
(1998) 07 PAT CK 0053

In the Patna High Court

Case No : Civ. Writ Juris. Case No. 1030 of 1998

Prahlad Pandey and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 17-07-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1999 Patna 29 : (1998) 3 BLJR 2122

Hon'ble Judges : B.M. Lal, C.J.;S.K. Singh, J

Bench : Division Bench

Advocate : S.S. Dwivedi, for the Appellant; Ganga Prasad Rao, Add. A.G., Shraavan Kumar and R.N. Singh, for the Respondent

Final Decision : Dismissed

Judgement

B.M. Lal, C.J.—By this writ petition under Article 226 of the Constitution of India, the petitioners who have not been able to get adjudication over the right of the occupation in respect of the disputed shops in Title Suit No. 179 of 1992 filed before the learned 2nd Munsif, Bhagalpur, for declaration and injunction and the same has been withdrawn on 16-1 -98 by themselves, have now switched on to avail of the discretionary remedy under Article 226 of the Constitution and in this way playing second inning.

2. On the same set of facts this Court in L.P.A. No. 1301 of 1996 (Sachidanand Roy and Ors. v. The State of Bihar and others) and other analogous appeals arising out of the order passed in C.W.J.C. No. 9436 of 1996 (Abhay Kumar Pandey and others v. The State of Bihar and others) and other analogous writ petitions, decided on 12-8-1997 allowing the L.P.A.'s and dismissing the writ petitions, held that since Title Suit No. 179 of 1992 is pending before the Munsifs Court at Bhagalpur, the jurisdiction under Article 226 of the Constitution of India can not be resorted to once having elected the forum and filed the Civil Suit.

3. In the above referred L.P.As. vide para 5 of the judgment this Court observed

that the pleadings as set out by the petitioners in the plaint and repudiated by the respondent Bihar State Financial Corporation and others in respect of tenancy right of the petitioners over the disputed shops in question appeared to be a "disputed question of fact" which cannot be gone into by the writ Court particularly where the petitioners have elected a forum and filed the Suit. Even in an application for grant of temporary injunction no prima facie case, balance of convenience in favour of the petitioners and further in the event of dismissing the application for injunction no irreparable injury to be caused to the petitioner was found. Despite that after withdrawing the Suit on 16-1-98 this writ petition is filed as if Article 226 of the Constitution of India gives a vested right to the litigant.

4. To dispose of this petition, it is necessary to give few facts: Bihar State Financial Corporation advanced a loan to M/s. Hotel Nilanjas, Bhagalpur, but the loan amount could not be repaid according to the terms and conditions of the agreement. Therefore, the Financial Corporation initiated a proceeding u/s 29 of the State Financial Corporation Act, 1951 (hereinafter to be referred to as the Act) against M/s. Hotel Nilanjas, Bhagalpur, and took over possession of the said unit. The petitioners claimed that they are tenants in the premises of M/s, Hotel Nilanjas, Bhagalpur.

5. Sachidanand Roy, respondent No. 8 and others, who have also been arrayed as respondents in this petition, submitted tenders for the said unit and (their tenders being the highest amongst the tenderers, the sale of the mortgaged assets of the said unit M/s. Hotel Nilanjas was settled in their favour for an amount of Rs. 14,11,238/90, out of which a substantial amount to the tune of Rs. 8,32,018/- was paid and the balance amount was treated as term loan to be paid in instalment to the Financial Corporation.

6. The case as set out by the Financial Corporation while filing their counter affidavit in C.W.J.C. No. 9436 of 1996 and other analogous writ petitions is that after taking possession from the occupants i.e. present petitioners and others, the same was handed over to respondent No. 8 Sachidanand Roy and others when their tender was accepted, deal was finalised and also agreement was arrived at, by that time the present petitioners Pralad Pandey, and others did not claim any tenancy right. This pleading has been taken into consideration vide para 5 of the judgment in L.P.A. No. 1301 of 1996 and other analogous L.P. As. On that basis this Court held that a "disputed question of fact" is involved which cannot be gone into by the Writ Court and since the suit is pending, therefore, the judgment passed in C.W.J.C. No. 9436 of 1996 and analogous writ petitions has been set aside in the above referred Letters Patent Appeals by judgment dated 12-8-97.

7. From the memo of the writ petition it is borne out that attempt was made to secure injunction even from the Appellate Court and also to expedite the hearing of the Civil Suit and on failure in their attempt, an application was moved on 16-1-98 for the withdrawal of the suit and the same was allowed and after the

withdrawal of the suit the petitioners have resorted to this discretionary remedy under Article 226 of the Constitution and that is how the petitioners for the second time have approached this Court in the writ jurisdiction.

