

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.209 of 2022

Arising Out of PS. Case No.-5 Year-2021 Thana- SIKANDRA District- Jamui

1. Meena Devi, W/o Late Ganga Bhagat, Resident of Village - Sikandra Bazar, Mali Tola, P.S.- Sikandra, Distt.- Jamui.
2. Kanchan Kumari, D/o Late Ganga Bhagat, Resident of Village - Sikandra Bazar, Mali Tola, P.S.- Sikandra, Distt.- Jamui.
3. Pinki Kumari, D/o Late Ganga Bhagat, Resident of Village - Sikandra Bazar, Mali Tola, P.S.- Sikandra, Distt.- Jamui.
4. Rajesh Kumar, S/o Late Ganga Bhagat, Resident of Village - Sikandra Bazar, Mali Tola, P.S.- Sikandra, Distt.- Jamui.
5. Umesh Kumar Bhagat, S/o Late Ganga Bhagat, Resident of Village - Sikandra Bazar, Mali Tola, P.S.- Sikandra, Distt.- Jamui.

... .. Petitioners

Versus

1. The State of Bihar through Superintendent of Police. Bihar
2. Director General of Bihar, Patna. Bihar
3. District Magistrate, Jamui, Distt.- Jamui. Bihar
4. S.P. Jamui, Distt. Jamui. Bihar
5. Officer in charge, Sikandra P.S, Distt.- Jamui. Bihar
6. Gayetri Devi, W/o Late Rajendra Prasad Keshri, Resident of Village - Sikandara, Ward no.03, P.S.- Sikandra, Distt.- Jamui.
7. Vikash Keshari, Son of Rajendra Prasad Keshri, Resident of Village - Sikandara, Ward no.03, P.S.- Sikandra, Distt.- Jamui.
8. Navin Keshari, Son of Rajendra Prasad Keshri, Resident of Village - Sikandara, Ward no.03, P.S.- Sikandra, Distt.- Jamui.
9. Praveen Keshari, Son of Rajendra Prasad Keshri, Resident of Village - Sikandara, Ward no.03, P.S.- Sikandra, Distt.- Jamui.

... .. Respondents

Appearance :

For the Petitioners	:	Mr. Prabhat Ranjan Singh, Advocate
For the Respondent No.6 to 9	:	Dr. Anjani Prasad Singh, Advocate
		Mr. Sunny Kumar, Advocate
For the State	:	Mr. Ajay Kumar, AC to GP-4

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 26-03-2026

The present Criminal Writ Petition has been preferred by
the Petitioners seeking direction to the Official and Private



Respondents to restore their ancestral landed property measuring 1.5 decimal, bearing Khata No. 485, Khesra No.1855, alleging that the Private Respondent Nos. 6 to 9 have forcibly dispossessed them with the connivance of Respondent No.5 herein.

2. The private respondents have appeared after notice and they have filed counter affidavit submitting that they have title to the landed property in question as they have purchased it byway of sale deed, executed by one Chameli Devi in their favour.

3. I heard learned counsel for the Petitioners, learned A.C. to G.P-4 for the State and learned counsel for the private Respondent Nos. 6 to 9.

4. Learned counsel for the Petitioners submits that the Private Respondents have illegally dispossessed them from the land in question with connivance of the Respondent No.5, who is in-charge of the police station, Sikandra, Jamui. Hence, this Court may issue writ of mandamus, directing the private respondents to restore the property to them.

5. However, learned counsel for the State and learned counsel for the private Respondents vehemently oppose the prayer of the Petitioners submitting that the writ petition is



liable to be dismissed in view of the fact that the alleged facts and circumstances constitute a dispute of civil nature, for which the Petitioner have alternative remedy by way of filing appropriate civil suit before the competent Civil Court.

6. I considered the submission advanced by both the parties and perused the material on record.

Availability of Efficacious Alternative Remedy And Entertainability/Maintainability of Writ Petition Under Article 226 Of The Constitution.

7. The question arises, whether the writ petition is maintainable in view of the availability of the efficacious alternative remedy to the Petitioners. Here, it may be pointed out that maintainability and entertainability of a writ petition are distinct concepts. The objection as to maintainability goes to the root of the matter and if such objection is found to be of substance, the Court is rendered incapable of even receiving the lis for adjudication. However, the question of entertainability is entirely within the realm of discretion of the High Court, as writ remedy is discretionary. Writ Petition, despite being maintainable may be not entertained by a High Court for many reasons or relief could even be refused to the Petitioners, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. It may be further pointed out



that availability of efficacious alternative remedy is not an absolute bar to maintainability of a writ petition. However, the Court can still refuse to entertain the writ petition, if the Petitioner has efficacious alternative remedy as held by Hon'ble Supreme Court in **Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer-cum-Assessing Authority and Others** as reported in **(2023) SCC OnLine SC 95**. Relevant paragraph of the judgment reads as follows:

“4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers conferred by article 226 of the Constitution having come across certain orders passed by the High Courts holding writ petitions as "not maintainable" merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to article 329 and ordainments of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the High Court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the High Courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under article 226 that has evolved through judicial precedents is that the High Courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that



mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition "not maintainable". In a long line of decisions, this court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the High Courts, writ remedy being discretionary. A writ petition despite being maintainable may not be entertained by a High Court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a High Court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.

(Emphasis supplied)

8. It has been also held by Hon'ble Supreme Court in **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors.** as reported in **(1998) 8 SCC 1** that power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. The High Court has discretion to entertain or not to entertain a writ petition and the High Court has imposed upon



itself certain restrictions, one of which is that if an effective and efficacious alternative remedy is available to the Petitioner, the High Court would not normally exercise its jurisdiction. However, this restriction is not an absolute bar to maintainability of the writ petition. The High Court can entertain the writ petition in the following three contingencies, namely the writ petition has been filed for enforcement of any of the Fundamental Rights or where there has been any violation of Principle of Natural Justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. The relevant paragraph of the judgments reads as follows:

“14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for “any other purpose”.

15. Under Article 226 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. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the



vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

(Emphasis supplied)

9. In Radha Krishan Industries vs. State of Himachal Pradesh and Others as reported in (2021) 6 SCC 771 Hon’ble Supreme Court has further held as follows after referring to relevant Judicial precedents:

“27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.

27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the



exercise of its writ jurisdiction, such a view would not readily be interfered with.

28. These principles have been consistently upheld by this Court in Chand Ratan v. Durga Prasad, (2003) 5 SCC 399, Babubhai Muljibhai Patel v. Nandlal Khodidas Barot, (1974) 2 SCC 706] and Rajasthan SEB v. Union of India, (2008) 5 SCC 632] among other decisions.”

Present Case

10. I find that there is dispute between the Petitioners and the Private Respondents in regard to the title to the landed property in question. As per the Petitioners, the land in question is their ancestral property and they have been forcibly dispossessed by the private respondents. The Private Respondents are, however, claiming that the land in question has been acquired by them by way of purchase. As such, there is a civil dispute between the parties and the Petitioners have efficacious alternative remedy by way of filing of appropriate civil suit before Competent Civil Court.

11. Accordingly, the present petition is dismissed with the liberty to the Petitioners to file appropriate Civil Suit before Competent Civil Court, if so advised.

(Jitendra Kumar, J.)

Chandan/-

AFR/NAFR	A.F.R.
CAV DATE	N.A
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