

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved on : 27-08.2021

Pronounced on : 01-11-.2021

WPCR No. 28 of 2015

- Narendra Singh Bhatia S/o . Shri Surjeet Singh Bhatia Aged About 48 Years Ex Councilor, R/o. Kailash Nagar Ward, Police Station City Kotwali, Rajnandgaon, Tahsil, Civil And Revenue District Rajnandgaon, C.G., Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh S/o Through Secretary, Department Of Home, Mahanadi Bhawan, New Raipur, Raipur, C.G., Chhattisgarh
2. Officer- In- Charge City Kotwali, Rajnandgaon, District Rajnandgaon, C.G., District : Rajnandgaon, Chhattisgarh
3. Nilesh Patel S/o . Shri Harihar Bhai Patel Aged About 52 Years R/o. Sagar Complex, Indira Market Durg, Police Station Durg, Civil And Revenue District Durg, C.G., District : Durg, Chhattisgarh
4. Superintendent Of Police S/o Rajnandgaon, District Rajnandgaon, C.G., District : Rajnandgaon, Chhattisgarh

---- Respondents

For Petitioners	:	Mr. K.A. Ansari, Sr. Advocate wit Mr. Aman Ansari, Advocate.
For Respondent No.3	:	Mr. P.S. Baghel, Advocate.
For respondent/State.	:	Mr. Devendra Pratap Singh, Dy.A.G.

Hon'ble Shri Justice Narendra Kumar Vyas

CAV Order

1. The petitioner has filed the writ petition (Cr) under Article 226/227 of the Constitution of India whereby he has prayed for issuance of suitable direction to respondents No.1 and 2 to desist from using unlawful means like threat and illegal means to oust the petitioner from the possession of the land/plot with obvious motive to hand it over to the respondent No.3. It has also been prayed that respondent No.2 be directed to return the articles i.e., Truck and

Tractor engines, Almirah with locker and document with respect transit permit and payment receipts.

2. The brief facts, as projected by the petitioner, are that the petitioner is in possession of a nazul plot measuring 449 sq. meter (i.e., 4400 sq.ft 22' wide x 200' depth) situated at Mathpara, Rajnandgaon since the time of his forefather from the year 1975 itself. The factum of possession was admitted by the father of respondent No.3 in revenue proceedings in 1984 and also prior to that. The father of respondent No.3 was never in actual physical possession of the plot and as per his own admission and so is the case with the petitioner.
3. Learned counsel for the petitioner would submit that the father of respondent No.3 neither opposed the possession of the petitioner's forefather nor of the petitioner till his death in the year 2012. Respondent No.,3 has migrated to United States of America and he came to India a few days before the death of his father and he has stated that he is to go back to United States of America for employment. The plot is fenced by a Pakki brick wall, gates have been put on the eastern and western side by the petitioner's forefather and it was used for as away for the Charcoal and Bamboo depo, The truck car etc., were kept over this plot and a room has also been constructed to provide shelter to Choukidar. Respondent No.3 and his father were not in possession but on 16-10-2012 and on 3-3-2013 respondent No.3 submitted a false complaint before respondent No.2 stating that the petitioner who has been the councilor of the Municipal Council, Rajnandgaon from Kailash Nagar Ward has dumped garbage over the plot to occupy the land. It is further contended in the complaint that the locks over the gate allegedly put by him have been broken and a Truck No. CG -04 J 3846 has been put over the same.
4. Learned Senior counsel would further submit that the respondent No.3 got the plot demarcated on 27-2-2013 and thereafter two locks had been put by him over the gate. On 3-3-2013 he found that the locks have been broken. On 4-3-2013 respondent No.3 again sent report to the Hon'ble Chief Minister and various authorities

complaining that local police have not taken any action against the petitioner and on the basis of complaint FIR No. 69 of 2013 was registered under Section 447 of IPC in the court of Judicial Magistrate First Class, Rajnandgaon on 28-12-2013. Now, the same has been registered as Criminal Case No. 1833 of 2013. In the case, the witness Rajesh Motlani owner of adjacent plot was examined on 19-8-2014 and he made a categorical statement that respondent No.3 was never seen by him in possession of the plot and he also stated that the petitioner is in possession of the plot. This proceeding is still pending respondent No.3 failed to appear before the Judicial Magistrate first class to give evidence till 11-1-2014.

