

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.703 of 2017

Arising Out of PS. Case No.-29 Year-2016 Thana- AGAMKUAN District- Patna

Ashok Kumar Gupta @ Ashok Kumar, Son of Surendra Sao, Resident of Munna Chalk, P.S.- Patrakar Nagar, Kankarbag, P.O.- Lohiya, Kankarbag, District- Patna.

... .. Petitioner

Versus

1. The State Of Bihar.
2. The Chief Secretary, Bihar Patna.
3. The District Magistrate , Patna, District Patna.
4. The Senior Superintendent of Police Patna, District- Patna.
5. The Superintendent of Police Patna (East), District- Patna.
6. The Land Reforms Deputy Collector, Patna City Patna.
7. The Sub- Divisional Officer Patna City, District - Patna.
8. The Dy, S.P. Patna, City District- Patna.
9. The Officer in Charge, Agam Kuan Police Station, District- Patna.
10. The Managing Director, Bihar State Housing Board, Patna.
11. The Executive Engineer, Bihar State Housing Board, Division-2 Patna.
12. The Assistant Engineer, Bihar State Housing Board, Division-2 Patna.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Dharendra Kumar, Advocate.
For the Respondent/s	:	Mr. Ajay Kumar Sharma, AC to AG
For the Board	:	Mr. Anshuman Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL JUDGMENT

Date : 02-08-2022

I.A. No. 01 to 2020

This interlocutory application has been preferred seeking amendment of the relief in the writ petition.

2. Learned counsel for the petitioner submits that during the pendency of the writ application, a chargesheet has been filed by the investigating agency and the learned SDJM, Patna City has taken



cognizance of the offences under Sections 447, 468, 467, 471 and 420 of the Indian Penal Code read with Section 3 of the Damage of Public Property Act. It is submitted that these developments have taken place during pendency of the writ application, therefore, the petitioner has prayed for setting aside of the order taking cognizance passed by the learned SDJM, Patna City.

3. Copies of the interlocutory application were served on learned counsel for the State as well as learned counsel for the Bihar State Housing Board (hereinafter referred to as 'the Board') on 03.02.2020. There is no opposition to the interlocutory application.

4. Hence, the Interlocutory Application No. 01 of 2020 is allowed.

5. Let the prayer made in the interlocutory application be treated as part and parcel of the writ application.

6. Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the Board.

7. The petitioner has moved this Court for the following reliefs:

“(i) For restraining the officers of Bihar State Housing Board from interfering in the ongoing construction made by petitioner upon his purchased land appertaining to Thana no. 10 Tauzi no. 468, Khata no. 79, Survey Plot no. 329 (Part) area 1300 square fit (2.98493 decimal)).

(ii) For quashing of FIR of Agamkuan P.S. case no.- 29/16 dated 20.01.16 under Section 467,



468, 471, 447, 420, of I.P.C. & 3 damage of public property Act, registered on the request of Assistant Engineer Bihar State Housing Board Division -2 Patna, based on wrong and incorrect facts.

(iii) For a declaration that unless the respondents authority Bihar State Housing Board came to a definite finding, after getting the lands demarcated, they have neither right nor title to restrain the petitioner from making construction over the land purchased from rightful owner, and outside the acquisition of land by the Bihar State housing Board.

(iv) And for other relief/relief's to which the petitioner may be found entitled.”

8. Learned counsel for the petitioner submits that the petitioner purchased a piece of land in the name of his wife Smt. Sarita Gupta for construction of a dwelling house at Mauza Bahadurpur, P.S. Sultanganj at present Agamkuan appertaining to Thana No. 10 Tauzi No. 468, Khata No. 79, Survey Plot No. 329 (Part) area 1300 Sq. ft. through a registered sale deed dated 05.11.2014.

9. It is submitted that the petitioner applied for mutation of the said land before the Circle Officer, Patna. An inspection report was called for and the Circle Inspector submitted a report based on which the order of mutation has been passed by the Circle Officer as contained in Annexure 'P/1' to the writ application.



10. It is further submitted that the petitioner applied for loan from a bank after passing of the map and completion of other formalities bank granted loan to the petitioner and thereafter only the petitioner started construction of his house over the said purchased land.

11. While he was carrying on the construction, the employees of the Board came there and created hindrances in construction of the house. The petitioner is said to have made an application (Annexure 'P/2') before the Executive Engineer of the Board stating the fact that the land belongs to the petitioner and it is free from accusation. It is the case of the petitioner that even the Managing Director of the Board has admitted this position. Despite this, it is submitted that the Executive Engineer, Patna Division No. 2 of the Board vide Letter No. 2102 dated 22.12.2015 directed the petitioner to stay the construction work and also directed to produce the certified copy of the registered deed for verification from Land Accusation Department, Collectorate, Patna. The copy of the Letter No. 2102 has been annexed as Annexure 'P/3' to the present application. The petitioner has duly complied with the direction of the Executive Engineer, Patna Division No. 2 by submitting a copy of the registered sale deed (Annexure 'P/4').

