

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
Criminal Writ Jurisdiction Case No.77 of 2017**

Arising Out of PS. Case No.-331 Year-2016 Thana- KOTWALI District- Munger

Sudha Devi, wife of Sri Nand Kishor Thakur, R/o – Bindwara, P.S- Kasim Bazar, District- Munger A/p- Bekapur, Town Hall Road, P.S- Kotwali, District- Munger.

... .. Petitioner

Versus

1. The State Of Bihar through Chief Secretary, Bihar.
2. The Secretary, Home(Police) Department Bihar, Patna.
3. Director General of Police, Bihar, Patna.
4. Divisional Commissioner Munger Division, Munger.
5. Deputy Inspector General of Police, Munger Range, Munger.
6. District Magistrate, Munger.
7. Khas Mahal Officer Munger.
8. Superintendent of Police, Munger.
9. Sub-Divisional Magistrate, cum-Sub Divisional Officer Sadar Munger.
10. Deputy Superintendent of Police, Munger.
11. The Officer in Charge, Kotwali Police Station, Munger.
12. Sri Manoj Kumar Sinha, the then officer in charge, Kotwali Police Station, Munger.
13. Sri Pankaj Singh, the officer in charge, Kotwali Police Station, Munger.
14. Sri Sanjay Sah, S/o Late Mano Sah, R/o Bekapur, P.S.- Kotwali District – Munger.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr.Dinesh Kumar Gupta, Adv.
For the State	:	Mr.Anil Kumar, AC to SC-8
For the Respondent no.14:		Mr. Anurag Saurabh, Adv.

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

5 02-09-2022 Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the private respondent nos.14.

Petitioner in the present case is seeking a direction to the respondent authorities to unlock the shop premises and hand over the possession thereof to the petitioner in terms of the order



of the Sub-Divisional Magistrate, Munger as contained in Annexure-8 to the writ application.

Learned counsel submits that the petitioner was running a saloon under name and style of Lovely Beauty Parlour in the shop in question. It is alleged that the respondent no.14 with the help of his henchmen antisocial element and Kotwali police personnel especially with the help of the respondent nos. 12 and 13 forcibly evicted the petitioner and took forceful possession of the shop in question. The case of the petitioner is that he had earlier filed a suit for specific performance of contract on the basis of an agreement dated 18.11.1995 executed by one Mr. Shiva Kumar Sharma who runs a business in the State of Rajasthan and decided to sell the property mentioned in the writ application which is situated in the premise of three storied building over an area of 3 dhur and 7 durking equivalent to 118 square feet bearing old Holding No.-126A, New Holding No.-474A, Ward No.26 bearing Khas Mahal Khata No.-29 Touzi No.1333 at Mohalla Azad chowk Town Hall Road Maroof Mohalla Belkapur Town Hall Road, P.S.-Kotwali in the District of Munger.

Learned counsel for the petitioner submits that the petitioner and her husband being power of attorney holder had



also filed an application before the Khas Mahal Officer as well as the Collector, Munger seeking permission for execution of sale deed at Munger as the suit house was situated over the Khas Mahal but no order was passed on the same hence the sale deed could not be executed.

It is the case of the petitioner that on 15.07.1996 Shatrughan Prasad Singh and Rekha Devi came to the shop of the petitioner, threatened her to vacate the shop and this matter was brought to the notice of the Collector, Munger and it was also informed to the police station upon which a proceeding under Section 107 and 144 Cr.P.C. were initiated.

It is further informed that in the said Title Suit the learned Sub-Judge 1st Munger found that the land is in the nature of khas mahal land hence the relief cannot be granted and accordingly the suit was dismissed but therein a finding is recorded that the petitioner is in possession over the disputed shop.

Learned counsel for the petitioner submits that the judgment of the learned Sub-Judge is sub-judice in a title appeal pending before the learned District Judge, Munger but that would be a different issue. According to him, so far as the present case is concerned, the fact remains that the petitioner



being in possession of the shop in question has been forcefully ousted and despite information given to the Collector, Munger and to the local police station, no protection was given to her and the private respondent had thrown her out of the premises with the tacit support of the police.

