

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.328 of 2019

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

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Pano Devi, W/o Late Kamleshwari Mukhia Resident of Aadarsh Nagar, Ward No. 16, Nagar Parishad Araria, P.O- and P.S- Araria Distt- Araria, at present residing at Hingua, Hingua Milik, P.O. and P.S.- Araria, District- Araria

... .. Petitioner/s

Versus

1. The State of Bihar, through the Director General of Police, Bihar, Patna
2. The District Magistrate, Araria,
3. The Superintendent of Police, Araria.
4. The Station House Officer-cum-Officer Incharge, Araria Police Station- Araria

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Avinash Shekhar, Advocate
		Mr. Vijay Shankar Tiwari, Advocate
For the Respondent-State:		Ms. Divya Verma, AC to AAG-3

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 11-02-2019

This writ petition has been filed by the petitioner for directing the respondent authority to restore the possession of the house of the petitioner situated over land pertaining to Khata No.2438, Revisional Survey Plot No.9544, falling in Mauza-Basantpur, Araria admeasuring 4 decimals.

2. Mr. Avinash Shekhar, learned counsel for the petitioner submitted that the petitioner, a widow, was residing over the land bearing Khata No.2438, Khesra No.9544, Plot No.313, admeasuring 4 decimals falling in Mauza-Basantpur, District- Araria since 1972 after constructing a hut over it. The said plot is



in the nature of *Gair Mazarua Sarkar* land. The holding was created in the name of her husband, vide Holding No.488. In the year 1989, one Bhubneshwar Prasad Sah filed a title suit bearing Title Suit No.373 of 1989 in the court of Munsif, Araria against her husband claiming right over the land in question. Vide order dated 14.08.1994, the title suit was dismissed by the learned Munsif, Araria. Subsequently, her husband died in the year 2016 leaving behind the petitioner and one son as the legal heirs. She is in peaceful possession over the said land. After death of her husband, one Dharamdeo Jha started putting pressure on the petitioner to sell out her house. On 06.10.2016, the wife and son of Bhubneshwar Prasad Sah sold 8 decimal of land from Khata No.2438, Khesra No.9477, Thana No.206 to one Viniya Devi, daughter of Vijay Baman through a sale deed No.10771 executed on 06.10.2016. However, due to non-payment of full amount to the vendor, the sale deed No.10771 was presented for its cancellation on 06.01.2017 before the sub registrar, Araria. Subsequently, the same was cancelled on 06.01.2017. After cancellation of the sale deed, Dharamdeo Jha and Viniya Devi had no claim over the land. Since a dispute had been created by them, the petitioner moved before the court of learned sub-judge, Araria in Title Suit No.250 of 2016 for declaration of tile in her favour as she was residing



over the said plot since 1972 and her husband was the rightful owner declared by the State.

3. He further contended that Viniya Devi was interested to take over possession of the land in question. She moved to the circle officer, Araria in Mutation Case No.3165/16-17 for mutation of the land in her favour on the basis of some false documents, which was objected by the petitioner. Later on, the circle officer rejected mutation application of Viniya Devi in view of the fact that Title Suit No.250 of 2016 was pending for adjudication before the court of sub-judge-I, Araria. Subsequent to the rejection of the mutation application, Viniya Devi moved before the court of sub divisional magistrate, Araria in Case No.888M of 2016 for initiation of a proceeding under Section 144 of the Code of Criminal Procedure against the son of the petitioner and the petitioner for restraining them to enter into the said plot.

4. He pleaded that with intention to harass the petitioner, Viniya Devi has implicated name of the petitioner in various false cases with frivolous allegation and by producing fabricated documents. Though, she has produced the sale deed no.10771 executed on 06.10.2016, she has not disclosed that the same deed has been cancelled on 06.10.2016. Due to suppression of several important facts, the sub divisional magistrate passed order



in Case No.888M of 2016 in favour of Viniya Devi. Subsequently, in connivance with Dharamdeo Jha and Viniya Devi, the station house officer, Araria and assistant sub inspector of police, Araria tried to take possession of the land in question. On 8th of October, 2016, respondent no.4 and an assistant sub inspectors of police, namely, Pramod Jha, Diwakar Jha and some other police personnels forcefully entered into the house of the petitioner, physically abused her and took away her son to the police station. Thereafter, the sub divisional Magistrate, Araria and the station house officer, Araria (Town) on 22.11.2016 along with the police team and Viniya Devi visited the house of the petitioner and forcefully ousted her from her own house and dispossessed her from her property.

