

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25168 of 2019

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Raj Ballabha Singh Son of late Laleshwar Singh, Resident of Village-
Chhouria, P.S. Belchhi, District- Patna, At Present residing at Mohalla-
Walipur, Ward No. 9, Barh, P.O. and P.S. Barh, District- Patna, Pin - 803214
... .. Petitioner

Versus

1. The State of Bihar through the Secretary, Home Department, Govt. of Bihar, Patna.
2. The District Magistrate, Patna.
3. The Sr. Superintendent of Police, Patna.
4. The Sub Divisional Officer, Barh, District- Patna.
5. The Sub Divisional Police Officer, Barh, District- Patna.
6. The S.H.O, Barh Police Station, District- Patna.
7. Amiya Kumar Gupta, Son of late Satya Charan Gupta, Resident of Mohalla- Talimpur, Ward No. 5, Town/P.O./P.S. Barh, District- Patna.
8. Bibha Kumari, Wife of Chunchun Singh @ Tuntun Singh, resident of Mohalla- Talimpur Barapar, Ward No. 15, Tonw/P.O./P.S. Barh, District- Patna.

... .. Respondents

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Appearance :

For the Petitioner : Mr. Sidhendra Narayan Singh, Advocate
Mr. Kumar Lalit, Advocate

For the Respondent State: Mr. Ruchikar Jha, AC to SC-8

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 22-01-2020

The petitioner has filed the present writ application under Article 226 of the Constitution of India seeking a direction to respondents No. 1 to 6 to safeguard his life as well as his legal right to possess the house in dispute until evicted through a process of law, in respect of which judicial proceedings are



pending. The house in question situate at Mohalla Walipur, Ward No.9, within Barh Municipality in the district of Patna.

2. It is the petitioner's case that respondent No.8 has forcefully entered into the said house, without any authority and, therefore, his possession may be directed to be restored forthwith.

3. It is the case of the petitioner that respondent No. 7 had filed a Title Eviction Case No.5 of 1998 for the petitioner's eviction for the suit house, which was decreed on 18.05.2003 in favour of respondent No.7 by the Court of learned Munsif, Barh. The petitioner had thereafter preferred Title Appeal No. 8 of 2003, which is pending in the Court of learned Additional District Judge IInd, Barh. It is further case of the petitioner that respondent No. 8 claims to have purchased the said suit house on 12.12.2006, during the pendency of the title appeal. An execution case has been filed, giving rise to Execution Case No.7 of 2003, by respondent No.7 for execution of the decree. During the pendency of the appeal, learned Additional District Judge IInd, Barh, by an order dated 05.04.2012 passed in Title Appeal No. 8 of 2003 had allowed the petitioner's prayer for stay of the execution proceeding in Execution Case No. 7 of 2003.

4. It is the petitioner's further case that all on a sudden, the family and relatives of respondent No. 8 forcefully entered into



the house of the petitioner and they committed acts of loot, assault and outrage of the modesty of the female members of the petitioner leading to lodging of a criminal case, giving rise to Barh P.S. Case No. 274 of 2014. It is also his case that he had represented higher police officials alleging non-cooperation of the local police. It is his further case that an application was filed on behalf of the petitioner in pending T.A. No. 8 of 2003, narrating forceful eviction of the petitioner from the suit house and seeking direction to the respondents to restore his possession.

5. The appellate Court dismissed the petition on 06.08.2014 as not maintainable by an order dated 06.08.2014 and allowed the petitioner liberty to file miscellaneous petition under Section 151 of the Code of Civil Procedure, as prescribed under Rule 459 of the Civil Court Rules of the High Court of Judicature at Patna. In the light of the said order of the appellate Court dated 06.08.2014, the petitioner filed a miscellaneous petition, which too has been held to be not maintainable by an order dated 19.07.2019 passed by learned Additional District Judge IInd, Barh, with a liberty to file fresh application as per law.

6. It is the petitioner's own case that the application, which was filed before the appellate Court on 06.08.2014, was on wrong legal advice and accordingly it was rightly rejected by an



order dated 29.09.2015. The petitioner is not questioning the correctness of the order of learned Additional District Judge IInd, Barh, in rejecting the petitioner's application as not maintainable vide order dated 19.07.2019. It is the petitioner's case that since the delivery of possession had never been effected to any person including the respondent decree-holder, continuance of respondent No. 8 in the said house is without any authority of law. According to the petitioner, he does not have any alternative remedy and, therefore, he has approached this Court invoking Article 226 of the Constitution of India for a direction to the respondent authorities to restore his possession over the premises in question.

7. Mr. Sidhendra Narayan Singh, learned counsel appearing on behalf of the petitioner, has placed reliance on a decision of this Court in case of *Amarnath Saw vs. State of Bihar and Others*, reported in [2000(3) BLJR 1659], and has submitted that the forceful eviction of the petitioner is grossly illegal and arbitrary and, therefore, his possession must be directed to be restored in exercise of this Court's jurisdiction under Article 226 of the Constitution of India.

8. I have perused the order dated 19.07.2019 passed in Misc. Case No. 4 of 2015 by learned Additional District Judge IInd, Barh, from which it appears that a plea was taken on behalf



of respondent No. 8 that as a matter of fact the suit property was amicably handed over by the petitioner to respondent No. 8 on 16/17 June, 2014, whereafter a false criminal case has been filed. It was her case that since the property was handed over voluntarily, there was no question of getting delivery of possession under Order 21 Rule 35 of the Code of Civil Procedure. Learned Additional District Judge IInd, Barh, has recorded in his order dated 19.07.2019 as under in paragraph 6(iii) :-

“That it is evident from the record that in between the period of dispute i.e. from the alleged date of voluntarily handing over the possession as claimed by OP 2, i.e. 16 June 2014 till the date of alleged possession taken by the OP 2 as claimed by the applicant i.e. 20.07.2014 and even further till filing of the application dated 06.08.2014 in the TA 08/2003 where it was prayed for direction to the Ops to hand over possession back to the applicant, there was no stay order was (sic) in force.”

9. The Court below, relying on a judgment of Calcutta High Court in case of *Parul Mukherjee v. Gouri Biswas*, reported in **2001 SCC On Line Cal 313**, has opined that in such cases the executing Court only has the power to undo an injustice.

10. This Court exercising power under Article 226 of the Constitution of India is not required to enter into the correctness or otherwise of the said opinion recorded by the Court of learned



Additional District Judge IInd, Barh. In my opinion, the petitioner had the option either to follow the order dated 19.07.2019 or to question the correctness of the said order in appropriate proceeding. This application seeking issuance of writ in exercise of power under Article 226 of the Constitution of India, in my opinion, is misconceived. The decision of this Court in case of *Amarnath Saw* (supra) is clearly distinguishable on facts. In that case an eviction suit was filed and during the pendency of the eviction suit, the writ petitioner was forcefully evicted and possession was delivered to the respondents of that case by the Special Execution Magistrate. In the present case, the eviction suit was decreed in favour of respondent No. 7. Respondent No. 8 claims to be the purchaser of the suit house. On the one hand, it is the petitioner's claim that he was forcefully evicted, it is the case of respondent No. 8 that she entered into the suit premises under certain amicable settlement. There is an opinion recorded by the learned Additional District Judge IInd, Barh, that the petitioner has the opportunity of approaching the Execution Court. The decision of this Court in case of *Amarnath Saw* (supra), in my opinion, does not apply in the facts and circumstances of the present case.

11. This application is completely misconceived and is dismissed accordingly.



12. No order as to cost.

(Chakradhari Sharan Singh, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	07.02.2020
Transmission Date	N/A