Referring to a judgment of this Court in the case of **Anand Kishore Prasad Sinha Vs. the State of Bihar** reported in **2021 (2) PLJR 445**, learned counsel for the petitioner submits that in such cases, this Court has held that the writ application may be maintained and an appropriate order may be passed by the Court. The judgment of this Court was challenged before the Hon'ble Supreme Court in S.L.P. (Crl.) No.3239 of 2021 but the same has not been interfered with.

Learned counsel further submits that in the present case it would appear that on a complaint filed by the petitioner a report was called for from the police inspector-cum-officer in-charge of Kotwali Munger police station by the Sub-Divisional Magistrate, Sadar Munger, who vide his order dated 16.09.2016 (Annexure-8) deputed a magistrate to unlock the lock which was placed by the private respondent on the shop of the petitioner. Despite the order (Annexure-8) being in force, the same has not been executed. This Court has been informed that



Annexure-8 is not under challenge before any competent court of law.

Mr. Anurag Saurav, learned counsel for the respondent no.14 has opposed this application. It is submitted that the shop in question is situated in a building which is a Khas Mahal land, therefore, the petitioner who has no right to claim ownership of the shop in question cannot be put in possession thereof.

This Court finds that although the respondent no.14 has appeared several years ago in this case but has not filed any counter affidavit.

The State-respondents has filed a counter affidavit sworn by the Dy.S.P.(Headquarter) Munger. It is stated in paragraph '9' that so far as Kotwali P.S. Case No.246/2016 lodged by the husband of the petitioner is concerned, investigation has been completed in the said case and a charge-sheet vide C.S. No.32/2017 dated 25.01.2017 under Sections 448, 379, 427 and 354B of the Indian Penal Code has been filed against the FIR named accused Sanjay Sah, son of late Mano Sah of Bekapur, P.S.-Kotwali, District-Munger (respondent no.14).

As regards the order passed by the learned S.D.M., Munger, the Dy.S.P. (Headquarter) does not deny the same, but



this Court finds that in a vague manner it is stated that the petitioner has filed an appeal being S.T.A. No.09/2016 before the court of learned D.J., Munger against the order of the Sub-Judge and unless and until any direction is given by the learned A.D.J.-1st, Munger the respondent authorities are unable to take any action.

Having heard learned counsel for the parties and on perusal of the records, this Court is of the considered opinion that pendency of the title appeal which arises out of a suit for specific performance of contract would have no bearing on the reliefs prayed in the writ application. It is not denied that the petitioner was in possession of the shop in question and her husband was running a saloon but they have been ousted from the premises unlawfully. No order of a competent court has been brought to the notice of this Court showing lawful eviction of the petitioner and her husband from the said shop. The fact that the S.D.M. had passed the order (Annexure-8) is also not in dispute. The said order still exists but the Dy.S.P. (Headquarter), Munger has filed a counter affidavit in which the only reason for non-execution of the same is said to be the pendency of the title appeal in the court of learned A.D.J.-I, Munger.

This Court is unable to understand the kind of plea



taken by the Dy.S.P. (Headquarter). It is a case in which forceful eviction of the petitioner has been done unlawfully and the role of the police authorities is also under cloud of doubt. Despite earlier information given to the Collector and the police authority no step was taken to protect the petitioner from the hands of the miscreants and in absence of any protection the petitioner has been unlawfully ousted. Whatever be their right, they could have been ousted only in accordance with law and not in the manner they have been ousted as it appears from the facts of the present case. This Court, therefore finds that the facts of this case would be covered by the ratio of the judgment of this Court in the case of Anand Kishore Prasad Sinha (supra).

This Court accordingly directs the respondent authorities to execute the order issued by the S.D.M., Sadar, Munger vide memo no.1222 dated 16.09.2016 (Annexure-8) within a period of 30 days from the date of receipt/production of a copy of this order.

This Court would record that any observation made by this Court is only for limited purpose of the present case and shall not cause any advantage or disadvantage to either of the parties in a duly constituted proceeding before a competent court of law.



This writ application is allowed to the extent indicated
hereinabove.

(Rajeev Ranjan Prasad, J)

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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'.

