

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11497 of 2018

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

... .. Petitioner/s

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 Fishery Officer, Madhubani.
6. The Circle Officer, Basopatti Anchal, Basopatti, Madhubani.
7. The SHO, Basopatti Police Station, Basopatti, Madhubani.
8. Basopatti Anchal, Matasya Jivi Sahayog Samiti through its Secretary,
Basopatti, Madhubani.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Yogesh Chandra Verma, Sr. Advocate Mr. Rakesh Narayan Singh
For the State		Mr. Mr.Sajid Salim Khan-SC-25 Ms. Prakrititi Sharma AC to SC-25
For Respondent no.8		Mr. Chandan Priyadarshi
	:	

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 29-01-2019

This writ application has been filed against the action of the respondents in settling a pond bearing Survey Plot No. 3392, new Khata No. 192, new Plot No. 5680, admeasuring 7 acres 5 decimals in Mauza-Katia under Basopatti Anchal in the district of Madhubani, which according to the petitioner, is her private pond, in favour of respondent no. 8, treating the same to be a Government *Sairat*. The petitioner is seeking cancellation of the said settlement. It is her case that in the cadastral survey,



the disputed plot was recorded as *Gairmajarua khas* land (*pokhar*) of the landlord Babu Awadh Bihari Narayan Singh, who was the father-in-law of the petitioner. There is a statement made in paragraph 7 of the writ application that, at the time of vesting of *Zamindari*, the landlord had filed return of the land in the name of the family. During the revisional survey, the said old C.S. Plot No. 3392 was recorded as R.S. Khata No. 192, R.S.Plot No. 5680 (area 7 acres 5 decimals) in the name of the petitioner's husband Late Chandra Mauleshwar Prasad Narayan Singh @ Mohan Singh. It is her further case that she is in possession of the aforesaid land and the rent receipts have been issued in favour of the petitioner till date i.e. up to 2017-18, in respect of the land in question. Vide Memo No.155 dated 07.6.2018, the Circle Officer, Basopatti, had directed the petitioner to appear before him on 09.06.2018, whereafter he had appeared before him and filed a petition, along with all the documents, asserting that the disputed land is a private *Pokhar*. It has been asserted that the Circle Officer expressed his inability as no record in respect of the disputed pond was available. It is also her case that she contacted the office of the District Fisheries Officer, Madhubani for providing the list of Sarkari *Sairat/Jalkar* and the private *Jalkar* situated in



Bassopatti Anchal. No such document was, however, provided to her. She has also asserted that she was not provided with the document of the disputed settlement of the *Pokhar*, which she has now obtained from the backdoor.

2. A supplementary affidavit on behalf of the petitioner has been filed, stating therein that the land in dispute is adjacent to the house of the petitioner which is her homestead land within the meaning of Section 2(j) of the Bihar Land Reforms Act, 1950 (hereinafter to be referred to as 'the Act of 1950'). It has been asserted in the said supplementary affidavit that the land, in question, did not ever vest in the State Government and, at the instance of one local MLA, the same had been fraudulently inserted in the list of *Sairat* by 'the then Circle Officer, Basopatti, who was dancing to the tunes of the then local MLA'. It is thus her claim that on the basis of the fraud committed at the instance of the then MLA and the Circle Officer, Basopatti, the entire records of the circle office, Basopatti have been tampered.

3. A counter affidavit has been filed on behalf of the Circle Officer, Basopatti, wherein he has denied that the disputed land has been recorded in the revisional survey in the name of the petitioner's Late husband. It has, however, been stated that the



said land stood vested in the State of Bihar, after abolition of *Zamindari*, but in the revisional survey *khatiyani*, the name of the petitioner's husband has wrongly been recorded and steps are being taken for necessary corrections. It is also stated in the said counter affidavit that the tank, in question, has been settled with the 'F.C.S.', (which, to me, appears to be an abbreviated form of the 'Fisheries Co-operative Society'), since long and the Society is in possession of the Tank. It has also been stated that the tank was being regularly settled by 'F.F.D.A.', Madhubani and the settlee has been coming in possession over the same. As regards the non-availability of the record as asserted in paragraphs 13 and 14 of the writ application, it has been stated in the counter affidavit that all the records were burnt in a fire which had broken out in 2012, in respect of which Basopatti P.S. Case No. 182 of 2012 has been registered.

