

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.730 of 2023

Arising Out of PS. Case No.- Year-0 Thana- District- Patna

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Arun Kumar, Son of Late Raghunath Prasad, Resident of Mohalla-
Balkishunganj, P.S.- Alamganj, District- Patna

... .. Petitioner

Versus

1. The State of Bihar through the Secretary, Department of Home, Govt. of Bihar, Patna.
2. The Secretary, Department of Home, Govt. of Bihar, Patna.
3. The Director General of Police, the Govt. of Bihar, Patna.
4. The Deputy Inspector General, Bihar, Patna.
5. The Senior Superintendent of Police, Bihar, Patna.
6. The Sub-Divisional Officer, Patna City, Patna.
7. Jitendra Pandey, The Circle Officer, Patna Sadar, Bihar, Patna.
8. Shri Sudhir Kumar, The S.H.O. of Agamkuan Thana, Bihar, Patna.
9. Arun Kumar Singh, Son of Late Vijay Ram Bahadur Singh, R/o K-57/4 Navpura, Varanasi, P.S.- Kotwali, District- Varanasi, Uttar Pradesh.

... .. Respondents

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Appearance :

For the Petitioner	:	Mr. Sudhanshu Trivedi, Advocate Mr. Vivek Anand Amritesh, Advocate
For the State	:	Mr. Manish Kumar, GP-4 Mr. Deepak Kumar, AC to GP-4
For the Resp No. 9	:	Mr. P.N. Shahi, Senior Advocate Mr. Shivam, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 20-12-2023 The counter affidavit filed on behalf of Respondent

No. 8 be taken on the record.

2. Heard learned counsel for the petitioner, learned

GP-4 for the State and Mr. Pushkar Narain Shahi, learned Senior

Advocate assisted by Mr. Shivam, learned Advocate

representing respondent no. 9.

3. By filing this writ application, the petitioner is

praying for the following reliefs:-

- “i) In the nature of mandamus for directing and commanding the Respondents authorities to lodge an F.I.R. against the Respondent No. 9 and conduct a free and fair inquiry against him who is forcefully disposing the petitioner from the land in question and threatening him and his family to kill.
- ii) In the nature of Mandamus for directing and commanding the respondent authorities to take action against respondents no. 8 (SHO, Agamkuan) who is illegally and unlawfully helping the Private respondents in dispossessing the petitioner from his land in spite of the fact that there is an order in favour of the petitioner by the competent authority.
- iii) In the nature of mandamus for directing and commanding the respondent authorities to provide protection/security to the petitioner and his family members from the private respondents as the petitioner and his family is living under serious threat due to the illegal and unlawful act and his connivance with the police officers.
- iv) For any other writ/writs, order/orders and direction, directions as your Lordships may deem fit and proper in the facts and circumstances of the case.”

4. It is the case of the petitioner that his mother Saraswati Devi purchased a piece of land of Khata No. 9, Khesra No. 935 in Mauza- Sandalpur, Patna admeasuring 62.05

decimal vide a sale deed dated 08.03.1963 from one Prabhu Nath Chaudhary and others. The sale deed was challenged by the grandfather of the private respondent in a Title Suit bearing No. 113 of 1965. The grandfather of private respondent, namely, Sri Mathura Prasad sold the land of *Khesra* No. 935 admeasuring 62.56 decimal during pendency of the suit to different persons. After his death, his legal heirs became party to the suit.

5. It is stated that when the legal heirs of the plaintiff Mathura Prasad came to know that mother of this petitioner is in actual possession of the land, a compromise petition was filed in the year 1994-95. In the said compromise petition, the co-plaintiff accepted that the land in question being *Khesra* No. 935 is of Saraswati Devi and a decree was passed accordingly in a Title Suit No. 113 of 1965 on 14.08.1996. It is stated in paragraph '6' of the writ application that no objection has been filed against the said decree.

6. It is further case of the petitioner that the land in question was mutated in the name of the petitioner and his family which was challenged by the private respondent but on objection raised by the petitioner, the said case was allowed in favour of the petitioner vide order dated 18.01.2018 passed in

Mutation Review Case No. 38/2016-17. The order passed in Mutation Review Case has not been interfered with by the Additional Collector in Mutation Cancellation Case No. 110/2019-20.

