

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3493 of 2007

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Brajesh Dhari Sharma, S/o Late Giridhari Prasad Sharma, Permanent Resident of village Samaya Garh, P.S- Mokameh, District- Patna, Presently working at_Institute of Public Admisitration, Darbhanga House Campus, Patna University.

.... Petitioner/s

Versus

1. The State of Bihar.
2. District Magistrate, Patna.
3. Sub-Divisional Magistrate, Patna Sadar, Patna.
4. Officer-in-Charge, Patrakar Nagar P.S- Kankar Bagh, Patna.
5. Peoples Cooperative House Construction Society Ltd. Kankar Bagh, Patna 20, through it's Honorary Secretary.
6. Kiran Sinha, w/o Shri Arun Kumar, resident of village- Korawan, P.S- Hilsa, District- Nalanda, At present residing in the House of Sri Mritunjay Singh, New Area, Chitragupta Nagar, Kankar Bagh, Patna.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Yogendra Mishra, Advocate.
: Mr. Umakant Tiwari, Advocate.
For the State : Mr. Vivek Anand Amritesh, A.P.P.
For the Respondent no. 5: Mr. Meekesh Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 25-09-2018

Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the respondent no. 5.

The petitioner has made two prayers in the instant writ petition. The first prayer is for issuance of a direction the respondents 1st party to get the encroachment made over plot no. K1-87, Peoples Co-operative House Construction Society, Kankar Bagh, Patna be removed within a time frame. The second prayer of the petitioner is for a direction to be issued in the shape of mandatory injunction restraining the respondent 3rd party to make any attempt to occupy any



portion of the said Society plot no. K1-87 having its dimension as 50'x80' (4,000 Sq. ft.).

The contention of the petitioner is that respondent no. 5 being Housing Cooperative Society acquired land from the Housing Department, Government of Bihar by means of lease in the year 1966-67 and as per plan of the Housing Department made allotment of plot no. 87, situated in Sector- K1 of Peoples Cooperative House Construction Society, Kankarbagh, Patna to the petitioner, who is a valid member of the said society. Another plot bearing no. K1-86 having identical dimension has been allotted to one Smt. Nandini Rai in the year 1982, but got the said land transferred to his son Alok Shekhar, for which subsequently a registered lease deed was executed by the society. After the said transfer of plot in favour of Alok Shekhar, some portion of plot no. K1-86 was utilized by the officials of the respondent no.1 for Road, Sewerage and Hotel Electric Line etc. and that is why the area of the plot got reduced and only 20'x80' land remained in possession of Alok Shekhar. The said Alok Shekhar filed Case No.320 of 1998 before the Registrar, Cooperative Societies, Bihar for a direction to the Society to get the petitioner's land excluded by 15'x80' and include the same in his plot no. K1-86. The Joint Registrar granted relief in favour Alok Shekhar, but in appeal, the decision of the original authority was set aside with an



observation that if Alok Shekhar had any grievance, he should have moved the appropriate authority for arbitration in terms of Clause- 15 of his registered lease deed. In the light of the direction, the said Alok Shekhar made an application to the Secretary, Housing Department, Government of Bihar for arbitration and the Secretary passed an order in favour of Alok Shekhar without hearing the petitioner. The petitioner, thereafter, challenged the order of the Secretary before this Court vide CWJC No. 7132 of 2004. During the pendency of the said writ petition, the said Alok Shekhar transferred the plot no. K1-86 to the respondent no. 6. A proceeding was also initiated under Section 144 of the Code of Criminal Procedure in which upon notice the petitioner appeared and filed his show-cause. The respondent no.6 also filed show cause claiming title and possession by virtue of sale deed executed in her favour by the said Alok Shekhar.

The respondent no. 3 after hearing arguments reserved order and passed order much after 60 days, making the same ante-dated and communicated the same to the respondent no.4 on 24.03.2005. By the said order, the respondent no.4 put the petitioner in a most disadvantageous position restraining him from going upon the land in dispute. Against the said order, the petitioner filed Criminal Revision application before the learned Session Judge, Patna who admitted the case and the same is still pending.



In the aforesaid background of the facts, the petitioner has filed the instant writ petition seeking removal of encroachment over the plot no. K1-87.

In my considered opinion, in the back drop of the facts noted above, no relief can be granted by the petitioner under writ jurisdiction. The relief claimed by the petitioner would require leading of the evidence and determination of dispute which can only be done by a civil court of competent jurisdiction.

In that view of the matter, the writ petition is dismissed with liberty to the petitioner to seek remedy before the appropriate court in accordance with law.

(Ashwani Kumar Singh, J)

Pradeep/Sneha

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	27-09-2018
Transmission Date	

