

(2015) 02 PAT CK 0144

In the Patna High Court

Case No : Letters Patent Appeal No.1157 of 2014 in Civil Writ Jurisdiction Case No. 9821 of 2013

State of Bihar

APPELLANT

Vs

Shrawan Kumar Thapa

RESPONDENT

Date of Decision : 11-02-2015

Acts Referred:

Citation : (2015) 1 BBCJ 612 : (2015) 2 BLJud 48

Hon'ble Judges : Iqbal Ahmed Ansari and Mr. Chakradhari Sharan Singh, JJ.

Bench : Division Bench

Advocate : Mr. Vivek Prasad, GP 18 and Mr. Sanjay Kuamr Ojha, AC to GP 18, for the Appellants; Mr. Naresh Chandra Verma and Mr. Ram Kumar Singh, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Mr. Chakradhari Sharan Singh, J.—The State of Bihar and its officials are appellants in the present appeal under Clause 10 of Letters Patent of this court as they are aggrieved by an order dated 29.10.2013 passed by learned single Judge in CWJC No. 9821 of 2013 (Ram Bahadur Thapa v. the State of Bihar & Ors).

2. By the order under appeal, learned single Judge, exercising writ jurisdiction under Article 226 of the Constitution of India, has directed the Commandant, Home Guard, Central Training Institute, Anandpur Camp, Bihta, Patna (appellant No.3) to construct their boundary wall on the land across the road, sparing the road shown as a public road, in the Revisional Survey map prepared in the year 2009. Learned single Judge has also restrained the appellants from blocking the free access to the sole respondent, who was the writ petitioner, to the road north of his plot. Learned single Judge has further ordered that if any construction was already made by the appellants obstructing thorough passage from respondent's land to the road, the same shall have to be removed by the appellants forthwith and if they do not remove it, the respondent would be free to demolish the

same. The fact as to whether the said land, north to the respondent's plot is a public road or it belongs to the Central Training Institute of the Bihar Home Guards, Anandpur Camp, Bihta, being used as internal road is in dispute.

3. We have heard, Mr. Vivek Prasad, learned Counsel for the appellants, and Mr. Ram Kumar Singh, learned counsel, for the sole respondent, at length.

4. The original petitioner, Ram Bahadur Thapa, who filed CWJC No. 9821 of 2013, was impleaded as sole respondent in the present Letters Patent Appeal. However, he died after disposal of CWJC No. No. 9821 of 2013 on 14.01.2013. I.A. No. 7730 of 2014 has been filed for substitution of name of legal heir of Late Ram Bahadur Thapa. The legal heir of Late Ram Bahadur Thapa has entered appearance by way of filing vakalatnama. I. A. No. 7730 of 2014, seeking substitution of sole legal heir of Late Ram Bahadur Thapa, is allowed. Let name of Late Ram Bahadur Thapa be treated to have been struck off from the cause title and name of his legal heir, Shrawan Kumar Thapa, be substituted. This is to be noted that a counter affidavit has also been filed on behalf of substituted respondent.

5. With the consent of learned counsel appearing for the parties including learned counsel for substituted respondent, this appeal has been heard on merits and is being disposed of at this stage itself.

