

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5442 of 2018

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Arbind Kumar Rai, S/o Sri Uday Narayan Rai, Resident of Mohalla- Godhna Road,
P.O.- Aanaith, P.S.- Arrah Nawada, District- Bhojpur, Arrah (Bihar).

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue, State of Bihar, Patna.
2. The Collector, Bhojpur, Arrah (Bihar).
3. The Circle Officer, Arrah Sadar, Bhojpur, Arrah.
4. The Municipal Commissioner, Arrah Municipal Corporation Bhojpur Arrah.
5. The Municipal Corporation Arrah, Bhojpur through the Municipal Commissioner, Arrah, Bhojpur.
6. The Superintendent of Police, Arrah, Bhojpur.
7. The S.H.O., Arrah Nawada Police Station, Arrah, Bhojpur.
8. Rajesh Kumar Singh, S/o Radha Mohan Singh, Resident of Mohalla- Godhna Road, P.O.- Anaith, P.S.- Arrah Nawada, District- Bhojpur (Bihar).
9. Sunil Kumar, Ex-Mayer, Arrah Municipal Corporation, Resident of Village- Anaith, Ward No.44, P.O.- Anaith, P.S.- Arrah Nawada, District- Bhojpur (Bihar).
10. Mrityunjay Kumar, S/o Late Uday Kumar Sinha, R/o Village- Baghwa Gali, Mahadeva Road, Arrah (Bihar).
11. Priyam Devi, Mayer, Arrah Municipal Corporation, W/o Sunil Kumar, (Ex-Mayer), Resident of Mohalla- Godhna Road, P.O.- Anaith, P.S.- Arrah Nawada, District- Bhojpur (Bihar).

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Siddharth Shankar Pandey, Advocate

For the Respondent/s : Mr. Raj Kishore Roy,-GP-18

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 10-04-2018



Heard learned counsel for the petitioner and learned counsel for the State.

2. In the instant writ petition the petitioner has prayed for quashing the order dated 07.11.2017 passed by the Municipal Commissioner, Arrah in Encroachment Case No.7 of 2016-17 directing the mother of the petitioner to demolish the illegal construction made over Government land bearing khesra No.2811 without obtaining sanction of building plan and to pay a penalty of Rs.2,00,000/- .

3. A preliminary objection has been raised on behalf of the State regarding maintainability of the writ petition on two grounds. The first being that the petitioner was not a party in the encroachment case before the Municipal Commissioner and the second that the petitioner has an equally efficacious statutory remedy of appeal under sub-section (3) of Section 323 of the Act of 2007 before the Municipal Building Tribunal against the impugned order.

4. In reply, learned counsel for the petitioner submitted that of course the proceeding was initiated against the mother of the petitioner, but it was the petitioner who has contesting the matter before the Municipal Commissioner, Arrah and he has a vested right in the property in question and, thus, there



is no merit in the objection raised on behalf of the State. He further contended that the remedy before the Municipal Building Tribunal is not equally efficacious. He submitted that even otherwise availability of an alternative remedy would not be a complete bar against the jurisdiction of this Court under Article 226 of the Constitution of India.

5. I have heard learned counsel for the parties and perused the record.

6. There is no dispute to the fact that the petitioner has got a remedy of appeal under sub-section (3) of section 323 of the Act of 2007. The said provision reads as under:-

“323(3). Any person aggrieved by an order of the Chief Municipal Officer under sub-section (1) may, within thirty day from the date of the order, prefer an appeal against the order to the Municipal Building Tribunal appointed under section 329.”

7. It is also not in dispute that Municipal Building Tribunal is functional in the State of Bihar. It is well settled in law that when the statutory forum is created by law for redressal of grievances, a writ petition should not be entertained subject to certain exceptions.

8. In **Nivedita Sharma vs. Cellular Operators**



Association of India[(2011) 14 SCC 337], the Supreme Court has held that the petitioner must exhaust its alternative remedy before the State Commission and should not directly come to High Court for challenging judgment of district forum.

9. In **Commissioner of Income Tax & Ors. Vs. Chhabil Dass Agarwal [(2014) 1 SCC 603]**, the Supreme Court observed that when the statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation subject to certain exceptions. The Supreme Court further opined that non-entertainment of petitions under writ jurisdiction by the High Court when an efficacious alternative remedy is available is a rule of self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. The Supreme Court further opined that undoubtedly it is within the discretion of the High Court to grant relief under Article 226 of the Constitution of India despite the existence of an alternative remedy. However, the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or if there is sufficient ground to invoke the extraordinary jurisdiction under



Article 226 of the Constitution of India.

10. In the instant case, it is admitted by the learned counsel for the petitioner that the petitioner has a statutory efficacious remedy of appeal against the order impugned. He has not been able to make out any exceptional case which would warrant this Court to exercise its extraordinary jurisdiction under Article 226 of the Constitution of India.

11. In that view of the matter, the writ petition is disposed of with liberty to the petitioner to challenge the order passed by the Municipal Commissioner, Arrah before the Municipal Building Tribunal, Bihar in accordance with law.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.04.2018
Transmission Date	NA

