

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1400 of 2019

Arising Out of PS. Case No.-86 Year-2019 Thana- SULTANGANJ District- Bhagalpur

Nand Kishore Sharma, Son of Late Mahadeo Mistri, Resident of Village-
Raghopur, P.S.-Nathnagar, District-Bhagalpur.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Home Affairs, Government of Bihar, Patna.
2. The Director General of Police, Government of Bihar, Patna.
3. The Inspector General of Police, Bhagalpur Division, Patna.
4. The District Magistrate, Bhagalpur.
5. The Superintendent of Police, Bhagalpur.
6. The Dy. Superintendent of Police, Sultanganj, District-Bhagalpur.
7. The S.H.O., P.S.-Sultanganj, District-Bhagalpur.

... .. Respondents

8. Arun Mandal, Son of Late Chedi Mandal, Resident of Kasmabad, P.O-Gangapur, P.S.-Sultanganj, District-Bhagalpur.
9. Arvind Mandal, Son of Late Chedi Mandal, Resident of Village-Kasmabad, P.O-Gangapur, P.S.-Sultanganj, District-Bhagalpur.

... .. Private Respondents

Appearance :

For the Petitioner : Mr. Jitendra Kumar Giri, Advocate
For the Respondents-State: Mr. S.K. Jha, AC to AAG-3

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 22-10-2019

Heard Mr. Jitendra Kumar Giri, learned counsel for
the petitioner and Mr. S.K. Jha, learned counsel for the State.

2. The petitioner Nand Kishore Sharma is a habitual litigant. He has filed back to back cases before this Court for an almost identical relief. Firstly, he had filed the writ petition vide C.W.J.C. No.22876 of 2012 wherein his prayer in



para 1 was as under:-

“1. That this is an application for issuance of an appropriate writ/writs, order/orders, direction/directions to the respondents to vacate/remove the illegal occupants/encroachers from the land situated at Mauza Raghobpur Thana no.-8 P.S.-Nath Nagar, District-Bhagalpur appertaining to Khatas no.161, and khesras no. 555 and 585 measuring an area of 4 decimals, khata no.309 and khesras no. 603, 592, 601, 607 measuring total areas of land 1 Acre 6 decimal of land and to get it restored to the physical possession of the petitioner which was the khatiyani land of grand father / ancestors of the petitioner and the land rent receipts have been regularly issued in his favour by the competent authority of the state. Despite the aforesaid features the above noted land has been illegally taken into physical possession by the anti-social elements / extremist by use of muscle power and force.”

(emphasis mine)

3. After hearing the parties, a Bench of this Court, vide order dated 13.12.2012 disposed of the said writ petition observing as under:-

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



2. Relief prayed for in this writ petition is absolutely misconceived in view of the provisions of the Bihar Gram Panchayat Raj Act, 2006.

3. As prayed for by the counsel for the petitioner, the writ petition is permitted to be withdrawn so as to enable the petitioner to avail the remedy of execution of the order passed by the Gram Kachahari before the Munsif having jurisdiction over the area”.

4. Thereafter, he filed another writ petition before this Court vide Criminal Writ No.690 of 2013 seeking the following reliefs in para 1 of the application:-

“(i) For issuance of an appropriate writ/writs, commanding and directing the respondents **to protect the life and liberty of the petitioner and his family members, which is at the risk in view of the Criminal threats given by the defendants of the Gram Panchayat execution Case No.01/2013 pending in the court of the learned Munsif, 2nd, District-Bhagalpur.**

(ii) For issuance of an appropriate writ/writs, commanding and directing the respondents to provide safety measures to the petitioner in accordance with law and arrest the persons who are making out criminal threats to the petitioner and his family members.

(iii) **For issuance of an appropriate**



writ/writs, commanding and directing the court below to expedite/dispose of the Gram Panchayat execution case No.01/2013 at an earliest stage.

(iv) For issuance of writ/ writs, direction/ Directions for the reliefs which the petitioner is entitled for in the facts and circumstances of the instant case.”

(emphasis mine)

5. In the said writ petition, after arguing at length, the petitioner sought leave to withdraw the writ petition with liberty to raise the issue before the court of Munsif-II, Bhagalpur in Execution Case No.1 of 2013. Vide order dated 13.12.2013, leave was granted and the writ petition was dismissed as withdrawn.

6. Thereafter, the petitioner filed the third writ petition vide Cr.W.J.C. No.573 of 2014 before this Court in which, in para 1, the prayer made was as under:-

“1. That, this is the writ petition being filed before this Hon’ble High Court on behalf of the aforesaid petitioner who seeks for issuance of a writ in the nature of mandamus commanding and directing the state respondents to protect the life / liberty of the petitioner as well as his family members who are prone to any fatal attack on their lives by the Respondent No. 7 and 8, and further more



commanding and directing the state respondents to remove the blockage put up on the main entrance of the residential premises of the petitioner which has been put by the private Respondents by raising a wall in front of the main gate of the residential premises of the petitioner.”

