

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.404 of 2024

In
Civil Writ Jurisdiction Case No.10336 of 2023

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Sudhir Kumar Singh Son of Late Sheo Murat Singh R/o Village- Kulharia,
P.O.- Karmnasa, P.S.- Durgawati, District- Kaimur, Bihar.

... .. Appellant/s

Versus

1. The State of Bihar through Principal Secretary, Land Reforms and Revenue Department, Government of Bihar.
2. The Collector cum District Magistrate, Kaimur, Bhabhua.
3. Deputy Collector Land Reforms, Mohania, Kaimur.
4. The Circle Officer, Durgawati, District- Kaimur.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Shiv Pratap, Advocate
For the Respondent/s : Mr. Md. Khushid Alam, AAG-12

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 21-11-2024

The writ petitioner, who is the appellant approached this Court seeking a certiorari quashing the order dated 20.03.2020 passed by the 2nd respondent, District Magistrate, Kaimur initiating proceedings under Section 87 of the Bihar Tenancy Act, 1885. The learned Single Judge dismissed the writ petition on the ground that there is an alternate remedy available before the Bihar Land Tribunal and left liberty to the appellant to approach the Tribunal within a period of eight weeks; thus declining jurisdiction under Article 226 of the Constitution of



India.

2. The learned Counsel for the appellant contended that there is no remedy before the Tribunal as available under the Bihar Tenancy Act, 1885. It was also contended that the writ petition ought not to have been dismissed for alternate remedy, especially going by the precedents of the Hon'ble Supreme Court as has been referred to in ***Dhani Ram v. Chief Engineer, Rajghat Project, Betwa River Board, 2013 SCC OnLine All 13431.***

3. We have looked at Section 87 of the Bihar Tenancy Act, 1885 which speaks of abandonment. The provision confers power on the landlord to enter into the holding, if the *raiyat* voluntarily abandons his residence without notice to the landlord and without arranging for payment of his rent as it falls due, and ceases to cultivate his holding either by himself or by some other person. The landlord on such entering into the holding also has the right conferred to let the holding to another tenant or cultivate by himself. Sub-Section (2) of Section 87 provides that before the landlord enters into the holding under sub-Section (1), he shall file a notice in the prescribed form in the Collector's office and the Collector shall cause a notice to be published in such manner as the State



Government, by Rule, directs.

4. Under sub-Section (3), when the landlord enters the holding under this provision, the *raiyat* is also given a remedy to file a suit for recovery of possession of the land at any time not later than the expiration of two years or in the case of non-occupancy, six months from the date of publication of the notice. The Court on such a suit being filed has to consider whether the *raiyat* voluntarily abandoned his holding and order recovery of possession on such terms, if any, with respect to compensation to persons injured and payment of arrears of rent as the Court deems just. Hence, though there is no remedy before the Tribunal, necessarily there is a remedy provided before the Civil Court.

5. It is trite that Article 226 of the Constitution of India cannot be invoked when there are disputed questions of fact and an adjudication as to the conflicting *raiyats* are possible only on proper evidence led. Hence, here is a case where it is not a mere question of alternate remedy; but this Court under Article 226 of the Constitution of India being unable to proceed due to the factual disputes involved.

6. The decision of the Allahabad High Court is not applicable on the above reasoning. Further, the said decision



was rendered only in the context of the writ petition against removal from service having been kept pending for nine years and eventually, in the absence of the Counsel, the learned Single Judge dismissed the writ petition on the ground of alternate remedy of appeal. The learned Judges also specifically observed that the petitioner was a gate-man in a project; a poor litigant, who was removed for unauthorized absence of hardly two months.

7. We find absolutely no such extenuating circumstance in the above case. As we noticed, the remedy to approach the Civil Court for recovery of possession is available at any time not later than the expiration of two years from the date on which the landlord enters the holding. In the case of a non-occupancy, the limitation is only six months. The impugned order of the District Magistrate, Kaimur itself is of the year 2020 and the writ petition was filed in the year 2023 without availing the statutory remedy available. Further, the landlord on whose application the proceedings were initiated has not been impleaded in the writ petition.

8. We further find that the writ petition itself was posted before Court on 12.10.2023, when the State prayed for instruction and on the next posting date, i.e., 11.12.2023 the



petitioner’s Counsel sought time. On the next adjourned date of 08.01.2024, the writ petition was dismissed on the submission of an alternate remedy being available. The writ petition was not even admitted.

9. Though we find that the alternate remedy as ordered by the learned Single Judge is not available, there was a statutory remedy which had not been availed and there can be no invocation of Article 226 of the Constitution of India to consider disputed questions of fact.

10. We hence dismiss the appeal.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

Anushka/-

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