

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.268 of 2016

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1. Sushil Kumar Sikaria son of Late Nand Kishore Prasad Sikaria
 2. Sanjay Sikaria son of Sushil Kumar Sikaria
 3. Sandeep Sikaria son of Sushil Kumar Sikaria
All Residents of Mohalla Arya Samaj Road, P.O. & P.S. Raxaul, District –
East Champaran, Presently Residing At 855/1, Indra Nagar, P.O. - New Forest,
P.S. - Basant Vihar, Dehradun, Uttarakhand.

.... Petitioners

Versus

1. The State Of Bihar Through The Director General Of Police, Bihar, Patna .
2. The District Magistrate, East Champaran, Motihari.
3. The Superintendent of Police, East Champaran, Motihari.
4. The Sub Divisional Officer, Raxaul, District East Champaran.
5. The Deputy Superintendent of Police, Raxaul, District - East Champaran.
6. The Officer In-Charge, Raxaul Police Station, Raxaul, District East Champaran.
7. Haji Mukhtar Alam Son of Late Israil Mian
8. Fakhruddin Miyan @ Munna Son Of Haji Mukhtar Alam
9. San-E-Elahi @ Bachcha Babu Son Of Haji Mukhtar Alam
10. Saddam Hussain Son Of Haji Mukhtar Alam Respondent Nos. 7 To 10
Residents of Village Bada Parewa, P.O. & P.S. Raxaul, District - East
Champaran.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Suraj Samdarshi, Advocate
For the Respondent/s : Mr. Ajay Rastogi, Advocate
For private respondents: Mr. A.K. Thakur, Advocate
Mr. Uma Shankar Verma, Advocate
Mr. B.K. Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

CAV JUDGMENT

Date: 16 -05-2017

The petitioners have invoked the writ jurisdiction of

this Court for issuance of direction to the respondent authorities

particularly respondent No.6, the Officer-in-Charge of Raxaul

Police Station in the District of East Champaran, commanding to



unseal the premise of the petitioners, which have been sealed by respondent No.6 in collusion with respondent Nos.7 to 10. Further prayer is for immediate handing over of the vacant and peaceful possession of the said premise to the petitioners as petitioners were dispossessed by the police at the time of sealing of the premise.

2. The case of the petitioner is that Plot No.735 under Khata No.7, admeasuring 2 Katha, situated at Bada Parewa, Raxaul, was purchased from Tikan Das through two different registered sale deeds, dated 23.06.1988 and 19.05.1989. Thereafter, the purchasers i.e., petitioner Nos.2 and 3, who are sons of petitioner No.1, were mutated in the government records and were/are paying the rent and getting the receipts.

3. In due course, the petitioners took loan on the land and holding for their newly established Sinclairs Laboratories and mortgaged the same with the bank. Later on, the business was sifted to Dehradoon and taking advantage of the absence of the petitioners, on 06.04.2015 the private respondent Nos.7 to 10 along with others forcefully entered into the said property claiming that the property belongs to them and thereafter ransacked the property after assaulting the employees of the petitioners. The matter was twice reported to the Raxaul Police, firstly on 06.04.2015 and secondly on 07.04.2015 and, then, Raxaul Police Station Case



No.90 of 2015 was registered.

4. Private respondent Nos.7 to 10 filed their counter affidavit disputing the claim of the petitioners and asserting that in fact the aforesaid plot is ancestral property of respondent Nos.7 to 10. They are in possession of the said premise. In the past the State authorities were likely to take possession of part of plot No.735 aforesaid then the private respondents filed Title Suit No.4 of 2002 against the State of Bihar and the suit was decreed in favour of private respondents and the said order remained unchallenged. They further asserted that the writ petitioners had filed Misc. Case No.4 of 2015 before DCLR, Raxaul, vide Annexure-B, and DCLR, Raxaul, considered the claim of title and possession of both the parties and dropped the proceeding directing the parties to approach the appropriate Civil Court by order dated 27.06.2015. Thereafter the private respondents filed Title Suit No.112 of 2015 on 23.12.2015 before the competent Civil Court for a decree of cancellation of two sale deeds, said to be executed by Tikan Das, the non-title holder, in favour of the writ petitioners, on the ground of title and possession of the private respondents. The writ petitioners have appeared in the suit and have already filed their written statement on 08.08.2016.

