

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.147 of 2019

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

Abdul Noor, son of Anul Haq, Resident of Mohalla- Mirchai Sah Ka Takiya,
Telhatta Road, P.S.- Town, Police Station- Siwan, District- Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Home Department, New Secretariat Patna
2. The District Magistrate, Siwan
3. The Superintendent of Police, Siwan
4. The Officer Incharge of O.P. Police Station, Siwan
5. The Circle Officer, Pacharukhi, District- Siwan
6. Baidyanath Prasad, son of Late Sachitanand Prasad.
7. Rakesh Kumar, son of Bidyanath Prasad

Respondent no. 6 and 7 are resident of Mohalla- Near Lal Kothi Babunia Mor, P.S.- Town Thana, District- Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Chandra Kant, Advocate

For the Respondent/s : Mr. Sheo Shankar Prasad, SC-8

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 28-01-2019

In the instant writ petition, the petitioner has made two prayers. His first prayer is to issue direction to the official respondents to provide security to the petitioner so that he may construct his house on Khata No.80, Plot No.479. His second prayer is for setting aside the order dated 22.09.2018 passed by the Sub Divisional Magistrate, Siwan in a proceeding under section 144 of the Code of Criminal Procedure.

2. At the outset, learned counsel for the petitioner submitted that due to subsequent developments, the second prayer of the petitioner has become infructuous. He submitted that the



petitioner has purchased 6 dhur land of Khata No.80, Plot No.479 from Shri Ram and Jagat Narayan on 28.05.1994 and, after purchase, he is coming in possession of the property. His contention is that from perusal of Khatian, it would be apparent that Khata No.80 belongs to Ramtahal, whose heirs have sold the land to several persons, on the basis of entries made in the Khatian. One Mostt. Ram Sakhi, daughter-in-law of Ramtahal, executed a sale deed on 02.08.1944 with respect to Khata No.80, Plot No.479/879 to Seikh Muhammad Sabir. The said Seikh Muhammad Sabir purchased the land from Mostt. Ram Sakhi, who became traceless after his two brothers Seikh Abir and Seikh Jabid executed sale deed in favour of respondent no.6 Baidyanath Prasad with respect to Khata No.80, Plot No.479 and 879, admeasuring an area of 5 Katha 3 Dhurs.

3. Learned counsel for the petitioner further submitted that the petitioner had applied for loan from the bank and after sanction of loan to the tune of Rs.1,50,000/- when he went to construct his house, respondent nos. 6 and 7 have raised objection. He contended that they have illegally interfered with the right of the petitioner by claiming that the plot over which the petitioner intends to construct the house belongs to them. They contend that they have purchased land from Ram Sakhi. He contended that they



also made a complaint to the police claiming that the petitioner was illegally trying to construct house over the plot in question as a result of which, a proceeding under Section 144 of the Code of Criminal Procedure was initiated under the orders of the Sub Divisional Magistrate, Siwan. He contended that the police have acted in collusion with private respondent nos. 6 and 7, as a result of which, the petitioner is facing difficulty in construction of his house.

4. *Per contra*, learned counsel appearing for the State submitted that the writ petition is quite vague. Save and except, khata no. and plot no. no description of the property has been given by the petitioner in the writ petition. It is not even mentioned that in which mauza of the district, said khata no. and plot no. are situated. The petitioner has raised several disputed questions of fact in the writ petition, which cannot be adjudicated by the court in a summary proceeding under Article 226 of the Constitution of India. The pleading made by the petitioner would make it clear that private respondents and the petitioner are claiming their right, title and possession over the disputed plot in question. Such issues can only be decided by a civil court of a competent jurisdiction in a properly instituted suit.

5. I have heard learned counsel for the parties.



6. I fully concur with the pleadings made by the learned counsel for the State.

7. The writ petition is not only vague but it is also difficult to comprehend the details of the land over which the petitioner intends to construct a house. From the writ petition, it would be clear that there is a pure and simple dispute of right, title and possession between two private parties. The remedy to the petitioner in such situation would be a suit and not a writ under Article 226 of the Constitution of India.

8. In that view of the matter, I am not inclined to entertain this writ petition. It is dismissed, accordingly.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.02.2019
Transmission Date	NA