8. The scope of Article 226 of the Constitution is well settled. Article 226 of the Constitution of India does not confer any vested guaranteed right in favour of the litigant to move the High Court, therefore, the petition under Article 226 of the Constitution can not be filed as of right. Though the prerogative powers vested in the High Court under Article 226 of the Constitution are plenary in nature but it does not lay down any specific direction that when or at whose instance or under what circumstances the High Court will exercise those powers; but all the same it affords an extraordinary jurisdiction for ventilating amongst others, the grievances arising out of infraction of law of the land with a view to seek redress and thus for every wrong for its redressal remedy and forum are provided and normally only after exhausting all remedies available in law, as a last resort remedy under Article 226 of the Constitution can be invoked. Therefore, no doubt an aggrieved person can approach the High Court invoking Article 226 of the Constitution for seeking appropriate relief and it is open to the Court in the exercise of its discretion to grant relief applying the above parameter and once on the basis of the above criteria the petitioners are denied relief that "disputed question of fact" is involved and the same can not be gone into and adjudicated upon in writ jurisdiction, it does not remain open for the litigant to approach the writ court repeatedly and, in our view, repeatedly approaching the writ court indeed amounts to abusing the process of the Court.

9. It is also not that the petitioners have shown that they are possessed of some legal right by virtue of which it can be said that any wrong or injury is likely to be caused to them affecting their tenancy right. At the cost of repetition again we reiterate that in L.P.A. once a finding is given that a "disputed question of fact" is involved and besides this the petitioners have not proved any semblance of tenancy right in their favour retaining possession as tenant of the suit premises, how discretionary jurisdiction can be invoked in their favour. "

10. In AIR 1997 993 (SC) it has been held that where a disputed question of fact is involved such petition is to be dismissed at the threshold. Similarly in *Sri Ramdas Motor Transport Ltd. and Others Vs. Tadi Adhinarayana Reddy and Others*, it has been held that where forum is available for consideration of grievances, resort of writ petition would not be appropriate.

11. It is submitted that after the withdrawal of the suit, the petitioners have no remedy. Surprisingly enough, who is responsible for creating this situation. Is it not that the petitioners themselves have withdrawn the suit and they themselves are responsible for the same. Even if the hearing of their application or the hearing of the suit was not expedited by the learned Munsif, the petitioners indeed had a remedy to approach this Court only to that extent so as to get a direction for expediting the hearing of the suit at the earliest.

12. The founding father have enacted Article 227 of the Constitution for the purpose of general superintendence over all the Courts and Tribunals with a duty to keep them within the bounds of their authority and to see that what their duty requires and what they do in a legal manner and also for the purpose to make the High Court custodian of all justice within the territorial limit of its jurisdiction so that administration of justice is met out properly, fairly by the Courts and Tribunals under the High Court.

13. No doubt High Court's powers of superintendence primarily is under Article 115 of the CPC but this provision only can be exercised where the subordinate Courts decides the list. But without decision if a matter is kept pending for days together and months together indeed resort to the provision of Article 227 can be made and thus Article 227 also confers a supervisory jurisdiction over the subordinate Courts and Tribunals in the State and, therefore, for such limited relief in appropriate cases the Writ Court can issue direction. Thus even at this stage this Court can issue direction but our difficulty is this that the suit itself has been withdrawn on 16-1-98.

14. Learned counsel made endeavour to show that it is a case of high-handedness on the part of the respondents and so the Writ Court should not lag behind in passing the appropriate order or orders. This submission has no two opinion that where a case of high handedness is brought to the notice of the Court, the Writ Court does not lag behind in invoking its jurisdiction. But we have already expressed in the preceding paragraph that the petitioners have failed to establish any semblance of tenancy right in their favour and that is why the learned Munsif did not pass any injunction order in favour of the petitioners restraining the respondents. This ex facie establishes that the petitioners are not at all in possession so the question of high handedness on the part of the respondents does not arise and, therefore, jurisdiction of Writ Court cannot be invoked.

15. Repeatedly invoking the writ jurisdiction by filing petition after petition no litigant has a right to unlimited drought on the Court time and public money in order to get his affairs settled in the manner as he wishes. Easy access to justice should not be misused as a licence to file misconceived or frivolous petition. See the decision in the case of Dr. Buddhi Kota Subbarao Vs. K.Parasaran and others, .

16. This Court is of the opinion that in such cases where apparently it appears that the petitioners are abusing the process of the Court, heavy cost is to be imposed. But at times the Court refrains from doing so considering the adverse reflection on the part of the council representing the party concerned and this compels this Court to stay hands in imposing cost. 17. In view of foregoing discussions, this petition fails and is dismissed.

S.K. Singh, J.

18. I agree