

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.883 of 2014

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

Goverdhan Das, Son of Late Chotu Das, resident of Mohalla - Lal Kothi, P.S.-
Tatarpur, District - Bhagalpur. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Govt. of Bihar, Patna.
2. The Director General of Police, Government of Bihar, Patna.
3. The District Magistrate, District - Bhagalpur.
4. The Senior Superintendent of Police, Bhagalpur.
5. The Sub-Divisional Magistrate, Sadar, Bhagalpur.
6. The Deputy Collector of Land Reform, Bhagalpur.
7. The Circle Officer, Jagdishpur, District- Bhagalpur.
8. The Officer-in-Charge of Police Station, Tatarpur, District - Bhagalpur.

... .. State Respondents

9. Neelam Kumar, W/o Arun Kumar.

10. Dr. Sunil Das Gupta, Son of Late Dr. Surendra Das Gupta,
Both residents of Lal Kothi, P.S. Tatarpur, District - Bhagalpur.

.... .. Respondents

Appearance :

For the Petitioner/s : Mr. Alok Kumar Choudhary, Advocate

For the Respondent/s : Mr. A. Kumar Kesari, AAG-XI

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 24-03-2015

This application under Articles 226 and 227 of the
Constitution of India has been filed by the petitioner for issuance
of certain direction to the respondents by way of issuing a writ in



the nature of mandamus to remove the illegal constructions/hutment put up by way of encroachment at the hands of trespassers over the land appertaining to khata nos. 450, 271, 270, 271, 450, 610, 830 and corresponding khesra no. 1502, 1505, 1506, 1504, 1481, 1480, 1507, 1510, 1572, 1478, 1479, 1508, 1509, 1477, 310, 309, 308, 1487, 1488, 1489, 1490, 1491, 379, 380, 366, 367, 369, 368, 376, 375, 1457, 374, 370, 372, 243 to 252 measuring an area of 20 bigha, 9 kathas, 5 Dhur failing within Mauza-tatarpur Lal-kothi, Ward no. 17 Holding no. 1/3A at Bhagalpur Municipality, District-Bhagalpur, Jamabandi no. 13, which has been the lands of attachment under section 146(1) of the Cr. P.C. vide order dated 23.01.1981 passed by the Sub-divisional Magistrate, sadar, District-Bhagalpur in the Misc. Case No. 811/1980. The petitioner further seeks issuance of a writ in the nature of prohibition for not raising any constructions over the aforesaid land and prohibiting any individual for alienating the aforesaid landed properties in the favour of outsiders and hand over possessions of the vacated land from the encroachers to the petitioner.

Learned counsel for the petitioner has submitted that the petitioner is the legal heir of the raiyat namely Govind Das Shastri who has inherited the aforesaid land from his fore-father whose



names find place in the records of right since 1904 itself and in the year 1980 a person namely Arun Kumar and others claiming to be the rightful owners of the aforesaid properties filed a Misc. Case No. 604/80 and 811/80 in the Court of Sub-divisional Judicial Magistrate, Sadar Bhagalpur praying, inter alia, the imposition of Section 144 of the Code of Criminal Procedure (hereinafter referred to as “the Code”) over the aforesaid land, and moreover, to declare the possession in his favour. Learned Sub-divisional Judicial Magistrate having seen of emergent situation prevailing over the land passed an order of attachment under Section 146(1) of the Code over the entire chunk of lands as stated hereinabove and the aforesaid proceeding is still going on between the concerned parties.

The aforesaid Govind Das Shastri filed a detailed application on 25.11.1999 in Misc. Case No. 811 of 1980 before the Sub-divisional Magistrate, Sadar Bhagalpur highlighting therein several issues including the illegal construction/encroachment over the land and prayed for removal of the same. On the application filed by Govind Das Shastri, the Sub-divisional Judicial Magistrate, Sadar Bhagalpur directed the Anchal Amin and the Circle Officer to take appropriate steps and submit report thereof to the Court. The Anchal Amin of the area



conducted the spot inquiry over the land and submitted his detailed report to the Circle Officer on 15.04.2005 wherein he has discussed about the then physical status of the land and, accordingly, the Circle Officer, Jagdishpur vide his Letter No. 411 dated 13.05.2005 submitted the report to the Sub-divisional Magistrate, Sadar Bhagalpur, the Sub-divisional Magistrate, Sadar Bhagalpur after receiving the report submitted by the Circle Officer, Jagdishpur became aware about the present status of the land and vide his Letter No. 187 and 69 issued on 31.01.2006 and 16.09.2007 respectively directed the respondent no. 7 to remove the encroachment forthwith and submit the report thereof to him for the full compliance of the order. But despite the same, the alleged encroachment over the land has not been removed till date.

