

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5324 of 2018

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Ripusudan Singh S/o Late Jagdeesh Singh resident of Village- Jamapur, P.O.
Jeeradei, P.S. Jeeradei, District Siwan, Bihar.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principle Secretary, Panchayati Raj,
Department, Govt. of Bihar.
2. District Magistrate, Samaharnalay Siwan, District- Siwan, Bihar.
3. Block Development Officer, Block Jiradei, District-Siwan
4. Mukhiya, Vill & Pachayat Jamapur, Block Jiradei, District- Siwan
5. Panchayat Sachiv, Panchayat Jamapur, Block Jiradei, District-Siwan

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ajeet Singh, Advocate
For the State : Mr.Kumar Alok- Sc7

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
CAV JUDGMENT

Date : 31-07-2023

1. The present writ petition has been filed for directing the respondents to remove the Nala constructed illegally upon the raiyati land of the petitioner.

2. The brief facts of the case, according to the petitioner, are that the petitioner had filed a complaint before the Anumandaliya Lok Shikayat Niwaran Padadhikari, Sub-division, Siwan bearing Case No. Anany Sankhya 516110107091600362



dated 07.09.2016 alleging therein that the respondents, especially the Mukhiya of the concerned panchayat had illegally constructed Nala over the raiyati land of the petitioner, whereupon the said complaint was disposed off by an order dated 17.10.2016, directing the petitioner to approach the competent authorities/officials, however, it was recorded in the said order that the land in question is a raiyati land, belonging to the petitioner and the Nala is crossing from behind the house of the petitioner. Thereafter, the petitioner had moved the Deputy Collector-cum-first Appellate Authority, Siwan, who had passed an order dated 31.12.2016, holding that the construction of the Nala, made over the raiyati land of the petitioner is illegal, hence the same should be removed. Nonetheless, no action was taken by the authorities, whereafter the petitioner had approached the District Magistrate, Siwan, but still no action was taken, hence the petitioner has approached this Court for redressal of his aforesaid grievance.



3. *Per contra*, the learned counsel for the respondents has submitted by referring to the counter affidavit filed in the present case that without the consent of the raiyats, no construction work of drain/lane/road can be done, and to the said effect, a guideline has been circulated amongst all the District Magistrates vide letter dated 17.06.2013. It is also submitted that the petitioner has wrongly alleged that drain has been constructed on his raiyati land. In fact, the Block Development Officer, Ziradei, vide letter dated 26.07.2018 directed the Circle Officer, Ziradei to conduct inquiry and measure the land in question, whereafter the Anchal Amin had got the measurement done and submitted his measurement report, vide letter dated 16.08.2018, according to which, the drain in question occupies 1 dhur 18 dhurki land of Survey Plot No.1556 and the petitioner has encroached about 2 dhur area of the said government land. It is also submitted that the said Survey Plot No.1556 is not the raiyati land of the petitioner, rather the same has been



recorded in the R.S.Khatiyani as dihasgit (Lane), which is for common use.

4. At this juncture, the learned counsel for the petitioner has submitted that Survey Plot No.1556 was raiyati/private gali of one Ramlal and widow of late Ramlal had sold the said Plot No.1556, by a registered deed along with other plots to the father of the present petitioner, namely, Late Jagdeesh Singh, hence it is submitted that Nala is admittedly situated over the private raiyati land of the petitioner.

5. This Court, vide order dated 30.08.2022, had directed the District Magistrate, Siwan to conduct an inquiry, seek appropriate documents/record of the case, both from the petitioner as also from the District Authorities and get the land measured so that the Court can be apprised with the factual position prevailing at the ground level. In compliance to the said order dated 30.08.2022, the District Magistrate has held spot inspection on 21.09.2022 along with the Circle Officer, Ziradei, Block Development Officer,



