

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.17949 of 2023**

Arising Out of PS. Case No.-288 Year-2023 Thana- SHASTRINAGAR District- Patna

PARMOD KUMAR Son of Late Bhagwan Sinha R/o Mohalla- Bindtoli,  
Sheikhpura, P.S- Shastrinagar, Dist- patna

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Smt. Deomati Kumari Wife of Sri Devendra Prasad R/o 25, Adarsh Colony,  
Kidwaipuri, Patna 800001, PS- Buddha Colony, Patna, Bihar

... .. Opposite Party/s

**Appearance :**

|                          |   |                                                        |
|--------------------------|---|--------------------------------------------------------|
| For the Petitioner/s     | : | Ms. Sagrika<br>Mr. Aditya Kr. Pandey<br>Mr. Anuj Kumar |
| For the State            | : | Mr. Jharkhandi Upadhyay, APP<br>Mr. Nagendra Prasad    |
| For the Opposite Party/s | : | Mr. Indu Bhushan                                       |

**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR**  
**ORAL JUDGMENT**

**Date : 02-05-2023**

The petitioner has prayed for a direction upon the police and the State Government Officials in accordance with law on the application of petitioner filed in connection with Shastrinagar P.S. Case No. 288 of 2023 dated 15.03.2023.

2. The case of the petitioner is that the petitioner rented a premise pertaining to Bindtoli, Sheikhpura, P.S.- Shastri Nagar, District- Patna in the year 2004 from Kumar Birendra, Son of Sri Indrasan Singh, Resident of village- Sipah, P.S.- Basantpur, District- Siwan at present resident of Kurji Balupar, P.S.- Digha, District - Patna (800010).



3. The property in question is a two storied house. There was a hall at the top. The petitioner got the third top and fourth floor constructed at his own expenses and the amount was settled in the rent and he started running R.D. Girl's hostel. When the petitioner took possession of the house, he settled the electricity bill in the year 2005-06. The settlement amount was paid by him. The petitioner used to pay rent both through deposits in bank account and in cash regularly. Since the relation with Kumar Birendra Pratap Singh was extremely cordial, no formal lease deed was prepared, but there are a large number of documents as well as proof of continuous acceptance of rent which would conclusively show existence of a tenancy.

4. The petitioner was running a girl's hostel and he has annexed various documents in proof of the facts that the girl's hostel was being run in the property.

5. The petitioner paid rent upto November 2019 in the Bank account of Shri Kumar Birendra Pratap Singh (landlord) and on his request, the rent was being fully paid in cash thereon till the settlement of issue of final rent amount. The parties with the intervention of well wishers sat at a table. A settlement was on the way but in the meantime, countrywide lock down due to corona intervened and all the hostels were either vacated or



closed which resulted in a stalemate. The petitioner kept on paying the dues of the authorities. However, the hostel remained closed. The petitioner has deployed a lady guard to look after the premises. Since, the entire infrastructure was in place, the petitioner again started making preparation for re-opening the Girls Hostel.

6. The further case of petitioner is that on 15.03.2023, 20-30 unknown persons entered into the premises and assaulted the lady guard at the premises. When the petitioner reached there, they were informed by the said persons that they have negotiated about the property with the said Kumar Birendra Pratap Singh. The petitioner asked them to contact Kumar Birendra Pratap Singh, but these persons were not ready to listen to anything. Along with these unknown persons 3-4 ladies also forcefully entered into the house. One of them, Smt. Deomati Kumari W/o Shri Devendra Prasad claimed herself to be the new owner of the premises but did not produce any relevant document to prove her ownership. These persons forcefully sealed the main gate of the premises by wielding iron rod on the gate to stop the petitioner from entering the house. The video recordings of all the incidents are with the petitioner which will prove the wrongful act. After such instances, the



Shastrinagar Police Station lodged an F.I.R. at 11:00 PM. But refused to take any action against the aggressors.

7. All the valuable movable properties worth 30- 40 lakhs are still in the house along with important documents related to the property which are at the risk of being destroyed by these accused persons.

8. It has been submitted that the accused persons have violated the property and possession of the petitioner. A house has been attacked in broad daylight, intrusions have been made and the local administration has remained a mute spectator to all the incidents even after having full knowledge.

