

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4428 of 2017

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Hari Mohan Tripathi Son of Shashi Bhushan Tripathi, Resident of village - Bindhu Chapra, P.S. Koilawar, District - Ara (Bhojpur)

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Rural Works Department, Government of Bihar, Patna
2. The District Magistrate, Chapra
3. The Deputy Development Commissioner, Chapra
4. The Block Development Officer, Chapra
5. The Circle Officer, Chapra Sadar, Chapra
6. The Executive Engineer, Rural Works Department, Works Division Chapra, District - Chapra

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ranjeet Kumar
For the Respondent/s : Mr.Kameshwar Prasad Gupta-Gp10

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 14-08-2020

The present writ petition has been filed by the petitioner for directing the respondent authorities to remove the illegal road (Balawan Tola to Raipur Bindgawan Road) constructed upon the ancestral land of the petitioner, appertaining to Katha no. 197, Plot No. 669 and 677, situated at village Raipur Bindgawan, District-Chapra, without obtaining consent or without acquiring the land of the petitioner. The petitioner has further prayed for handing over the land in question back to the petitioner or in the alternative, directing the respondent authorities to pay adequate compensation at the market rate in



terms of the Land Acquisition Act.

2. The brief facts of the case according to the petitioner are that he was only two years old when his father died in the year 1962. A land appertaining to Khata No. 197, Plot No. 669 and 677, situated at village Raipur Bindgawan, District-Chapra is recorded in the name of petitioner's father namely Shashi Bhushan Tripathi alias Shashi Bhushan Tiwary. The aforesaid land has always been in the possession of the petitioner and has been cultivated regularly, but the district administration, Chapra without acquisition or without obtaining consent started construction of road in the year 2009-10 utilizing petitioner's one bigha land and as soon as he came to know about the illegal construction, he rushed to his native village and lodged his objection with the respondents and the executing agency, whereupon they stated that the land of the petitioner shall not be utilized as the same does not fall in the alignment and the petitioner had then returned back. According to the petitioner, though his land does not fall in the alignment but still his one bigha land has been illegally utilized for the construction of the road namely Balawan Tola to Raipur Bindgawan, village Bindgawan, P.O. Bandhu Chapra, P.S.-Koilarwar, District-Chapra. The petitioner is stated to have submitted a



representation before the District Magistrate, Chapra and before the Deputy Development Commissioner, Chapra on 04.02.2010, enclosing a copy of the Khatian, with a request to either vacate the land or pay adequate compensation, but to no avail. It is has been stated by the petitioner in the writ petition that the land appertaining to Khata No. 197, Plot No. 669 and 677, situated at village Raipur Bindgawan, District-Chapra is recorded in the Khatian in the name of petitioner's father namely shashi Bhushan Tripathi, hence the construction of road upon the land the petitioner appertaining to Khata No. 197, Plot No. 669 and 677, situated at village Raipur Bindgawan, District-Chapra is illegal and the same deserves to be removed.

3. The learned counsel for the petitioner has submitted that the land of the petitioner has been illegally usurped by the respondent authorities without complying with the provisions of law in an illegal and arbitrary manner. It is thus submitted that either the respondent be directed to return back the land in question of the petitioner herein or in the alternative, the respondents be directed to adequately compensate the petitioner for the illegal construction of road over his land.

4. Per contra, the learned counsel appearing for the respondent-State has referred to the counter affidavit filed by



the Executive Engineer, Rural Works Department, Works Division, Chapra wherein it has been admitted that under the Pradhan Mantri Gram Sarak Yojna (PMGSY), an agreement was executed for construction of road i.e. Balban Tola to Raipur Bindgawan on 5.10.2009, whereafter the construction work of the said road had started and finally the same was completed on 10.4.2012. It is submitted that the said road is being used by the general public of the area. It has been further stated in the said counter affidavit that during the course of construction of the aforesaid road, no objection was ever raised by the petitioner. It is also stated that the petitioner has approached this Court belatedly and there is no provision for making payment of any sort of compensation under the PMGSY.

