

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11124 of 2018

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Nawal Kishore Singh Son of Late Ram Balak Singh, resident of Village-
Tetuwa, P.S. Atri, District- Gaya.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Collector, Gaya, Bihar.
3. The Sub- Divisional Officer, Sadar, Gaya, Bihar.
4. The Land Reforms Deputy Collector, Gaya, Sadar, Bihar.
5. The Land Reforms Deputy Collector, Neemchak, Bathani, Gaya, Bihar.
6. The Circle Officer, Atri Circle, Gaya, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ajay Kumar, Adv.
For the Respondent/s : Mr.Md.Khurshid Alam -AAG 12

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CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT

Date : 19-11-2024

On 29.10.2024, this Court had passed the following
order :-

“None appears for the petitioner.

*2. Learned counsel appearing for
the State has submitted that only on the basis
of Sada Hukumnama petitioner wants
mutation of the land in his favour. It has been
specifically stated in paragraph 15 of the
counter affidavit that State has preferred Title
Appeal No. 92 of 2019 before the District
Judge, Gaya for setting aside the judgment
dated 27.04.2002 and decree dated
02.08.2022, passed by Munsif II, Gaya in*



Title Suit No. 61 of 1996. Learned counsel submits that subject matter of the land in question is sub-judice before the competent Court, and therefore, question of fixation of rent does not arise.

3. Petitioner is directed to submit rejoinder, if any, to the counter affidavit filed on behalf of the State.

4. List this matter on 19.11.2024.

5. It is, however, made clear that in case no one appears on behalf of the petitioner on the next date of hearing, the matter will be decided on the basis of material available on record as the matter is pending consideration for the last six years.”

2. Today also, no one has turned up on behalf of the petitioner.

3. Learned counsel for the State submits that subject matter of land in question is sub-judice before the competent court in title Appeal No. 92 of 2019, as stated in para 15 of the counter affidavit, and as such, the present writ petition is not maintainable and is liable to be dismissed.

4. When there is dispute between the parties with respect to tile over a piece of land, no Court should interfere into the said matter. The Hon'ble Supreme Court in catena of judgments has held that regular suit is appropriate remedy for



settlement of dispute relating to property rights between private persons. The remedy under Article 226 of the Constitution shall not be available except where there is violation of some statutory duty on the part of statutory authority is alleged. It has been held that the High Court cannot allow its constitutional jurisdiction to be used for deciding disputes for which remedies under the general law, civil or criminal, is available. The jurisdiction under Article 226 of the Constitution being special and extraordinary, it should not be exercised casually or lightly on mere asking by the litigant. In this context, the decision of the Hon'ble Supreme Court in the case of ***Sohan Lal Vs. Union of India & Anr.*** reported in ***AIR 1957 SC 529*** and in the case of ***Radhey Shyam & Anr. Vs. Chhabi Nath and Ors***, reported in ***(2015) SCC 423*** are quite relevant.

5. In the case of ***Sohan Lal (supra)***, Hon'ble Supreme Court has observed as under :

“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. In the case of **Radhey Shyam (supra)**, Hon’ble Supreme Court in paragraphs 64 and 65 has observed as under :

“64. However, this Court unfortunately discerns that of late there is growing trend amongst several High Courts to entertain writ petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in case of dispute between landlord and tenant and also in a case of money decree and in various other cases where disputed question of property



are involved, writ courts are entertaining such disputes. In some cases the High Courts, in a routine manner, entertain petitions under Article 227 over such disputes and such petitions are treated as writ petitions.

65. We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ court should not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority.”

7. In the light of the discussion made above, the said aspect cannot be decided in writ jurisdiction and the appropriate remedy, in the facts and circumstances of the case, is before the competent Court. Petitioner has not made out a case. Accordingly, the present writ petition is disposed of as not maintainable.

(Alok Kumar Pandey, J)

mcverma/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.11.2024
Transmission Date	NA