9. The petitioner has submitted that the materials would unequivocally show that the petitioner was in continuous possession of the property. It is submitted that any act of dispossession can only be under the procedure prescribed by law and not otherwise.

10. It has further been submitted that the police being a mute spectator to such gross acts of aggression in the heart of the town of Patna and apparently is in collusion with the land grabbers and land mafia. The duty of the police is not only to lodge FIR, but also to prevent illegal activities. The violators are still preventing the petitioner from entering the property and the



petitioner is fearful of his life in going to the property and saving his valuable assets which may already have been destroyed or removed.

**11. On 21.03.2023, the following order was passed:-**

*“Heard the parties.*

*Yesterday, the S.H.O., Shastri Nagar Police Station along with Investigating Officer of the case had appeared. He admitted before this Court that no eviction proceeding was preferred by the opposite party No. 2 or persons claiming through her. In fact, he did not inform this Court that the property has been sold by the opposite party No. 2. He had sought for one chance to correct his mistake and proceed further in the investigation and because of that the case was adjourned for today. Today, when the case has been called Mr. Siya Ram Shahi, learned counsel, appears before this Court and submits that on the orders passed by the Magistrate who is attached with the Shastri Nagar Police Station to resolve the dispute between private individuals, the possession of the house has been given by the police and the Magistrate to the opposite party No. 2. Patna High Court CR. MISC. No.17949 of 2023(3) dt.21-03-2023 2/3 This Court has been repeatably observing that the police and civil authorities cannot evict any person in the name of resolving the dispute without any order from a competent Civil Court. If the opposite party No. 2 wanted the possession of the house then she should have approached the Civil Court for an appropriate order, but it seems that the officials including the police officials of this State are not following the law and they are violating the law everyday.*

*The Collector, Patna, the Senior Superintendent of Police, Patna, Mr. Kaushal Kishore Dutt (Magistrate), the S.H.O., Shastri Nagar Police Station and the Investigating*



*Officer of this case will appear in this Court tomorrow (22.03.2023) to explain as to under what authority of law their magistrate and police officials are interfering in the private dispute of two persons and are acting as if they are above the courts.*

*Let a copy of the order be communicated to the Senior Superintendent of Police, Patna and the Collector, Patna through FAX/e-mail /WhatsApp by the office and also by Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor for the State.*

*List this case tomorrow (22.03.2023) for further hearing.”*

12. Pursuant the order dated 21.03.2023, on 22.03.2023 the District Magistrate Patna and the Senior Superintendent of Patna and the other Officials have appeared and the following order was passed:-

*“Heard learned counsel for the petitioner and learned APP for the State.*

*Pursuant to the last order of this Court, the District Magistrate, Patna, the Senior Superintendent of Police, Patna and other official have appeared.*

*This Court has been informed by the Senior Superintendent of Police, Patna that investigation of the case has commenced and it has been found that accused persons have forcefully entered into the house without resorting to any civil suit. They are not being authorized by any learned Magistrate or police to forcibly entry into the house as has been claimed by the accused persons. He has further submitted that investigation will be concluded within ten days and charge-sheet will be filed and action will be taken against accused person in accordance with*



*law.*

*Mr. Siyaram Shahi, appearing for one of the accused opposite party no. 2 who claims to be purchaser of the property in question.*

*List this case on 5<sup>th</sup> April, 2023 under "Heading for Judgment".*

**13.** On 07.04.2023, the Officer-in-Charge, Shastrinagar police Station appeared and produced the copy of the charge-sheet and a copy of the case diary in the Court.

**14.** From the evidence collected by the police during investigation, it is clear that the opposite party no. 2 along with some criminals forcibly entered the house and got it vacated. The opposite party no. 2 claims to be the purchaser of the property from Devendra Prasad and the charge-sheet has been submitted against the opposite party no. 2 and others after the police found the allegations true against opposite party no. 2 and others accused persons of Shastrinagar P.S. Case No. 288 of 2023.

**15.** The opposite party no. 2 has appeared *suo motu* and filed a counter affidavit. From the aforesaid counter affidavit, it is clear that the opposite party no. 2 is the purchaser from the landlord (Kumar Birendra) for consideration. On 20.06.2019, it has been submitted by them that when the house was not vacated by the petitioner after the purchase by the opposite party no. 2, the opposite party no. 2 filed C.W.J.C. No. 21395 of 2019 praying for issuance of the directions to the respondents to vacate illegal possession of the private respondent No. 8 (petitioner) as she has purchased the building which has been captured by Pramod Kumar (petitioner).

