

(2021) 09 PAT CK 0022

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 23834 Of 2019

Tanga Majdoor Sangh

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 07-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2, Order 1 Rule 10
Andhra Pradesh Land Encroachment Act, 1905 — Section 6
Code Of Criminal Procedure, 1973 — Section 144

Citation : (2021) 09 PAT CK 0022

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Yogesh Chandra Verma, Anuj Kumar, Javed Aslam, Rajiv Roy, Suresh Kumar, Priyadarshi Matri Saran, Akhileshwar Kumar Shrivastava

Final Decision : Dismissed

Judgement

1. This matter has been taken up for hearing online because of COVID-19 pandemic restrictions.

2. This writ petition under Article 226 of the Constitution of India has been filed through one Daroga Prasad Chaudhary, who claims to be the General Secretary of Tanga Majdoor Sangh (hereinafter referred to as 'the Society') registered under the provisions of Societies Registration Act, 1860. The Society is the petitioner in this case.

3. The petitioner is seeking a direction from this Court restraining the respondents, particularly respondents no. 2 and 3 from removing/demolishing a Tanga Stand located at Meena Bazar in the town of Bettiah, West Champaran. It is the petitioner's case that the said Tanga Stand was established in the year 1884 and is in existence for more than 135 years. It is the case of the petitioner that the Society has two hundred Tanga holders, as Members. It is petitioner's further case that the Tanga Stand is situate over a piece of land having

description: Thana No. 120, Circle Bettiah (East Champaran) Khata No. 5242, P.S. Nagar Bettiah, ad-measuring (Bada Rakba) 0-9-3 Dhur (70 feet x 55 feet) having boundaries, Chitragupta Mandir (North) Main Road (South) Rickshaw stand (East) and Part of Khesra No. 52/42 (West). It has been asserted in the writ petition that petitioner's forefather(s)/legal representatives of the petitioner have been plying their Tumtum (wooden vehicle pulled by horse) since during the time of Bettiah Raj (about 1885).

4. Admittedly, a Title Suit No. 119 of 2014 is pending before a competent court of civil jurisdiction at Bettiah instituted by the petitioner in respect of the same land.

5. The petitioner has referred to an order passed by the Sub-Divisional Officer, Bettiah Sadar dated 04.09.2015 in a proceeding under Section 144 of the Cr.P.C., which according to it, is in favour of the petitioner. With the aforesaid assertions made in the writ petition, the petitioner, apart from seeking a direction from this Court restraining respondents from removing/demolishing the Tanga Stand, is also seeking a declaration from this Court to the effect that Tanga Stand was established in the year 1884 and that the respondents have no authority or any right to remove/demolish the Tanga Stand.

6. It is relevant to note at this stage that one Intervention Application has been filed by one Babloo Miya seeking impleadment in the writ petition claiming himself to be the Chairperson of the said Society. It has been asserted in the Intervention Application filed on 22.03.2021 that, as a matter of fact, the Secretary of the Society namely Daroga Prasad Chaudhary, through whom this writ application has been filed, was found constructing shops after taking salami (security money) for the purpose of letting the same out to the tenants on rent without any approval or resolution in this regard of Tanga Majdoor Union Congress Committee, against the pecuniary interest of the Society. For the said reason, the said Daroga Prasad Chaudhary and other office bearers of the Society were removed from their office by a resolution dated 15.03.2016 and accordingly the Committee of the Society was dissolved. Subsequently, an ad hoc Committee headed by the intervenor was constituted on 20.07.2016, till election of the office bearers of the Society and ever since then the intervenor and other office bearers are exercising their official work in the interest of the Society. It has also been stated that prior to filing of the present writ application one Babloo Kumar and Umesh Kumar Patel, former Presidents and Secretary of the Society have wrongfully instituted a Suit giving rise to aforesaid Title Suit No. 119/14 for declaration of their right and title over the said land of Tanga Majdoor Sangh, Meena Bazar. In the said Suit, they have filed injunction petition on 20.01.2020 under Order 39 Rule 1 & 2 of the C.P.C. for restraining the respondent Nagar Parishad from constructing a public lavatory over the land in question. It has further been asserted that after having learnt about the institution of the Title Suit at the instance of Daroga Prasad Chaudhary, the intervenor and the office bearers of the Society have filed an application under

Order 1 Rule 10 of the C.P.C. for their impleadment in the Title Suit taking a plea that the so called plaintiffs in the Title Suit do not represent the Society, after removal. It has been asserted in the Intervention Application that the said Daroga Prasad Chaudhary, through whom the writ application has been filed, has dishonest intention to occupy the vacant land of the said Tanga Stand for his personal interest.