5. The learned counsel for the respondents-State has further referred to the counter affidavit filed on behalf of the Respondent No. 5 i.e. the Circle Officer, Chapra Sadar, Chapra wherein it has been stated that after receipt of notice of the present case, a report was called for from the concerned Halka Karamchari and the Anchal Amin, who had then visited and measured the land in question and have submitted a report dated 17.2.2018, from which it is evident that 750 kari x 40 kari



and 75 kari x 40 kari P.C.C. road has been constructed near the plot no. 669 and 677 respectively, however, the remaining part of the said plot in question is vacant. It has been also submitted that since the road has been constructed in the interest of the public, it will not be fit and proper to remove the same. It is also submitted that the grievance of the petitioner is under consideration and the Circle Officer, Chapra Sadar, Chapra has already written to the petitioner to submit a proper representation for compensation so that his grievances can be looked into.

6. It appears that this Court by an order dated 25.1.2018 had given the following directions:-

“Though a counter affidavit has been filed on behalf of respondent, but it does not even suggest that any verification has been made as to whether the road has been constructed over the raiyati land of the petitioner and whether the land in question is recorded in the revenue record in the name of the petitioner or his ancestor, which suggests the casual manner in which the respondents are filing counter affidavit.

As prayed for, list this matter after four weeks enabling learned counsel for the respondent-State to file supplementary counter affidavit meeting the contentions raised by the petitioner



in the Writ application.”

7. In pursuance to the said order of this Court dated 25.1.2018, the Executive Engineer, Rural Works Division, Works Division Chapra has filed a further counter affidavit wherein it has been stated that upon a query made from the Circle Officer, Chapra, Saran with regard to the name of the raiyat of Khata No. 197, Plot No. 669 and 677, the Circle Officer, Chapra by his letter dated 9.2.2018 has apprised that the claim of the petitioner has been found to be partly true. It has been further stated in the said counter affidavit that the petitioner had not raised any objection at the time of construction of the road or thereafter and has approached this Court belatedly after lapse of several years.

8. The learned counsel for the respondents-State has also referred to the counter affidavit filed on behalf of the District Magistrate, Saran at Chapra i.e. the Respondent No. 2 wherein it has been stated that the claim for compensation by the petitioner for the land in question is based only on Annexure-1, which is an alluvial and deluvial land and there is no survey map of this land, hence, the petitioner has got no legal right or title over the land in question. It is further submitted that though the name of the father of the petitioner is Shashi Bhushan Tripathi, however, Annexure-1 to the writ petition



would show that the name of one Shashi Bhushan Tiwary has been mentioned, hence, there is a discrepancy as far as the name of the father of the petitioner has been recorded in Annexure-1 and both do not match. It is also submitted that the land under consideration is situated at village Raipur Bindgawan and is an un-surveyed land / topo land, hence, no khatian (record of right) or map exists anywhere. It is also stated in the said counter affidavit filed by the Respondent No. 2 that the Circle Officer, Sadar Circle had earlier conducted the measurement on the basis of Jamindari Naksha, which was made available to him, however, the same has got no legal sanctity since neither survey was carried out nor khatian has been prepared. It is also submitted that from a bare perusal of the case records available at the office of the Circle Officer, Sadar, Saran at Chapra, it is apparent that the claim of the petitioner was forwarded by the Circle Officer Sadar to the Executive Engineer, Rural Works Department, Works Division, Chapra for necessary action, however, the said Executive Engineer, Rural Works Department, Works Division, Chapra never brought it to the notice of the District Magistrate, Saran at Chapra. Only after the matter came into the knowledge of the Respondent No. 2, he directed the D.C.L.R., Sadar to inquire



into the matter and submit an inquiry report whereupon the D.C.L.R., Sadar Chapra has inquired into the matter and submitted his inquiry report dated 25.6.2019, according to which, the said land in question is un-surveyed / topo land, hence, no khatian or map exists. In fact, the D.C.L.R., Sadar Chapra has also found that the Circle Officer, Sadar Chapra and the concerned Halka Karamchari and Anchal Amin of Circle Officer Sadar, Chapra have engaged in wrong doings, hence, has recommended for taking necessary action against them. Lastly, it is submitted that the Circle Officer, Sadar Chapra and Executive Engineer, Rural Works Department, Works Division, Chapra have filed counter affidavit without taking approval from the District Magistrate, Saran at Chapra. Thus, it is submitted by the learned counsel for the respondents-State that it is apparent that the land in question is un-surveyed / topo land and the right and ownership over the land in question belongs to the State of Bihar, hence, it has got a public road constructed over the said land for the general benefit of the public at large, therefore, there is no merit in the present writ petition and the same is fit to be dismissed.