**16.** It has been submitted that C.W.J.C. No. 21395 of



2019 was heard and the case has been admitted. The following order has been passed by this court on 05.11.2019:-

***“Heard.***

***Admit.”***

17. But there was no direction to any of the authorities or to evict the petitioner forcibly or no liberty was given to the petitioner to take law into her own hand and evict the petitioner forcibly. Thereafter, the opposite party no. 2 Smt. Deomati Kumari again filed an application before the S.H.O., Shastri Nagar Police Station, then notice was issued to the petitioner and also to the opposite party No. 2 namely Deomati Kumari and on 20.02.2023 order was passed that “ प्रथम पक्ष एवं द्वितीय पक्ष उपस्थित प्रथम पक्ष के द्वारा जमीन खरीदै हैं एवं उनका रजिस्ट्री हुआ है एवं रशीद कटवाया गया है मोटेशन भी हो गया है प्रथम पक्ष का जमीन सही है। द्वितीय पक्ष के अनुसार पूर्व में उस मकान में रहते थे द्वितीय पक्ष ने कहा था जो हम घर खाली कर देंगे लेकिन द्वितीय पक्ष का कहना है जो हम भी जमीन मालिक को कुछ पैसा दिया था। कोरोना काल में घर खाली था। द्वितीय पक्ष ने कहा जो घर पर मेरा कोई रहता नहीं है। द्वितीय पक्ष के अनुसार ११.०३.२०२३ को थाना में दोनों पक्ष उपस्थित रहेंगे एवं घर खाली करने संबंधी बातचीत होंगे”

18. It is further stated by the opposite party no. 2 that on 11.03.2023, Pramod Kumar and Smt. Deomati Kumari appeared before the Shastrinagar police station then the petitioner Pramod Kumar handed over they key of the building and unlocked the gate of the building and he only requested that there are some furniture etc. for which some time may be given so that he may be able to remove the furniture etc. from the building.

19. It appears that opposite party no. 2 has now made out a case that the key was handed over to her on 11.03.2023 at



Shastrinagar police station and thereafter, they unlocked the building and on the same day, she along with her entire family members entered into the building.

**20.** It has been submitted by the opposite party no. 2 that the building has not been forcibly captured by the opposite party no. 2 and as per the mutual understanding the key was handed over to the opposite party no. 2. They also thereafter submitted that the action of the S.H.O. pursuant to the direction of this court is illegal. In paragraph No. 28, they have admitted that the S.H.O., Shastri Nagar Police Station got vacated the building from her possession and went away taking all the male members to the police station.

**21.** During the course of hearing on 22.03.2023, the S.H.O., Shastri Nagar Police Station and the Magistrate denied that the key was handed over to the opposite party no. 2 ever.

**22.** I have heard learned counsel for the petitioner, learned counsel for the State and the learned counsel for the opposite party no. 2.

**23.** Learned counsel for the petitioner has submitted that even if the opposite party no. 2 may be a *bonafide* purchaser but forcible eviction of a tenant by the purchaser is not authorized by law and for evicting the tenant the only recourse available to the opposite party no. 2 was to file an eviction suit under the Bihar Buildings (Lease, Rent and Eviction) Control (Amendment) Act, 1993 and use of force is not permissible. He has also relied upon various judgment of this court including Harisons Continental Private Limited vs. The State of Bihar (2022 SCC Online Pat 3178), Dr. Arshad Sharful Haque vs. State of Bihar passed in C.W.J.C. No. 1592 of 2021, Surendra Singh vs. State of Bihar and Ors. passed in Cr.W.J.C. No. 153 of



2017 and other analogous cases and Anand Kishore Prasad Sinha vs. State of Bihar reported in **2021(2) PLJR 445**.

**24.** During arguments learned counsel for the opposite party no. 2 was specifically put a question as to whether any eviction suit was filed, he answered that no eviction was filed. With regard to the veracity of the story of handing of the key to the opposite party no. 2 by the petitioner in the police station, the opposite party no. 2 could not produce any evidence apart from a mere bald statement which has been denied by the S.H.O. Shastrinagar police station and the Executive Magistrate Shri Kunal Kishore Dutt in court.

