Geeta Kumari, GP-28

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH**  
**ORAL JUDGMENT**

**Date : 24-01-2018**

Heard Mr. Sanjay Kumar, learned counsel for the petitioner,  
and learned AC to AAG-10 for 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 no.8.

The present writ application has been filed for a direction to  
respondent no.7, the Circle Inspector, Paru to implement the order  
dated 31.12.2012, issued vide Letter No. 1374, under the signature  
of respondent no.5, the Circle Officer, Paru, as contained in  
Annexure-3, whereby respondent no.7, the Circle Inspector, Paru  
has been directed to deliver the possession of the land to the  
petitioner after contacting respondent no.6, the Officer-In-Charge,



Paru Police Station, on 21.01.2013. Further prayer has been made to provide security to life and property to the petitioner.

It is submitted by learned counsel for the petitioner that the petitioner submitted an application before the DIG, Tirhut Division with regard to encroachment being made on the land of the petitioner, appertaining to Khata No. 35, Plot No. 348, Khata No. 100, Plot No. 358, situated in Mauza Koeria Khas, P.S. Parun, Circle Paru, District Muzaffarpur. Consequently, Police Sub-Inspector, Paru Police Station requested respondent no.5, the Circle Officer, Paru, vide letter dated 15.01.2011, and consequently, respondent no.5, the Circle Officer, Paru issued the impugned letter, but the Circle Inspector failed to take consequential action. Hence, the present writ application.

It is submitted by learned AC to AAG-10 that the issue relates to dispute with regard to possession between the petitioner and respondent no.8 and the same cannot be resolved in the present proceeding.

Having heard learned counsel for the parties, this Court is of the view that the issue of delivery of possession or for removal of the encroachment over a raiyati land, proceeding can be resolved either under the provisions of the Bihar Land Dispute Resolution



Act or the grievance has to be redressed through a competent civil court.

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 since there is triangular dispute between the parties and the fundamental facts have not been brought on record through pleadings and counter pleadings. Such issue can be decided only after leading of evidence properly in a suit before Civil Court.

Hence, this Court cannot exercise the discretionary jurisdiction under Article 226 of the Constitution of India for implementation of a direction issued by the Circle Officer to Circle Inspector. Moreover, on bare perusal of the order, the implementation of which is being sought by the petitioner, it can well be appreciated that the order has not been passed in any



quasi judicial proceeding nor the Circle Officer had any jurisdiction to pass such order.

Accordingly, the present writ application is dismissed.

However, this order will not preclude the petitioner to represent the District Level Security Committee for seeking protection of life and property.

**(Dinesh Kumar Singh, J)**

Amrendra/-

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