9. The learned counsel for the respondents-State has also submitted that proper action has been taken against the



defaulting officials, who had tried to mislead this Court and engaged in wrong doings. It is further submitted that the Circle Officer, Sadar Chapra and the Executive Engineer, Rural Works Department, Works Division, Chapra have filed further counter affidavits, rectifying their earlier mistakes and the aforesaid contentions made by the Respondent No. 2 in its counter affidavit has been reiterated.

10. In reply, the learned counsel for the petitioner has referred to a rejoinder affidavit filed by the petitioner to the counter affidavit filed by the respondent no. 2 wherein it has been submitted that Shashi Bhushan Tiwary and Shashi Bhushan Tripathy are one and the same person and the father of the petitioner died more than 58 years ago when the petitioner was just one year old, however, it is submitted that the rent has always been deposited and receipt has been regularly issued by the Circle Officer up to date. It is disputed that the land in question is close to the river and it is submitted that there is no question that the land in question is diluvial and alluvial. It is also submitted that the survey of the land was conducted in the year 1932-1933 and thereafter again in the year 1954-55 and accordingly, map was also prepared. It is stated that the name of the father of the petitioner also exists in the register and the



petitioner has always been in possession of the land and has cultivated the land all throughout.

11. I have heard the learned counsel for the parties and gone through the materials on record as also the various affidavits / counter affidavits / supplementary counter affidavits / rejoinder affidavits etc. which have been filed by both the parties wherein claim and counter claim as also refutation of the claim of the petitioner has been made. It is also apparent from the materials available on record that the claim of the petitioner regarding ownership of the land in question i.e. Khata no. 197, Plot No. 669 and 677, situated at village Raipur Bindgawan District-Chapra is seriously under dispute as is apparent from what has been recorded hereinabove in the preceding paragraphs. Moreover, this Court finds that there is no material on record to suggest that the petitioner had ever protested the construction of the road in question, construction whereof admittedly started in the year 2009 and got completed on 10.4.2012. Even thereafter, the petitioner had been sitting tight over the matter and has woken up only in the year 2017 when he thought it fit and proper to file the present writ petition.

12. At this juncture, it would be apt to refer to a judgment rendered by the Constitution Bench of the Hon'ble Supreme



Court of India in the case of ***Shri Sohan Lal vs. Union of India & Another***, reported in ***AIR 1957 SC 529***, paragraph no. 5 to 8 are reproduced herein below:-

“5. We do not propose to enquire into the merits of the rival claims of title to the property in dispute set up by the appellant and Jagan Nath. If we were to do so, we would be entering into a field of investigation which is more appropriate for a Civil Court in a properly constituted suit to do rather than for a Court exercising the prerogative of issuing writs. These are questions of fact and law which are in dispute requiring determination before the respective claims of the parties to this appeal can be decided. Before the property in dispute can be restored to Jagan Nath it will be necessary to declare that he had title in that property and was entitled to recover possession of it. This would in effect amount to passing a decree in his favour. In the circumstances to be mentioned hereafter, it is a matter for serious consideration whether in proceedings under Art. 226 of the Constitution such a declaration ought to be made and restoration of the property to Jagan Nath be ordered.

6. Jagan Nath had entered into a transaction with the Union of India upto a certain stage with respect to the property in dispute, but no letter of allotment had been issued to him. Indeed, he had been informed, when certain facts became known, that the property in question could not be allotted to him as he was a



displaced person who had been allotted land in East Punjab. As between Jagan Nath and the Union of India it will be necessary to decide what rights were acquired by the former in the property upto the stage when the latter informed Jagan Nath that the property would not be allotted to him. Another question for decision will be whether Jagan Nath was allowed to enter into possession of the property because it was allotted to him or under a misapprehension as the Union of India was misled by the contents of his application. The case of the Union of India is that under the scheme Jagan Nath was not eligible for allotment of a house in West Patel Nagar, as it was subsequently discovered that he had been allotted, previous to his application, agricultural land in the District of Hissar. Being satisfied that Jagan Nath was not eligible for allotment, the Union of India refused to allot to him the tenement No. 35, West Patel Nagar and allotment of that house was made to the appellant who was found to be eligible in every way. The appellant was accordingly given possession of the property after Jagan Nath's eviction. The appellant had complied with all the conditions imposed by the Union of India and a letter of allotment was actually issued to him and he entered into possession of the property in dispute under the authority of the Union of India. Did the appellant thereby acquire a legal right to hold the property as against Jagan Nath? In our opinion, all these questions should be decided in a properly constituted suit in a Civil Court rather than in



proceedings under Art. 226 of the Constitution.