**25.** In the aforesaid circumstances, there is no doubt that the opposite party no. 2 has forcibly entered the premises after breaking open the lock and is now trying to justify the illegal action.

**26.** It is not in dispute that the S.H.O. Shastrinagar police station initially did not act upon the complaint of the petitioner and only when the petitioner filed this application before this court then the Shastrinagar police started to take interest in the matter.

**27.** From the facts which are before this court, it appears that Shastrinagar police was also in collusion with the opposite party no. 2 and only when this court interfered in the matter then they started acting. This court cannot be a mute spectator to the illegal acts committed by the opposite party no. 2 of forcibly in capturing the house in question without resorting to law and once this court is convinced that the possession has been taken forcibly, this court can order for restoration of possession.

**28.** The Allahabad High Court has considered the restoration of possession to a person in a writ application who



had suffered at the hands of the encroachers and was dispossessed from in his property by terrorising him. Once, a person approaches the police and the police help the person to take possession of the property in question forcibly by not acting the illegal action should not be ignored. In the case of *Jai Prakash Vashisht v. Addl. District Magistrate, 1995(26) All LR 46*, Allahabad High Court held as follows:-

*“Illegal house grabbing seems to be rapidly becoming the order of the day in many places in Uttar Pradesh. This Court will be failing in its duty if it does not voice its protest against these brazen acts of lawlessness. A man's house is said to be his castle. But when the castle is invaded illegally by a mob of anti social elements who beat up the inhabitants, throw them out and illegally occupy the same, it is the matter of great concern for all law abiding citizens. Several instances of such illegal house grabbing have lately come to the notice of this Court, and reports about them have been published widely by the newspapers.”*

29. The Hon’ble Supreme Court in the case of ***Krishna Ram Mohanti (1989) 4 SCC 131*** has held that no person can forcibly be dispossessed from the property even if person sought is ready to approach. It is the duty of the Court to issue appropriate order/direction or writ in the nature to direct the possession of the petitioner on such a person.

30. This Court in the case of ***Harisons Continental Private Limited vs. The State of Bihar (supra)*** has held as follows:-

*“35. The only issue which is to be looked into is that, in case, the possession of the petitioner no.1 is admitted and it is found that he has been ousted by respondent no.7 in collusion with the local police, unlawfully and by use of force or by taking the law into his hand and it finally comes out to be a case of property*



*grabbing or ouster of the petitioners by unlawful means, whether or not this Court would be justified in entertaining the writ application and granting the reliefs as prayed, to the petitioners. Thus, the submission of respondent no.7 that because the petitioner no.1 does not have an existing executable right, therefore, the petitioner no.1 cannot maintain the present writ application, is completely misconceived and misplaced kind of submission.*

*36. In paragraph '15' of its counter affidavit the respondent no.7 admits to have filed an eviction suit under Section 11(1) (c) of the Eviction Act, 1947 against the petitioners on the ground of personal necessity. This is adjactly what the Hon'ble Court in Company Petition No.10 of 1996 opined as procedure. In paragraph '17' the respondent no.7 in fact admits in clear words that the petitioner can claim possession of the hotel area as per the terms of the lease deed, though submission is that not of the entire building and it is claimed that the ground floor and the basement is in the occupation and possession of the answering respondents. At this stage, this Court is not required to look into anything beyond the subject matter of the writ application which is the hotel area which the respondent no.7 himself claims to have locked. It is unimaginable that on the one hand the respondent no.7 himself admits that the petitioner can claim possession of the hotel area but at the same time the respondent no.7 says that he locked the outer gate of the hotel on finding that there was no one in the hotel or its reception counter. This Court would discuss in detail the complete conflicting stand of respondent no.7 in paragraph '17' of its counter affidavit as regards the manner in which he claims to have locked the gate of the hotel and denies involvement of local police. For this purpose, this Court will discuss the statements in paragraph '17' of the counter affidavit of respondent no.7 side by side with the report of Dy.S.P. which contains analysis of the CCTV footage.*

