

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1069 of 2013

Arising Out of PS.Case No. -null Year- null Thana -null District- SARAN

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Lagandeo Singh S/O Late Ram Vilas Singh, R/O Village- Gheghhta, P.S. Sonapur,
Distt. Saran

.... Petitioner/s

Versus

1. The State of Bihar through the Secretary Home Department, Govt. of Bihar, Old Secretariat, Patna
2. Director General of Police, Department of Police, Govt. of Bihar, Old Secretariat, Patna
3. Deputy Inspector General of Police, Saran Range, Chapra
4. Superintendent of Police, Saran at Chapra
5. Sub-Divisional officer, Sonapur Sub Division Sonapur
6. Deputy Superintendent of Police, Sonapur Sub-Division, Sonapur
7. Station House Officer of Sonapur Police Station
8. Sushila Devi, Sub-Inspector, Sonapur Police Station

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manish Chandra Gandhi, Advocate

For the Respondent/s : Mr.Sanjay Prakash Verma, A.C. to G.A.-1

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 28-01-2015

Heard learned counsel for the petitioner and learned
counsel for the State.

The grievance of the petitioner in the present writ petition
is that respondent no.7 Station House Officer of Sonapur Police
Station has unauthorizedly locked the shop of the petitioner.

By filing the present application under Articles 226 and
227 of the Constitution of India, the petitioner has prayed for a
direction to be issued to respondent no.2 for taking exemplary legal
action against the respondent nos.7 and 8 who have abused their

official position and harassed the petitioner illegally.

Learned counsel for the petitioner has submitted that he had given a room of his house on rent to one Dharmendra Rai for running a grocery shop. Since the petitioner came to know that said Dharmendra Rai was indulged in sale of liquor he told him to stop his illegal activity. On the protest having been made by the petitioner, his tenant Dharmendra Rai became violent and attacked upon him. On the basis of fardbeyan of the petitioner, Sonapur P.S. Case No.264 of 2008 was registered on 28th November, 2008 against Dharmendra Rai and others. The petitioner also filed an application under section 144 of the Code of Criminal Procedure in the court of learned Subdivisional Magistrate, Sonapur against Dharmendra Rai and others vide Case No.M-640 of 2008. The said proceeding was disposed of by the Subdivisional Magistrate, Sonapur on 10th February, 2009 by vacating the injunction order passed against the petitioner and continuing the injunction order against the opposite party. The aforesaid order dated 10th February, 2009 was challenged in revision before the learned Sessions Judge, Saran at Chapra vide Cr. Revision No.79 of 2009 by Dharmendra Rai. The learned Sessions Judge, Saran at Chapra disposed of the revision petition on the ground of expiry of sixty days. He observed “any observation touching the issue of right, title and possession of the parties, in respect of the land in question,

being redundant, no further order is required for scrapping the same”.

It has been contended that the application for anticipatory bail of Dharmendra Rai in the aforesaid criminal case launched on the basis of fardbeyan of the petitioner was rejected by the learned Sessions Judge on 4th January, 2011. However, after rejection of anticipatory bail petition of the accused Dharmendra Rai, respondent no.8, Sushila Devi, the Sub Inspector of Sonapur Police Station, came and opened the lock of the petitioner's shop and permitted one Shankar Rai (father of Dharmendra Rai) to put his own lock in the shop.

It has been contended that the said act of respondent no.8 was highly arbitrary and illegal. He has further submitted that the SHO of the Sonapur Police Station had also connived with respondent no.8 in the said illegal act. The contention of the petitioner is that though he has highlighted the illegal activity of respondent nos.7 and 8 before the higher authorities but no action has been taken against them so far.

On the other hand, learned counsel for the State has contested the matter. He has submitted that there is no truth behind the allegations made in the writ petition. As a matter of fact, there is a landlord and tenant dispute between the petitioner and Dharmendra Rai. The petitioner happens to be landlord of the shop which was



given on rent to Dharmendra Rai for running a grocery shop. The shop in question was never vacated by the tenant in favour of the petitioner or possession of the said shop was never handed over to him. It has been submitted that the petitioner wants to take possession of the shop in question even without resorting to legal procedure in accordance with law. Instead of filing a proper eviction suit he has resorted to a remedy under writ jurisdiction in order to put pressure upon the official respondents to help him in illegal manner in evicting the tenant. Learned counsel for the State has further submitted that the present application has been instituted with ulterior motive and in the case instituted by the petitioner against Dharmendra Rai, the police have already concluded investigation and submitted charge sheet in the court. Learned counsel for the State has further submitted that it is wrong to allege that respondent no.8 or respondent no.7 had ever put any lock over the shop in question. As a matter of fact, it is in possession of one Dharmendra Rai and his father Shankar Rai had unlocked the premises on 23rd June, 2011 and thereafter, he has put his lock over the shop.

Regard being had to the nature of dispute, I am not inclined to entertain the present application. The petitioner has not even impleaded the private parties like Dharmendra Rai and Shankar Rai as respondents in the present case. The facts narrated above

clearly demonstrate that Dharmendra Rai is tenant of the petitioner with whom he is on litigating terms. In case the petitioner has any dispute with his tenant, appropriate remedy would be before the Civil Court and not before this Court. It is well settled that the question of right, title and possession cannot be adjudicated in a writ proceeding under Article 226 of the Constitution of India. Similarly, disputed questions of fact are not to be decided in a writ proceeding.

For the reasons assigned hereinabove, I find no merit in the present application. Accordingly, it is dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

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