

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1735 of 2018

In

Civil Writ Jurisdiction Case No.5288 of 2014

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1. Raj Kumar Verma, aged about 48 years, Son of Moti Lal Singh @ Moti Lal Saroj, Resident of Ward No. 12, Gola Bazar, Sherghati, P.S.- Sherghati, District- Gaya- 824211
 2. Sanjay Verma Son of Moti Lal Verma Resident of Ward No. 12, Gola Bazar, Sherghati, P.S.- Sherghati, District- Gaya- 824211

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Government of Bihar, Patna
2. The District Magistrate cum Collector, Gaya
3. The Superintendent of Police, Gaya
4. The Sub-Divisional Magistrate, Sherghati, District- Gaya
5. The Sub-Divisional Police Officer, Sherghati, Distt- Gaya
6. The Officer-in-Charge Sherghati, Distt- Gaya
7. Bigan Mistry Son of Chamari Mistry, Resident of Village- Kadwa, P.S.- Sherghati, Distt- Gaya
8. Budhiraj Gupta, Son of Late Chhatanki Sao, Resident of Gola Bazar, Shereghati, P.S.- Shereghati, Distt- Gaya
9. Gulab Chand Mistry, Son of Late Banshi Mistry, Resident of Village- Mahuawan, P.S.- Amas, Distt- Gaya
10. Lohari Kumhar, Son of Late Gardu Kumhar, Resident of Gola Bazar, Sherghati, Distt- Gaya
11. Bishun Kumhar, Son of Lohari Kumhar, Resident of Gola Bazar, Sherghati, Distt- Gaya

... .. Respondent/s

with

Letters Patent Appeal No. 524 of 2019



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Versus

1. Raj Kumar Verma @ Ray Kumar Verma, aged about 40 years, Male son of Moti Lal Singh (Verma)
2. Sanjay Verma, aged about yrs Male Son of Moti Lal Verma Both Resident of Gola Bazar, Sherghati, P.S.- Sherghati, District- Gaya- 824211

... .. Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Government of Bihar, Patna
2. The District Magistrate cum Collector, Gaya
3. The Superintendent of Police, Gaya
4. The Sub-Divisional Magistrate, Sherghati, District- Gaya
5. The Sub-Divisional Police Officer, Sherghati, Distt- Gaya
6. The Officer-in-Charge Sherghati, Distt- Gaya
7. Pandit Upendra Nath, son of Ram Prasad Prajapati, resident of Golabazar, Sherghati, P.S. Sherghati, Distt- Gaya
8. Lohari Kumhar, son of Late Gardu Kumhar
9. Bishun Kumhar, Son of Lohari Kumhar, Both are Resident of Gola Bazar, Sherghati, Distt- Gaya

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Sanjay Kumar, Advocate
		Mr. Ashutosh Singh, Advocate
For Respondent No. 7	:	Mr. Binod Kumar Singh, Advocate
		Ms. Vagisha Pragya Vacaknavi, Advocate
For Respondent No. 7 to 9:		Mr. Dhananjay Kumar, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT



(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 16-07-2019

Heard learned counsel for the appellants in both the appeals.

2. These two appeals arise out of a common judgment delivered on 28.11.2018 by a learned Single Judge in two writ petitions.

3. The first writ petition C.W.J.C. No. 5288 of 2014 was filed by three petitioners claiming themselves to be the tenant of the premises of which the petitioner of C.W.J.C. No. 20064 of 2016 Pandit Upendra Nath is stated to be the landlord. They came up with their plea that they are the tenants of three shops whereas the Respondent Nos. 7 and 8 in the writ petition who are the appellants before us claim themselves to be the purchasers of the shops from the agnate of Pandit Upendra Nath. The challenge raised by the tenants was that in connivance with the police authorities, particularly an Assistant Sub-Inspector of Police by the name of Rakesh Ranjan, locks were forcibly put on the three shops by the appellants and this, therefore, amounted to a highhandedness on the part of the authorities; hence the petitions. The said three persons claiming possession as tenants therefore came up before this Court and the learned Single Judge after getting certain affidavits from the



authorities ultimately disposed of the writ petition for handing over the possession of the shops to the petitioners of C.W.J.C. No. 5288 of 2014 [Bigan Mistry and two others] by the impugned judgment.

