

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.291 of 2021

In
Civil Writ Jurisdiction Case No.8844 of 2020

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1. Nawal Kishor Sureka, S/o-Late Murlidhar Sureka, Resident of Henry Bazar, Loharpatti, Police Station-Motihari Town District-East Champaran, at Present Sureka Sadan-Sutapati, Police Station-Town, District-Muzaffarpur.
 2. Dhruv Prasad Son of Late Kashi Sah Resident of Mohalla-Banjariya, Police Station-Banjariya, District-East Champaran.
 3. Suraj Kumar S/o-Sachidanand Prasad R/o-Khoda Nagar P.S.-Chhtauni, District-East Champaran, Motihari,

... .. Appellant/s

Versus

1. The State of Bihar
2. The Director General of Police, Bihar
3. The District Magistrate, East Champaran, Motihari,
4. The Superintendent of Police, East Champaran, Motihari,
5. The Circle Officer, Sadar, Motihari, East Champaran, (Notified)
6. The Officer Incharge, Sadar Motihari Police Station, East Champaran, Motihari,

... .. Respondent/s

Appearance :

For the Appellant/s : Ms. Mahasweta Chatterjee, Adv.
For the Respondent/s : Mr. Saroj Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 23-06-2022

Heard Ms. Mahasweta Chatterjee, learned advocate for
the appellants and Mr. Saroj Kumar for the State.

The appellants have challenged the order dated 10.03.2021
passed in CWJC No. 8844 of 2020 whereby the learned Single Judge
has refused to issue any direction to the respondents to restore to the
appellants their possession over the two-storey building standing
over plot nos. 474, 472, 475, 447, 458, 459, 466, 470, 461, 462 and



471 which, according to the appellants, is their personal property over which they have the right, title and interest.

The prayer made on behalf of the appellants for restraining the District Magistrate, East Champaran at Motihari from interfering in the said property also has been rejected.

It appears that the appellants rested their claim over the property in question on the basis of registered sale deeds executed in favour of the grand-mother of the appellant no.1 way back in the year 1944. Some of the persons of the locality, relying upon the document titled "*Samarpannama*" dated 08.04.1952, sought a declaration of the aforesaid property as a public/religious trust.

It was the case of the appellants before the learned Single Judge that because of the interference of a local politician, the appellants were forcibly evicted from the premises notwithstanding the fact that Section 144 of the Cr.P.C. proceeding was dropped midway with respect to the property.

Ms. Chatterjee has drawn the attention of this Court to the fact that the learned Single Judge heavily relied upon the pendency of a Title suit bearing T.S. No. 176 of 2020, seeking a declaration that the said premises is a public trust, in which the appellants have been impleaded as defendants. She has further argued that a simultaneous effort was made by Deepak Agarwal and Anil Agarwal to contest the matter before the Bihar State Religious Trust Board with respect to



the declaration of the property as a religious trust and not a private property.

That proceedings also is still pending final adjudication.

In the interregnum, we are of the considered view, no direction could have been issued under Article 226 of the Constitution of India for restoration of possession of the property in favour of the appellants.

For the aforementioned reasons, we do not see any fault-line in the order passed by the learned Single Judge.

In view of the judgments of the Hon'ble Supreme Court in the Union of India & Ors. Vs. Ghaus Mohammad, AIR 1961 SC 1526; D.L.F. Housing Construction (P) Limited Vs. Delhi Municipal Corporation & Ors., AIR 1976 SC 386; State of Rajasthan Vs. Bhawani Singh & Ors., 1993 Supp. (1) SCC 306 and State of Bihar & Ors. Vs. Chandrabanshi Singh, 2015 SCC OnLine Pat 10048, which deprecate passing of any order under the writ jurisdiction in the event of basic facts being disputed and the claim of either of the parties being dependent on complicated questions of law and fact involving/adducing of evidence, we do not intend to interfere with the order impugned.

In all the aforementioned cases, the consistent view of the Supreme Court is that the only right course for the High Court to



follow is to dismiss the writ petition on the preliminary ground, without even entering into the merits of the case.

The Hon’ble Supreme Court in all these cases has sounded a note of caution that not doing so would lead to a perilous and hazardous result, thereby making the issues involved with respect to the respective rights of the parties extremely difficult to be proved.

The learned Single Judge has taken note of all these principles in not acceding to the prayer made on behalf of the appellants before it.

We have not been persuaded by Ms. Chatterjee to interfere with the order passed by the learned Single Judge.

The appeal therefore is dismissed.

The appellants however will be at liberty to have their claims and rights vindicated by approaching the appropriate forum to which right they are entitled.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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