*49. The Hon'ble Delhi High Court was of the view that it was not concerned with the title of the property in question and on noticing the fact that the respondent no. 3 & 4 were inducted into possession in connivance with*



*police and the petitioner was thrown out of the house where she was living for about four years, the court took a view that it has quite and ample powers to pass appropriate orders including orders for restoration of possession. The relevant observations of the Hon'ble Delhi High Court are quoted hereunder for a ready reference :-*

*“..... In such circumstances, this Court, to do complete justice between the parties, has wide and ample powers to pass appropriate orders including orders for restoration of possession. On the facts like the present it is the duty of the Court to come to the aid of person who is oppressed and is in disadvantageous position and, therefore, it is necessary to make innovations and forge new tools when atrocities are committed by those who are required to enforce the rule of law. The alleged offender cannot be permitted to take advantage of delay in justice delivery system. The contention that they may have prima facie committed the offence of trespass for the purpose of registration of FIR, which may be registered, and that the law will have its own course after registration of the FIR and at this stage no orders for delivery of possession can be passed, cannot be accepted on the peculiar facts of this case. Of course, the criminal law will have its own course. Of course, the suit would also be decided on its own merit and this order will not prejudice parties in those proceedings but all this does not persuade us to deny the relief of putting the petitioner back into possession. All situations are not alike. What relief deserves to be given in exercise of jurisdiction under Article 226 cannot be placed in a rigid mould. It cannot be put in a straight jacket. The relief is to be moulded as the facts and circumstances of the case and cause of justice may demand.....”*

**50.** *In the case of Vijay Khanna & Anr. Vs. Union of India reported in 1998 SCC Online Del 846 the Hon'ble Division Bench of Delhi High Court was examining a case in which restoration of possession was sought for in writ jurisdiction. The petitioners were alleging dispossession*



*from the ground floor portion of the house by respondent no. 15 and others while from first floor portion by respondent no. 16 and others on 14th April, 1994 and 26th April 1994 respectively. The Hon'ble High Court rejected the contention of the respondents that the petitioner may get restored their possession in terms of Section 456 Cr.P.C. and expressed its views in the following words:-*

*“..... It will not be out of place to state that power to restore possession of immovable property under Section 456 Cr.P.C. can be resorted to by the court only after recording the finding of guilt against the accused and the decision in case FIR No. 259/1994 is likely to take couple of years time. Taking note of the ratio in Smt. Anju Devi's case (supra) and the facts and the circumstances of the case, the petitioners deserves to be put back into possession of their house. ... ..”*

**51.** *In the case of Waf Alaulad and Anr. Vs. Sundardas Daulatram and Sons and Ors. reported in 1996 SCC Online All 176 = AIR 1996 All 355, the Hon'ble Allahabad High Court observed in paragraph 14, 15, 16, 17, 19, 20 and 21 as under:-*

*“14. But dispossessing a person from his property otherwise than in due course of law is different from grabbing the property by terrorising the person in possession. To capture the property forcibly by creating terror by applying brute force is not a simple case of dispossessing a person from property. In a country governed by rule of law no person can be deprived of his life, liberty and property by third degree methods, such as terrorising and man-handling the person concerned. In such a case not only the person who has been dispossessed of his property but the society itself is taken to ransom by brute force. Such an act creates terror in the minds of the people and has the effect of shaking the social fabrics of the society. These acts also hit and damage the authority of the Government with the result that the public order, peace and tranquility of the society are disturbed. In such cases it is the duty of the Government to come to the rescue of the persons who are threatened or*



*have been dispossessed from their property by brazen act of lawlessness."*

*15. In Charan Lal Sahu v. Union of India, AIR 1990 SC 1480, generally known as "Bhopal Gas leak disaster case" the Supreme Court while dealing with the concept known as "parens patrias", has held that the Government has the sovereign power of guardianship over the persons under disability and it is its duty to protect them. It was further held that where the citizens are not in a position to protect their rights the Government must intervene and fight for their rights. Relevant extract from the above decision of the Supreme Court is reproduced below at page 1504 :*

