

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14677 of 2018

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1. Tejan Singh @ Tej Narain Singh
2. Ram Kumar Singh
3. Birendra Singh All Sons of late Sahdev Singh, Resident of Village-Samadhpora, P.S.-Bahari, Dist.-Darbhanga.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Commissioner, Darbhanga Division, Darbhanga.
3. The Collector, Darbhanga.
4. The Deputy Collector, Land Reforms Sadar Darbhanga at Darbhanga.
5. The Circle Officer, Baheri, Darbhanga.
6. Gajendra Singh
7. Upendra Singh Both Sons of Late Ram Tapeswar Singh, Resident of Village-Baheri, P.S.-Baheri, Dist.-Darbhanga.

... .. Respondent/s

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Acts/Sections/Rules:

- Section 4(h) of the Bihar Land Reforms Act
- Sub section (5) of Section 4 of the Bihar Land Disputes Resolution Act, 2009

Cases referred:

- Sohan Lal Vs. Union of India & Anr. reported in AIR 1957 SC 529
- Shyam & Anr. Vs. Chhabi Nath and Ors, reported in (2015) SCC 423

Writ petition - filed for setting aside orders passed by the Bihar Land Tribunal, Division Commissioner, and DCLR.

Respondents had filed a case before the DCLR for removal of encroachment from the land in question. DCLR directed CO to remove the encroachment. Against the said order of removal of encroachment, present petitioners filed Land Dispute Appeal before the DC which was dismissed by order on the ground of misjoinder of necessary parties. Thereafter, petitioners filed case before the Bihar Land Tribunal, which was rejected by an order by observing that where issues relating to title arise the same would have to be mandatorily closed leaving the same open to the parties to seek remedies before the competent Civil Court.

Held - Both parties are disputing title over the land in question - Where disputed aspect is involved writ petition is not maintainable. (Para 7)

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 extra-ordinary should not be exercised casually or lightly on mere asking by the litigant. (Para 8)

Writ petition is disposed of as not maintainable. (Para 11)

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... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Anil Kumar, Adv.
For the Respondent/s : Mr.Raj Kishore Roy- GP 18

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
Date : 09-01-2025

In the instant writ petition, petitioners have prayed for
the following relief (s) :-

*“I. For setting aside the order dated
7.12.2017 passed by the Ld. Member
(Administration) the Bihar Land Tribunal,
Patna in B.LT. Case no. 480/2017 whereby
and where under the B.L.T. case no.*



480/2017 was said to not maintainable in this tribunal in the light of perused order of Hon'ble apex court in Civil Appeal no. 4726 and 4729- 4739/2017.

II. For getting aside the order dated 16.3.2017 passed by the Division Commissioner, Darbhanga in Land Dispute appeal no. 64 of 2013 affirming the order of the Id. D.C.L.R. Darbhanga dated 19.1.2013 in B.L.D.R. case no. 459/12-13 on the ground of mis-joinder of necessary party which is an error of record.

III. For further setting aside the order dated 19.1.2013 passed by the Id. Deputy Collector Land Reforms, Darbhanga in B.L.D.R. case no. 459/12-13 whereby and where under the Circle Officer Baheri has been directed to remove the encroachment from 6 decimal of land opf Khata no. 708(old), Khesra no. 1130(old), new Khesra no. 1776.”

2. Briefly stated, the facts of the case is that respondent nos. 6 & 7 filed Case No. 459/12-13 before the DCLR, Sadar, Darbhanga for removal of encroachment from the land in question. The DCLR vide order dated 19.01.2013 allowed the case and directed the C.O. to remove the encroachment. Against the said order of removal of encroachment, present petitioners filed Land Dispute Appeal



Case No. 64 of 2013 before the Divisional Commissioner, Darbhanga, which was dismissed by order dated 16.03.2017 on the ground of mis-joinder of necessary parties. Thereafter, petitioners filed B.L.T. Case No. 480 of 2017 before the Bihar Land Tribunal, which was rejected by the order dated 07.12.2017 by observing that with regard to provision of Sub section (5) of Section 4 of the B.L.D..R. Act it was held that where issues relating to title arise the same would have to be mandatory closed leaving the same open to the parties to seek remedies before the competent Civil Court. Being aggrieved by the said order passed by the Tribunal, petitioners have approached this Court by way of wiling the present writ petition.