7. The said Intervention Application was allowed by this Court by an order dated 08.04.2021 and accordingly Babloo Miya (Md. Imteyaz @ Babloo) the Chairperson of Tanga Majdoor Sangh has been allowed to be impleaded as party respondent in the writ petition. From the pleadings on record, it is evident that the petitioner did not file any reply to the said Intervention Application controverting the facts asserted therein, though a copy of the said Intervention Application (I.A. No. 02 of 2021) was served on learned counsel for the petitioner on 22.03.2021 itself. Till date, the facts asserted in the Intervention Application have not been controverted by the petitioner.

8. The Executive Officer, Nagar Parishad, Bettiah has filed a counter affidavit stating therein that at no point of time the land was settled in favour of the Society by Bettiah Estate. It has been stated that considering compelling requirement of male and female toilets near Meena Bazar, which is a good market complex, a decision has been taken to use the land for construction of public lavatories. The assertion made in the writ application that there are two hundred Tangas has been specifically denied and it has been stated that there are more than five thousand Auto-rickshaws and three thousand E-rickshaws running in Bettiah Town and, therefore, travel by Tanga is not an appropriate mode. As on date, only 10 to 15 Tangas are parked in the plot, most of which is still lying vacant. The respondents have questioned the locus standi of the petitioner in the wake of the application having been filed before the Trial Court in Title Suit under Order 1 Rule 10 for impleadment.

9. Mr. Yogesh Chandra Verma, learned Senior counsel appearing on behalf of the petitioner has submitted that without awaiting final decision in the Title Suit, the authorities ought not to have proceeded to dispossess the petitioner from the land in question. He contends that it is sheer high handedness on the part of the respondents to interfere with the peaceful enjoyment of the land in question by Members of the Society, which has been in use for parking Tangas by its Members for more than a century. He has relied on following decisions in support of his submissions:-

(i) Jai Narayan Bhagat & Anr. v. State of Bihar & Ors. of this Court reported in 2011 (4) PLJR 504, (ii) Government of Andhra Pradesh v. Thummala Krishna Rao and Anr. (AIR 1982 SC 1081) of the Supreme Court and (iii) Smt. Uma Devi Sinha v. State of Bihar & Ors of this Court reported in 2001 (2) PLJR 587.

10. He has submitted that it is evident from the admitted pleadings on record that there exists a bonafide land dispute between the petitioner and the Nagar

Parishad and, therefore, summary eviction on the ground of unauthorized occupation by the State respondents is wholly arbitrary.

11. Mr. Priyadarshi Matri Saran, learned counsel representing the Bettiah Nagar Parishad has submitted that this writ application is not maintainable for the reason that the petitioner has already filed an application in the Title Suit under Order 39 Rule 1 & 2 of the C.P.C. He has submitted that the petitioner cannot be allowed to maintain two parallel proceedings by filing the present writ application for the relief in respect of which he has already filed a Title Suit. He has further submitted that there being dispute in respect of title, this Court may refrain from entertaining this application exercising power of judicial review.

12. Mr. Akhileshwar Kumar Shrivastava, learned counsel representing the intervenor respondent has also opposed the writ petition questioning the locus of Daroga Prasad Chaudhary and his bonafide to maintain the writ application.

13. I have carefully gone through the pleadings of the parties on record, which have been mentioned hereinabove. By filing present writ application, the petitioner seeks inter alia a declaration that the Tanga Stand was established in the year 1884. The other reliefs, which the petitioner is seeking, are incidental to the said declaration. Considering the nature of dispute amongst the parties, which has been noted hereinabove, the Court exercising power of judicial review cannot return a finding in the nature of declaration, as sought by the petitioner. The petitioner has already filed a Suit and has also filed an application for injunction. It is always open for the petitioner to press his application for interim relief before the Trial Court. In my view, the petitioner cannot maintain this writ application also for the reason that the petitioner has effective remedy under law before the Trial Court. In my opinion, in the given facts and circumstances of the case, it would be travesty of justice, if such application is entertained on the basis of affidavits wherein the basic facts are in controversy.