6. Late Ram Bahadur Thapa had preferred the aforementioned writ application, giving rise to CWJC No. 9821 of 2013 under Article 226 of the Constitution of India, seeking a direction to the appellant Nos. 2 and 3 herein not to block the only entrance road of the petitioner's home, standing over plot No. 2169, Khata No. 366 of village Anandpur under Bihta Anchal of Patna district, on the ground that he was using the said road for decades. He claimed, in the writ application, that he was appointed as Constable (Band Party) in the Bihar Home Guards at the said Anandpur Camp, Bihta, and he superannuated, on 31.07.1989, holding the rank of Havildar. According to him, he had purchased 11 decimals of land of plot No. 2169 under Khata No. 367 of village Anandpur, on 25.02.2003, through two registered sale deeds and got his name mutated, accordingly, in the circle office and has been paying rent to the State of Bihar. He immediately, thereafter, constructed his residential house over the said plot and has been using road known as Anandpur Camp Road for his ingress and egress from the house, which is on the north of the house. He took a plea that the sale deeds would also show northern boundary as road. With a grievance that the appellant No.3 ordered for construction of a pucca compound wall and despite petitioner's objection, he got completed construction of the said wall in front of entrance gate of the petitioner, the petitioner approached this court by filing the above mentioned CWJC No. 9821 of 2013. He brought on record copies of registered deeds, dated 25.02.2003, as noted above, and Revisional Survey Map in support of his plea that the land over which the appellants were raising wall was, in fact, a public road.

7. A counter affidavit was filed, on behalf of the appellants, in the said writ proceeding stating therein that the road, in question, belonged to Central Training Institute of Bihar Home Guards, Anandpur Camp, Bihta, and asserted, at paragraph 13 of the said counter affidavit, that internal road of the Institute was being labeled as a public road by the petitioner, wrongly, in the writ application. The appellants also took the plea in the writ proceedings that the said road has been described as "Home Guard ka Sadak" which indicated that the road was not a public road, but was the internal road for the Institute of Home Guards at Anandpur Camp, Bihta.

8. Mr. Vivek Prasad, learned Counsel, appearing on behalf of the appellants, referring to the order under appeal, has contended that learned single Judge, while allowing the writ application, misconstrued the description of the road, in question, as "Home Guard Road". Referring to the sale deeds, brought on record along with the writ application, he has added that the said road has been described as "Home Guard ka Rasta" meaning thereby, "the road belonging to Home Guard". He has, therefore, submitted that the order under appeal suffers from error of record. He has also submitted that Revisional Survey plan and map, relied upon by the respondent- writ petitioner, have not attained finality and, as a matter of fact, by notification No. 2059, dated 26.12.2012, as well as 138.2, dated 22.2.2014, issued by Revenue and Land Reforms Department, Government of Bihar and District Settlement Officer Headquarters (settlement office), Patna, the said plan has been stopped/dropped. Referring to the averments made in the counter affidavit, filed in the writ proceeding, he has submitted that there being serious dispute over the fact as to whether the land, in question, was a public road or not, learned single Judge ought not to have allowed the writ application solely on the basis of Revisional Survey map and the averments made in the writ application.

9. Mr. Naresh Chandra Verma, learned counsel appearing for the sole respondent, coming in defence of the order under appeal, has submitted that learned single Judge passed the order on the basis of the admitted fact that the respondent-writ petitioner had been using the road, in question, for ingress and egress from his home, constructed by him over the plot of land purchased in the year 2003. He submits that learned single Judge rightly relied upon Revisional Survey map prepared by the officials of the State Government, correctness of which could not have been brought, in question, by the appellants and respondents in the writ proceeding. He submits that the respondent's right of easement would stand denied if the order passed by learned single Judge is interfered with.

10. Upon careful consideration of the submissions made on behalf of the parties as well as the pleadings in the writ proceedings available on record, it is evident that this fact was not admitted by the appellants, in their counter affidavit, that the respondent had been using the road for his ingress and egress. There is no averment in the writ application as to when did the respondent construct his

home over the land, purchased by him in the year 2003, in order to make out a case of his right of easement.

11. We are of the view that facts, in the writ proceeding, were under serious dispute and not worth being adjudicated upon in a proceeding under Article 226 of the Constitution of India. We are also of the view that the respondent had remedy, only under ordinary civil law before the court of competent jurisdiction for the relief which he claimed through the writ jurisdiction of the High Court. The facts, as asserted in the writ application, needed to be proved before appropriate court of competent jurisdiction by adducing evidence in order to seek reliefs sought for in the writ proceeding.