*"There is a concept known both in this country and abroad, called "parens patriae". Dr. B. K. Mukherjee in his 'Hindu Law of Religious and Charitable Trusts,' Tagore Law Lectures, Fifth Edition, at p. 454, referring to the concept of parens patriae, has noted that in English Law, the Crown as parens patriae is the constitutional protector of all property subject to charitable trusts such trusts being essentially matters of public concern. Thus the position is that according to Indian concept parens patriae doctrine recognised King as the protector of all citizens and as parent. In Budhakaran Chaukhani v. Thakur Prasad Shah, AIR 1942 Cal 311 the position was explained by the Calcutta High Court at page 318 of the report. The same position was reiterated by the said High Court in Banku Behary v. Banku Behary Hasra AIR 1943 Cal 203 at pp. 205 of the report. The position was further elaborated and explained by the Madras High Court in Kumaraswami Mudaliar v. Rajammal AIR 1957 Mad 563 at p. 567 of the report. This Court also recognised the concept of parens patriae relying on the observations of Dr. K. Mukherjee aforesaid in Ram Saroop v. S. P. Sahi, (1959) 2 Supp SCR 583 at pp. 598 and 599; AIR 1959 SC 951 at pp. 958-959. In the "words and phrases" permanent Edition, Vol. 33 at p. 99, it is stated that parens patriae is the inherent power and authority of a Legislature to provide protection to the person and property of*



*persons non sui juris, such as minor, insan, and incompetent persons, but the words "parens patriae" meaning thereby 'the father of the country', were applied originally to the King and are used to designate the state referring to its sovereign power of guardianship over persons under disability. (Emphasis supplied). Parens patriae jurisdiction, it has been explained, is the right of sovereign and imposes a duty on sovereign, in public interest, to protect persons under disability who have no rightful protector. The connotation of the term "parens patriae" differs from country to country, for instance, in England it is the King, in America, it is the people, etc. The Government is within its duty to protect and to control persons under disability. Conceptually, the parens patriae theory is the obligation of the State to protect and take into custody the rights and the privileges of its citizens was discharging its obligations. Our Constitution makes it imperative for the State to secure to all its citizens the rights guaranteed by the Constitution and where the citizens are not in a position to assert and secure their rights, the State must come into picture and protect and fight for the rights of the citizens. The preamble to the Constitution, read with the Directive Principles. Arts. 38, 39 and 39A enjoins the State to take up the responsibility. It is the protective measure to which the social welfare State is committed. It is necessary for the State to ensure the fundamental rights in conjunction with the Directive Principle of State Policy to effectively discharge its obligation and for this purpose, if necessary, to deprive some rights and privileges of the individual victims or their heirs to protect their rights better and secure these further."*

*16. The position of the Government being that of parent it has to act, intervene and protect lives, liberty and property of the people when threatened or invaded. Its duty is much greater in the case of a person under disability. A person is under disability not only when he suffers from physical or legal infirmities, but also when he is unable to stand up and protect his right and*



*property from invasion by or with the help of anti social elements, Mafias and terrorists. In such a case it is not only duty of the Government to protect a person in distress and restore the possession of his property to him, but it is also the duty of this Court, when approached, to pass appropriate orders and issue necessary directions to the Government to protect his life, liberty and property and, when found necessary, to restore him the possession of his property.*

*17. A learned Single Judge of this Court in Jai Prakash Vashisht v. Addl. District Magistrate, 1995(26) All LR 46 has, in this connection, laid down as under:*

*"Illegal house grabbing seems to be rapidly becoming the order of the day in many places in Uttar Pradesh. This Court will be failing in its duty if it does not voice its protest against these brazen acts of lawlessness. A man's house is said to be his castle. But when the castle is invaded illegally by a mob of anti social elements who beat up the inhabitants, throw them out and illegally occupy the same, it is the matter of great concern for all law abiding citizens. Several instances of such illegal house grabbing have lately come to the notice of this Court, and reports about them have been published widely by the newspapers."*

*20. When a person, who has been dispossessed from his property by brazen acts of lawlessness by or with the help of anti- social elements, approaches this Court under Article 226 of the Constitution, this Court does not exercise its power to enforce the contractual and legal obligations of the parties. It only directs the Government to enforce the Rule of law and to protect the lives, liberty and the properties of the people and, if found necessary, to restore the possession of the property to the person who has been dispossessed therefrom, leaving it open to the parties to get their rights adjudicated through Civil Court. To tell a person whose property has been forcibly captured and seized by or with the help of*