4. During the pendency of the said writ petition which was filed in the year 2014, the landlord whose ownership is not disputed by the tenants, filed C.W.J.C. No. 20064 of 2016 that was directed to be connected with the other writ petition and the relief prayed for in the said writ petition was for protection of the interest of the petitioner and his tenants that was being disturbed at the instance of the appellants in connivance with the police. The landlord contended that he has succeeded throughout with the aid of judgments and decrees right from 1972 onwards and his title not being disputed, the possession of his tenants through him could not have been altered at the instance of the appellants.

5. After exchange of affidavits, directions were issued and questioning the same the present appeals have been filed. Having entertained the appeals, we had passed the following interim order on 21st January, 2019:

“We have gone through the impugned judgment and, prima facie, we find that the learned Single Judge has assumed the



jurisdiction of granting a mandatory injunction in favour of the respondent-petitioner by issuing direction of opening locks and putting the respondent-petitioner into the possession. This was essentially a private nature of civil dispute for which a writ petition would not ordinarily be maintainable keeping in view the scope of exercise of powers under Article 226 of the Constitution of India.

In the background aforesaid, the directions issued by the learned Single Judge while exercising the writ jurisdiction may not have been an appropriate exercise of discretion. Consequently, we permit Shri Dhananjay Prasad, who has put in appearance on behalf of the respondent-petitioner, to file a response for which he prays he may be granted two weeks' time. Time prayed for is granted. One week time is granted for rejoinder, if any.

The matter shall be listed after expiry of three weeks on 25.02.2019.

Until further orders of the Court, the operation of the order dated 28.11.2018 shall remain in abeyance and the parties are directed to maintain status quo.

A copy of the appeal may be served on the learned counsel for the respondent petitioner by tomorrow.”



6. Having gone through the pleadings the main contention on behalf of the respondents in the writ petition was that it was the police that had interfered and had virtually put the locks on the shops with a clear allegation against the Sub Inspector of Police Mr. Rakesh Ranjan. It is on this ground that violation of rights were complained of and the writ petition was ultimately disposed of giving rise to the impugned judgment.

7. We have gone through the pleadings of both the writ petitions and we find a complete denial on behalf of the police about their participation in the putting of locks on the three shops. This, therefore, raises a serious disputed question of fact relating to the putting of locks by a police officer. In the absence of any such confirming material on record, it will be difficult for this Court in the exercise of jurisdiction under Article 226 of the Constitution of India to accept one version or the other on the basis of oaths. The evidence with regard to the participation of the police officer remains a mere allegation without any substantive proof. Even otherwise, if the allegation has to be tested, then evidence will have to be led in this regard which cannot be gone into under the extraordinary jurisdiction of this Court. We, therefore, find that the learned Single Judge ought not to have issued a decree of possession in the manner in



which it has been framed in the impugned judgment without recording a finding on this issue. As a matter of fact, if there is no established participation as alleged then the very maintainability of the writ petition is questionable.

8. Consequently, we are of the opinion that the respondent-petitioners ought to have approached the appropriate forum instead of filing a writ petition before this Court. If the landlord had any grievance to be redressed, he ought to have claimed his rights also before the appropriate forum and in the event there was an apprehension of breach of peace, then it was also for the police authorities to have invoked processes as enshrined under Section 145 Cr.P.C. and the provisions relating thereto. We do not find any such measure having been taken and the writ petition has been entertained straight away before this Court in the background aforesaid.

9. We, therefore, are unable to sustain the impugned judgment for the reasons aforesaid without prejudice to the rights of the parties to approach the appropriate forum for the redressal of their grievances. The disposal of this matter by us or any orders passed herein will not be any impediment in the passage of the parties to claim their rights before the concerned Court.



10. We, accordingly, allow the appeals and set aside the impugned judgment dated 28.11.2018 and direct that the parties shall be at liberty to obtain relief from the appropriate forum as observed hereinabove.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

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CAV DATE	
Uploading Date	19.07.2019
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