4. Contesting respondent no.8 has also filed a counter affidavit, asserting that the grievance, which the petitioner has raised in the present writ application, had been raised earlier before the Public Grievance Officer, under the Bihar Right to Public Grievance Redressal Act, 2015 (in short 'the Act of 2015'), by making an application, which has been dismissed by an order dated 14.06.2018 (Annexure-A). It is accordingly the



case of the respondent no.8 that the petitioner is guilty of suppression of this material fact, as the said order of the Public Grievance Redressal Authority was passed before 22.06.2018, when the present writ application came to be registered.

5. A rejoinder has also been filed on behalf of the petitioner to the counter affidavit, filed on behalf of respondent nos. 3 to 7. Relying on Annexure-8 of the supplementary affidavit, filed on behalf of the petitioner, it has been asserted that it is evident from the report of Anchal Amin and Halka Karamchari that *prima facie*, the pond in dispute is the homestead land of the petitioner and the petitioner had made payment of upto date rent. It has been reiterated, based on the sketch map prepared by the Anchal Amin that the disputed R.S. Plot No. 5680, which was earlier C.S. Plot No. 3392 was adjacent to the ancestral house of the petitioner, situated on C.S. Plot No. 3395, R.S. Plot No. 5681 and all the adjoining land. It is also stated that the petitioner's father-in-law, who was the intermediary, had filed return in the name of the husband of the petitioner, who was found in possession of the land during the land verification proceeding and, accordingly, during the revisional survey, the land was recorded in the name of the husband of the petitioner.

6. I have heard Mr Yogesh Chandra Verma, learned Senior



Counsel, appearing on behalf of the petitioner, learned SC-25 for the State of Bihar and Mr. Chandan Priyadarshi, learned counsel for respondent no.8.

7. Before I refer to and consider the pleadings on record and rival submissions of the parties, I must take note of a brief summary of the case. The case of the petitioner is based on the revisional survey entry and payment of rent in respect of the said land and her continuous possession. This is not disputed that in the revisional survey entry, the name of the petitioner's husband has been entered, which entry, according to the State of Bihar, is incorrect. Whereas, it is the case of the respondents that the land in question stood vested in the State of Bihar, it is the petitioner's case that the land being in *khas* possession of the intermediary, within the meaning of Section 2(j) of the Act, it is homestead and, therefore, it did not vest in the State of Bihar. So far as the payment of rent is concerned, one rent receipt showing payment on 13.09.2017, has been brought on record by way of Annexure-3. Though, there is a statement that the petitioner has been paying up-to-date rent, there is no document in respect of the said statement, except the said rent receipt dated 13.09.2017. Lastly, whereas it is the petitioner's case that she is in continuous possession over the disputed land,



the respondents have denied such statement and it has been stated that the Fisheries Co-operative Society is carrying on fisheries activities over the pond since long. These are *inter-parties* disputes which, whether can be adjudicated upon in a proceeding under Article 226 of the Constitution of India, is one of the questions involved.

8. Mr. Yogesh Chandra Verma, learned Senior Counsel, appearing on behalf of the petitioner, has referred to Annexure-8 to the writ application, to submit that there are unimpeachable materials to establish that the land, in question, is a private property of the petitioner. He has referred to a map prepared by the Anchal Amin, describing the location of the disputed land to make out his case that it appertains to the petitioner's residential area and, therefore, a homestead land within the meaning of Section 2 (j) of the Act of 1950. According to him, since the State of Bihar has failed to bring on record any notification, as contemplated under Section 3 of the Act of 1950, no claim can be raised that the disputed land has vested in the State of Bihar. He has placed reliance on a Division Bench decision of this Court, reported in **1975 BBCJ 535 (Uma Prasad Singh and another Vs. The State of Bihar and others)**, to submit that, based on materials available on record, this Court should hold



