

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.921 of 2013

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

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Sri Lakshmi Narayan Trust @ Chorout Math through its Trustee Anand Kand Das
Chela Of Mahanth Shyma Narayan Das, resident Of Village-Chorout, P.S.-Pupari,
District-Sitamarhi

..... Petitioner

Versus

1. The State of Bihar
2. The Collector, Sitamarhi
3. The Superintendent of Police, Sitamarhi
4. The Deputy Superintendent of Police Pupari, District-Sitamarhi
5. The Sub-Divisional Officer, Pupari, District-Sitamarhi
6. The Circle Officer, Choroul, P.S.-Pupari, District-Sitamarhi
7. The Officer Incharge, P.S.-Pupari, District-Sitamarhi
8. The Bihar Board of Religious Trust through its Chairman, Bihar Board Of Religious Trust, Bidyapati Marg, Patna
9. The Chairman, Bihar Board Of Religious Trust, Bidyapati Marg, Patna
10. Ramekbal Mandal son of Mahabir Mandal
11. Baiju Mandal son of Ram Ekbal Mandal
12. Suresh Paswan son of Late Kantun Paswan
13. Judi Mandal son of Late Raghunandan Mandal
14. Dayanand Mehato son of Late Ramchandra Mahato
15. Shyam Paswan son of Chulai Paswan
16. Vijay Paswan son of Lakshman Paswan
17. Ashok Paswan son of Ram Lakshman Paswan
18. Madan Mandal son of Late Ramkripal Mandal
19. Mahesh Badhai son of Late Mansi Badhai
20. Shankar Thakur son of late Mansi Badhai
21. Shankar Thakur son of late Girbal Thakur
22. Doman Paswan son of Shivdhar Paswan
23. Yogendra Paswan son of Pradeep Paswan
24. Tetel Paswan son of late Rambriksh Paswan



25. Vilash Rai son of late Mouji Ram
26. Laxmi Mandal son of late Ramkirpal Mandal
27. Lal Babu Raut son of late Sonki Raut
28. Abhiram Rai son of late Yogendra Rai
29. Bipat Das son of late Makhan Das
30. Jagdish Mandal, son of not known.

All resident of village Chirot (Choraut) P.S. Pupri, District- Sitamarhi.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Siya Ram Shahi, Advocate
Ms. Shally Kumari, Advocate
Ms. Namrata Singh, Advocate
For the State : Mr. Prakash Chandra Jha, A.C. to G.A.-11
For the Respondent no.8 : Mr. Shekhar Singh, Advocate
For the Respondents no. 11,
14, 15, 17, 19 to 24 and 29: Mr. Yogesh Chandra Verma, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
C.A.V. JUDGMENT
Date: 27-03-2017

The present criminal writ application has been filed by the petitioner for commanding the respondents to provide lawful protection to the properties held and possessed by him which is under the threat of anti-social elements.

2. The writ application has been filed by Sri Lakshmi Narayan Trust @ Chorout Math (for short 'the trust') through its trustee Anand Kand Das.

3. It is submitted by Mr. Siya Ram Shahi, learned counsel appearing for the petitioner that the trustee Anand Kand Das succeeded as Mahanth after death of his Guru Mahant Shayam Narayan Das in 2005. The trust has vast property and



there are 11 deities installed in various temples and situated at different places, i.e., Sitamarhi and Madhubani. It is submitted that after final publication under Section 11(1) of the Ceiling Act, in L.C. Appeal Case No. 6/1984, the Collector, Sitamarhi held that the erstwhile Mahanth late Shayam Narayan Das was entitled to retain one unit for himself as Shebait and six units for the deities equivalent to 210 acres of Class IV land and declared 154.73 acres of land of the trust as surplus which was later on distributed to landless persons. After the order of the Collector, final publication under Section 11(1) of the Ceiling Act was published on 01.08.1985 allowing the land holder to retain 210 acres of land. It is submitted that sometimes in 1986, at the instance of application filed by the secretary of a political party, steps were taken to reopen the ceiling proceeding of late Mahanth Shayam Narayan Das under the orders of the Deputy Secretary of Revenue and Land Reforms Department by the Collector, Sitamarhi under Section 45B of the Ceiling Act. However, the ceiling proceeding which was reopened on 06.08.1989 was quashed by this Court vide order dated 17.07.1990 passed in CWJC No. 10404 of 1989. Again, at the instance of some local leaders of a particular political party, the Collector, Sitamarhi vide order dated 25.07.1995 reopened the case under Section 45B of the Ceiling Act which was



again challenged by late Mahanth Shayam Narayan Das in CWJC No. 9768 of 1995 and vide order dated 25.06.1997, this Court quashed the proceeding. It is submitted that again the local leaders of a particular political party are trying to dispossess the petitioner from its land by fixing red flags over the land. The disturbance created by the political party is out and out interference in the right of property of the petitioner which is required to be saved and protected by the district administration.

