

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.835 of 2019

In

Civil Writ Jurisdiction Case No.2607 of 2018

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1. Rajendra Singh S/o Late Ramnarayan Singh Vill.- Chandparsa, P.s.- M.H. Nagar, Hasanpura, Distt.- Siwan
 2. Nand Kumar Singh S/o Late Hare Ram Singh Vill.- Chandparsa, P.s.- M.H. Nagar, Hasanpura, Distt.- Siwan
 3. Jitendra Singh S/o Late Pitamber Singh Vill.- Chandparsa, P.s.- M.H. Nagar, Hasanpura, Distt.- Siwan

... .. Appellants

Versus

1. The State of Bihar through Principal Secretary, Revenue and Land Reforms Department, Govt. of Bihar
2. The District Magistrate cum Collector Siwan
3. The Circle Officer Hasanpura, Siwan
4. The Circle Officer Darounda, Siwan
5. The Block Development Officer Darounda, Siwan
6. The Block Development Officer Hasanpura, Siwan

... .. Respondents

Appearance :

For the Appellants : Ms Surya Nilambari
For the Respondents : Mr. Md. Khurshid Alam (Aag12)

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 05-12-2019

I.A. No. 1 of 2019

This interlocutory application has been filed by the appellants for condonation of delay of 52 days caused in filing the letters patent appeal against the order dated 02.05.2019 passed by the learned single Judge in CWJC No. 2607 of 2018.



Considering the submissions advanced at the Bar and the pleadings made in the interlocutory application, the delay in filing the appeal is condoned.

LPA No. 835 of 2019

This appeal under Clause 10 of the Letters Patent is directed against the order dated 02.05.2019 passed by the learned single Judge in CWJC No. 2607 of 2018 whereby the petition filed by the appellants for directing the respondent authorities inter alia not to construct road relating to plot no. 245, khata no. 87 Chandparsa, P.S. M.H. Nagar, Hasanpur, Siwan and plot no. 977, khata no. 29 and 7 in village Utsi, P.S. Daraunda, Siwan and to pay compensation for damage to the crops has been disposed of by advising the appellants to approach the civil court for common law remedy.

2. Ms Surya Nilambari, learned counsel appearing for the appellants submitted that while passing the impugned order the learned Single Judge failed to appreciate the issues involved in the present case. He failed to appreciate that the appellants are being deprived of their right to property enshrined under Article 300A of the Constitution of India, which prescribes that no person can be deprived of the property except save by authority of law. He also failed to appreciate that construction of road on private land of the



appellants cannot be made in the absence of any proposal to acquire the land and to suitably compensate the appellants for such acquisition.

3. On the other hand, learned counsel appearing for the State submitted that the State or its instrumentality has nothing to do with the dispute of the appellants with the private parties. The State is not in any manner involved with any construction of road over the plots in question.

4. He contended that the appellants have dispute with his co-villagers. The construction, if any, is being made by the villagers. The private parties have not been made party in the writ petition. The disputed questions of fact cannot be adjudicated by the Court in writ jurisdiction. Keeping these facts in mind if the learned Single Judge has relegated the appellants to the common law remedy in exercise of discretionary jurisdiction under Article 226 of the Constitution of India, no illegality can be found with the order impugned.

5. We have heard the parties and perused the record.

6. We find force in the submission of the learned counsel for the State. The appellants have raised several disputed questions of fact in the writ petition. The State has controverted the claim made by the appellants that the State is behind the



construction of the road over the land in question. The categorical stand of the State is that it has nothing to do with the construction of the road in question. The appellants have not impleaded any private party in the writ petition. A writ petition would not be maintainable against private body when it has no public duty imposed on it. Furthermore, the writ petition was also not maintainable as it involved several disputed question of facts.

7. In view of the above discussions, we are of the opinion that the learned Single Judge has rightly disposed of the writ petition directing the appellants to seek remedy under the common law before the civil court of competent jurisdiction.

8. The appeal, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

(Prakash Chandra Jaiswal, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	07.12.2019
Transmission Date	