Ziradei, Revenue Karmchari and Anchal Amin, in presence of the petitioner and other villagers, as has been stated in the supplementary counter affidavit filed on behalf of the respondent no.2. It has also been stated that the Circle Officer, Ziradei had produced extract copy of the Khatiyani and as per Khatiyani, Plot No.1556 is dihasgit, which is gali in nature and the said fact has also been admitted by the petitioner in his signed statement dated 22.09.2022, which has been annexed as Annexure-G to the supplementary affidavit, filed on behalf of the respondent no.2. In fact, the District Magistrate, Siwan had also got Plot No.1556 measured by the Anchal Amin on 23.09.2022 in presence of the Circle Officer, Ziradei, Block Development Officer, Ziradei, Revenue Officer, Ziradei, Revenue Karmchari, the petitioner and other villagers, who have all signed the proceedings, whereafter the Anchal Amin had submitted a report dated 23.09.2022 along with tracing map, from which it is clear that the petitioner has made encroachment over 2 dhur



area of plot no.1556. Thus, it is submitted that the ownership claim of the petitioner is incorrect and illegal and without any basis.

6. The respondents have also filed a supplementary counter affidavit, in reply to the rejoinder affidavit and the supplementary rejoinder affidavit filed by the petitioner, wherein it has been stated that the petitioner has falsely taken a stand that the name of one Ramlal is mentioned as tenure holder of Khata No.443, Survey Plot No.1556, inasmuch as the actual fact is that the khatian nowhere mentions the name of Ramlal either as ex-landlord or intermediary or tenure holder, which is apparent from a copy of the khatian placed on record from which it is clear that Babu Kishun Kumar Singh and others were the ex-landlord of Survey Plot No.1556, Khata No.443, which is rent free and in the nature of dihasgit. Thus, it is submitted that it is clear that the said Ramlal had no concern or any right with respect to the land in question. In such view of the matter, the respondents have disputed the title of the



petitioner over the land in question as also the authenticity of the sale deed in question. As far as the order dated 31.12.2016, passed by the Additional Collector (Lok Shikayat), Siwan is concerned, it is stated that the same is not binding on the respondents, inasmuch as the same is an ex parte order and has not taken into consideration the entries of khatiyani. In any view of the matter, it is submitted that the public grievance redressal authority does not have any authority to either direct for removal of an encroachment or decide the issue regarding right, title and interest of any person in a particular piece of land. Thus, it is submitted that the present writ petition is bereft of any merit and moreover, disputed question of facts are involved in the present case, which cannot be adjudicated in a writ jurisdiction under Article 226 of the Constitution of India.

7. Having heard the learned counsel for the parties at length and having perused the materials on record, this Court finds that contesting claims have been put forth by the respective parties and



while the petitioner is claiming his right, title and interest over Survey Plot No.1556, the respondents have amply demonstrated that the said land is dihasgit, which is gali in nature, as is apparent from the khatyan and has also been admitted by the petitioner (Annexure-G to the supplementary counter affidavit filed on behalf of respondent no.2). Thus, it *prima facie* appears that the drain has not been constructed over the private land of the petitioner, but on dihasgit land. Hence, this Court is of the opinion that a bona fide dispute with regard to right, title and interest of the petitioner over the land in question, i.e. Survey Plot No.1556 has arisen and such disputed questions of fact cannot be decided in a writ jurisdiction under Article 226 of the Constitution of India.

8. 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.”

9. It would be relevant to refer to yet another judgment rendered by the Hon’ble Apex Court in the case of **Punjab National Bank & Others vs. Atmanand Singh & Others**, as recently held on 6.5.2020, reported in **2020 SCC Online SC 433**, paragraph nos. 15 to 24 whereof are reproduced hereinbelow:-

“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."

10. Reference be also had 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 hereinbelow:-

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.”

11. Considering the facts and circumstances of the 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 facts as regards the right and title of the petitioner over the land in question, the present writ petition is not maintainable, hence, the same stands dismissed.

(Mohit Kumar Shah, J)

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AFR/NAFR	AFR
CAV DATE	29.11.2022
Uploading Date	31.07.2023
Transmission Date	NA