4. Mr. Shahi submitted that since the trust is a public religious trust under the control of Bihar State Religious Board, on complaint made by the trustee, even the Chairman of the Bihar Religious Board vide letter dated 28.06.2012 requested the Collector, Sitamarhi to take action and protect the land of the trust from illegal dispossession. Mr. Shahi submitted that private respondent nos. 10 to 30 are encroachers over the land of the trust and despite repeated representations, no step has been taken by the authorities of the district administration to remove them.

5. A counter-affidavit has been filed on behalf of respondent nos. 2, 5 and 6 wherein it is stated that as and when information has been received by the respondents, effective steps have been taken for maintenance of law and order.

6. It is submitted by Mr. Prakash Chandra Jha,



learned Assistant Counsel for G.A.-11 that in past, the authorities of the State have always acted in good faith. In future also whenever an occasion would arise, they would take steps in accordance with law to protect the rightful claim of the petitioner.

7. On the other hand, Mr. Yogesh Chandra Verma, learned Senior Advocate appearing for respondent nos. 11, 12, 14, 15, 17, 19 to 24, 26 and 29 submitted that the respondents being represented by him are peacefully enjoying the possession over the survey plot nos. 14051 and 14052 since more than 30 years. They have constructed hutment and shops over the land and they are not encroachers over the land of the petitioner. Mr. Verma, learned Senior Advocate submitted that the private respondents are not members of any political party and they are not anti-social elements. He submitted that they have never been noticed by any court in connection with their possession over the land on which they are living with their families. He submitted that several disputed questions of facts have been raised in the instant writ application, which can only be decided in the suit before the competent court under the law and the writ application is fit to be dismissed.

8. In reply, Mr. Siya Ram Shahi, learned counsel appearing for the petitioner submitted that the private respondents



illegally and unauthorizedly entered into the land of the trust in the year 2012 and illegally constructed hutments. He submitted that the matter was reported to the Officer-in-Charge with a request to take action against the persons named thereon and to restore the land in favour of petitioner after removing them and to provide protection to the property of the trust. A similar application was also filed before the Circle Officer for taking action against the encroachers of the land of the trust on 18th June, 2012 pursuant to which notices were issued to the respondents to vacate the land of the trust, but no action has been taken since then. He submitted that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India should direct the official respondents to evict the private respondents from the land of the petitioner.

9. I have heard learned counsel for the parties and perused the materials available on record.

10. In the opinion of this Court, in respect of an immovable property, if a person claims title and he does not have a possession, the remedy lies in filing a suit for declaration and possession with or without consequential injunction may be in a given facts and circumstances of a case along with declaration to his title or interest. Further, where there is merely an interference with person's rightful possession or where there is a threat of



dispossession, or where there is frustration or interference in the free and full enjoyment of the property, the remedy lies to sue for an injunction simplicitor.

11. In the opinion of this Court, a writ application under the guise of seeking a writ of *mandamus* directing the police authorities to give protection to the petitioner cannot be made forum for adjudicating on civil rights. Thus, it would not be proper for this Court to issue any writ of mandamus against the private respondents in the present writ proceeding.

12. However, if a rightful owner who is in possession of the property is under threat of its dispossession by anti-social elements or a group of persons, the Court cannot shut its eyes and such anti-social elements cannot be permitted to encroach over the property or occupy the property by illegal means.

13. In that view of the matter, in the event the petitioner trust feels that the properties held and possessed by it is likely to be encroached in future by anti-social elements, it may make a proper representation to the Superintendent of Police, Sitamarhi who after conducting an inquiry made in this behalf, may pass an appropriate order as is permissible in law. Under such circumstances, if the Superintendent of Police feels that the



petitioner being lawful owner is in possession of property and there is threat of forcible dispossession, he shall provide it adequate police protection.

14. With these observations and directions, this writ application is disposed of.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
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