
(2009) 11 PAT CK 0043
In the Patna High Court

Mahanth Rameshwar Das Tyagi		APPELLANT
	Vs	
The Bank of India and Others		RESPONDENT

Date of Decision : 26-11-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 1 PLJR 502

Hon'ble Judges : Samarendra Pratap Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Samarendra Pratap Singh, J.—Heard the learned Counsel for the petitioner, Bank of India and the intervenor respondent.

2. In the instant application, the petitioner prays for directing the respondent Bank of India to honour the agreement and to pay the rent of the premises of the Ram Janki Mandir which is in the district of Siwan to him. He has also prayed for quashing of Annexure-8 whereby the Senior Branch Manager, Bank of India, refused to accept the demand of the petitioner to make payment of monthly rent to it and in such circumstance he is depositing the rent in its Esc. Account. Late Raja Ram Kishore Prasad Narayan Singh of Maksudpur Quila had properties in the different districts of State of Bihar including Gaya and Siwan. He constructed a Ram Janki Temple in village-Chainpur in the district of Siwan on Plot No. 1370 pertaining to Khata No. 862. Subsequently he donated the entire land of the aforesaid plot in favour of Ram Janki Mandir. In the revisional survey khatian the aforesaid land stands in favour of Ram Janki Mandir and its Pujari, Saklu Das @ Narayan Das claims to be chela who had declared him as his successor in his life itself.

3. The petitioner states that though the land was donated in favour of Ram Janki Mandir some of the heirs of late Raja Ram Kishore Prasad Narayan Singh started alienating the land to different persons. He states that a Title Suit bearing T.

section No. 202/84 was filed by one of the purchasers of the land from late J.K.P.N. Singh who happened to be the son of one of the daughters of late Raja Ram Kishore Prasad Narayan Singh. The petitioner states that the injunction petition filed by the plaintiffs in the aforesaid Title Suit No. 202/84 was rejected. A copy of the order of Munsif-2, Siwan in T.S. No. 202/84 is annexed as Annexure-2.

4. Learned Counsel submits that while rejecting the injunction petition the trial court held that the petitioner was in possession. He further submits that another title suit bearing T.S. No. 368/90 was filed by one Pasupati Singh who is also a purchaser from late J.K.P.N. Singh. In the aforesaid T.S. No. 368/90 the Bank of India was also a party and the plaintiffs had sought injunction restraining the bank from entering into the agreement with the petitioner. Learned Counsel submits that the injunction petition was rejected. He submits that the Bank pursuant to the agreement entered into in the year 1990 had paid rent itself. He submits that on application of intervenor respondent the Bank had stopped making payment by the impugned communication dated 21.3.2007 contained in Annexure-8.

5. Learned Counsel for the Bank, Mr. Ajay Kumar Sinha, states that intervenor respondent filed an application giving reference to order dated 30.4.2001 stating therein that he has been appointed as Shebait for Mata Bhagwati in Title Suit No. 171/2000/150/2000.

6. Learned Counsel for the petitioner states that in the aforesaid title suit, the order passed by the learned trial court related to the properties in the district of Gaya and not related to the properties at Chainpur. He further submits that by way of amendment in 2005 the entire property including the one mentioned in Schedule-IV which also covers the land of Ram Janki Mandir in Siwan has been added in the relief portion. Thus, he submits that the order of the Munsif would still be limited to property mentioned in Schedule-1 to III which do not cover the land of Ram Janki Mandir in the village-Chainpur in the district of Siwan.

7. Mr. Umesh Prasad Singh, learned Senior Counsel appearing for the respondents states that writ Court would initially restrain from interfering with the matters falling under the private law domain particularly one of enforcing agreement between the parties. Learned Counsel for respondent No. 5 relied upon a decision in the case of Dwarka Prasad Agarwal (D) by LRS. and Anr. v. B.D. Agarwal and Ors. reported in 2003 (6) SCC 23. By making reference to para 28 of the aforesaid Judgment, he submits that the High Court while exercising power of judicial review essentially looks into illegality, irrationality and procedural impropriety of an order passed by the State or a statutory authority. He further submits that remedy under 226 of the Constitution of India cannot be invoked for resolution of a private law dispute as contradistinguished from a dispute involving public law character. It would be useful to quote para 28 of the aforesaid Judgment which is reproduced hereinbelow:

A writ petition is filed in public law remedy. The High Court while exercising a power of judicial review is Concerned with illegality, irrationality and procedural Impropriety of an order passed by the State or a Statutory authority. Remedy under Article 226 of the Constitution of India cannot be invoked for resolution of a private law dispute as contradistinguished from a dispute involving public law character. It is also well settled that a writ remedy is not available for resolution of a property or a title dispute. Indisputably, a large number of private disputes between the parties and in particular the question as to whether any deed of transfer was effected in favour of M/s Writers & Publishers Pvt. Ltd. as also whether a partition or a family settlement was arrived at or not, were pending adjudication before the civil court of competent jurisdiction. The reliefs sought for in the writ petition primarily revolved around the order of authentication of the declaration made by one of the respondents in terms of the provisions of the said Act. The writ petition, in the factual matrix involved in the matter, could have been held to be maintainable only for that purpose and no other.

8. The petitioner seeks enforcement of agreement of payment of rent vis ? a - vis respondent bank mainly as an injunction petition filed by one of the purchasers of some portion of aforesaid premises, restraining the bank from enforcing the agreement with petitioner was rejected in T.S. No. 368/90. In the aforesaid T.S. No. 368/90 respondent No. 5 was not a party. The rejection of the injunction petition of a private party could in no way have the effect of enforcing the bank to honour the agreement, if it was not willing to honour the same, for any valid ground.

9. It is also not in dispute that a suit was filed on behalf of Mata Bhagwati through one Ajay Singh claiming as Shevait bearing T.S. No. 171 of 2000. In the aforesaid suit the Respondent No. 5 was made Shevait in respect of the property mentioned in Schedule?1 to 3. In fact, initially the relief was claimed in respect of the property mentioned in Schedule-1 to 3 which did not cover the property which is subject matter of this writ application.

10. Nevertheless this Court would refrain from issuing any direction for enforcing the agreement in writ jurisdiction under Article 226 of the Constitution as it falls in private law domain.

11. In the back drop of the aforesaid discussions this Court is of the view that the petitioner ought to have taken resort to other remedy available under a law including moving an application under B.B.C. Act or filing a suit for specific performance for redressal of his grievance instead of moving this Court in writ jurisdiction.

12. With the aforesaid liberty this writ application stands dismissed.