

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.276 of 2019

In
Civil Writ Jurisdiction Case No.11497 of 2018

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Manju Singh wife of Late Chandra Mauleshwar Prasad Narayan Singh
Resident of Village- Mahthaud Kataiya, P.S. Basopatti, District- Madhubani,
presently residing at Mohan Bhawan, East Boring Canal Road, Patna-
800001. Appellant.

Versus

1. The State of Bihar.
2. The Principal Secretary, Department of Revenue and Land Reforms
Government of Bihar, Patna.
3. The District Magistrate, Madhubani.
4. The Superintendent of Police Madhubani.
5. The District Fisheries Officer Madhubani.
6. The Circle Officer, Basopatti Anchal Basopatti, Madhubani.
7. The S.H.O., Basopatti, Police Station Basopatti, Madhubani.
8. Basopatti Anchal Matasya Jivi Sahyog Samiti through its Secretary,
Basopatti, Madhubani.

... .. Respondents.

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Appearance :

For the Appellant	:	Mr. Kamal Nayan Choubey, Senior Advocate. Mr. Ambuj Nayan Chaubey, Advocate. Mr. Dineshwar Pandey, Advocate. Mr. Animesh Kumar, Advocate. Mr. Yogendra Kumar Dwivedi, Advocate.
For the Respondent No. 8 :	:	Mr. Amit Srivastava, Advocate. Mr. Girish Pandey, Advocate. Mr. Chandan Priyadarshi, Advocate.
For the Respondent State :	:	Mrs. Nutan Sahay, AC to AAG-12

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL)

Date : 19-12-2019

This intra court appeal has been preferred under

Clause 10 of the Letters Patent of Patna High Court Rules, 1916

assailing the judgment dated 29.01.2019, passed in C.W.J.C.

No.11497 of 2018, whereby the learned Single Judge dismissed



the writ application of the appellant.

2. Case of the appellant Manju Singh in succinct is that Pokhar, bearing C.S. Plot No.3392, admeasuring 7 acres 5 decimals, situated in Mauza Katiya of Basopatti Anchal, District Madhubani, was recorded as *Gair Majarua Khas* land in the name of father-in-law of the appellant, namely, Babu Awadh Bihari Narayan Singh as landlord. At the time of vesting *Zamindari*, the said landlord filed return of the land in the name of the family. During the revisional survey old C.S. Plot No.3392 was recorded as R.S. Khata No.192, R.S. Plot No.5680, admeasuring 7 acres 5 decimals, with the nature of the land as *Pokhar* in the name of husband of the appellant, namely, Chandra Mauleshwar Prasad Narayan Singh @ Mohan Singh. Appellant is in possession of the said *Pokhar* making payment of the *Malguzari* against *Malguzari* receipt. She looks after the aforesaid *Pokhar* and rears fishes through her agent without any interference and hindrance. Recently, some members of the Basopatti Matasya Jivi Sahayog Samiti started hatching conspiracy to forcibly grab the said *Pokhar* and threatening the appellant and her agent, whereupon the appellant filed an application before the local police and Circle Officer, Basopatti to protect her Pokhar and to take action against respondent no.8



(Basopatti Matasya Jivi Sahayog Samiti). She sent the copy of the representation to the District Magistrate, Madhubani, Superintendent of Police, Madhubani, S.H.O., Basopatti P.S. and the District Fisheries Officer, Madhubani.

3. After appearing before the Circle Officer, the appellant made request to make enquiry as to how settlement has been made in favour of respondent no.8 and requested to cancel the aforesaid settlement and to restrain respondent no.8 from going over the aforesaid *Pokhar*. She also requested the Circle Officer, Basopatti to provide her list of *Sarkari Sairad/Jalkar* and private *Jalkar* situated in Basopatti Anchal and documents regarding the settlement, if any, made in favour of respondent no.8, but no such document was accorded to her despite repeated requests. She also contacted the office of District Fishery Officer, Madhubani (respondent no.5) and requested to provide her the aforesaid document but in vain. On approaching the Basopatti police, following the forcible grabbing of the *Pokhar* by respondent no.8, she learnt that the District Fishery Officer had sent a letter to the S.D.O., Jai Nagar with a copy to the S.H.O. and Circle Officer, Basopatti intimating that the *Pokhar* has been settled in favour of respondent no.8 and as such it may be provided protection over