7. The eviction of Jagan Nath was in contravention of the express provisions of S. 3 of the Public Premises (Eviction) Act. His eviction, therefore, was illegal. He was entitled to be evicted in due course of law and a writ of mandamus could issue to or an order in the nature of mandamus could be made against the Union of India to restore possession of the property to Jagan Nath from which he had been evicted if the property was still in possession of the Union of India. The property in dispute, however, is in possession of the appellant. There is no evidence, and no finding of the High Court that the appellant was in collusion with the Union of India or that he had knowledge that the eviction of Jagan Nath was illegal. Normally, a writ of mandamus does not issue to or an order in the nature of mandamus is not made against a private individual. Such an order is made against a person directing him to do some particular thing specified in the order, which appertains to his office and is in the nature of a public duty (Halsbury's Laws of England Vol. 11, Lord Simonds Edition, p. 84). If it had been proved that the Union of India and the appellant had colluded, and the transaction between them was merely colourable, entered into with a view to deprive Jagan Nath on his rights, jurisdiction to issue a writ to or make an order in the nature of mandamus against the appellant might be said to exist in a Court. We have not been able to find a direct authority to cover a case like the one before us



but it would appear that so far as election to an office is concerned, a mandamus to restore, admit, or elect to an office will not be granted unless the office is vacant. If the office is in fact, full proceedings must be taken by way of injunction or election petition to oust the party in possession and that a mandamus will go only on the supposition that there is nobody holding office in question. In R. v. Chester Corporation 1855-25 LJQB 61(E), it was held that it was inflexible rule of law that where a person has been de facto elected to a corporate office, and has accepted and acted in the office, the validity of the election and the title to the office can only be tried by proceeding on a quo warranto information. A mandamus will not lie unless the election can be shown to be merely colourable. We cannot see why in principle there should be a distinction made between such a case and the case of a person, who has, apparently entered into bona fide possession of a property without knowledge that any person had been illegally evicted therefrom.

8. In our opinion, the High Court erred in allowing the application of Jagan Nath filed under Art. 226 of the Constitution and making the order it did. The appeal is accordingly allowed and the order of the High Court is set aside. In, the circumstance of the present case, however, we are of the opinion that each party should bear his own costs in this Court and in the High court.”

13. It would be relevant to refer to yet another judgment



rendered by the Hon'ble Apex Court, recently on 6.5.2020, in the case of ***Punjab National Bank & Others vs. Atmanand Singh & Others***, reported in ***2020 SCC Online SC 433***, paragraph nos. 15 to 24 whereof are reproduced herein below:-

“15. The judgment of the learned single Judge has completely glossed over these crucial aspects and the writ petition has been disposed of in a very casual manner. The Division Bench of the High Court committed the same error in upholding the decision of the learned single Judge. The Division Bench has not even analysed the efficacy of the affidavits filed in support of the stand taken by the appellant-Bank during the pendency of the LPA. It merely reiterates the view taken by the learned single Judge in just two short paragraphs reproduced in paragraph 6 above. It has not analysed the efficacy of the proceedings in Misc. Case No. 4 (DW1) PNB/1989-90, as well as, the certified copy of the proceedings filed in appeal before it, in the context of affidavits of Bank officials and report of the District Magistrate. The Division Bench was also misled by the voluminous documents relied upon by the respondent No. 1 and assumed that the same could not be a figment of imagination or a piece of fiction.

