
(2021) 03 PAT CK 0100

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 8844 Of 2020

Nawal Kishore Sureka And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 10-03-2021

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 144
Constitution Of India, 1950 — Article 226

Citation : (2021) 03 PAT CK 0100

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Mahasweta Chatterjee, Nasrul Hoda Khan

Final Decision : Dismissed

Judgement

1. The petitioners are seeking a direction to the State respondents to restore their possession over a two-storey building standing over plot no. 474, 472, 475, 447, 458, 459, 466, 470, 461, 462 and 471 which according to them, is their personal property over which they have right, title and interest. Further, they are seeking an order from this Court restraining the District Magistrate, East Champaran at Motihari from interfering with the said property except in accordance with law.

2. It is their case that the aforesaid plots appertaining to Khata No. 122 was transferred in the name of one Manbhari Kuar, the grandmother of petitioner no. 1, by one Maulvi Mahmood Alam and Md. Safiruddin through registered sale deeds no. 1700 and 1701 dated 12.02.2014. The land was mutated in her name and she started paying rent, which was paid up to the year 2020-21. A land possession certificate was also issued in her name by the Circle Officer, Sadar, Motihari, East Champaran. After the death of Manbhari Kuar in 1948, father of petitioner no. 1 came into possession over the plots and in 1965, he constructed a two-storey building over the plots, which he would rent for seminars and marriages etc. The father of petitioner no. 1 (Murlidhar Sureka) died in 1978

whereafter petitioner no. 1 took over the said property.

3. It is the petitioners' specific case that no Dharamshala ever existed over the said plots and the building is still known as Marwari Vivah Bhawan.

4. To strengthen their case, the petitioners have asserted that the writ application was filed before this Court giving rise to C.W.J.C. No. 8048 of 2015 for closure of all the marriage halls, as they were causing pollution in the locality. Petitioner no. 1 was impleaded as respondent no. 24 in the said writ application. Subsequently by an order dated 06.04.2016, the Bihar State Pollution Control Board had asked the petitioner to close the marriage halls with immediate effect and the writ petition was disposed of by an order dated 11.04.2016 recording therein that no marriage halls should be operated within the municipal limits of Motihari, Nagar Parishad except in accordance with law. The marriage hall is closed since 2016.

5. Further, according to the petitioners, a registered rent agreement was entered into between petitioner no. 1 and some tenants including petitioners no. 2 and 3 on 28.12.2016 at monthly rental of Rs. 10,000/- for a period of 11 months. After expiry of the said agreement, the petitioner no. 1 executed another rent agreement on 20.11.2019 in favour of petitioners no. 2 and 3 for a period up to 27.10.2020 at the rate of Rs. 11,000/- per month and thus petitioners no. 2 and 3 remained in possession till 30.07.2020. Besides, it is further their case, that petitioner no. 2 was running a Jewellery shop, for which he was using the premises in question for manufacturing ornaments whereas petitioner no. 3 was residing in the house with his family and children.

6. Later one Deepak Agarwal and Anil Agarwal filed a petition claiming the premises to be a Dharamshala and a public trust on the basis of unregistered Samarpannama dated 08.04.1952 allegedly executed by said Manbhari Kuar whereby the premises was donated to the Marwari Samaj. They questioned the authority of petitioner no. 1 to let out the said property. It is the petitioners' case that the police upon enquiry had concluded that the property belonged to the petitioner and by an order dated 11.04.2019, a proceeding initiated under Section 144 of the Criminal Procedure Code was dropped by Sub-Divisional Officer, Sadar, Motihari. It has further been asserted that a title suit has been filed by the said Deepak Kumar registered as Title Suit No. 176 of 2020 on 03.07.2020, in which, all the three persons are defendants, seeking a declaration that the said premises is a public trust. The petitioners have alleged that under the influence of the said plaintiff Deepak Kumar, a local MLA, who is a Minister in the State Government, requested the Chief Minister of Bihar to get the said Dharamshala free of any encroachment and at the same time he asked the District Magistrate to get the Dharamshala vacated. It has been asserted in the writ petition that on 30.07.2020, the Circle Officer accompanying police force provided by Motihari, Sadar Police Station came to the premises and threw out the belonging of the petitioners on road. The Minister has allegedly written a letter to the Chairman of the Bihar State Board of Religious Trust (hereinafter

referred to as 'the Board') for constitution of a committee. One of the plaintiffs of the Title Suit has filed a petition before the Board, concealing the fact regarding pendency of the Title Suit. It has been stated that the Chairman of the Board has declared the said Manbhari Kuar Dharamshala, as public trust and has directed for completing all the formalities within two days for getting the Dharamshala registered with Bihar State Board of Religious Trust Board.

7. Ms. Mahasweta Chatterjee, learned counsel appearing on behalf of the petitioners with her usual vehemence has argued that it is an example of total high handedness on the part of the local administration whereby the petitioners were forcibly thrown out of the premises, which they were legally occupying since long. She has contended that no procedure at all was followed before throwing the petitioners out of the premises. She has argued that the petitioners are in possession of the documents in support of their respective claims to own and occupy the premises in question.