the *Jalkar*. Somehow the appellant got a copy of Memo No.324 dated 24.06.2016, issued by the District Fishery Officer, Madhubani, by which respondent no.8 was directed to deposit the reserved amount for the different *Jalkars* settled with them including the *Pokhar* of the appellant, figured at serial no.32 of the list, indicating that respondent no.6 has illegally settled the private *Jalkar* of the appellant in favour of respondent no.8. Further case of the appellant is that Partition Suit No.135 of 1976 is pending between different coparceners of the appellant regarding the *Pokhar* in question and the learned Sub Judge-XI, Patna vide judgment and preliminary decree dated 30.03.2017 has ordered to partition the aforesaid plot amongst the parties. Against the aforesaid judgment and preliminary decree, the appellant has preferred F.A. No.72 of 2017 in this Court, which is pending disposal. Thus, it is evident that the *Pokhar* in dispute is the private property of the appellant and the respondent State has got no right to settle the said *Pokhar* in favour of respondent no.8. No information of the aforesaid settlement was ever sent to the appellant and the said *Pokhar* has been wrongly, fraudulently and arbitrarily settled in favour of respondent no.8 without any information and knowledge to the appellant. As per rule only the government *Pokhar/sairat* can be settled with the



Fisherman Co-operative Society but as the Pokhar in dispute is the private property of the appellant, it cannot be settled in favour of respondent no.8 by the State Government. Hence, the aforesaid settlement made in favour of respondent no.8 is liable to be cancelled. Further case of the appellant is that by virtue of the aforesaid illegal and wrongful settlement made in favour of respondent no.8, respondent no.8 is hatching conspiracy to forcibly fish out the fishes reared by the appellant.

4. In the aforesaid background of facts, the appellant filed a writ petition before this Court vide C.W.J.C. No.11497 of 2018 praying therein for the following relief:-

(i) That the respondents may be directed to immediately cancel the settlement of Niji Pokhar Jalkar of petitioner situated in C.S. Plot No.3392, R.S. Khata No.192, R.S. Plot No.5680, area 7 acres 5 decimal situated in Mauza Katiya under Basopatti anchal of Madhubani district with respondent 2nd set Basopatti Matasya Jivi Sahayog Samiti, and declaration be made that the above said property belongs to the petitioner.

(ii) That the respondents may be directed to not disturb the petitioner in any manner.

(iii) That any other relief or reliefs may be allowed which will be just, proper and equitable in the opinion of this Hon'ble Court.

5. By filing supplementary affidavit, the



appellant has taken a plea that the *Pokhar* in dispute, bearing C.S. Plot No.3392 is 'adjacent' to the house of the appellant and is, in fact, homestead land of the appellant as defined under Section 2 (j) of the Act.

6. Respondent no.4, the Superintendent of Police, Madhubani filed a counter affidavit with the plea that it is wrong to say that the local police and officials are making attempt to dispossess the appellant from the alleged *Pokhar* wrongfully and arbitrarily. The onus lies upon the appellant to prove her ownership regarding the property (*Pokhar*) in question. This respondent has no jurisdiction to cancel the settlement of the *Pokhar* which is listed in government *sairat*.

7. Respondent nos.3 to 7 by filing counter affidavit has taken the plea that old Plot No.3392, new Khata No.192, Plot No.5680, area 7 acres 5 decimals, was recorded in C.S. khatian as *Gair Majarua Khas* which vested in the State of Bihar after abolition of *Zamindari* but in revisional survey *khatian* the name of the husband of the appellant, namely, Chandra Mauleshwar Prasad Narayan Singh @ Mohan Singh was wrongly recorded. The Circle Officer is in process to file for correction of the new survey *khatian*. Further case of the aforesaid respondents is that the *Pokhar* in question has been



settled in favour of respondent no.8 since long and respondent no.8 is in possession of the aforesaid Pokhar. Further case of the aforesaid respondents is that mere *Malgujari* receipt issued in favour of appellant cannot confer title on the appellant over the aforesaid *Pokhar*.

8. Respondent no.8 by filing the counter affidavit has taken the plea that the issues raised by the appellant in the writ petition has earlier been raised before the Anumandal Lok Shikayat Adhikari, Jai Nagar, Madhubani who concluded that Khesra No.3392 is a *shairat* of Fisheries Department and rejected the case of the appellant but, suppressing the aforesaid aspect of the case intentionally, the appellant has filed the writ petition. Hence, she is not entitled to get any relief as claimed.