16. Even if the impugned judgments were to be read as a whole, there is no analysis of the relevant documents and in particular, the stand taken by the appellant-Bank expressly denying the existence of the stated agreement



and genuineness thereof, which plea was reinforced from the affidavits of the concerned Bank officials and the report of the District Magistrate. Notably, the District Magistrate in the affidavit filed in compliance of the order dated 18.3.2016 had clearly denied the existence of the stated proceedings for want of contemporaneous official record in that regard. This aspect has not been taken into account by the High Court at all. On facts, therefore, the High Court committed manifest error in disregarding the core jurisdictional issue that the matter on hand involved complex factual aspects, which could not be adjudicated in exercise of writ jurisdiction.

17. The appellant-Bank has rightly invited our attention to the Constitution Bench decision of this Court in Thansingh Nathmal (supra). In paragraph 7, the Court dealt with the scope of jurisdiction of the High Court under Article 226 of the Constitution in the following words:—

*“7. ... The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. **Resort that***



jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.

(emphasis supplied)

Similarly, another Constitution Bench decision in Sukanmal (supra) dealt with the scope of jurisdiction under Article 226 of the Constitution. In paragraph 6 of



the said decision, the Court observed thus:—

“6. On the first point, we are of opinion that though the High Courts have power to pass any appropriate order in the exercise of the powers conferred under Article 226 of the Constitution, such a petition solely praying for the issue of a writ of mandamus directing the State to refund the money is not ordinarily maintainable for the simple reason that a claim for such a refund can always be made in a suit against the authority which had illegally collected the money as a tax. ... We do not find any good reason to extend this principle and therefore hold that no petition for the issue of a writ of mandamus will be normally entertained for the purpose of merely ordering a refund of money to the return of which the petitioner claims a right.”

(emphasis supplied)

And again, in paragraph 9, the Court observed as follows:—

“9. We therefore hold that normally petitions solely praying for the refund of money against the State by a writ of mandamus are not to be entertained. The aggrieved party has the right of going to the civil court for claiming the amount and it is open to the State to raise all possible defences to the claim, defences which cannot, in most cases, be appropriately raised and



considered in the exercise of writ jurisdiction.”

(emphasis supplied)

In Smt. Gunwant Kaur (supra) relied upon by the respondent No. 1, in paragraph 14, the Court observed thus:—

*“14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit in reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. **When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition.** Rejection of a petition in limine will normally be justified, where the High Court is of*



the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons.”

(emphasis supplied)

We restate the above position that when the petition raises questions of fact of complex nature, such as in the present case, which may for their determination require oral and documentary evidence to be produced and proved by the concerned party and also because the relief sought is merely for ordering a refund of money, the High Court should be loath in entertaining such writ petition and instead must relegate the parties to remedy of a civil suit. Had it been a case where material facts referred to in the writ petition are admitted facts or indisputable facts, the High Court may be justified in examining the claim of the writ petitioner on its own merits in accordance with law.

18. In the next reported decision relied upon by the respondent No. 1 in Babubhai (supra), no doubt this Court opined that if need be, it would be open to the High Court to cross-examine the affiants. We may usefully refer to paragraph 10 of the said decision, which reads thus:—



“10. It is not necessary for this case to express an opinion on the point as to whether the various provisions of the Code of Civil Procedure apply to petitions under Article 226 of the Constitution. Section 141 of the Code, to which reference has been made, makes it clear that the provisions of the Code in regard to suits shall be followed in all proceedings in any court of civil jurisdiction as far as it can be made applicable. The words “as far as it can be made applicable” make it clear that, in applying the various provisions of the Code to proceedings other than those of a suit, the court must take into account the nature of those proceedings and the relief sought. The object of Article 226 is to provide a quick and inexpensive remedy to aggrieved parties. Power has consequently been vested in the High Courts to issue to any person or authority, including in appropriate cases any government, within the jurisdiction of the High Court, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. It is plain that if the procedure of a suit had also to be adhered to in the case of writ petitions, the entire purpose of having a quick and inexpensive remedy would be defeated. A writ petition under Article 226, it needs to be emphasised, is essentially different from a suit and it would be incorrect to assimilate and incorporate