12. It is submitted that the respondent Assistant Engineer of the Board without examining the facts as to whether the land of the petitioner is free from accusation or not lodged an FIR alleging wrong facts vide Agamkuan P.S. Case No. 29 of 2016 against the petitioner.



The petitioner has been granted anticipatory bail by the learned Sessions Judge, Patna vide order dated 29.01.2016.

13. Learned counsel for the petitioner has at this stage drawn the attention of this Court towards the counter affidavit filed on behalf of the respondent nos. 4, 5, 8 and 9 which has been served on 03.07.2017. The Additional Superintendent of Police, Patna City has sworn the affidavit. In paragraph '7' of his counter affidavit, he stated that the SDPO, Patna City has reviewed the case and opined that it would be appropriate to take decision after measurement of the land in question. If after measurement the land in question will be found as the land of the Board then the case will be found to be true against the petitioner of this writ petition but if the land will be found to land of the petitioner then the case will be winded up as a mistake of facts. The I.O. of the case was directed to obtain the measurement report of land in question from an Amin and get the land measured through the Amin.

14. The counter affidavit further states that the I.O. of the case has filed several request letter to the Deputy Collector Land Reforms, Patna City (hereinafter referred to as 'the DCLR') for deputation of Amin for measurement of land in question but the Amin has not submitted the measurement report. It is finally stated in paragraph '9' of the counter affidavit that the investigation of the case is pending for want of measurement report of Amin related to the land in question.



15. After filing of the aforesaid counter affidavit of respondent nos. 4, 5, 8 and 9, a counter affidavit has been filed on behalf of the respondent nos. 3, 6 and 7. This affidavit has been sworn by the Deputy Collector Land Reforms, Patna City. The DCLR, Patna City has stated in paragraph '10' of his counter affidavit that he directed the Circle Amin for measurement of the said land after consulting the office of the Bahadurpur Housing Colony of the Board as also to the Agamkuan Police Station. The Circle Officer has sent a report of the land in question along with the report of the Revenue Karamchari which are enclosed as Annexures 'D' and 'E' to the counter affidavit. In paragraph '12', it is stated that as per the said report, the land in question is recorded as Bakast land in the survey record and its nature is within 'Kita Dhanhar' under Mauza Bahadurpur Thana No. 10, Khata No. 79 Plot no. 329, area 2.92 decimal as per the Register II Jamabandi No. 2046 has been created in the name of Sarita Devi wife of Ashok Kumar Gupta by Mutation Case No. 1072/4 of 2014-2015. The present jamabandi comes from earlier jamabandi No. 1533/1. According to him, the matter involves question of title and possession between the petitioner and the respondent Board which may be decided by a competent civil court.

16. Learned counsel for the petitioner submits that on a bare perusal of the First Information Report as contained in Annexure '5', it would appear that the Assistant Engineer of the Board lodged the FIR in a hurry and he in fact made wrong and false statement in his written



complaint addressed to the Officer Incharge of Agamkuan Police Station.

17. Learned counsel further submits that on the one hand, the Additional Superintendent of Police while filing the counter affidavit in this Court submitted that the investigation of the case is pending for the result of the measurement which has been requested but at the same time, without paying heed to the final measurement report it has been duly stated in the counter affidavit of the DCLR, a chargesheet was filed and the learned SDJM, Patna City took cognizance of the offences and proceeded to summon the petitioner in a routine and mechanical manner.

18. Learned counsel submits that a bare perusal of the counter affidavit of the DCLR would show that at best it may be a case of purely civil dispute and at no stretch of imagination one can say that a criminal proceeding would lie in the given facts of the case.

19. Learned counsel further points out that when this case was taken up for consideration as back as on 10.01.2020, this Court granted time to the Board to file counter affidavit as on the said date even though the name of learned counsel for the Board was appearing in the cause list, learned counsel had not put his appearance. It is pointed out that copy of the writ application was duly served upon learned counsel for the Board on 18.04.2017.



20. Again, when I.A. No. 1 of 2020 was filed a copy was served on 03.02.2020 but during all this period for about two and half years the Board did not file any affidavit in opposition.

21. Learned counsel submits that in such circumstance, the petitioner has made himself entitle for the reliefs prayed in the writ application. It is submitted that further continuation of the proceeding in the learned court below would only be an abuse of the process of the Court and sheer harassment to the petitioner and hence, the FIR and the order taking cognizance are required to be quashed.