9. Appellant by filing rejoinder to the counter affidavit of respondent nos.3 to 7 has taken the plea that documents filed as Annexure-A (photocopy of the CS khatiyani) and Annexure-B (photocopy of the F.I.R.) by respondent nos.3 to 7 itself shows that the land stands recorded in the name of the husband of the appellant. Even though in most fraudulent and wrongful manner it is claimed that after abolition of *Zamindari* the land in dispute vested in the State of Bihar and the name of the husband of the appellant was wrongly recorded. Further case



of the appellant is that from bare perusal of Annexure-8 series, which is Memo No.1125 dated 12.07.2018 sent by the Circle Officer, Basopatti along with the report of the Anchal Amin and Halka Karmchari and sketch map annexed by the appellant with her supplementary affidavit as Annexure-8 series, it is evident that the sketch prepared by the Anchal Amin of R.S. Plot No.5680, C.S. Plot No.3392, admeasuring 7.05 acres, is the disputed pond which is adjacent to the ancestral house of the appellant situated in C.S. Plot No.3395, R.S. Plot No.5681 and all the adjacent lands, bearing C.S. Plot No.3390, C.S. Plot No.3393, C.S. Plot No.3394, C.S. Plot Nos.3396 corresponding to R.S. Plot No.5675, 5678, 5677, 5676, 5684, 5682, area 10.89 acres, is hailing to the appellant and is adjoining to the *Pokhar* and Anchal Amin had categorically stated that the pond is within the above said plot. Thus, it is evident that that land in dispute is homestead land, as defined under Section 2 (j) of the Bihar Land Reforms Act, 1950 (hereinafter in short referred to as 'the Act') . Further case of the appellant is that for vesting of the land in the State Government a notification was required to be issued by publishing it in official gazette declaring that the land of the proprietor has vested in the State. But no notification either under Section 3 or Section 3 (A) or any other provision of law



was ever issued by the State Government. At the time of vesting of *Zamindari* the landlords were given option to file return and as such the landlord filed return in the name of husband of the appellant who was in possession of the pond in question during the land verification proceeding. Subsequently, during revisional survey the land was recorded in the name of husband of the appellant and the appellant has been making regular payment of the rent as is evident from Annexures-1 to 3 filed by the appellant with the writ application as well as Annexures-A & B annexed with the counter affidavit of respondent nos.3 to 7. Further case of the appellant is that after lapse of around 50 years of the preparation of the revisional survey of the record, the Circle Officer is claiming that it is in process to file case against the alleged entry in the name of husband of the appellant over the property in question which itself indicates that the respondents are admitting the stand taken by the appellant. As the pond in question is *raiyati* land of the appellant, hence there is no question of its settlement. Annexures-1 to 3 annexed with the writ application and Annexure-8 series annexed with the supplementary affidavit of appellant and Annexures-A & B annexed with the counter affidavit of respondent nos.3 to 7, itself shows that till date the land stands recorded in the name of



the appellant, then how the pond in question can be settled in favour of respondent no.8 without any information or knowledge to the appellant?

10. After hearing the parties and perusing the materials available on record, the learned Single Judge has dismissed the writ application with the following observations:-

“.....Dismissal of this writ application will not, however, be an impediment for the petitioner to seek her remedy by way of filing a duly framed suit before a civil court of competent jurisdiction or before any other forum, in accordance with law. No observation made in the present order shall be considered as this Court's opinion on the petitioner's claim of her title in respect of the disputed land...”

11. Being aggrieved and dissatisfied with the aforesaid judgment dated 29.01.2019, the appellant has preferred this intra court appeal.

12. Respondent no.8 has filed a counter affidavit in the appeal reiterating its stand taken earlier in the writ application.

13. In reply to the aforesaid counter affidavit the appellant has filed a reply affidavit contradicting the same.

14. It is submitted by Mr. K.N. Chaubey, learned senior counsel for the appellant that the impugned judgment passed by the learned Single Judge is wrong and illegal. The



claim of the appellant regarding the *Pokhar* in question is fortified by all the documents of title and possession including the survey record and rent receipts etc. It is an error of record to say that the appellant had resorted any remedy before the Public Grievance Redressal Officer for any adjudication. It is further submitted that in para-9 of the supplementary affidavit filed in the writ application, the appellant has taken the case in specific that *Pokhar* in question is located adjacent to the dwelling house of the appellant. As a matter of fact, appellant had sought protection from the respondents officials such as District Magistrate and the Superintendent of Police, who, on their own, referred it to Public Grievance Redressal Officer who has got no adjudicatory power. It is further submitted that it is well settled principle that onus to rebut the presumption of correctness of the survey entry is on the part of the respondent questioning the same which has not been discharged. Against unimpeachable and overwhelming documents in favour of the appellant no document has been filed on behalf of the respondents and as such the claim of the appellant should have been allowed. It is further submitted that the land and *Pokhar* in question which is in possession of the family of the appellant as is recorded in cadastral survey *khatian* and revisional survey *khatian*



