

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1023 of 2017

Arising Out of PS. Case No.- Year-1111 Thana- District-

Mahesh Nandan Singh Son of Late Narsingh Narayan Singh, Resident of Village P.O.- Rampur, P.S.- Suryagarha, District- Lakhisarai.

... .. Petitioner

Versus

1. The State Of Bihar Through The Principal Secretary, Department Of Home, Government Of Bihar, Patna
2. The Director General of Police, Bihar, Patna.
3. The District Magistrate, Lakhisarai.
4. The Superintendent of Police, Lakhisarai.
5. The Sub-Divisional Officer, Lakhisarai.
6. The Circle Officer, Suryagarha, District-Lakhisarai.
7. The Officer-In-Charge, Suryagarha Police Station, District-Lakhisarai.
8. Arun Singh, Son of Late Baijnath Singh,
9. Santosh Singh, Son of Arun singh, Both 8 and 9 are Resident of Village P.O.- Rampur, P.S.- Suryagarha, District- Lakhisarai.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Arun Kumar, Advocate
For the Resp.No. 8 & 9 : Mr. Ram Vinay Singh @ Sanjay, Advocate
For the State : Mr. Iqbal Asif Niazi, AC to GP-5

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 22-11-2022 Heard learned counsel for the petitioner, learned counsel for the respondent nos. 8 & 9 and Mr. Iqbal Asif Niazi, learned AC to GP-5 for the State.

On 10.11.2022, even as this Court granted adjournment to accommodate learned counsel for the petitioner, this Court recorded the order taking note of the relevant facts of the case.

It would, thus, be beneficial to reproduce the order dated 10.11.2022 hereunder:-



“A prayer for adjournment on the ground of bereavement in the family of learned counsel for the petitioner has been made.

Learned counsel for the respondent nos.8 and 9 as also learned counsel for the State are present.

This writ application has been filed for a direction to the respondents particularly respondent no.4 to provide all necessary security to the petitioner and to take appropriate action against the private respondents who according to the petitioner are creating unnecessary disturbance in cultivation of the lands situated under different Mauza of Rampur village. The petitioner claims that those are the purchased lands of the petitioner and he is having valid right, title and possession over the same.

It is stated that with regard to the land in question till date no civil or criminal case has ever been instituted. Petitioner has mentioned that with regard to different lands he had filed a Title Suit No.45 of 1990 in the court of learned Sub-Judge-III, Lakhisarai in which private respondents are party defendants. The said title suit has been decreed in favour of the petitioner vide order dated 10.10.2012. No appeal was filed against the said decree by the private respondents. It is his submission that after having been defeated in the said suit the private respondents are creating disturbance over the land in question.

It is further submitted that in this regard the petitioner has submitted a representation as contained in Annexure-1 to the writ application to the District Administration.

Learned counsel for the State has drawn the attention of this Court towards the statements made in paragraph ‘14’ of the counter affidavit. It is stated therein that the Halka Karamchari has reported that the petitioner never came in possession over the land in question since the date of



purchase and the suit for possession of the land in question is pending in the competent court of civil jurisdiction and to maintain peace the respondent no.7 has taken steps under Section 107 of the Code of Criminal Procedure.

This Court finds that neither the petitioner has enclosed the copy of the judgment and decree of the learned court below passed in Title Suit No.45 of 1990 nor the State has disclosed about the case number in which the land in question is the subject matter of adjudication.

Let this case be listed on 22.11.2022 under the same heading maintaining its position.

In the meantime, the petitioner may, if so advised, place on record a copy of the judgment and decree of the learned court below passed in Title Suit No.45 of 1990 and the State shall place on record the case number of the case in which the land in question is involved.

The respondent nos. 8 and 9 may also, if so advised, file their counter affidavits.”

Today, learned counsel for the petitioner submits that he could not file copy of the judgment and decree of the learned court below passed in Title Suit No. 45/1990 but admits at this stage that the judgment and decree of the said Title Suit is under challenge in Title Appeal No. 18/2012 pending in the court of learned Additional District Judge – 1st, Lakhisarai.

Learned counsel for the petitioner admits that there has been a mistake on the part of the petitioner in saying that the judgment and decree of the Title Suit was not under challenge.

Respondent no. 8 & 9 has filed a counter affidavit.



The stand of respondent no. 8 & 9 is that not only the petitioner has made a false statement concealing the pendency of the Title Appeal No. 18/2012, the fact remains that the petitioner has not lodged any F.I.R. or any other information with the jurisdictional police station alleging threat to his life and property in the hand of the private respondents. It is submitted, thus, that the petitioner has moved this Court directly seeking protection. It is submitted that in a matter involving civil dispute, there is no reason as to why this Court sitting under Article 226 of the Constitution of India in its criminal writ jurisdiction may be requested to take appropriate action against the private respondents.

The official respondents have also filed a counter affidavit which has been sworn by Circle Officer, Surajgarha, Lakhisarai. He has given the description of the land which are there in Schedule III of the decree dated 02.11.2012. In paragraph '8' of the counter affidavit it is stated that as per the statements made in paragraph '4' of the writ application Khesra 3238 area 38 decimals and Khesra 3237 area 24 decimals are disputed land. According to the Circle Officer, in the judgment dated 10.10.2012 the learned court has ordered the private respondents to hand over the possession of the land within two



months from the date of the judgment. It is, thus, submitted that the petitioner has to seek his remedy towards execution of the judgment and decree in accordance with law.

It is further stated that the Halka Karmachari/Circle Inspector has reported with respect to the land of Khesra 3237 & 3238 that a Title Appeal No. 18/2012 is pending for adjudication and the land under both the Khesra is in possession of the private respondents. A photocopy of the report submitted by the Halka Karmachari/Circle Inspector with annexed documents have been brought on the record as Annexure 'B' to the counter affidavit of the official respondents.

Having heard learned counsel for the petitioner, private respondents and the State and upon perusal of the materials noticed hereinabove, this Court is of the considered opinion that the pleadings of the case are not disclosing any bonafide case to invoke extraordinary writ jurisdiction of this Court. The parties are litigating over the piece of land, they are in appeal and whosoever has got the decree in his favour has got a right to get the fruit of the decree by way of execution of the same. Recently in the case of **Rahul S. Shah vs. Jinendra Kumar Gandhi** reported in **(2021) 6 SCC 418**; the Hon'ble Supreme Court has directed that any execution case must be



disposed of within a period of six months unless it requires adjournment for the reasons to be recorded on that date. This has been reiterated in the case of **Bhoj Raj Garg vs Goyal Educational And Welfare Society [SLP(c) No. 19654/2022]**.

Liberty is there to the petitioner to seek execution of the decree, if there is no stay operating by the order of the learned Appellate Court.

At this stage, learned counsel for the petitioner submits that the petitioner should be granted liberty to move before the competent authority, if he finds any threat to his life and property at any stage.

Needless to say that such liberty is always there with every citizen of the country and the petitioner being one of them can, in case of any threat to his life and property, represent to the jurisdictional police station with such materials which will be looked into.

This application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

Rajeev/-

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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'.

