

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10166 of 2019

Obaida Khatoon Wife of late Saiyad Gulam Qadir, Resident of Village-
Panhesha, P.S. Nalanda, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Revenue Department, Govt. of Bihar, Patna.
2. The District Magistrate, Nalanda.
3. The Addl. District Magistrate, Revenue, Nalanda.
4. The D.C.L.R. Rajgir, District - Nalanda.
5. The Circle Officer, Silao (Rajgir), District- Nalanda.
6. Aminuzzaman Son of late Anwarul Haque, Resident of Panhesha, P.S. Nalanda, District- Nalanda.
7. S.M.Saraf, Son of late Abu Nasar, Resident of Panhesha, P.S. Nalanda, District- Nalanda.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Kameshwar Singh
For the Respondent/s : Mr.Rishi Raj Sinha (Sc19)

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT

Date : 14-11-2024

In the instant petition, petitioner has prayed for
the following relief(s):-

I. For issuance of an appropriate writ of Certiorari for grant Mutation/Rent Fixation in favour of petitioner on Khata no.297, Plot no.1657.

II. For issuance of an appropriate writ to mutate of said land whose executed the sale- deed.

III. For issuance of a writ of mandamus for direction to set aside the order of A.D.M. Nalanda passed on 12.02.2019 in Appeal



no.2/2016

IV. For issuance of a writ of mandamus for direction to the respondents to allow all other consequential benefits to the petitioner as admissible.

V. For issuance of any other relief/ reliefs as may deem fit and proper and for which the petitioner is entitled.

2. Learned counsel for the petitioner submits that petitioner is the owner of the Plot no. 1657, Khata No. 297, total area 50 decimal and he has applied for fixation of land and filed application before Circle Officer, Silao, Nalanda but the same was rejected. He further submits that petitioner has filed an appeal before D.C.L.R., Rajgir (Nalanda) and the same also rejected. Further, petitioner has approached A.D.M., Nalanda but the claim of the petitioner was rejected with direction that the land in question is a disputed land over which the petitioner and others are claiming their title, so in that situation said matter can be decided by competent court as it is related with title of property in question. He further submits that he has not availed appropriate forum against the order dated 12.09.2019 passed by the learned A.D.M., Nalanda.

3. Learned counsel for the State submits that, though, he has not availed the forum of B.L.T. against the order



dated 12.09.2019 passed by the learned A.D.M., Nalanda. He further submits that from the perusal of material available on record it clearly transpires that there is dispute of title between petitioner and others on the aforesaid land in question.

4. From the perusal of the material available on record, it is crystal clear that there is dispute between the parties with respect to title over the land in question. Petitioner and other parties are also claiming title over the land in question.

5. 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 is 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 are available. The jurisdiction under Article 226 of the Constitution being special and extraordinary and 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 Indian & 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.

6. 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.”

7. 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.”

8. In the light of the discussion made above,



disputed aspect with respect to title over a land cannot be decided in writ jurisdiction. Accordingly, the present writ petition stands disposed of as not maintainable.

9. However, dismissal of writ would not be hurdle for the petitioner to approach appropriate forum for redressal of his grievance within a period of four weeks from the date of receipt of this order.

10. It is needless to mention that the period spent in pursuing the matter before this Court be considered sympathetically while dealing with the aspect of condonation of delay.

(Alok Kumar Pandey, J)

alok/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	14-11-2024.
Transmission Date	N/A