coupled with the return submitted in their favour followed by issuance of incessant rent receipts could not have been brushed aside by the learned Single Judge relegating the writ petitioner to the Civil Court. The appellant should not have been blamed for concealing the proceeding before the Public Grievance Redressal Officer where she had not gone on her own and the matter was casually referred by the authority without any knowledge of the appellant who has no power to decide the right and title of a person. The nature of the dispute does not fall within the ambit of the Public Grievance Redressal Officer and as such its *ex parte* finding could not be said to be material facts and is not fatal to the maintainability of the writ application. It is further submitted that the right of the appellant is well fortified under the provisions of the Bihar Land Reforms Act, 1950 and the notification issued therein which could not be ignored by the learned Single Judge. It is also submitted that in view of the necessary notification either under Section 3 or Section 3 A of the Act, it is preposterous to claim that the land and *Pokhar* is vested in the State of Bihar and the claim of the respondent is presumptuous and is liable to be negated by this Court.

15. Per contra, it is submitted by Mr. Amit Srivastava, learned counsel for the respondent no.8 and learned



counsel for the State that after the abolition of the *Zamindari* the pond in question vested in State and the State Government has settled the aforesaid pond (*Pokhar*) in favour of respondent no.8. The said settlement has been made since long but no objection has been made by the appellant. It is further submitted that as per the provisions of Section 2 (j) of the Act, the “homestead” means a dwelling house used by the proprietor or tenure-holder for the purposes of his own residence or for the purpose of letting out on rent together with any courtyard, compound, attached garden, orchard and out-buildings and includes any out-buildings used for the purposes connected with agriculture or horticulture and any tank, library and place of worship appertaining to such dwelling house. But, as the appellant has nowhere stated that the *Pokhar* in question is appertaining to her dwelling house, hence the said *Pokhar* is not the homestead land of the appellant. It is further submitted that *albeit* by filing supplementary affidavit to the writ application, the appellant has taken the case that the aforesaid *Pokhar* is adjacent to the dwelling house of the appellant but the word “adjacent” is not the synonym of word “appertaining”. As the aforesaid *Pokhar* is not the homestead land of the appellant, hence it stood vested in the State after abolition of *Zamindari*



and Appellant has got no right and title over the aforesaid *Pokhar* and the State Government has rightly settled the aforesaid *Pokhar* in favour of respondent no.8. It is further submitted that the appellant has filed representation before the Public Grievance Redressal Officer and her representation was rejected by the aforesaid incumbent but she has suppressed the aforesaid fact and has not come with clean hand before this Court. Hence, she is not entitled to get any relief from this Court.

16. The crucial point in this case is, whether the disputed *Pokhar* is homestead of the appellant. From perusal of the record and the submissions made by the parties, it appears that as per case of the appellant the *Pokhar* in question is adjacent to the dwelling house of the appellant. Though the appellant has not taken the aforesaid plea in her writ application but supplemented the same by filing supplementary affidavit stating that the *Pokhar* is adjacent to the dwelling house of the appellant.

17. Under Section 2 (j) of the Act, the homestead land has been defined as under:-

2 (j) "**homestead**" means a dwelling house used by the proprietor or tenure-holder for the purposes of his own residence or for the purpose of letting out



on rent together with any courtyard, compound, attached garden orchard and out-buildings and includes any out-buildings used for the purposes connected with agriculture or horticulture and any tank, library and place of worship appertaining to such dwelling house.

[Explanation.- In this clause, the expression “dwelling house” or out-building shall include any land on which there stood such dwelling house or out-building at any time before the date of vesting.]

18. The definition of 'homestead' thus includes any tank appertaining to any dwelling house. The word 'appertaining' according to Legal Glossary, 1988 published by Government of India, Department of Law and Justice, means “belonging as part to the whole”, while word 'adjacent' means “lying near to, adjoining”.

19. Thus, in order to constitute any tank as part of the homestead, the tank belonging to the dwelling house as constituting one unit, the tank and the building must be inextricably linked and not lying near or adjoining or in the vicinity.