*anti social elements, to file a suit for its recovery and be on the street till the suit is decided by the last Court, is nothing but slapping a person in distress. The first two preliminary objections raised by the learned counsel for the owner are, therefore, rejected.*

*21.As regards the third preliminary objection it may be mentioned that Supreme Court in Krishna Ram Mahale v. Mrs. Shobha Venkat Rao, (1989) 4 SCC 131 : AIR 1989 SC 2097 (supra), relevant extract from which has been reproduced before, has held that no person can forcibly be dispossessed from property even by the owner except by recourse to law. If a person is sought to be dispossessed by brute force he has a right to approach this Court, to protect his possession and it is the duty of this Court to issue appropriate order, direction or writ in the nature of mandamus to the Government to protect the possession of the property of such a person till he is dispossessed therefrom through a Court. In the instant case period of lease expired on 31- 12-1994. But the tenants have a right to continue in its possession till they are evicted through Court. They thus have the right to approach the Court to protect their possession of the property. Their writ petition as such cannot be said to be not maintainable. The third preliminary objection is also rejected.....  
.....”*

*52. In the case of Ram Prasad Narayan Sahi & Anr. Vs. The State of Bihar and others reported in AIR 1953 SC 215, their Lordships of the Hon’ble Supreme Court did not allow to circumvent and overreach the rule of law. This case has been relied upon by a Bench of this Court in the case of Hindustan Petroleum Corporation Ltd. Vs. The State of Bihar and others reported in 1996 SCC online PAT 378=AIR 1996 PAT 163 and on finding that the college authorities knew it very well that in order to evict the petitioner company it will have to file a suit, instead of doing that an understanding was reached with PRDA authorities and by demolishing the structure, the petitioner company had been got rid of it, the Hon’ble Court strongly condemned the same in the following words:-*



*“Thus rule of law has been circumvented and overreached. The college authorities knew it very well that in order to evict the petitioner company it will have to file a suit. Instead of doing that so called understanding was reached with PRDA authorities and by demolishing the structure, the petitioner company had been got rid of. This Court strongly contends the subversion of rule of law by the PRDA authorities at the instance of the college authorities.”*

31. From the aforesaid facts, it appears that respondent no. 2 has avoided the established procedure of law and has indulged in unlawful act to get the forcible possession of the house in question from the petitioner.

32. Paragraph no. 63 of the ***Harisons Continental Private Limited vs. The State of Bihar*** (*supra*) reads as follows:-

*“63. In the light of the discussions made hereinabove, this Court would have no hesitation in coming to a conclusion that during the pendency of the eviction suit brought by the respondent no.7 against the petitioners, the respondent no.7 through its Directors acted unlawfully by taking law into its hand and while doing so the local police administration has not only remained a mute spectator despite information given by the first party (the petitioners) in time but went to the extent of helping the respondent no.7 by handing over the key to the second party. The report of the Dy.S.P. clearly says that key was given by sub-inspector of police Parmatma Dubey to the officer on duty, if it was so, a vague statement in the same report that key was handed over to the second party speaks a volume about the conduct of the local police. As per report, it was the said sub-inspector of police Parmatma Dubey who had left the police station with key. He claims to have opened the shutter and took out the tea vendor Sanjay Kumar who was inside the hotel premises and then again handed over the key to the officer on duty, if it was so then there would be no iota of doubt that key was handed over to respondent no.7*



*by police. The fact that two emails sent to the Superintendent of Police, Patna on 25.02.2022 one of which were at midnight itself did not get any response again only strengthens the case of the petitioners that the local police was in collusion and they failed to protect the petitioners from unlawful dispossession.”*

**33.** From the aforesaid discussion and from reading of the aforesaid judgment, it is clear that the forcible possession of the property without resorting to the duly established procedure of law is not permissible in our country and the illegal act of the opposite party no. 2 in connivance with Shastrinagar police cannot be condoned.

**34.** In view of the above, the dispossession of the petitioner is held illegal.

**35.** The S.H.O. Shastrinagar. Patna is directed to take back the possession from the opposite party no. 2 and hand over the premises to the petitioner by the 15<sup>th</sup> of July, 2023. For doing so, he can request for deployment of necessary police force so that the rule of law may prevail.

**(Sandeep Kumar, J)**

Saif/-

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