5. On 11-1-2014 Istagasa under Section 145 of Cr.P.C., was filed by respondent No.2 in the Court of Sub Divisional Magistrate, Rajnandgaon in which respondent No.3 is arrayed as party No.1 whereas petitioner is arrayed as party No.2. In the case on 11-1-2014 itself, Sub Divisional Magistrate, Rajnandgaon, passed preliminary order and thereafter proceeded with the case in accordance with law. Sub Divisional Magistrate, Rajnandgan passed final order on 4-6-2014 and held that petitioner (party No.2 in the case) was in possession on the date of preliminary order and even prior to that and therefore, he dropped the proceedings.
6. Against the order dated 4-6-2014 passed by the Sub Divisional Magistrate, Rajnandgaon, respondent No.3 filed criminal revision No. 46 of 2014 before the Sessions Court, Rajnandgaon He also filed writ petition (cr) No. 98 of 2013. The said petition was dismissed as withdrawn in which he prayed for registration of offence under Section 452 of IPC against the petitioner. The said petition was dismissed with liberty to file a complaint before the competent court. Thereafter, respondent No.3 neither filed any complaint nor any other proceedings for recovery of possession from the petitioner as the possession of the petitioner was already declared by the competent court but putting all sorts of pressure on respondent No.2 through higher authorities respondent No.2 is threatening and illegally trying to dispossess the petitioner from the

plot. Respondent No.2 has illegally, unauthorizedly seized the truck bearing registration No. CG04 J 3846. Thereafter issued notice to the petitioner to furnish documents of the truck as well as documents of land. The petitioner has made representations to the higher authorities, but no action has been taken by them.

7. It has been further contended by learned Sr. Advocate for the petitioner that the respondent No.2 is harassing the petitioner by filing various criminal litigations against the petitioner whereas it is purely civil dispute of possession of property, therefore, initiation of criminal proceedings is against the law laid down by the Hon'ble Supreme Court in case reported in **2020 (16) SCC 714 in case of Govind Prasad Kejariwal Vs. State of Bihar, Commissioner of Police and Other Vs. Devendra Anand in Criminal Appeal No.834 of 2017. Joseph Salvaraja A Vs. State of Gujarat, 2011 (7) SCC 59, Indra Mohan Goswami Vs. State of Uttaranchal, 2007 (12) SCC 1, G. Sagar Suri Vs. State of U.P. and Others reported in 2000 (2) SCC 636, Vinod Kumar Vs. State of Bihar, 2014 (10) SCC 663 judgment passed by this Court in case of Vishwadini Pandey Vs. State of C.G. and judgment of Hon'ble Supreme Court in case of State of Haryana Vs. Bhajan Lal** and would submit that FIR and criminal proceedings against the petitioner be kindly quashed.
8. He would further submit that the person who is in possession of the property can file civil suit and also principle of adverse possession should have been applied against the respondent No.3 in favour of the petitioner as the petitioner is in possession of the disputed property since very long. He would refer to judgment of Hon'ble Supreme Court in **Ravinder Kaur Grewal and others vs. Manjit Kaur and others, reported in (2019) 8 SCC 729** wherein it has been held that once 12 years' period of adverse possession is over, the owner's right to eject the person in adverse possession (adverse possessee /possessory owner) is lost and the possessory owner acquires the right, title and interest possessed by the outgoing person/owner, as the case may be against whom he has established the period of prescription. It has been further held that

such adverse possessee/possessory owner can not only seek to protect his title as defendant in a suit but can also file suit for declaration of his title and for permanent injunction restraining defendant from interfering with his possession, where owner whose title stood extinguished, or any other person seeks to dispossess him from property. Hon'ble Supreme Court in the said judgment has observed in para 59 & 60 which are extracted hereunder:

“59. We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be against whom he has prescribed. In our opinion, consequence is that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of [Article 65](#) of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under [Article 64](#), even before the ripening of title by way of adverse possession. By perfection of title on extinguishment of the owner's title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted by the plaintiff by taking the plea of adverse possession. Similarly, any other person who might have dispossessed the plaintiff having perfected title by way of adverse possession can also be evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly, under other Articles also in case of infringement of any of his rights, a plaintiff who has perfected the title by adverse possession, can sue and maintain a suit.

60. When we consider the law of adverse possession as has developed visàvis to property dedicated to public use, courts have been loath to confer the right by adverse possession. There are instances when such properties are encroached upon and then a plea of adverse possession is raised. In Such cases, on the land reserved for public utility, it is desirable that rights should not accrue. The law of adverse possession may cause harsh consequences, hence, we are constrained to observe that it would be advisable that concerning such properties dedicated to public cause, it is made clear in the statute of limitation that no rights can accrue by adverse possession”.

9. In view of above factual and legal position, the petitioner has prayed for following relief:

“That this Hon’ble Court may kindly further be pleased to issue suitable directions to the respondents No.1&2 to desist from using unlawful means like threat and illegal means to oust the petitioner from the possession of the land/plot with the obvious motive to hand it over to the respondent No.3.

That the Hon’ble Court may kindly further be pleased to that the respondent No.1 be further directed to enquire into the conduct of respondent No.2 in going out of way to support the respondent No.3 for achieving the possession of the plot in an illegal manner.