It has been submitted that the petitioner having interest in the landed properties, made several representations vindicating his grievance for the non-compliance of previous order passed by the Sub-divisional Magistrate in Misc. Case No. 811/1980 on various occasions for removing the illegal constructions/encroachment put up over the land and several executive order and directions were issued at different level by different authorities but to no avail.

It has been contended that during pendency of the Misc.

Case No. 811/1980 and the order under Section 146(1) of the Code several persons have raised *pucca* construction over the land in question by use of criminal force.

Learned counsel for the State has contested the matter. He has submitted that from the perusal of the report of Additional S.P. City as contained in Memo No. 3584 dated 2.10.2014, it appears that there is land dispute between petitioner and private respondent for a piece of land situated in Mauza Tatarpur Lal Kothi, ward No.17, Holding No. 9, Jamabandi No. 13 and 07, Khasra No. 1502, 1505, 1506, 1504, 481, 1480, 1507, 1510, 1512, 1478, 1478, 1508, 1509, 1477, 380, 366, 307, 369, 368, 374, 370 and 372, a proceeding under Section 146(1) of the Code has been initiated and concerned land has been attached by passing speaking order and the matter is sub-judice before competent Court between the parties.

He has submitted that the present application has been filed by the petitioner for issuance of certain direction to the respondents by way of issuing a writ in the nature of mandamus which is not maintainable, because a writ of mandamus can be issued to restore possession to a person from whom the State has taken possession of the property without the authority of law. Admittedly, in the instant case, the State has not taken possession



of the land in question and, hence, the application is not maintainable. He has further pointed out that private respondent no. 10 had also filed three writ applications bearing Cr. W.J.C. No. 922 of 2012, 954 of 2012 and 1104 of 2012 for the same issue and similar relief and this Court had disposed of those writ applications which was disposed of by a common order passed by this Court on 15.01.2013, holding therein that a suit and not mandamus is the appropriate remedy where the petitioner can have the property restored to him only upon establishment of his title or right to possession.

Having heard the parties and perused the record. Section 146 of the Code is a corollary to Section 145 of the Code. Under this provision, the Magistrate is empowered to pass an order of attachment in three cases (i) if it is a case of emergency; or (ii) if none of the parties was in possession; or (iii) if none was in possession as to the possession.

The Magistrate has given the power to attach the dispute until the Competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof. The determination need not be final determination even may be tentative at the moment Competent Court does not show the order of attachment is recorded to have to an end. Admittedly, in this

case, the petitioner has not filed any suit for recovery of possession, declaration of right, title and possession over lands in question. It is evident from the facts stated hereinabove that the right, title and possession of the petitioner are very much in dispute.

It is well settled that disputed question relating to title or possession cannot be satisfactorily gone into or adjudicated in a writ petition. Even if, a person has been dispossessed from immovable property without his consent otherwise than, in course of law, he has a right to file a suit to recover its possession. Section 6 of the Specific Relief Act specifically provides for such a suit to recover the possession of the property. In such a case also, writ petition is not an appropriate remedy because of many reasons. One of the reasons is that this Court under Article 226 of the Constitution cannot issue writ of mandamus to a private individual unless he acted in exercise of statutory power and/or was discharging public duty.

Regard being had to the facts and circumstances of the case, I am of the considered opinion that a suit and not mandamus is the appropriate remedy where the petitioner can have the property restored to him only upon establishment of his title or right to possession. In the present case, the petitioner wants

possession of disputed lands from private persons who have not even been made respondents and who were alleged to have encroached upon his land and have made *pucca* construction.

Since the petitioner has an alternative remedy available to him for the redressal of his grievance which is equally efficacious, I am not inclined to entertain this application filed under Articles 226 and 227 of the Constitution. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J.)

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