

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.963 of 2015

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

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Md. Masrurul Hasan @ Kale son of Md. Majrul Hasan Azad, resident of Mohalla-
Laxmi Narayan Road, Islampur P.S.- Muzaffarpur Town, P.O.- Main Post office
District- Muzaffarpur, PIN- 842001 Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna
 2. Commissioner, Tirhut Division, Muzaffarpur through in-charge officer, Jan
Shikayat Koshank, Tirhut Commissionaire, Muzaffarpur
 3. District Magistrate, Muzaffarpur
 4. Senior Superintendent of Police, Muzaffarpur
 5. Sub-Divisional Magistrate (East), Muzaffarpur
 6. Circle Officer, Mushahari Block, Muzaffarpur
 7. Mahbub Alam son of Md. Mustafa, resident of Mohalla- Laxmi Narayan Road,
Islampur P.S.- Muzaffarpur Town, P.O.- Main Post Office, District-
Muzaffarpur, PIN-842001 Respondent/s
- =====

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar @ S.K., Advocate
For the State : Mr. Ashok Kumar Chaudhary, AAG-13
: Mr. Shailendra Kumar Jha, AC to AAG-13

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 29-03-2016

By way of the present application preferred under Articles 226 and 227 of the Constitution of India, the petitioner seeks a direction to be issued to the respondent authorities to comply their orders passed through Memo No. 494 dated 20.01.2014 and Memo No. 579 dated 09.03.2015 in the light of orders dated 13.08.2013 and 04.12.2014 passed by the Respondent No.5, the Sub divisional Magistrate, East, Muzaffarpur and the learned 4th Additional Sessions Judge, Muzaffarpur respectively in connection with Case No.785 of 2013 and Cr. Revision No. 259 of 2013 respectively and to further direct them to facilitate the petitioner to build a wall around the

boundary of his land.

2. It is contended by the learned counsel for the petitioner that a proceeding was brought by the respondent no.7 in the court of the Respondent No.5 under sections 144 and 147 of the Code of Criminal Procedure (For short "CrPC") against the petitioner for the blocked of 16 feet wide and 280 feet long private path towards east to west on a plot bearing Khata No. 45, Khesra No. 20, 30 and 31 situated at Pankaj Sharan Lane in Islampur, Nalanda. However, after hearing the parties, the Respondent No.5 did not accede to prayer made by the respondent no.7 and closed the proceedings of the case. The said order of the learned Sub Divisional Magistrate was challenged by the respondent no.7 before the court of sessions in revision, but the revisional court also dismissed the revision application holding the same to be meritless. In the background of these two orders, the petitioner has approached this court seeking a direction to be issued to the respondents to allow him to build a wall around the boundary of his land.

3. Learned counsel for the petitioner has further contended that the courts below have declared the right, title and possession of the petitioner over the land in question and in that view of the matter it is incumbent upon them to ensure that the order passed by them is properly executed. Since they have failed to discharge their duty, the petitioner is left with no option, but to approach this court in a writ

proceeding.

4. Per contra, learned counsel for the State has submitted that the argument advanced by the learned counsel for the petitioner is totally misconceived. By order dated 13.8.2013, the learned Sub Divisional Magistrate had simply refused to initiate proceedings under sections 144 and 147 of the CrPC. The revision application against the said order was also dismissed by the revisional court vide order dated 04.12.2014. The aforesaid orders, however, cannot be interpreted to mean that the courts below have declared right, title and possession of the petitioner over the land in question. The only question before the courts below for consideration was whether or not there was any immediate apprehension of breach of peace concerning the land in question. According to him, a refusal to initiate proceedings under sections 144 and 147 of the CrPC can be for various reasons.

5. I have heard respective learned counsel for the parties and perused the materials available on the record. I find substance in the arguments advanced by the learned counsel for the State.

6. A writ in the nature of mandamus can only be issued in the matters of a judicially enforceable and legally protected right. A person can be said to be aggrieved only when he is denied a legal right by someone who has a legal duty to do something and abstains from doing it.

7. In the present case, it cannot be said that simply because

the learned Sub Divisional Magistrate had refused to initiate proceedings under sections 144 and 147 of the CrPC on the application of the respondent no.7, the right, title and possession of the petitioner over the land mentioned above was declared in his favour. In absence of such right having been determined by any court of competent jurisdiction in favour of the petitioner, in the opinion of this court, no writ of mandamus can be passed against the official respondents. The petitioner can not approach this court under Article 226 of the Constitution in the name of inaction on the part of the respondent authorities. Furthermore, private disputes between the petitioner and the private respondent cannot be decided by the writ court.

8. Accordingly, the application, being devoid of any merit, is, hereby, dismissed.

(Ashwani Kumar Singh, J)

Md.S./-

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