

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6610 of 2013

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1. R.K. Rajan S/O Sri Moorat Lal Resident Of Bihari Road, Hilsa, Nalanda At Present Residing At Pushpa Prakash Bhawan, Near Choudhary Petrol Pump, Kankarbagh Main Road, P.S.- Kankarbagh, Patna- 20.

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Home Secretary, Department Of Home, Bihar, Patna
3. The District Magistrate, Nalanda
4. The S.D.O., Hilsa, Nalanda
5. The S.P., Nalanda
6. The O/C Hilsa, P.S. Nalanda
7. Smt. Nilu Kumari W/O Shailesh Kumar Sao Of Mohalla- Koeri Tola, P.S.- Hilsa, Nalanda.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Durgesh Nandan

Mrs. Manisha Prakash

For the State : Mr. Shashi Shekher Pd. Sinha, A.C. to G.A.-13

For the Respondent no 7 : Mr. Sushil Kuamar Singh

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 24-02-2016

Some uncommon prayers have been made by the petitioner invoking Article 226 of the Constitution of India. The writ application prays for a direction upon the State respondents including the private respondent no. 7 to restore his possession over part/portion of the house/building from where he was dispossessed by the purchaser of the part of the house/building from the own nephew of the writ petitioner. Such prayer is made on the plea that the State respondents connived with respondent no. 7 in doing so. He has also prayed for payment of exemplary cost as his forcible dispossession from the

room of the house/building has infringed his fundamental rights guaranteed under Article 21 of the Constitution of India.

Heard the Counsel for the petitioner, the State as well as the respondent no. 7.

It has been averred that petitioner is permanent resident of Bihar Road, Hilsa in the district of Nalanda where he owns and possess a pucca residential house. In the interior part of the building, he had a room in his possession used as his official chamber. A dispute had arisen over the title/possession of the house/building between him and his full brother Late Bhagwan Lal. Later on, his brother executed a deed of relinquishment on 30.4.2007 in respect of the room (integral part of the building). In the year 2012, son of Bhagwan Lal, after death of his father, sold the house/building including the room in favour of respondent no. 7 who was tenant from before in a portion of the building/house and who made few attempts for his forceful dispossession from the room. Anticipating an untoward incident, the petitioner made applications before the government (respondent no. 2). On 5th March, 2013, the respondent no. 5 with the help of her husband and others conniving with the local police officer forcibly ousted him from the room and erected a wall after removal of the rear door. Articles kept inside the room were either removed or looted. A lock was put on the door of the room. The

occurrence was reported to the police as well as the local administration but no step was taken.

In the counter affidavit of respondent nos. 5 and 6, it is stated that a serious dispute over title and possession of the house/building exists between the petitioner and his nephew who later sold the property in favour of the respondent no. 7. In the written report submitted by the petitioner himself on 7.3.2013, it was alleged that the husband of respondent no. 7 with 10-12 unknown persons came on to the house and forcibly dispossessed him from the room in his occupation. The respondents have specifically denied the connivance or any role of the officer-in-charge of the local police station in such dispossession of the petitioner. On the strength of the written report submitted by the petitioner, Hilsa P.S. Case No. 01/2013 has been registered under Sections 380, 427 and 34 of the Indian Penal Code against 05 accuseds including the husband of respondent no. 7. The case is under investigation.

The respondent no. 7, in her reply, has stated that she along with one another person purchased the premises by a registered sale deed in 2012 from the son of the full brother of the petitioner who was owner in possession of the house. On coming to know about the sale of the property/house, the writ application is filed on the strength of a got up deed of relinquishment. A dispute over title and possession of

the house between the two claimants is raised in this writ application which is fit to be dismissed.

In the rejoinder, the petitioner has stated that there are several co-sharers of the house whereas the respondent no. 7 got a sale deed executed only by one co-sharer. It is reiterated that deceased Bhagwan Lal (his full brother) had executed a deed of relinquishment in respect of the room. Earlier an occurrence with respect to possession of the house had taken place. In respect thereof, Hilsa P.S. Case No. 449 of 2014 was lodged against the husband and relative(s) of respondent no. 7 in which charge-sheet was submitted and the case is pending trial.

On consideration of the rival pleadings and the submissions, what crystalises to this Court is that a dispute between the co-sharers over the title and possession of the building/house exists. The son of the full brother of the petitioner executed a sale deed in respect of the house in favour of the respondent no. 7 whereas the case of the petitioner is that a room in the house was spared and the rights thereto was relinquished by his full brother before his death. Except stating that the occurrence on the relevant date had taken place in connivance of the Officer-in-charge of Hilsa Police Station by the purchaser and her goons, there is nothing on record to indicate that the local administration or the Officer-in-charge actually played any role in the alleged dispossession of the petitioner from the room in question. It is



true that in appropriate case, depending on the peculiar facts of the case, the Court can issue a direction upon the private respondent also but the present one is not a case where such direction can be issued. A mere glance over the facts gives an impression of presence of property dispute between the co-sharers of the building. The petitioner has relied on an alleged deed of relinquishment executed by his full brother whereas the private respondent has seriously disputed the veracity thereof. This Court does not propose to delve into that aspect of the matter leaving the parties to agitate their claim(s) before appropriate forum.

The Counsel for the petitioner has argued that the State respondents have failed to discharge their responsibility by not complying with the provisions of the Code of Criminal Procedure when a cognizable offence anticipated or committed is reported to the Police. Such submission does not elevate the case of the petitioner. The petitioner himself has admitted of the property dispute between him and his co-sharer(s) in respect of the house. The title or possession of the parties cannot be raised in writ proceeding as it involves appreciation of disputed questions of fact. Reliance placed by the petitioner in support of his contention on ***A.I.R. 2013 SC 818*** (paragraph 7) appears inappropriate. The Apex Court in the said case dealt with the case of fake encounters. It may advantageously be noted

that in case of custodial death or fake encounter, the Courts have come down heavily on the perpetrators of such atrocities on the citizens. The present one is not the case of like nature.

The writ application merits to be dismissed leaving the parties to agitate their grievance/claims before appropriate forum/Court in accordance with law.

I order accordingly.

After the order has been passed, an oral submission was made on behalf of the petitioner to stay the operation of the order for some days.

I do not find it a case where any such order should be passed.

(Kishore Kumar Mandal, J)

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