

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.679 of 2013

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

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Ratna Jagwani Son Of Late A.K. Jagwani, Resident Of Gyani Bhawan, East
Boring Canal Road, P.S- Budha Colony Distt- Patna.

... .. Petitioners

Versus

1. The State Of Bihar Through The Chief Secretary, Old Secretariat Patna
2. The Director General Of Police, Govt. Of Bihar, Patna
3. The Commissioner, Patna Division, Patna
4. The District Magistrate Patna
5. The Senior Superintendent Of Police, Patna
6. The Sub Divisional Officer, Danapur, Distt- Patna
7. The Deputy Collector Land Reforms, Danapur, Distt- Patna
8. The Circle Officer, Danapur, Distt- Patna
9. The Sub Divisional Police Officer, Danapur, Distt- Patna
10. Officer -In- Charge, Rupaspur Police Station, Patna.
11. M/S Ma Developers Pvt .Ltd. Through Its Managing Director, Vijay Kumar
Son Of Sri Baliram Bhagat, 101, B.P. Complex in Front Of Om Vihar,
Pirmuhani, Patna
12. Mr. Ramjee Singh Chauhan Secretary Arpana Sahkari/Grih Nirman Samiti
Ltd. Son of late Lal Bahadur Singh Ramayan Apartment, Near Narmda
Apartment Flat No. 303 Dak Banglow Road Patna.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr.Subodh Kumar Jha, Advocate Mr. Pranav Kumar Jha, Advocate
For the State	:	Mr. Pramod Kumar Singh, AC to SC-16
For respondent no. 11	:	Mr. Yogendra Prasad Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date : 02-01-2019



Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the respondent no. 11.

2. The prayer of the petitioner as narrated in para-1 of the writ petition is as under:-

“This writ petition is being filed for issuance of an appropriate writ/writs, order or orders in the nature of mandamus for directing and commanding respondents to protect the life and property of the petitioner particularly the property bearing Survey Plot No. 241, Touzi No. 5808, Khata No. 197, Co-operative Plot No. 232A measuring an area 2700 Sq. Ft. which the petitioner had purchased through a registered sale deed dated 26.11.1987 from Arpana Sahkari Grih Nirman Samiti Ltd. Patna upon which the petitioner had peaceful possession, however, recently the private respondent no. 11 forcefully wanted to dispossess the petitioner by giving threat of his life and further for a direction upon the respondent no. 10, the Officer-in-charge, Rupaspur Police Station to provide all sorts of lawful protection to the petitioner for his life and property which is under clouds in the hand of



respondents and further for any other other appropriate relief or reliefs for which the petitioner is entitled in the facts and circumstances of the case.”

3. The case of the petitioner is that he had purchased a piece of land admeasuring an area of 2700 square feet bearing Plot No. 232A, Touzi No. 5808, Survey Plot No. 241, Khata No. 197 at village- Jalalpur, Police Station- Danapur, District- Patna from Arpana Sahkari Grih Nirman Samiti Ltd, Patna vide sale deed dated 26.11.1987. The said Plot No. 232 A has been mutated in his name and he is paying rent for the same. He is in peaceful possession of the land since the date of its purchase. Recently, respondent no. 11 tried to encroach upon his land. Being aggrieved, he filed an application before the Sub-Divisional Police Officer, Danapur and pursuant to a report submitted by the police, a proceeding under Section 144 of the Code of Criminal Procedure was initiated by the Sub-divisional Magistrate. Subsequently, he also filed Misc. Case No. 96/12-13 before the Deputy Collector Land Reforms, Danapur for settlement of dispute on 27.12.2012. He had prayed to get the land measured through the court *Amin* under the supervision of the Pleader Commissioner for confirmation of the possession over the



land in question. The Deputy Collector Land Reforms on receipt of the said application filed by him had issued notice to the respondent no.11 and appointed a pleader commissioner and after resorting to all the formalities and hearing all the parties including respondent no. 11 passed an order on 09.04.2013 affirming the report submitted by the Pleader Commissioner whereby his plot was demarcated. However, the respondent no. 11 challenged the order passed by the Deputy Collector Land Reforms before the Commissioner in appeal, but the said appeal was also dismissed vide order dated 25.07.2013.

4. Learned counsel for the petitioner contended that from the aforestated facts it would be evident that in spite of valid right, title and possession over the land in question, the private respondent no.11 is creating problem and trying to encroach upon the land of the petitioner. He contended that under the circumstances, this Court should direct the respondent authorities to provide protection to the petitioner for constructing the boundary wall over the land in question after deputing Magistrate and armed forces for the ends of justice and equity.

5. *Per contra*, learned counsel appearing for



the State submitted that the writ petition is not maintainable as the petitioner has not alleged any violation of any statutory duty on the part of any statutory authority. He contended that the dispute is between the two private parties relating to property, which should not be adjudicated in extra-ordinary writ jurisdiction. He contended that even otherwise, the State is duty bound to maintain law and order and there is no failure on the part of State and its authorities in maintaining law and order.

6. Learned counsel appearing for the respondent no. 11 apart from adopting the arguments advanced on behalf of the State submitted that the petitioner is trying to establish his right, title and possession over the disputed plot by way of raising several disputed questions of facts before this Court. He contended that in case of any dispute relating to any property of a registered co-operative society, the party aggrieved can approach the Registrar, Co-operative Society under Section 48 of the Act. He further contended that the aforestated orders passed by the Deputy Collector Land Reforms and the Commissioner, Patna Division were challenged before the Bihar Land Tribunal and after hearing the parties, the Bihar Land Tribunal has set aside



the orders passed by the Deputy Collector Land Reforms and the Divisional Commissioner.

7. The preliminary issue to be considered by this Court in the present case is whether a writ petition under Article 226 of the Constitution of India is the appropriate remedy for settlement of disputes relating to property rights between the private persons.

8. It is well settled position in law that a remedy under Article 226 of the Constitution of India shall not be available to a party except where violation of some statutory duty on the part of statutory authority is alleged.

9. This Court in exercise of its extra-ordinary jurisdiction cannot go into all the questions of fact arising out on the basis of factual pleadings and record a factual finding that it is the petitioner who has the right, title and possession of the land in question. This Court also cannot allow its constitutional jurisdiction to be used for deciding disputes for which remedies under general law, civil or criminal are available. The jurisdiction under Article 226 of the Constitution of India is not intended to replace the ordinary remedies either by way of a civil suit or before the statutory authority available to an aggrieved person. The jurisdiction



under Article 226 of the Constitution of India being a special and extra-ordinary cannot be exercised casually or lightly on mere asking by the petitioner.

10. In that view of the matter, I am not inclined to entertain the present writ petition, as the issues raised in it is nothing but a dispute between two private parties relating to property.

11. Accordingly, the writ petition is dismissed as not maintainable.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
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