

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.896 of 2017

Arising Out of PS.Case No. -261 Year- 2017 Thana -Sherghati District- GAYA

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1. Md. Shamim
2. Anwar Raza Khan
Both sons of Ahad Raza Khan
3. Md. Sarmad Siddique Son of Shamsuddin Siddiquee
All residents of Mohalla - Shumali (Uttarwari), P.O. & P.S. - Sherghati, District - Gaya.

.... Petitioner/s

Versus

1. The State of Bihar through Home Secretary, Home Department, Government of Bihar, Old Secretariat, Patna.
2. The District Magistrate, Gaya.
3. The Inspector General of Police, Magadh Range, Gaya.
4. The Senior Superintendent of Police, Gaya.
5. The Sub Divisional Police Officer, Sherghati.
6. The Incharge of Sherghati Police Station, Sherghati.
7. The Circle Officer, Sherghati, Gaya.
8. Md. Irfan Ahmad son of Md. Tahir Hussain Tegi @ Tahir Hussain Resident of Mohalla - Anwarganj, P.S. - Sherghati, District - Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Thakur, Adv.
For the Respondent no.8: Mr. Pushkar Narayan Shahi, Sr.Adv.
Mr. Ajay Kumar Sharma, Adv.
For the State : Mr.Apurva Kumar, AC to GA-4

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 25-07-2018

The present writ application has been filed for issuance of a writ of mandamus directing the respondent authorities to restore the possession of the petitioners and their tenants to the House and shops situated on a piece of land appertaining to Thana No.762, Plot No. 1100(old) 3300 (new), Khata No.-983 (old) and 116 (new) Holding No. 193 situated at Mohalla- Sumali, Sherghati in the District



of Gaya. The petitioners have alleged that they have been forcibly evicted/ousted from the premises in question on 22.05.2017 with the help of local police on the basis of First Information Report giving rise to Sherghati P.S. Case No. 261/2017.

A perusal of the First Information Report giving rise to Sherghati P.S. Case No. 261/2017 registered on the same day i.e. 22.05.2017 under Sections 341/ 323/ 504/ 506/ 34 of the Indian Penal Code would show that the private respondent no. 8 has lodged the said F.I.R alleging therein that on 22.05.2017 these petitioners, who were occupying the premises in question without paying rent for last 7 months, called the informant and told him that he was vacating the premises, but on the private respondent no. 8 asking the petitioners to pay the outstanding rent, the petitioners threatened him and assaulted the informant and his family members. The FIR was registered on the same day at about 2.00 P.M.

Learned counsel for the petitioners submits that the private respondent no. 8 took the police authorities of the area in collusion with him for extraneous consideration and by ensuring presence of the police in the premises in question, took upon himself to evict the petitioners forcibly with the assistance of police force. Learned counsel submits that the petitioners were contesting the eviction suit which was brought by the private respondent in the court



below. It is thus submitted that the reliefs prayed in the writ application is required to be granted to the petitioners in the facts and circumstances of the present case.

On the other hand, learned counsel representing the State as also the private respondent no. 8 have opposed the prayer made in the writ application on the grounds inter-alia that the petitioners had earlier filed a complaint case in the Court of Learned Chief Judicial Magistrate at Shergahti alleging identical allegations against the police personnel. The Learned Judicial Magistrate, 1st Class, Sherghati got an inquiry conducted in the matter and after following the procedures prescribed under Section 202 of the Code of Criminal Procedure when the learned Magistrate found that there were no sufficient materials to proceed against the accused persons in terms of Section 204 Cr.P.C., the application of the petitioners was rejected in terms provided under Section 203 of the Code of Criminal Procedure. A Revision application against the order under Section 203 Cr.P.C. is said to be pending. It is further submitted that a land dispute between the petitioners and the private respondent is admittedly going on, the petitioners are party to the pending title suit wherein also they have now amended the plaint and are seeking recovery of possession. On these grounds, it is submitted that the relief prayed in the writ application is not fit to be granted by this Court sitting in its



extraordinary writ jurisdiction under Article 226 of the Constitution of India.

Having gone through the material available on the record, this Court is of the considered opinion that the petitioners having invoked the jurisdiction of the regular courts in terms of the Code of Criminal Procedure and a complaint petition filed by the petitioners having been dismissed against which the revision is said to be pending in the court of learned District Judge at Gaya, at this stage, this Court would not be willing to take a view as regards the complicity of the police personnel in the matter of eviction of the petitioners from the premises in question. It has been informed to this Court that earlier an Eviction Suit was also filed by the private respondent no. 8 against the petitioners which was pending when the petitioners were thrown out from the premises. A title suit is also pending in the court below. There are allegations and counter allegations and this Court sitting in its writ jurisdiction would not be willing to go into that aspect of the matter and hence it is left for the petitioners to pursue their remedy in revision before the learned District Judge, Gaya and any other remedy for recovery of possession as is being claimed, in accordance with law.

However, before I part with this case one thing which has been worrying this Court is that admittedly in all the inquiries,



which have been conducted, it has been found that the police personnel were present when the articles which were kept in the premises in which the petitioners were there till their eviction were being thrown or taken out. The inquiry conducted by the ADM rank officer also shows that the officers in-charge of the Police Station and other police personnel were there. The petitioners have brought on record certain photographs showing that a large number of house-hold articles are thrown on the road and the private respondent no. 8 has been shown coming out from the shop area with certain articles. The presence of police personnel may also be seen in the photographs. The veracity of these photographs cannot be examined by this Court in the present writ petition, but as a Constitutional Court it is certainly a concern for this Court that how in presence of police officer of the area the articles shown to have been lying on the road side would be thrown as alleged by the petitioners. In the opinion of this Court, this matter is required to be looked into from administrative point of view in the interest of justice, this Court would therefore, direct the Inspector General of Police, Magadh Range, Gaya (respondent no.2) to look into the entire matter, consider the evidences which may be brought to his notice by the petitioners and after examining the veracity of the materials which will be brought by the petitioners before him an appropriate order would be required to be passed by



him.

Is it a case of administrative lapse, whether in presence of the police officers, the articles of the petitioners were thrown out and the presence of the police officers were secured by the private respondent only to facilitate such eviction as alleged by the petitioners are some of the questions which are required to be examined and looked into by respondent no. 2. Pursuant to such inquiry which may be conducted by respondent no. 2, necessary consequential orders in administrative side may also be passed by him in the interest of justice.

This Court makes it very clear that being a Constitutional Court what has come in the mind of the Court has been indicated just for the purpose of an inquiry by a responsible police officer of the rank of respondent no.2 to inspire confidence and at this stage no part of the observations made by this Court hereinabove would cause prejudice to either of the parties to the litigation. Let a free and independent inquiry be conducted by respondent no. 2 and order accordingly.

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	NAFR
CA V DATE	N/A
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