7. On the strength of these materials, it is contended that the petitioner is in possession of the land but on 04.03.2023, the private respondents came on the land in question along with 50-60 unknown criminal people lashed with arms and they attempted to capture the land illegally. The Agamkuan Police Station was informed of the incident but the Officer-in-Charge of the police station refused to lodge FIR and rather frightened the petitioner from approaching the Court. In respect of the alleged occurrence, a complaint has been filed with the Sub-Divisional Magistrate, Patna City in which a report was called from the Officer-in-Charge of the police station but the Officer-in-Charge of the Agamkuan Police Station did not take any step to comply with the order of the Sub-Divisional Magistrate, Patna City.

8. Earlier, after hearing learned counsel for the petitioner, this Court had issued *Dasti* notice to the private respondent and the S.H.O. Agamkuan Police Station was asked to be present in person to inform this Court as to what action has

been taken by him pursuant to the complaint as contained in Annexure '4' and what is the present position of the construction over the land in question.

9. A counter affidavit has been filed by Respondent No. 8. It is stated that upon receipt of the complaint of the petitioner, the S.H.O deputed a Sub-Inspector of Police to obtain relevant document with respect to the land from both the sides and examine it and thereafter to report the matter to the Circle Officer/Sub-Divisional Officer and to carry out the order, if there is any, from any competent authority. In course of site inspection by the Inquiry Officer, it has been found that in one part of plot, construction work is being carried out by one Arjun Kumar, Son of Balindra Singh of Chunni Plaza, Kankarbagh. During the inquiry, the construction work was stopped by the person who was executing the work. A Non-FIR Case No. 40 of 2023 dated 17.03.2023 has been registered and proceeding under Section 107 Cr.P.C. has been initiated against the second party Arjun Kumar. By order of the S.D.O, Patna City, Section 144 Cr.P.C. proceeding has been initiated. In the said case, the S.D.O, Patna City has prima-facie found the claim of the second parties made out and, thus, adverse orders were passed against the petitioner's side. A copy of the order dated 10.04.2023

passed in Miscellaneous Case No. 235 of 2023 has been annexed as Annexure 'R/8-F' to the counter affidavit.

10. The private respondent has also filed a counter affidavit. It is stated that the petitioner has concealed various facts which are necessary for adjudication of the dispute between the parties.

11. Learned senior counsel for the private respondent has placed before this Court a copy of the judgment and decree of the Civil Court, Patna passed in Title Suit No. 113 of 1965. It is submitted that in the said title suit, the land on which the petitioner is claiming his rights was Schedule I property and the plaintiffs through whom the private respondent is claiming had sought a declaration that the sale deed executed in favour of the mother of the private respondent by one Tarkeshwar Nath Chaudhary would not affect the title of the plaintiff and the co-plaintiffs as said Tarkeshwar Nath Chaudhary was not competent to execute the sale deed. The said suit was decreed on contest and it has been held by the learned Sub-Judge, VI, Patna that the sale deed dated 01.08.1961 with respect to plot no. 935 could not be operative and binding upon the plaintiff and the co-plaintiffs.

12. Learned counsel for the petitioner has at this stage

submitted that the kind of declaration sought for in the suit by the plaintiffs even if allowed by the learned civil court in the title suit, would not affect the right, title and interest of the petitioner as the declaration sought for was not for setting aside the sale deed executed in favour of the mother of the plaintiff.

13. This Court has heard learned counsel for the parties at length and perused the records. To this Court, it appears that the dispute between the parties is a keenly contested civil dispute, the issues involved therein may not been gone into by this Court sitting in its criminal writ jurisdiction. It is, thus, concluded that in the nature of the dispute between the parties, it would only be just and proper for the petitioner to seek his remedy whatsoever available to him and as may be advised to him in accordance with law before the competent court.

14. This Court would, however, direct the S.H.O. of the Agamkuan Police Station to ensure that no law and order problem takes place and any attempt to forcefully evict the petitioner, if he is in possession of the property, by applying brute force must be dealt with in accordance with law strictly.

15. Let it be recorded for clarity sake that the direction to the S.H.O. is with sole intention to ensure that law

and order be maintained and any attempt by any person to take the law into his hand be dealt with strictly.

16. This would, however, not be taken as any opinion of this Court with respect to any right, title or possession of the parties over the property in question.

17. With the aforesaid observations and directions, this writ application is disposed of.

(Rajeev Ranjan Prasad, J)

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