the petitioner's title in respect of the land, in question, there being no serious dispute about the same. He has also submitted that in a partition suit among the coparceners of the family, the said disputed land has been described as private land and the suit has been accordingly decreed and the judgment and preliminary decree has been passed. He has submitted that the State of Bihar is estopped from raising an objection against the title of the petitioner in respect of the disputed land in the light of their own record of rights based on the revisional survey, in which the name of the petitioner's Late husband finds place as a *Raiyat*. He has relied on the guidelines issued by the Revenue and Land Reforms Department, Govt. of Bihar, vide No.01/2013-925(6) dated 11.11.2014, to submit that in case a land is found to have been in *khas* possession of an intermediary, being utilized for agricultural or horticultural purposes, it shall be deemed to be settled by the State with such intermediary and he would be deemed to be a *Raiyat* having the occupancy right over such land. He has referred to the following portion of the said guidelines to contend that the entry in the revenue record should be treated to be correct:-

"सक्षम प्राधिकार को समय के विभिन्न बिन्दुओं के सापेक्ष स्पष्ट, पूर्ण एवं निश्चित साक्ष्यों पर निर्भर करना होगा। राजस्व पंजियों में प्रविष्टी



यदि किसी दावाकर्ता के भूमि पर धारिता को प्रकट करती है तो उसे सही माना जा सकता है। कोई दावाकर्ता के भूमि पर धारिता को प्रकट करती है तो उसे सही माना जा सकता है। कोई दावाकर्ता अपने दावा को अभिलेख, लगान रसीद, जमींदारी रिटर्न आदि से इसे स्थापित कर सकता है। यदि कोई दावाकर्ता इसे साबित करता है, अर्थात् उसकी लगातार तीस वर्षों से धारिता प्रमाणित होती है तो तीस वर्षों की अवधि की समाप्ति के बाद, उसका स्वत्व (title) चिरभोग (Prescription) के तहत निर्मित होगा और इस प्रकार वह रैयत की परिभाषा के अन्तर्गत आएगा।"

9. Referring to the same paragraph of the guidelines he has submitted that since the petitioner has been in continuous possession over the disputed land for more than 30 years, her title stands created by the prescription and accordingly the petitioner comes within the definition of *Raiyat* in respect of the disputed land.

10. Mr. Sajid Salim Khan, learned SC-25, on the other hand, has submitted that the pond, in question, was being settled as *Jalkar* with the Fisheries Co-operative Society since long and the petitioner's plea that she is in continuous possession over the said land is completely incorrect. He has submitted that the rent receipt cannot be a substantial proof of title of the petitioner. He has also submitted that the disputed



question of title cannot be adjudicated upon in a writ proceeding under Article 226 of the Constitution of India.

11. Mr. Chandan Priyadarshi, learned counsel for respondent no.8 has submitted that the State-respondents are in possession over the pond, in question, and the nature of the disputes, which are being raised, can be adjudicated upon only in a properly framed suit and not in a proceeding under the writ jurisdiction of this court.

12. On the basis of the rival pleadings on record and submissions made on behalf of the parties, it is evident that the relief, which the petitioner is seeking, can be granted only after holding that the land, in question, was homestead land within the meaning of Section 2(j) of the Act of 1950 which did not vest in the State of Bihar by virtue of different provisions under the Act of 1950 and that the petitioner has been coming in continuous possession over the said land uninterruptedly for more than 30 years and that the documents, which have been brought on record in support of the pleading, conclusive prove the petitioner's title over the disputed land.

13. I am of the view that these questions relating to the title of the petitioner, in respect of the disputed land, should not be gone into in a proceeding under Article 226 of the



Constitution of India. As has been noticed above, whereas the petitioner is claiming that she is in possession over the disputed land from the very beginning, respondents claim that the land was being settled by the Department in favour of the Fisheries Co-operative Society since long. In such situation, a proceeding under Article 226 of the Constitution of India the Court cannot record a finding, this way or that way. This is also to be noted that the State- respondent has raised objection over the correctness of the revisional survey entry itself. Clause (3.) of sub-paragraph (ii) of paragraph 3 of the guidelines dated 11.11.2014 provides that in case *Jamabandi* in respect of *Gair Majarua* land is continuing without any basis, steps for cancellation of mutation under Section 13 of the Bihar Land Mutation Act, 2012 shall be taken. It has been repeatedly held by the Supreme Court that the merits of the rival claim to property or disputed question of fact cannot be investigated in a proceeding under Article 226 of the Constitution of India. In view of the nature of the dispute arising in the present proceeding, no finding can be recorded in a summary proceeding in respect of question of title or possession over the disputed land. I form an opinion that by questioning the settlement of the pond as Government *Sairat* in favour of



Fisheries Co-operative Society, the petitioner wants from this Court a declaration in respect of a title, which is being disputed. By the respondents.