12. It has been held by Supreme Court that remedy, under Article 226 of the Constitution of India, is not a proper remedy for adjudicating upon disputed question of facts and that superior courts in exercise of jurisdiction under Article 32 or Article 226 of the Constitution of India, decide a lis on the basis of facts, which are admitted between the parties or are, otherwise, established.

13. We consider it appropriate to refer to few decisions of the Supreme Court on limitations of a proceeding under Article 226 of the Constitution of India, while deciding a lis on the basis of facts, which are not admitted between the parties.

14. A Constitution Bench of the Supreme Court, in case of *Deep Chand v. the State of Rajasthan*, (AIR 1961 SC 1526), has held that a proceeding under Article 226 of the Constitution of India would not be appropriate for decision upon disputed questions of facts, when there is a great deal of dispute, which would require examination of evidence. The Supreme Court, in the case of *Natha Singh v. the Financial Commissioner, Taxation, Punjab & Others* (AIR 1976 SC 1053) held, at paragraph 5, as follows:-

"5. With regard to the first contention advanced on behalf of the appellants, it is sufficient to observe that it has been time and again observed by this Court that in dealing with a petition under Article 226 of the Constitution, the High Court cannot exercise the jurisdiction of an appellate court and cannot re-examine or disturb the findings of fact arrived at by an inferior court or a tribunal in the absence of any error of law."

(Emphasis is supplied)

15. The Supreme Court dealt the question of scope of judicial review, under Article 226 of the Constitution of India, in cases involving disputed questions of facts in case of *Chairman, Grid Corporation of Orissa Ltd. (GRIDCO) & Ors. v. Sukamaini Das and Others*, reported in (1997) SCC 298, and held that disputed questions of facts ought not to be entertained under Article 226 of the Constitution of India.

16. Again, in the case of *Food Corporation of India v. Pala Ram*, reported in (2008) 14 SCC 32, the Supreme Court, held, in paragraph 47, that writ petition was not maintainable as a series of disputed questions of facts were raised.

17. In case of Hindustan Coca-Cola Beverages Pvt. Ltd. v. Sangli Miraja Kupwad Municipal Commissioner and Others, reported in (2011) 7 SCC 645, the Supreme Court held in paragraph 21 that there being disputed questions of facts, they should not have been gone into by the High Court exercising writ jurisdiction under Article 226 of the Constitution of India.

18. The law, on the scope of jurisdiction of the High Court, under Article 226 of the Constitution of India, in cases involving disputed questions of facts has been succinctly laid down by the Supreme Court in case of Shubhashree Das @ Mili v. the State of Orissa and others, reported in (2012) 9 SCC 729, holding that claims of the appellant under Article 226 of the Constitution of India could not have been determined on the basis of disputed facts. The relevant observations, appearing, in Shubhashree Das (supra), in this regard, read,

" in a case where the petitioner/ appellant wishes to press his/her claim before a High Court under Article 226 of the Constitution of India, the claim raised by such petitioner/ appellant must be determined on the basis of factual position and acknowledged by the respondent". The Supreme Court observed that this was so because a High Court in exercise of writ jurisdiction under Article 226 of the Constitution of India, would ordinarily not adjudicate a matter, where foundational facts are disputed.

19. On the basis of discussions, as above, dealing with factual as well as legal aspects, we are of the view that the order, under appeal, dated 29.10.2013, passed by learned single Judge, in CWJC No. 9821 of 2013, needs to be interfered with and we accordingly do so. The order under appeal, dated 29.10.2013, passed by learned single Judge is hereby set aside and CWJC No. 9821 of 2013 is dismissed as the same involves disputed question of facts. The sole respondent shall have the liberty to take recourse to appropriate provisions of law before forum/ court of competent jurisdiction for redressal of his grievance.

20. This appeal is, accordingly, allowed. There shall, however, be no order as to costs.

I.A. Ansari, J.—I agree.