20. As per the case of the appellant, as developed by way of filing a supplementary affidavit, the *Pokhar* in question is adjacent to the dwelling house of the appellant and not appertaining to it. The *Pokhar* and the



dwelling house of the appellant are not inextricably linked and the *Pokhar* in question cannot be said to be homestead land.

21. Section 5 of the Act provides that with effect from the date of vesting of all homestead lands comprised in an estate or tenure and being in the possession of an intermediary on the date of such vesting shall subject to the provisions of Sections 7A and 7B of the Act be deemed to be settled by the State with such intermediary and he shall be entitled to retain possession of the land comprised in such homesteads and to hold it as a tenant under the State free of rent. But as *Pokhar* in question is not the homestead land of appellant it may not be deemed to be settled by the State with her.

22. In the facts and circumstances of the case and the submissions made by the parties, appellant could not have been granted relief as claimed in the writ petition.

23. From perusal of record, it further appears that the appellant had approached the Public Grievance Redressal Forum by filing a complaint under the Bihar Right to Public Grievance Redressal Act, 2015 (hereinafter in short referred to as the 'Act of 2015') and the Forum by its order dated 14.06.2018 rejected the complaint petition of the appellant. But the appellant nowhere either in the writ petition



or in the supplementary affidavit disclosed about rejection of her complaint petition by the aforesaid incumbent. Non disclosure of the rejection of the complaint petition of the appellant by the aforesaid incumbent in the writ petition amounts to suppression of material facts. Order dated 14.06.2018 of the Public Grievance Redressal Officer filed as Annexure-A to the counter affidavit of respondent no.8 indicates that the appellant had raised her grievance under the Act of 2015 that someone had taken out fishes from the said pond without paying her any penny and on her application enquiry was made and finding the disputed *Pokhar* as government *sairat* the aforesaid incumbent rejected the complaint petition of the appellant. The nature of grievance raised by the parties and not the correctness of the order passed by the Public Grievance Redressal Officer is of relevance for the purposes of adjudging the conduct of the appellant, in not disclosing the fact of filing of the application under the said Act of 2015. The Public Grievance Redressal Officer is a statutory authority created under the Act of 2015. The grievance raised by the appellant before the Public Grievance Redressal Officer would certainly come under the purview of the expression 'regarding any matter arising out of failure in the functioning of, or violation of any law', policy,



service, programme or scheme in force in the State as enshrined under Section 2 (a) of the Act of 2015.

24. The remedy under the Act is thus statutory in nature which the appellant has already availed. The appellant had remedy of appeal under the Act against the rejection of her complaint petition, which she did not exhaust. Appellant has thus suppressed the material fact of having approached the Public Grievance Redressal Officer under the Act of 2015 and rejection of her complaint petition with adverse finding against her which was material for the purpose of determination of the *lis* as there is finding by the statutory authority rejecting the claim of the appellant that the *Pokhar* in question is her private *Pokhar*, finding the said *Pokhar* hailing to Fishery Department of the State of Bihar. It is well settled that in exercise of the writ jurisdiction the Court cannot be oblivious of the conduct of the party invoking the writ remedy.

25. The Hon'ble Supreme Court in the case of **Satya Pal Anand Vs. State of Madhya Pradesh and others, reported in (2016) 10 SCC 767**, has been pleased to rule that a party may have several remedies for the same cause of action, but he must select his remedy and cannot be permitted to indulge in multiplicity of actions. In the case of **Welcome Hotel**



and others Vs. State of Andhra Pradesh and others, reported in **(1983) 4 SCC 575** deprecating the conduct of non-disclosure of relevant and material fact has been pleased to rule that such party is not entitled to be heard on the merits of the case. In **K.D. Sharma Vs. Steel Authorities of Indian Ltd. and others** reported in **(2008) 12 SCC 481**, the Hon'ble Supreme Court has been pleased to rule that it is imperative that the petitioner approaching the writ court must come with clean hands and put forward 'all facts before the Court without concealing or suppressing anything'.

26. Having regard to the facts and circumstances of the case, case law and discussions made herein above by me, I find that this intra court appeal is shorn of merit and is liable to be dismissed on the aforesaid two counts. Accordingly, this appeal is dismissed.

(Prakash Chandra Jaiswal, J.)

Ashwani Kumar Singh, J. I agree.

(Ashwani Kumar Singh, J.)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	05.12.2019
Uploading Date	19.12.2019
Transmission Date	NA