*the procedure of a suit into the proceedings of a petition under Article 226. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right of relief, questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is no doubt discretionary, but the discretion must be exercised on sound judicial principles. **When the petition raises complex questions of fact, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute should not appropriately be tried in a writ petition, the High Court may decline to try a petition** (see *Gunwant Kaur v. Bhatinda Municipality* [(1969) 3 SCC 769]. If, however, on consideration of the nature of the controversy, the High Court decides, as in the present case, that it should go into a disputed question of fact and the discretion exercised by the High Court appears to be sound and in conformity with judicial principles, this Court would not interfere in appeal with the order made by the High Court in this respect.”*

(emphasis supplied)

This decision has noticed Smt. Gunwant Kaur (supra),



which had unmistakably held that when the petition raises complex questions of facts, the High Court may decline to try a petition. It is further observed that if on consideration of the nature of the controversy, the High Court decides to go into the disputed questions of fact, it would be free to do so on sound judicial principles. Despite the factual matrix in the present case, the High Court not only ventured to entertain the writ petition, but dealt with the same in a casual manner without adjudicating the disputed questions of fact by taking into account all aspects of the matter. The manner in which the Court disposed of the writ petition, by no stretch of imagination, can qualify the test of discretion having been exercised on sound judicial principles.

19. In Hyderabad Commercials (supra), on which reliance has been placed, it is clear from paragraph 4 of the said decision that the Bank had admitted its mistake and liability, but took a specious plea about the manner in which the transfer was effected. On that stand, the Court proceeded to grant relief to the appellant therein, the account holder. In the present case, however, the concerned officials of the Bank have denied of being party to the stated agreement and have expressly asserted that the said document is forged and fabricated. It is neither a case of admitted liability nor to proceed against the appellant Bank on the basis of indisputable facts.

20. Even the decision in ABL International Ltd. (supra)



will be of no avail to the respondent No. 1. This decision has referred to all the earlier decisions and in paragraph 28, the Court observed as follows:—

*“28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. **The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition.** The Court has imposed upon itself certain restrictions in the exercise of this power. (See Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1]) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction.”*

(emphasis supplied)

21. *For the view that we have taken, it is not necessary*



for us to dilate on the decisions of this Court in Bhinka (supra) and Kaliya (supra), which have dealt with the efficacy and admissibility of certified copies of the relevant documents. Be it noted that these decisions are in reference to the suit/trial in the concerned case, where the documents are required to be proved by the party relying upon it by examining competent witnesses to prove the existence thereof and also their contents.

22. A priori, we have no hesitation in taking the view that in the facts of the present case, the High Court should have been loath to entertain the writ petition filed by the respondent No. 1 and should have relegated the respondent No. 1 to appropriate remedy for adjudication of all contentious issues between the parties.

23. Accordingly, we are inclined to allow this appeal. As a consequence, the impugned decisions of the learned single Judge and the Division Bench are set aside and the writ petition filed by the respondent No. 1 shall stand dismissed with liberty to respondent No. 1 to take recourse to other alternative remedy as may be permissible in law. The same be decided on its own merits in accordance with law uninfluenced by the observations on factual matters made in the impugned judgment and order of the High Court or for that matter, this judgment. In other words, all contentions available to both parties are left open including to proceed against respondent No. 1 as per law, if it is found by the concerned Court/forum that false and incorrect



statement on oath has been made by the respondent No. 1 and that the documents produced by him are forged and fabricated documents.

24. In view of the above, this appeal succeeds. The impugned decisions are set aside and the writ petition filed by the respondent No. 1 being CWJC No. 867/1999 stands dismissed with liberty as aforesaid. There shall be no order as to costs. Pending interlocutory applications, if any, shall stand disposed of.”

14. This Court finds it relevant to refer to a judgment reported in **(1982) 2 SCC 134 (Government of Andhra Pradesh vs. Thummala Krishna Rao & Another)**, paragraph nos. 8 to 10 whereof are reproduced herein below:-