22. Mr. Ajay Kumar Sharma, learned AC to learned AG has opposed this application but the opposition is only for the name sake. Learned AC to learned AG submits that after investigation the chargesheet has been filed but is unable to say as to how on the face of the affidavit of the Additional SP which this Court has taken note of hereinabove the chargesheet could be filed ignoring the result of the measurement.

23. Mr. Anshuman Singh, learned counsel for the Board has though appeared to oppose this application but he has in fact no instruction as to how the writ application may be opposed. Learned counsel has submitted that in this case chargesheet has been filed but it is not known whether the chargesheet has been filed without looking into the report of the Amin or after taking into consideration the said report.



24. Having heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the Board, this Court finds that in fact what are stated in the writ application as a matter of fact in respect of the land as per Revenue records are not at all in dispute. The counter affidavit of the DCLR states in so many words that the Amin deputed by him has measured the land in question and submitted a report as contained in Annexure 'D' and 'E' to the counter affidavit. The Circle Officer Patna, Sadar has vide his Letter No. 5041 dated 18.08.2017 addressed to the SDPO, Patna City clearly stated that an inspection of the land in question has been conducted through the Revenue Karamchari and as per his report the land bearing plot no. 329 in khata no. 79 under Thana no. 10 is recorded in the mutation as Kita dhanhar and the same is recorded in Register II in the name of the wife of the petitioner. The Mutation has been done in her name vide Mutation Case No. 1072/04 of 2014-2015 and this has been done with reference to Old Jamabandi No. 1533/1. The Circle Officer, Patna Sadar has also stated that on this piece of land Sarita Gupta was constructing her house.

25. His letter (Annexure 'D') is supported by the report of the Revenue Karamchari (Annexure 'E'). These are undisputed documents. The stand of the DCLR in his counter affidavit vindicates the stand of the petitioner. On the contrary, the Board has despite lapse of over two and half years failed to submit its reply in opposition. Even today, no significant material has been brought to the notice of this Court to take a contrary view.



26. This Court is, therefore, of the considered opinion that the First Information Report (Annexure '3') to the writ application has been lodged in haste and it has been used as a tool of harassment for the petitioner even otherwise in the nature of dispute the Board was creating, there was no reason to lodge a first information report setting a criminal law on process. This Court is reminded of the judgment of the Hon'ble Supreme Court in the case of **State of Haryana vs. Bhajan Lal** reported in **AIR 1992 SC 604**, paragraphs '107' and '108' of which are quoted hereunder for a ready reference:

"107. Mr. Parasaran, according to whom the allegations in the present case do not make out an offence, drew our attention to a recent judgment of this Court in *State of U.P. v. V.R.K. Srivastava* (1989) 4 SCC 59 : (AIR 1989 SC 2222) to which one of us (S. Ratnavel Pandian, J.) was a party. In that case, it has been ruled that if the allegations made in the FIR, taken on the face value and accepted in their entirety, do not constitute an offence, the criminal proceedings instituted on the basis of such FIR should be quashed. The principle laid down in this case does not depart from the proposition of law consistently propounded in a line of decisions of this Court and on the other hand it reiterates the principle that the court can exercise its inherent jurisdiction of quashing a criminal proceeding only when the allegations made in the FIR, do not constitute an offence and that it depends upon the facts and circumstances of each particular case.

108. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly



defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

27. In the nature of the uncontroverted materials present on the record, the order taking cognizance passed by the learned SDJM,



Patna City has no basis to stand. The order seems to have been passed in routine and mechanical manner and the same is liable to be set aside. As a result of such discussion, the first information report being Agamkuan P.S. Case No. 29 of 2016 and the subsequent order including order taking cognizance passed in the said case are hereby set aside.

28. The Letter No. 2102 dated 22.12.2015 as contained in Annexure ‘P/3’ in the present case of the Board interfering with the ongoing construction work of the petitioner is quashed. Unless it is so ordered by a competent court of law in duly constituted proceeding, no interference shall be made by the Board.

29. This application is allowed to the extent indicated hereinabove.

30. Since this Court has noticed that the Board has after lodging of the FIR in haste miserably failed to substantiate the allegation and did not submit any reply to this Court in the present writ application and the petitioner had to file the writ application to come out of the FIR and he contested the matter for all these years, this Court deems it just and proper to direct the Board to pay a cost of litigation which is assessed at Rs.15,000/- payable to the petitioner within a period of one month from today.

(Rajeev Ranjan Prasad, J)

avin/-

AFR/NAFR	
CAV DATE	
Uploading Date	04.08.2022
Transmission Date	04.08.2022

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading ‘Judicial Orders Passed During The Pandemic Period’.