3. Learned counsel for the petitioners submitted that the 1 acre 48 decimal land of khata no. 708(old), 480(new), plot no. 1130(old) 1776 and 1777(New) of Mauza Samadpur Anchal Baheri, District Darbhanga is the subject matter of this case. Nature of the land in question is Pokhar and is recorded as “Gair Mazarua Aam” in C.S, Khatiyani and in R.S.,Khatiyani it is recorded as “Anabad Sarva Sadharan”. Learned counsel submits that while deciding the appeal of the petitioners, the Commissioner has passed the order that the appeal is dismissed



on the ground of mis-joinder of necessary party as the State of Bihar has not been made party, but the petition of Land Dispute Appeal No. 64 of 2013, as contained in Annexure-8 to the writ petition, indicates that State of Bihar is added as one of the respondents i.e. respondent no.1.

4. By order dated 13.02.2023 notice was directed to be issued to respondent nos. 6 and 7 and it was further directed that during pendency of the application, status quo shall be maintained. Thereafter, respondent nos. 6 & 7 appeared and filed I.A. No. 01 of 2024 complaining that the aforesaid order dated 13.02.2023 is being misused by the petitioners inasmuch as the dispute is with regard to 6 dhurs of land but in the garb of the status quo order, they are disturbing the respondent nos. 6 & 7 with regard to the entire pond which is more than 1 bigha.

5. Learned counsel appearing for the respondent nos. 6 & 7, though the counter affidavit, has submitted that in para 7 it is stated that statement made by the petitioners in para 4 of the writ petition that land of khata no. 708(old), 480(new), plot no. 1130(old) 1776 and 1777(New) of Mauza Samadpur Anchal Baheri is recorded as Gair Mazarua Aam Land in C.S. Khatiyani and in R.S. is not true. In para 8 of the counter affidavit, it is stated that the survey entry in the C.S. Khatiyani was rectified



and corrected by the order of Asst. Settlement Officer dated 03.11.2002 passed in Suit No. 383/106 of 1902 itself. Learned counsel submits that the D.C.L.R. Darbhanga by the order dated 26.03.1995 in the proceeding no. 33/84-85 under Section 4(h) of the Bihar Land Reforms Act put the land in question in the sairat list, but the Collector, Darbhanga by the order dated 12.05.1987 passed in Rev. Case No. 37/05-06 filed by the respondent nos. 6 & 7 set aside the order of the DCLR, Darbhanga dated 26.03.1985 and remanded the matter to the DCLR, Darbhanga to pass a fresh order. The D.C.L.R., Darbhanga in view of the order of the Collector, Darbhanga dropped enquiry under section 4(h) of the Bihar Land Reforms Act and by order dated 28.08.1988 (Annexure-6/E) removed the Pokhar from the Sairat list and affirmed it a nizi pokhar of respondent nos. 6 & 7.

6. Learned counsel for the State submits that I.A. No.02 of 2024 has been filed on behalf of the State in which it is stated that the land in question appertaining to Khesra No. 1130(old)/ 1776 and 1777(New) has been properly measured by the Anchal Amin, Baheri in which it has been found that petitioners have encroached; possessed 6 dhurs of land in question and the land of Khesra No. 1130(old)/ 1776 and 1777(New) has been declared as the Raiyati land of respondent



nos. 6 and 7.

7. Considering the facts and circumstances of the case and the arguments advanced on behalf of both the parties, it is crystal clear that the bone of contention between the parties with respect to title over the land in question. Both parties are disputing title over the land in question. It is well settled that where disputed aspect is involved writ petition is not maintainable.

8. 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 extra-ordinary 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.

9. 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.”

10. 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.”



11. In the light of the discussion made above, the said aspect cannot be decided in writ jurisdiction. Accordingly, the present writ petition stands disposed of as not maintainable. Parties are at liberty to approach the appropriate forum.

12. Pending I.As., if any, stands disposed of.

(Alok Kumar Pandey, J)

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