8. It seems to us clear from these provisions that the summary remedy for eviction which is provided for by Section 6 of the Act can be resorted to by the Government only against persons who are in unauthorised occupation of any land which is “the property of the Government”. In regard to property described in sub-sections (1) and (2) of Section 2, there can be no doubt, difficulty or dispute as to the title of the Government and, therefore, in respect of such property, the Government would be free to take recourse to the summary remedy of eviction provided for in Section 6. A person who occupies a part of a public road, street, bridge, the bed of the sea and the like, is in unauthorised



occupation of property which is declared by Section 2 to be the property of the Government and, therefore, it is in public interest to evict him expeditiously, which can only be done by resorting to the summary remedy provided by the Act. But Section 6(1) which confers the power of summary eviction on the Government limits that power to cases in which a person is in unauthorised occupation of a land “for which he is liable to pay assessment under Section 3”. Section 3, in turn, refers to unauthorised occupation of any land “which is the property of the Government”. If there is a bona fide dispute regarding the title of the Government to any property, the Government cannot take a unilateral decision in its own favour that the property belongs to it, and on the basis of such decision take recourse to the summary remedy provided by Section 6 for evicting the person who is in possession of the property under a bona fide claim or title. In the instant case, there is unquestionably a genuine dispute between the State Government and the respondents as to whether the three plots of land were the subject-matter of acquisition proceedings taken by the then Government of Hyderabad and whether the Osmania University, for whose benefit the plots are alleged to have been acquired, had lost title to the property by operation of the law of limitation. The suit filed by the University was dismissed on the ground of limitation, inter alia, since Nawab Habibuddin was found to have encroached on the property more than 12 years before the date of the suit and the University was not in possession of the property at any time within that



period. Having failed in the suit, the University activated the Government to evict the Nawab and his transferees summarily, which seems to us impermissible. The respondents have a bona fide claim to litigate and they cannot be evicted save by the due process of law. The summary remedy prescribed by Section 6 is not the kind of legal process which is suited to an adjudication of complicated questions of title. That procedure is, therefore, not the due process of law for evicting the respondents.

9. The view of the Division Bench that the summary remedy provided for by Section 6 cannot be resorted to unless the alleged encroachment is of “a very recent origin”, cannot be stretched too far. That was also the view taken by the learned Single Judge himself in another case which is reported in Meharunnissa Begum v. State of A.P. [(1970) 1 Andh LT 88] which was affirmed by a Division Bench [Meherunnissa Begum v. Govt. of A.P. AIR 1971 AP 382 : (1971) 1 Andh LT 292 : ILR 1972 AP 44] . It is not the duration, short or long, of encroachment that is conclusive of the question whether the summary remedy prescribed by the Act can be put into operation for evicting a person. What is relevant for the decision of that question is more the nature of the property on which the encroachment is alleged to have been committed and the consideration whether the claim of the occupant is bona fide. Facts which raise a bona fide dispute of title between the Government and the occupant must be adjudicated upon by the ordinary



courts of law. The Government cannot decide such questions unilaterally in its own favour and evict any person summarily on the basis of such decision. But duration of occupation is relevant in the sense that a person who is in occupation of a property openly for an appreciable length of time can be taken, prima facie, to have a bona fide claim to the property requiring an impartial adjudication according to the established procedure of law.

10. The conspectus of facts in the instant case justifies the view that the question as to the title to the three plots cannot appropriately be decided in a summary enquiry contemplated by Sections 6 and 7 of the Act. The long possession of the respondents and their predecessors-in-title of these plots raises a genuine dispute between them and the Government on the question of title, remembering especially that the property, admittedly, belonged originally to the family of Nawab Habibuddin from whom the respondents claim to have purchased it. The question as to whether the title to the property came to be vested in the Government as a result of acquisition and the further question whether the Nawab encroached upon that property thereafter and perfected his title by adverse possession must be decided in a properly constituted suit. Maybe, that the Government may succeed in establishing its title to the property but, until that is done, the respondents cannot be evicted summarily.”



15. Considering the facts and circumstances of the present case and for the reasons mentioned hereinabove in the preceding paragraphs as also taking into account the well settled principle of law laid down by the Hon'ble Apex Court in a catena of decisions, as referred to hereinabove, this Court finds that since the present case involves disputed question of fact as to the right and title of the petitioner over the land in question in as much as the claim of the petitioner regarding ownership of the land in question i.e. Khata no. 197, Plot No. 669 and 677, situated at village Raipur Bindgawan District- Chapra is seriously under dispute as is apparent from the materials available on record and discussed herein above in the preceding paragraphs, the present writ petition is not maintainable, hence, the same stands dismissed.

(Mohit Kumar Shah, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	21.11.2019
Uploading Date	19.08.2020
Transmission Date	NA

