

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.935 of 2023

In

Civil Writ Jurisdiction Case No.9423 of 2022

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Savitri Devi W/o Sri Bhola Mistri, Residence of at Nahar Par, New Arfabad Colony, Gur Ki Mandi, Dhanuki, Patna, P.O.-Gulzarbagh, P.S.-Alamganj, Patna City, District-Patna, Pin-800007.

... .. Appellant/s

Versus

1. The State of Bihar through Chief Secretary, Govt. of Bihar.
2. The Principal Secretary, Revenue and Land Reform Government of Bihar, Patna.
3. Commissioner, Patna Division, Government of Bihar.
4. The District Magistrate, Patna.
5. Municipal Commissioner, Patna Municipal Corporation, Maurya Lok, Patna, Bihar.
6. Additional Collector Land Reform, Patna.
7. Sub-Divisional Officer, Patna City.
8. Circle Officer, Patna Sadar.
9. Senior Superintendent of Police, Patna.
10. S.H.O. Alamganj, Patna City.
11. Amit Anand, S/o Sri Ramlakhan Mahto, Residence of at Mohalla-New Arfabad Colony, Besides of Nahar, P.O.-Gulzarbagh, P.S.-Alamganj, District-Patna, Pin-800007.
12. Ajay Kumar, S/o Bachchu Mandal, residence of at Gur Ki Mandi, P.S.-Alamganj, P.O.-Gulzarbagh, District-Patna, Pin-800007.
13. Nand Kumar Yadav, S/o Late Subai Yadav, residence of at Mohalla-Navjivan Colony, P.S.-Alamganj, P.O.-Gulzarbagh, District-Patna, Pin-800007.
14. Jira Devi, residence of at Mohalla-New Arfabad Colony, P.S.-Alamganj, P.O.-Gulzarbagh, District-Patna, Pin-800007.
15. Vijendra Sharma, residence of at Mohalla-New Arfabad Colony, P.S.-Alamganj, P.O.-Gulzarbagh, District-Patna, Pin-800007.
16. Ramrati Devi, W/o Akhil Dev Singh, residence of at Mohalla-New Arfabad Colony, P.S.-Alamganj, P.O.-Gulzarbagh, District-Patna, Pin-800007.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. S. Azeem, Advocate
Mr. Arvind Kumar, Advocate

For the Respondent/s : Mr. Md. Khurshid Alam (AAG-12)

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**CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)**

Date : 23-01-2024

The writ petitioner-appellant herein, is aggrieved by the judgment of the learned Single Judge merely permitting her to avail the alternate remedy of an appeal from the order of the Circle Officer, Patna Sadar, Patna dated 19.04.2022. The appellant's contention in the appeal is that there were other prayers; of restoring the demolished house in the property in which the petitioner was alleged to have encroached and due compensation from the Circle Officer.

2. At the outset, we have to notice that the learned Single Judge had disposed of the writ petition without looking into the merits, on the request made by the learned counsel for the petitioner to challenge the order dated 19.04.2022 in an appropriate appeal, which even at that point of time was hit by limitation. The petitioner's counsel made the prayer only since the appeal would have been impeded by the issue of limitation. The learned Single Judge reserved liberty to the petitioner to file an appeal within four weeks, which direction if complied with, the appeal was directed to be disposed of on merits with a reasoned and speaking order, in accordance with law. Hence,



the limitation issue was not to be looked into by the appellate authority.

3. The counsel for the appellant takes objection to the judgment of the learned Single Judge discounting the fact that he had confined the prayer to the appellate remedy being availed of, without the rigor of limitation; before the learned Single Judge.

4. We have also take note of the contentions raised in the writ petition which is repeated in the appeal. The appellant in the writ petition traces the title of the land and contends that after sale deed executed in favour of the appellant there was mutation carried out, with the Municipality. It is also averred that the private respondents, who belong to the forward caste, being inimical to the petitioner; who belongs to an extremely backward caste, has influenced the Circle Officer to carry out the demolition of the building in the property. The demolition was also without notice and is against the order of the Collector is the further submission made. The relief portion itself shows that a title suit is pending.

5. Though allegation of malafide is raised against the Circle Officer impleaded as the 8th respondent, he has not been impleaded in his personal capacity; which is necessary insofar



as finding the malafides and also awarding any compensation as prayed for by the appellant.

6. Further, it is very pertinent that, even according to the appellant, a title suit is pending. It is not stated as to whether there are any interim orders in the title suit, nor is it stated whether the matter has been disposed of as of now. If the appellant establishes the title, then necessarily the appellant would have to seek restoration of the property. If there is any allegation of malafide action leading to eviction from a property and compensation thereof it would have to be agitated in the Civil Court. The question of title and the illegal eviction, including no notice having been given, would require evidence, the adjudication of which the Civil Court would be best suited and not an extraordinary remedy under Article 226 of the Constitution.

7. For all the above reasons, including that the petitioner's counsel before the learned Single Judge having confined the prayer, the appeal stands dismissed. However, if the appellant desires to file an appeal, from the order of the Circle Officer, then necessarily the same shall be done within a period of four weeks from today in which circumstance as directed by the learned Single Judge, there would be a



consideration on merits by a speaking order, in accordance with law.

8. The appeal would stand dismissed with the above reservation.

(K. Vinod Chandran, CJ)

(Rajiv Roy, J)

Sunil/-

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CAV DATE	
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