

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10237 of 2023

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Nawal Kishor Sharma Son of Late Jugalkishor Sharma, Resident of Near Vishwakarma Mandir, Maniya Chauraha, P.O.- Munger, P.S.- Kasimnagar, District- Munger.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Department of Revenue and Land Reforms, Government of Bihar, Patna.
3. District Magistrate, Munger.
4. Sub Divisional Magistrate, Munger.
5. The Circle Officer, Sadar, Munger.
6. S.H.O., Kasimnagar, Munger.
7. Rajeshwari Devi W/o Chandrashekhhar Sharma @ Shekhar Sharma, R/o Maniya Chauraha, P.O. Munger, District- Munger.
8. Dev Nath Sharma @ Gholtan Sharma S/o Late Rameshwar Mishri, R/o Maniya Chauraha, P.O. Munger, District- Munger.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Deepak Kumar, Advocate
For the Respondent/s : Mr. Raj Kishore Roy, GP 18

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL ORDER

2 21-12-2023 Heard learned counsel for the parties.

2. This writ petition has been filed for commanding the respondent authorities to remove the illegal encroachment by Respondent Nos. 7 and 8 on Raiyati land of the petitioner appertaining to Tauji No. 414, Jamabandi No. 24/28, Khesra No. 689 & 712 having an area of 64 decimals.

3. It is contended on behalf of the petitioner that grandmother of the petitioner namely Punia Loharin was in the



Khatihan in respect of Tauji No. 414, Jamabandi No. 24/28, Khesra No. 689 & 712 having an area of 64 decimals. Punia Loharin died intestate leaving behind her three sons namely Anandi Mishtri, Chandi Mishtri and Jugal Kishor Sharma and out of the said land, Chandi Mishtri sold 15.01 decimals in Plot No. 712 which consisted of 27 decimals of land in the name of Punia Loharin. But on 19.07.2019 some criminal encroachers forcefully took possession of the said land regarding which the concerned P.S. Kaimbazar was immediately informed but no action was taken. Then the petitioner approached the office of Circle Officer, Munger and filed for land measurement of the above mentioned land and then Circle Officer gave an order to measure the said land *vide* Order No. 91/2019-2020 dated 02.03.2020. Although, the date for measurement of the land in question was fixed for 25.03.2020 but the same could not be conducted due to the pandemic lockdown. Thereafter, petitioner approached the office of Circle Officer many times but despite the fact that petitioner had deposited the required amount for the said measurement, no measurement has been conducted till date which is clear violation of Article 14 of the Constitution of India apart from the violation of principles of natural justice. It is next submitted that petitioner has filed a title suit bearing Title Suit



No. 150/2020 in the court of learned Sub-Judge 1st, Munger in which notices have been issued and duly served upon all the respondents but still they are doing illegal construction and executing the registry of the said land fraudulently on the basis of false representation of title of the said land (photocopy of the Title Suit No. 150/2020 annexed as Annexure P/2). It is further submitted that the Kasimbazar police station, after thorough inquiry and verification, submitted its report to the Superintendent of Police, Munger (Annexure P/3) wherein it is categorically stated that the land in question belongs to the legal heirs of Punia Loharin and Respondent Nos. 7 & 8 are trying to illegally capture some portion of the said land and in this regard procedure under Section 107 Cr.P.C. was initiated and appropriate authority concerned was directed to conduct measurement of the land in question. On 10.02.2022, the Sub-Divisional Magistrate, Munger initiated proceeding under Section 107 Cr.P.C. in Case No. 78 against Respondent Nos. 7 & 8 and observed that the land in question belongs to the petitioner(Annexure P/4). It is further submitted that petitioner is the legal heir of Punia Loharin and he had regularly payed the *lagan* of the said land from 1967 till 2000 (Annexure P/6). He further submits that a Land Possession Certificate was also



issued on 15.07.1992 in favour of the petitioner in respect of Tauji No. 414, Jamabandi No. 24/28, Khesra No. 689 & 712 (Annexure P/7) and the land in question was in peaceful possession of the legal heirs of Late Punia Loharin including the petitioner since decades and no objection was raised against the same which further establish the fact that the land in question belongs to the petitioner.

4. On the other hand, learned counsel representing the State, while opposing the aforesaid submissions made on behalf of the petitioner submits that the present writ petition is not maintainable. He further submits that remedy under Article 226 of the Constitution of India is pre-eminently a public law remedy and is not, generally, available as a remedy against private wrongs. The resort to Article 226 of the Constitution of India can be had to enforce various rights of the public or to compel public or statutory authorities to discharge their public duties in the realm of public functions, within the bounds of law.

In the present case the grievance of the petitioner is against the private respondents who are allegedly encroaching the Raiyati land of the petitioner. It is not in dispute that Respondent Nos. 7 & 8 who are neither public body nor they are the persons discharging any public duty, their alleged act of encroachment is



not amenable to writ jurisdiction.

5. Having heard the submissions made on behalf of the parties, this court is of the opinion that remedy of the petitioner does not lie in the realm of public law remedy under Article 226 of the Constitution of India but falls within the domain of a civil court of competent jurisdiction and as far as the police are concerned, they cannot be directed to take law in their hands and do what the law does not permit them to do. It is settled law that in a case of private wrong, in order to invoke court's jurisdiction under Article 226 of the Constitution of India, for issuance of a writ in the nature of *mandamus*, two conditions must be satisfied, namely, (i) *the identity of the person, against whom the writ is sought, as person or body, which is amenable to writ jurisdiction, and (ii) the nature of duty, which is sought to be enforced, is a public duty or has an element of public interest.* In the absence of any public interest or in the absence of breach of public duty or in the absence of any public wrong having been committed, no recourse to Article 226 of the Constitution of India is possible. The remedy of the petitioner, in the factual background of the present case, thus, lies in approaching a civil court of competent jurisdiction for remedy of his grievances including a suit seeking injunction.



6. For the foregoing reasons, I do not find any merit in
the writ petition and it is, accordingly, dismissed.

(Prabhat Kumar Singh, J)

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