8. Md. Nasrul Hoda Khan, learned SC-1 representing the respondents while opposing the reliefs sought for in the present writ application has submitted that the petitioners' claim of title and right to occupy the premises in question, cannot be adjudicated upon in a writ proceeding under Article 226 of the Constitution of India, in the light of law laid down by the Supreme Court and this Court in numerous cases.

9. As is clear from the pleadings in the writ application itself that a suit in respect of the said property is pending before a Court of competent jurisdiction asserting therein that the said Manbhari Kuar had executed a Samarpannama on 08.04.1952 for the premises to be used by public as Dharamshala and a building was constructed over the land with the donations given by the public. The title of petitioner no. 1 over the premises has been completely disputed. In the aforesaid background, one of the reliefs sought for in the suit is for declaration that the premises in question is a public trust for use by the general public and that the petitioner no. 1 did not have any authority to enter into any lease agreement with petitioners no. 2 and 3. The petitioners are parties in the said suit.

10. On perusal of the order dated 11.04.2019 passed by the Sub-Divisional Officer, Sadar, Motihari in the proceeding under Section 144 of the Cr.P.C., it transpires that while dropping the proceeding, the Sub-Divisional Officer has specifically recorded that the dispute between the parties before him concerns title in respect of the premises in question, which could not be resolved in the proceeding before him. He, accordingly, opined that the parties should approach competent Court for declaration of title. It has been averred in the writ petition itself that the Chairman of the Board has already declared the premises in question as a public trust with further direction to complete the formalities for getting Dharamshala registered with the Board by an order dated 04.08.2020.

11. It is to be noted that Ms. Mahashweta Chatterjee has vehemently argued that this Court, on the basis of photostat copies of the documents brought on

record, may decide the question, as to whether, the petitioner no. 1 has title over the property or not and whether the petitioners no. 2 and 3 have been unlawfully thrown out of the premises in question.

12. In my opinion, since it has been repeatedly held in judicial pronouncements that a proceeding under Article 226 of the Constitution of India is not a correct forum for adjudication of disputes relating to title, no relief, as sought for by the petitioners in the present case can be granted. This is because the relief, which the petitioners are seeking, cannot be granted without recording a finding of fact that the petitioners were in possession over the premises in question at the relevant point of time, as asserted in the writ application. Further, this Court in the present proceeding cannot record a finding of title of petitioner no. 1 over the said premises. Apparently, there exists dispute in respect of title which is evident from the pleadings on record inasmuch as a suit is pending and the Board has already declared the premises to be a public trust.

13. The Supreme Court in case of *Union of India and Others v. Ghaus Mohammad* (AIR 1961 SC 1526) has held in paragraph 7 as under:-

"7. The question whether the respondent is a foreigner is a question of fact on which there is a great deal of dispute which would require a detailed examination of evidence. A proceeding under Article 226 of the Constitution would not be appropriate for a decision of the question. In our view, this question is best decided by a suit and to this course neither party seems to have any serious objection. As we propose to leave the respondent free to file such a suit if he is so advised, we have not dealt with the evidence on the record on the question of the respondent's nationality so as not to prejudice any proceeding that may be brought in the future."

14. It would be beneficial to note another decision of the Supreme Court in case of *D.L.F. Housing Construction (P) Limited v. Delhi Municipal Corporation and Others* (AIR 1976 SC 386) holding as under in paragraph 20:-

"20. In our opinion, in a case where the basic facts are disputed, and complicated questions of law and fact depending on evidence are involved the writ court is not the proper forum for seeking relief. The right course for the High Court to follow was to dismiss the writ petition on this preliminary ground, without entering upon the merits of the case. In the absence of firm and adequate factual foundation, it was hazardous to embark upon a determination of the points involved. On this short ground while setting aside the findings of the High Court, we would dismiss both the writ petition and the appeal with costs. The appellants may, if so advised, seek their remedy by a regular suit."

15. In case of *State of Rajasthan v. Bhawani Singh and Others* reported in 1993 Supp (1) SCC 306, the Supreme Court has held in no uncertain terms that disputed questions relating to title cannot be satisfactorily gone into or adjudicated upon in a writ proceeding. Referring to the aforesaid pronouncements of the Supreme Court, a Division Bench of this Court in its

decision in case of State of Bihar and Others v. Chandrabanshi Singh reported in 2015 SCC OnLine Pat 10048 has held that disputed questions of fact relating to title can be proved only in a proper suit and not in a proceeding under Article 226 of the Constitution of India.

16. For the aforesaid reasons, I do not find any merit in this application. This writ application is accordingly dismissed.

17. It is made clear that I have not gone into the merit of the claims of these petitioners in respect of their title or occupation in respect of the premises in question and, therefore, any observation made in the present order should not be treated as an opinion on the merit of respective claims of the parties. The petitioners shall be at liberty to approach appropriate forum for adjudication of their claims in appropriate proceeding in accordance with law.