14. It is evident that the petitioner had approached the Grievance Redressal Officer under the Bihar Right to Public Grievance Redressal Act, 2015, which has been decided against her by an order dated 14.06.2018. In the said order, the Public Grievance Redressal Officer, Basopatti, Jainagar, has found the land to be *Sairat* of Fisheries Department and has accordingly rejected the petitioner's claim. Apparently, the petitioner has not stated in her present application that she had made an application before the Public Grievance Redressal Officer, under the Act of 2015, nor any statement has been made that her application has been rejected. A supplementary affidavit was filed on 07.08.2018 by the petitioner which also did not disclose the rejection of the application of the petitioner's application, by order dated 14.06.2018.

15. In response to the submission made on behalf of respondent no.8 that non-disclosure of the rejection of the petitioner's application by the petitioner, amounts to suppression of material fact, Mr. Yogesh Chandra Verma, learned Senior Counsel for the petitioner, has argued that, in the facts and



circumstances, such non-disclosure does not amount to suppression of material fact. He contends that the office of the Public Grievance Redressal Officer is not a forum for adjudication over the claim which the petitioner is raising in the present writ application. The said forum just looks into the grievances of the citizens for the purpose of their redressal and there is no element of adjudication on rival claim in the said proceeding. He has also submitted that there has, in fact, been no adjudication by the Public Grievance Redressal Officer by rejecting the petitioner's application

16. I have perused the order dated 14.06.2018. From the said order, it transpires that the petitioner had raised grievance under the Act of 2015 that someone had taken out fishes from the said pond without paying her any money. It is on such application that an inquiry was made and based on the finding that it was a Government *Sairat*, the petitioner's application was rejected. 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, in the facts and circumstances of the present case, for the purpose of adjudging the conduct of the petitioner, 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 complaint within the meaning of the said Act has been defined under Section 2(a) of the Act as under:-

“2(a) “complaint” means any application made by a citizen or a group of citizens to a Public Grievance Redressal Officer for seeking any benefit or relief relating to any schemes, programme or services run in the State by the State Government or in respect of failure or delay in providing such benefit or relief, or 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 by a public authority but does not include grievance relating to the service matters of a public servant, whether serving or retired, or relating to any matter in which any Court or Tribunal has jurisdiction or relating to any matter under Right to Information Act, 2005 (Central Act No. 22 of 2005) or services notified under the Bihar Right to Public Services Act, 2011”.

17. The grievance, which the petitioner had raised before the Public Grievance Officer would certainly lie under 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'.

18. The remedy under the Act is thus statutory in nature which the petitioner availed. The petitioner had remedy of appeal and revision under the Act, which she did not invoke. The finding recorded by the statutory authority under the Act of 2015, in such circumstance, in my opinion, cannot be completely brushed aside and the petitioner's contrary contention be accepted for grant of relief, keeping in my mind the apparent conflict between the two.

19. The petitioner, in my view, suppressed this material fact of having approached the Public Grievance Redressal Officer under the Act of 2015 and its dismissal with adverse finding against her. Once she invoked the provision under the Act of 2015, either she should have questioned the decision of the Public Redressal Grievance Officer before the appellate authority or, as the case may be, before the revisional authority under the Act or could have taken a plea that the forum itself was not competent. This plea has, however, not been taken.