That the Hon’ble Court may kindly further be pleased to direct the respondent No.2 to return the articles i.e. truck and tractor engines, Elmira with locker, and document with respect to transit permit and payment receipts etc.”

10. On the other hand, learned counsel for the State has filed its return denying the allegations levelled against the officers of the Government and would submit that there was dispute going on between the petitioner and respondent No.3 regarding possession of land in question situated at Mathpara, Rajnandgaon. Both the parties are claiming that the land belonging to them only and they are trying to take possession of questioned land property. Respondent No.3 made several complainants against the petitioner that he is trying to trespass on the land in question by using illegal means. Respondent No.3 also informed to the answering respondents that in the nazul record the above said land is entered in his name and demarcation of the land was done on 27-2-20213 and thereafter, boundary was locked and at the relevant point of time there was no any dispute regarding land in dispute, but on 3-3-2013 the lock was broken by the petitioner and he parked his truck on the aforesaid land. On the basis of information given by the respondent No.3, an offence under Section 447 of IPC was registered against the petitioner on 31-8-2013 after conducting detailed enquiry on the written report filed by the respondent No.3.

It has been further contended that after investigation the charge sheet was filed by the answering respondents before the court of learned Judicial Magistrate First Class, Khairagarh, District Rainandgaon on 28-12-2013 and now a criminal case No. 186 of 2-14 is pending before that court against the petitioner. Thus, the petitioner is leveling false and bald allegation against the answering respondents who are doing their act, in accordance with law. It has been further contended by the State counsel that respondent No.2 has taken action strictly, in accordance with law and upon investigation in connection with the above said crime the truck of the petitioner has been seized and issued notice to the petitioner on 11-1-2015 which has not been replied by the petitioner. The State has not acted beyond their duty of maintaining law and order as such the writ petition (criminal) is liable to be dismissed by this Court.

11. I have heard learned counsel for the parties and perused the record.
12. From perusal of the relief clause, it is crystal clear that the petitioner wants that vehicle which has been seized by the Police that may be returned back to him and the concerned authorities are restrained from taking any action. From perusal of the contents of the petition and material annexed with petition, it is clear that the petitioner is unable to point out any action which has been found to be illegal or contrary to the provisions of law taken by the authorities, therefore, the prayer is made by the petitioner that the respondent authorities be kindly directed to enquire into the matter, cannot be accepted. As there is no specific allegations of non-compliance of statutory duty or police atrocity has been pleaded or prima facie established by the petitioner. The bald allegations with regard to threat and unlawful means to oust the petitioner from possession of the land cannot be considered for issuing any direction to the authorities. So far as criminal case on the basis of complaint made by respondent No.3 an offence under Section 447 of IPC has been registered. The Section 447 of IPC reads as under:-

“447. Punishment for criminal trespass.—
Whoever commits criminal trespass shall
be punished with imprisonment of either
description for a term which may extend
to three months, with fine or which may
extend to five hundred rupees, or with
both”.

13. The offence as alleged to have been committed by the petitioner require to be examined by the concerning Judicial Magistrate first class after appreciating the evidence, material on record, therefore, it cannot be presumed that the police are adopting unlawful method to dispossess the petitioner from the plot.
14. From perusal of the record it is clear that the materials and vehicle of the petitioner were seized by the Police and the Police have issued notice to the petitioner for releasing his vehicle (annexure-P-16), petitioner has not taken any action in this regard and no material documents have been placed on record for perusal of this court, therefore, this court cannot give any finding on this issue as the petitioner has not taken any action on the basis of notice issued by the authorities. The petitioner has still remedy to submit all the documents before concerning authorities for releasing his materials and vehicle seized by the Police and even if the authorities are not inclined to release the same, the petitioner has an alternative remedy available to him to file an application under section 452 of IPC for releasing his vehicle on Supurdnama before the concerned District Magistrate.
15. The judgment cited by learned counsel to substantiate that in civil dispute between the parties initiation of criminal proceedings is abuse of process of law is not applicable to the present facts of the case. As in the present case respondent No.3 has filed complaint for alleged violation of Section 447 of IPC but if petitioner claims that he is the owner of the plot in dispute then it is for him to prove the ownership of the plot. The complainant has specifically contended that the petitioner has broken the lock and illegally placed the vehicle No. CG 04 3846 and thereafter put his lock with intention to take possession of the plot. The averments made by the petitioner and respondents No.3 require to be examined by the

concerning Judicial Magistrate First Class, therefore, this averment cannot be examined at this juncture by this Court. Further contention of the learned senior counsel for the petitioner with regard to law laid down by the Hon'ble Supreme Court in case of adverse possession the same is not applicable to the present facts of the case.

16. Accordingly, the petition filed by the petitioner being devoid of merit is liable to be and is hereby dismissed.

Sd/-

(Narendra Kumar Vyas)
Judge

Raju