

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No. 2828 of 2017

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

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Dr. Binod Kumar Jha, Son of Sri Kusheshwar Jha, Resident of Village – House No.
1A/-2, Ashiana Nagar, P.S. – Rajiv Nagar, District Patna

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Home Department
2. The S.H.O. Rajiv Nagar, Police Station, Patna
3. The Sub-Divisional Magistrate, Sadar, Patna
4. The Commissioner Patna Municipal Corporation, Maurya Complex, Patna
5. Sadan Kumar Lal Das, Son of Late Bindeshwar Lal Das, Resident of Village –
Single Duplex House No. 1A/01, Ashiyana Nagar, P.S. Rajiv Nagar, District –
Patna

.... Respondents

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Appearance :

For the Petitioner : Mr. Kamlesh Kumar, Advocate

For the Respondents : Mr. Prabhat Kumar Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 21-12-2017

Heard learned counsel for the parties.

2. This writ application has been preferred for quashing
the order dated 04.11.2017 passed by the Sub-Divisional Magistrate, Patna
in Misc. Case No. 2050(M) of 2017 whereby a proceeding under Section
144 of the Code of Criminal Procedure has been initiated for land dispute
between the parties bounded as follows:-

East – Pucca Road

West – Pucca Road

North – House No. 1A/3 of Vinod Kumar Kesari

South – House of First Party Sadan Kumar



2. The police report submitted in the case vide page 44 and 45 of the application would reveal that the dispute arose for alleged encroachment on the land between the house of the petitioner and respondent no. 5 who was first party before the court below.

3. The petitioner has filed a show cause before the court below vide Annexure-3 disclosing his claim and stating the facts that the land under proceeding is within the boundary of the petitioner. Hence, the proceeding is incompetent one.

4. Learned counsel for the State as well as Patna Municipal Corporation submits that the dispute is not with regard to any residential house, rather for vacant land. Hence, this Court should not interfere in the matter in exercise of this extra ordinary jurisdiction.

5. Since the impugned proceeding is preventive and the Magistrate is competent to rescind or alter the proceeding in exercise of power under Sub-section (5) of Section 144 of the Code of Criminal Procedure, it is directed that the learned Sub-Divisional Magistrate, Patna shall pass necessary order on the show cause of the petitioner within 15 days on receipt/production of a copy of this order.

6. Accordingly, this application stands disposed of.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	22.12.2017
Transmission Date	22.12.2017