5. He contended that being aggrieved by the illegal act of the respondent no.4 and other police officials, the petitioner approached the District Magistrate and submitted her representation, but no action has been taken so far. Being disappointed by the approach of the respondents, the petitioner has also lodged a complaint, vide Complaint Petition No.2419 of 2016 in the court of chief judicial magistrate, Araria against the police officers concerned, Dharamdeo Jha, Viniya Devi and others narrating the entire incident and the manner in which the police in



collusion with Viniya Devi dispossessed the petitioner from her property on 22.11.2016.

6. He further contended that the impugned action on the part of the respondents is a glaring example of executive arbitrariness and administrative high-handedness. The petitioners appeal to the respondent authorities for the redressal of her grievance has gone unheeded so far.

7. He urged that the facts narrated above is sufficient to prove the right, title and possession of the petitioner over the plot in question from which, she was forcefully dispossessed.

8. *Per contra*, Ms. Divya Verma, Assistant Counsel to AAG-3, for the State submitted that the writ petition is fit to be rejected. Though the petitioner has made several allegations against Dharamdeo Jha and Viniya Devi in the present application and as per her own case Viniya Devi is in possession of the property in question, they have not been impleaded as respondents. That apart, in paragraph no.12 of the writ petition, the petitioner has stated that the station house officer, Ramakant Chaudhary, assistant sub inspectors, Pramod Jha and Diwakar Jha and some other police personnel forcefully entered into her house, illegally abused her and took away her son to the police station and it has also been alleged that they were instrumental in ousting her from



her property, neither Ramakant Chaudhary nor Pramod Jha nor Diwakar Jha has been made respondent in the writ petition. Hence, the writ petition deserves to be dismissed for non-joinder of the necessary parties.

9. She argued that in case the petitioner was forcefully ousted from the property in question on 22.11.2016, there is no plausible explanation as to why the present application has been filed after lapse of more than two years.

10. She pleaded that from the pleading of the petitioner itself, it would be evident that the petitioner has already filed Title Suit No.250 of 2016 for declaration of her right and title in the court of sub-judge-I, Araria with respect to the property in question, which is still pending. In that circumstance, the petitioner ought to have prayed for restoration of possession before the court below itself. As the petitioner has not availed of the statutory remedy available to her, no relief can be granted to her in exercise of extraordinary writ jurisdiction.

11. Having heard the parties and perused the record, I am of the opinion that allowing the writ petition would in effect be a declaration of the title to the property in question in favour of the petitioner and restoring her in possession.



12. True it is that in a country governed by law no person can be dispossessed from a property otherwise than in due course of law.

13. To capture the property forcibly is a serious matter. However, if that was the case, the petitioner ought to have approached this court without undue delay.

14. However, in the present case it would appear from the pleading of the petitioner that the title of the petitioner is itself in dispute and a suit in this regard is pending before the subordinate Judge. Since the petitioner has an alternative statutory remedy for the redressal of her grievance, which is equally efficacious and she has already availed the same, a parallel writ proceeding can not be maintained.

15. That apart, it is well settled position in law that disputed questions relating to title can not be satisfactorily gone into and adjudicated in a writ petition.

16. Furthermore, admittedly Viniya Devi is in possession over the property in question since 22.11.2016 whereas the writ petition has been filed on 05.02.2019. Once a person is in settled possession of property, even on assumption that she has no right to remain on the property, she cannot be dispossessed except by recourse to law.



17. If the petitioner has been dispossessed from immovable property without her consent otherwise than in course of law, she has right to recover its possession under Section 6 of the Specific Relief Act.

18. In view of the discussions made above, no relief can be granted to the petitioner in the extraordinary writ jurisdiction.

19. Accordingly, the writ petition is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.02.2019
Transmission Date	NA