7. The said writ petition was dismissed by this

Court vide order dated 06.02.2015 observing as under:-

“It would be apparent from the record that the petitioner is in habit of filing repeated writ petitions before this court on similar facts and issues. Earlier, the petitioner had preferred two writ petitions vide Cr.W.J.C. No.690 of 2013 and 22876 of 2012 before this Court with more or less identical prayers which were dismissed as withdrawn after hearing of the matters on 13.12.2013 and 13.12.2012 respectively.

Several disputed questions of fact have been raised in the present application. It would further appear from the record that primarily there appears to be a land dispute between the petitioner and private respondent nos. 7 and 8. Such matters cannot be adjudicated in writ jurisdiction.

In that view of the matter, I find no merit in the present application.



Accordingly, the application is dismissed.” (emphasis mine)

8. The respondent nos. 7 and 8 in Cr.W.J.C. No.573 of 2014 were Ramesh Mandal son of Banarshi Mandal and Arbind Mandal son of Chhedi Mandal respectively.

9. After having failed to get any favourable order in the three writ petitions filed earlier, the petitioner has filed the present application vide Cr.W.J.C. No.1400 of 2019 wherein he has made the following prayer in para-1:-

“1. That this is the criminal writ petition being filed before this Hon’ble High Court on behalf of the aforesaid petitioner for issuance of a writ in the nature of ‘Mandamus’ whereby and where under commanding and directing State respondents to investigate into Sultanganj P.S. Case No.86 of 2019 properly and in accordance with law; and further, the prayer of the aforesaid petitioner is to command and direct the State Respondents **to provide legal protection to the petitioner and his family members whose life, freedom and liberty are at stake owing to the private respondent no. 8 and 9**, who are bent upon to terminate the life of the petitioner and his family member if they are found in their village upon their



return back from the outside of the State
of Bihar.” (emphasis mine)

10. The respondent nos. 8 and 9 in the present case are Arun Mandal and Arbind Mandal, both sons of Chedi Mandal. It is to be noted that in Cr.W.J.C. No.573 of 2014 the respondent no.8 was Arbind Mandal son of Chhedi Mandal.

11. It would appear from the record that an FIR vide Sultanganj P.S. Case No.86 of 2019 dated 08.04.2019 was registered by the petitioner against respondent nos. 8 and 9 and one Krishna Mandal. The said FIR was instituted under Sections 447, 387, 427, 504 and 506 read with 34 of the Indian Penal Code. The allegation made in the said FIR is that the petitioner had purchased 18 $\frac{3}{4}$ decimal land from one Kaushalya Devi and had got the said land mutated in his name. The accused persons demanded Rs. 2 lakh as *rangdari* from the petitioner and threatened that failure to pay the amount would cost his life. He has also alleged that they damaged the standing crops of the petitioner causing him huge loss.

12. The said case is under investigation. To hold investigation into a cognizable offence is the statutory duty of the police. At this stage, the Court has no role to play. The role of the Court would start only after the investigation of the case would be over and a report under Section 173(2) of the Code of



Criminal Procedure (for short 'CrPC') would be submitted before the Court. There is nothing on record to suggest that the investigation is not being conducted properly. There is also no assertion that the petitioner ever filed any application highlighting the allegation of threat etc. against the respondents no. 8 and 9 before the court of jurisdictional Magistrate where his application is pending.

13. The nature of prayer made in the writ petition in respect of providing protection to the petitioner and his family members alleging that their life is at stake at the hands of private respondent nos. 8 and 9 is more or less identical to the prayer made in the earlier writ petition, which was dismissed earlier vide order dated 06.02.2015 observing "several disputed questions of fact have been raised in the present application. It would further appear from the record that primarily there appears to be a land dispute between the petitioner and private respondent nos. 7 and 8. Such matters can not be adjudicated in writ jurisdiction."

14. The said order dated 06.02.2015 passed in Cr.W.J.C. No.573 of 2014 was never challenged by the petitioner in appeal. Hence, the order dated 06.02.2015 attained finality.



15. After more than four years of dismissal of Cr.W.J.C. No.573 of 2014, the petitioner has filed the present application on 03.10.2019. The only difference in the previous writ petition and the present one is impleadment of Arun Mandal brother of Arbind Mandal (respondent no.9) as respondent no.8.

16. Regard being had to the facts and circumstances of the case, this Court is of the considered opinion that the petitioner is in the habit of filing cases back to back by making slight changes either in the prayer portion or in the list of private respondents. The application herein is totally misconceived.

17. It is dismissed, accordingly with cost of Rs.25,000/- .

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.11.2019
Transmission Date	04.11.2019

