

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.203 of 2017

Arising Out of PS. Case No.-331 Year-2016 Thana- BARH District- Patna

Sabita Devi wife of Umesh Sao @ Umesh Prasad Sao, resident of Mohalla-Dayachak, Ward No.29(old)/26/25(old). Barh Nagar Parishd, Barh, P.S.Barh, District- Patna

... .. Petitioner

Versus

1. The State of Bihar through Home Secretary, Govt. of Bihar at New Secretariat, Patna at Bihar
2. The Inspector General of Police, Magadh Pramandal, Patna
3. The Senior Superintendent of Police, Patna
4. The Superintendent of Police (Rural), Patna
5. The Additional S.P., Barh, Patna
6. Civil S.D.O., Barh, District- Patna
7. The Officer-in-charge, Barh Police Station, Barh, District- Patna
8. Mr. Ajit Kumar Choudhary son of name not known, the then Additional SHO., Barh Police Station, Patna

.... Respondent 1st set

9. Kapil Yadav son of Ramjee Yadav
10. Binod Yadav son of Kapil Yadav
11. Dilip Yadav son of Kapil Yadav

All resident of Mohall-Dayachak, Barh Nagar Parishad, Ward No.29 old/26 new, P.S.-Barh, District- Patna

12. Wife of Kapil Yadav
13. Wife of Binod Yadav
15. Wife of Dilip Yadav

All resident of Mohall-Dayachak, Barh Nagar Parishad, Ward No.29 old/26 new, P.S.-Barh, District- Patna

... .. Respondent 2nd set

Appearance :

For the Petitioner/s : Mr. Dr. Anshuman, Advocate



: Mr. Sanjay KumaR, Advocate
: Mr. Baban Kumar, Advocate
For the Respondent/s : Mr. Sheo Shankar Prasad, SC-8

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 05-08-2019

Heard learned counsel for the petitioner and
learned counsel for the State.

2. This application has been filed by the petitioner for directing and taking action against the police authority, who have issued eviction notice upon the petitioner. The further prayer of the petitioner is for directing the police authority to restore possession of the property in question in favour of the petitioner.

3. Learned counsel for the petitioner submitted that the petitioner Sabita Devi had purchased a plot measuring one Katha one Dhur by virtue of absolute sale registered deed on 27.11.2001 bearing Tauzi No.7838, Revenue Thana No.597, part of Khata No.232, Plot No.734. After purchase of the said property, she had constructed house and started living in it. She is paying rent to the Barh Nagar Parishad. The house is situated at a prime location. The husband of the petitioner, namely, Umesh Sao had started business of manufacturing and selling bakery in the said premises for which he applied for getting a



licence under Shops and Establishment Act. In October, 2016, the petitioner received a notice dated 01.10.2016 issued by the Additional SHO, Barh Police Station, namely, Ajit Kumar Chaudhary wherein it was stated that one Dilip Kumar son of Kapildev Rai had given an application stating therein that he had purchased one Katha one Dhur land in the year, 2005 and after constructing house over the said property, he had given the same on rent to Umesh Sao. After that, when Dilip Kumar asked him to vacate the premises, they are not vacating the same. The notice further stated that the petitioner and her husband should be present at the Barh Police Station on 02.10.2016 in order to explain as to why they are not vacating the premises in question.

4. He has further contended that the husband of the petitioner is a drunkard and is always used to live in drunken state. He was irregular in business. So his business was being looked after by the petitioner's family. The private respondents used to put pressure on her that her husband had taken loan from them so she has to sell the property to them. Since 2010 she had filed several petitions before the different authorities in this regard. The private respondents had put extreme pressure for selling the property in question to them and promised to pay the amount to the petitioner in addition to adjustment of loan.



5. He contended that the private respondents in connivance with the local police had sent the notice for eviction. Thereafter, on 13.10.2016, they forcefully entered into her house and thrown them out. In this regard, a police case vide Barh P.S. Case No.331 of 2016 dated 13.10.2016 was registered on the basis of the statement made by the petitioner.

6. Having argued so, learned counsel for the petitioner submitted that the action taken by the police in sending the eviction notice and allowing the forceful entry by the private respondents into the house of the petitioner are wholly illegal, arbitrary, unjust and unsustainable in law.

7. He pleaded that the petitioner has become a victim of police high handedness.

8. Per contra, learned counsel for the State submitted that there is no truth behind the allegation made by the petitioner. The alleged notice dated 01.10.2016 was sent to the petitioner and her husband in view of the written report given by the respondent 2nd set and it was sent with an intention to resolve the dispute amicably. As such, the police officer had directed the petitioner to appear in person to clarify the matter in order to maintain public peace and to avoid any ugly scene. He contended that in the first paragraph of the said notice the fact



alleged by the purchaser has been recited whereas the vendor was asked to be present to explain the actual state of affair, but he never appeared and the police did not take any action thereafter. He contended that it was never a notice for eviction. The police have never acted in any manner to evict the petitioner or her husband. He contended that in the application the petitioner has alleged that her husband is drunkard and always used to live in drunken state, but no complaint has been made by the petitioner against her husband at any point of time.

9. As far as the FIR of Barh P.S. Case No.331 of 2016 registered under Sections 452, 352, 427, 504 and 506 read with 34 of the Indian Penal Code is concerned, it has been contended by the learned counsel for the State that upon completion of investigation the police found the accusation made by the petitioner to be false. Thus, the investigating officer submitted final report no.82 of 2017 dated 15.03.2017 in the court. A copy of the case diary and the final report submitted in connection with Barh P.S. Case No.331 of 2016 by the investigating officer has been produced before me.

10. He has further pleaded that till date no suit has been filed by the petitioner before the civil court either for recovery of possession or for right and title over the property in



question.

11. Having heard learned counsel for the parties and carefully perused the materials available on record, I find that the notice issued to the petitioner on 01.10.2016 was not an eviction notice. It was issued pursuant to the complaint made by the purchaser of the property. The police had simply asked the petitioner and her husband to put their side of story in respect of allegation made by the purchaser of the property.

12. As far as the police case instituted by the petitioner against the private respondents is concerned, the allegations made in respect of forceful eviction from the property in question have not been found true in course of investigation. The police have submitted final report as back as on 15.03.2017. The contention of the petitioner that the police had acted in collusion with the private respondents has vehemently been denied by the official respondents in the supplementary affidavit filed on behalf of respondent nos. 3, 4 and 7 also. It has been contended that there is no material to support that the police ever acted in connivance with the respondent 2nd set.

13. The petitioner has not filed any rejoinder to the counter affidavit filed on behalf of the State. In the counter



affidavit it has been pleaded that till date no suit has been filed by the petitioner for recovery of possession or for declaration of right and title over the property in question in her favour.

14. It is well settled position in law that where on a question of fact there is serious dispute, which cannot be decided without taking evidence, the writ court would not decide such question.

15. The dispute between the parties in the present case is purely of civil nature. The factual aspect of the dispute between the parties cannot be appreciated and adjudicated by this Court in exercise of either writ jurisdiction or supervisory jurisdiction. The petitioner can raise the dispute relating to right, title or recovery of possession before the competent court of law.

16. In view of the discussions made above, I am of the considered opinion that no case for issuance of any direction or for taking action against the police authority is made out. In absence of any cogent material to show that the petitioner was forcefully evicted by the private respondents in collusion with the police from the property in question, no direction for restoration of possession can be granted by this Court specially in exercise of jurisdiction under Articles 226 and



227 of the Constitution of India.

17. The application is dismissed, accordingly.

(Ashwani Kumar Singh, J)

Md. S/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	10.08.2019
Transmission Date	10.08.2019