5. The aforesaid factual position reveals that there is



apparent dispute of title and possession between the parties pending before the competent Civil Court since prior to this writ petition and the law is well settled that the writ Court cannot look into the disputed question of title and possession.

6. Contention of the petitioners is that in the present case the respondent-police has acted as facilitators to allow wrong entry into possession of the premise by the respondents. Initially the police put a lock on the disputed premise and, thereafter, the respondent Nos.7 to 10 were allowed to break open the boundary wall and backside of the premise in attempt to take forceful possession. Therefore, fundamental right of the petitioners has been violated by the State authorities, which must be protected in exercise of this extra-ordinary jurisdiction.

7. To counter the aforesaid claim of the writ petitioners, the respondent No.4 has asserted that Annexure-A, the police report dated 23.04.2015, would reveal that both sides, the writ petitioners and respondent Nos.7 to 10, had put their lock on the disputed premise and there was imminent apprehension of breach of peace and chances of communal disharmony. Therefore, the police put its own lock on the suit premise to discharge their duty to maintain peace and public order.

8. It appears that this Court by order dated 28.07.2016,



asked respondent Nos.3 to 6 to appear in person along with the relevant records to satisfy the Court as to under what provision of law the premise of the petitioners was sealed/locked. The aforesaid respondent filed their show-cause disclosing the circumstances necessitating prevention of apprehension of breach of peace under which the lock was put and further assured that they would open the lock. This Court by order dated 04.08.2016 directed respondent No.3 for opening of the lock only and to report this Court to this effect and same was reported subsequently.

9. A bare perusal of the material brought on the record would make it abundantly clear that there is dispute of title and possession between the parties much prior to the alleged date of dispossession (i.e., 06.04.2015) as both have produced supporting documents to claim their title and possession inasmuch as petitioners have produced mutation order as well as mortgage of the premise to the bank; whereas the respondent Nos.7 to 10 have produced the order of the D.C.L.R. Raxaul, wherein it is discussed that Title Suit No.4 of 2002 was going on between the private respondents on the one side and the State of Bihar and others on the other for the same land and was decided in favour of the private respondents. Moreover, Title Suit No.112 of 2015 is already going on between the parties. The record does not disclose with certainty



that the petitioners were dispossessed by the Act of the State-respondents. Therefore, in my view, this Court should not interfere in the matter in exercise of this writ jurisdiction and in view of well settled principle of law that writ Court should not enter into the disputed question of title and possession especially when the same dispute is pending before the competent Civil Court.

10. Learned counsel for the petitioner had placed reliance on cases of *Bishan Das V. State of Punjab and others*, reported in **AIR 1961 SC 1570**, **Samir Sobhan Sanyal V. Trackks Trade Private Ltd. and Others** reported in **(1996) 4 SCC 144**, **The Gait Public Library and Institute V. The State of Bihar and others** reported in **1995 (1) PLJR 585**, **Hindalco Industries Ltd and another v. The Union of India and others** reported in **1996 (2) PLJR 521** and **M/s. Hindustan Petroleum Corporation Ltd V. State of Bihar** reported in **1996 (2) PLJR 621**.

None of the aforesaid cases are applicable in the facts and circumstances of this case; rather the judgments aforesaid were delivered in their individual factual situations laying down different propositions of law. In none of the aforesaid referred cases there was consideration/decision that the writ court can go into and decide the disputed question of title and possession between the parties.



11. To conclude I hold that in fact the petitioners were not dispossessed from the referred land and premise by act of the State-authorities and there is dispute of title and possession between the writ petitioners and respondent Nos.7 to 10 since much prior to the arrival of cause of action of this writ petition. Therefore, in view of the settled principles, this Court is not inclined to go into the aforesaid disputed question of fact in exercise of this extraordinary jurisdiction. In the result, this writ application has got no merit and accordingly stands dismissed without cost.

(Birendra Kumar, J)

Mkr./-

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