14. In all fairness to the submissions made by learned Senior counsel for the petitioner, the Court must notice at this juncture the judicial pronouncements relied upon in support of the petitioner's case. In case of Thummala Krishna Rao (supra), the Supreme Court has held that summary remedy for eviction provided by Section 6 of the Andhra Pradesh Land Encroachment Act, 1905 can be resorted to by the Government only against persons who are in unauthorized occupation of any land, which is the property of the Government. The Supreme Court, however, stated that if there is a bonafide dispute regarding title of the Government to any property, the Government cannot take a unilateral decision in its own favour that the property belongs to it and on that basis take recourse to summary remedy, as provided under Section 6 of the said Act. In case of Thummala Krishna Rao (supra) the dispute over the title was found by the Supreme Court to be genuine between the State Government and the private respondents. In that circumstance, it was concluded in the said case that the respondents had a bonafide claim to litigate and they could not be evicted save by the due process of law. The Supreme Court further held that it is not the

duration, short or long, of encroachment that is conclusive of the question whether the summary remedy prescribed by the Act can be put into operation for evicting a person. What is relevant for the decision of that question is more the nature of the property on which the encroachment is alleged to have been committed and the consideration whether claim of the occupant is bonafide. Unquestionably, therefore, the ratio laid down in case of Thummala Krishna Rao (supra) can be applied only when the Court reaches a conclusion that there exist bonafide dispute regarding title between the Government and the petitioner.

15. In the present case, the petitioner's locus standi to maintain this application itself has been questioned by the intervenor respondent, who claims to be the head of the Society. The petitioner has not disputed the clear averments made in I.A. No. 02 of 2021 questioning the very locus of Daroga Prasad Chaudhary to maintain this application and asserting that his intents are malafide. In such circumstance, the Court does not deem it to be a fit case to record a finding that dispute in relation to title between the Society represented by Daroga Prasad Chaudhary and Nagar Parishad is bonafide and, therefore, it would require interference in writ jurisdiction; despite pendency of the title suit, in which, applications under Order 39 Rule 1 & 2 have already been filed. On the contrary, conduct of the petitioner in approaching this Court during the pendency of the Suit, where he could have sought appropriate reliefs, cannot be approved.

16. This Court in case of Smt. Uma Devi Sinha (supra) has relied on the Supreme Court's decision in case of Thummala Krishna Rao (supra). There cannot be any quarrel over the legal position that the State respondents should not resort to the process of summary eviction by way of removal of encroachment where bonafide question of title exist.

17. I am of the view, however, after having examined the pleadings on record that the petitioner's claim of title or possession over the land in question cannot be said to be bonafide requiring this Court's interference in writ jurisdiction.

18. As regards reliance on another Coordinate Bench decision of this Court in case of Jai Narayan Bhagat (supra), in my opinion, the facts of the said case are clearly distinguishable. In that case, a Title Suit was filed by the State, which was dismissed for non-prosecution and pending consideration for restoration of the Title Suit in a miscellaneous case, the respondents were found to be proceeding for removal under the provisions of Bihar Public Land Encroachment Act, 1956. Paragraph 21 of the decision in case of Jai Narayan Bhagat (supra) reads as under:-

"21. Admittedly, a civil dispute is pending between the State and the petitioners with regard to title and possession over some plots. Whether or not the dwelling demolished by the respondents is situated over any of the plots which is the subject matter of the title suit, is yet to be determined by a civil court of competent jurisdiction and each party has its own stand. It is another story that the suit filed by the state stands dismissed for default and although a restoration

application is pending but the suit is yet to be restored. Thus, at present, no proceeding is pending in between the parties."

19. Considering the discussions noted above, I am of the view that this writ application has no merit and is accordingly dismissed.

20. The interim order stands vacated.