20. It is well-sleeted that in exercise of the writ jurisdiction the Court cannot be oblivious of the conduct of the party invoking the writ remedy. The Supreme Court, in the case



of **Satya Pal Anand Vs. State of Madhya Pradesh and others, reported in (2016) 10 SCC 767**, has held 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. I am also of the view that the fact, which the petitioner suppressed, is a material fact which was material for the purpose of determination of the *lis*. Whereas it is the case of the petitioner that the land is a private *Pokhar*, which belongs to her, there is a finding by a statutory authority that the said land belongs to Fisheries Department of the State of Bihar. There is, thus, some material in the nature of the finding in the order of the Public Redressal Grievance Officer to counter the plea, which the petitioner has taken for grant of relief in the proceeding under Article 226 of the Constitution of India. Deprecating the conduct of non-disclosure of relevant and material fact, the Supreme Court remarked in the case of **Welcome Hotel and others Vs. State of Andhra Pradesh and others**, reported in **(1983) 4 SCC 575** that such party is not entitled to be heard on merits of the case. In the case of **K.D. Sharma Vs. Steel Authorities of Indian Ltd. and others** reported in **(2008) 12 SCC 481**, the Supreme Court has held 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'. There are series of decisions on this line, all of which need not be reiterated in the present judgment. Reference may, however, be made to the decision of the Supreme Court in the case of **Arunima Baruah Vs. Union of Indian and others**, reported in **(2007) 6 SCC 120**. In the said case, the appellant had filed a suit and an application for grant of injunction, in which notices were issued. She had filed a writ petition also for identical/similar relief, without disclosing the fact that she had filed a suit. Before the writ petition had come up for final hearing, the appellant had filed an application for withdrawal of the suit. The suit was subsequently withdrawn. Against the dismissal of the writ petition and the letters patent appeal by the High Court on the ground of suppression of material fact, the appellant approached the Supreme Court. The Supreme Court, noticing the fact that the suit proceeding had terminated without determination of the *lis* held in paragraph 11 and 12 as follows:-

“11. The court's jurisdiction to determine the *lis* between the parties, therefore, may be viewed from the human rights concept of access to justice. The same,



however, would not mean that the court will have no jurisdiction to deny equitable relief when the complainant does not approach the court with a pair of clean hands; but to what extent such relief should be denied is the question.

12. It is trite law that so as to enable the court to refuse to exercise its discretionary jurisdiction suppression must be of material fact. What could be a material fact, suppression whereof would disentitle the appellant to obtain a discretionary relief, would depend upon the facts and circumstances of each case. Material fact would mean material for the purpose of determination of the lis, the logical corollary whereof would be that whether the same was material for grant or denial of the relief. If the fact suppressed is not material for determination of the lis between the parties, the court may not refuse to exercise its discretionary jurisdiction. It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.”

21. After having observed, as above, the Supreme Court,



while dismissing the appeal, held in paragraphs 21` and 22 as under:-

“21..... In this case, however, the appellant had suppressed a material fact. It is evident that the writ petition was filed only when no order of interim injunction was passed. It was obligatory on the part of the appellant to disclose the said fact.

22. In this case, however, suppression of filing of the suit is no longer a material fact. The learned Single Judge and the Division Bench of the High Court may be correct that, in a case of this nature, the Court's jurisdiction may not be invoked but that would not mean that another writ petition would not lie. When another writ petition is filed disclosing all the facts, the appellant would be approaching the writ court with a pair of clean hands, and the Court at that point of time will be entitled to determine the case on merits having regard to the human right of the appellant to access to justice, and keeping in view the fact that judicial review is a basic feature of the Constitution of India.”

22. In view of the aforesaid discussions, I am not inclined to entertain this writ application for the following reasons:-

(i) The petitioner suppressed a fact that her claim that the



disputed land was her private pond, was rejected by a statutory authority under the Act of 2015, which, in my opinion, is material.

(ii) The petitioner has alternative remedy of appeal and revision under the Act of 2015 which she has not availed.

(iii) The facts are not so admitted, based on which this Court can record a finding of the petitioner's title and possession over the disputed land.

23. In view of the above, this writ application is dismissed.

24. 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.

25. There shall be no order as to cost(s).

(Chakradhari Sharan Singh, J)

HR/-

AFR/NAFR	AFR
CAV DATE	Nil
Uploading Date	06. 02.2019
Transmission Date	

