

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13025 of 2007

Dr. Someshwar Narayan Singh, S/o Late Bishwanath Narayan Singh,
Resident of 87, Anugrah Puri, Gaya, P.S. Rampur, District-Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Gaya
3. The Superintendent of Police, Gaya
4. The Sub Divisional Magistrate, Gaya
5. Gaya Regional Development Authority, Gaya through its Chairman, Gaya.
6. Chairman, Gaya Development Authority. Gaya
7. Gaya Municipal Corporation through its Chief Executive Officer, Gaya.
8. The Chief Executive Officer, Gaya Municipal Corporation Gaya
9. Mahesh Singh Yadav S/o late Ram Charittar Yadav, Resident of A.P. Colony, Gaya
10. Gopal Yadav S/o Name not known
11. Jaipal Yadav, S/o Nepal Yadav
12. Ramprit Yadav Son of -not known
13. Sanjay Yadav S/o Mahesh Singh Yadav Resident of A.P. Colony, Gaya P.O.- Gaya, P.S. Rampur, Distt-Gaya
14. Bilas Yadav S/o of Late Ram Khelawan Yadav
15. Kailash Yadav son of Late Ram Khelawan Yadav
16. Deonandan Yadav Son of not known
17. Mukesh Son of Krishna Yadav, Resident of A.P. Colony. Gaya P.O.- Gaya, P.S. Rampur, Distt.- Gaya
18. Lalan Yadav Son of name not known.

All respondent No. 10,11,12,14,15,16 and 19 are Resident of Village/ Mohalla -Chiraiyan Tand, P.O. Gaya, P.S. Rampur, District- Gaya.

... .. Respondent/s

Appearance:

For the Petitioner/s	:	Mr. Rupak Kumar, Advocate Mr. Shyameshwar Kr. Singh, Advocate
For the State	:	Mr. Sanjay Prasad, AC to A.A.G.-4

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date: 04-04-2023

The present writ petition has been filed for directing the respondent authorities to ensure restoration of the possession of the land in question, back to the petitioner as also restraining the respondents no. 10 to 18 from interfering with the possession of the petitioner over the land in question which the petitioner had purchased in the year 1986 and with regard to which a permanent



injunction is operating in favour of the petitioner as has been ordered by the learned 3rd Additional Munsif, Gaya in Title Suit No. 383 of 1975 and Title Suit No. 2 of 1978.

2. The learned counsel for the petitioner has submitted that the case of the petitioner, in brief, is that he had purchased the land in question from his sister, namely, Pratibha Singh vide sale deed dated 17.03.1989, who had purchased the land from one Shri Prakash vide sale deed dated 23.09.1986, who in turn had purchased the same from the Gaya Improvement Trust vide sale deed dated 18.01.1966.

3. The learned counsel for the petitioner has submitted that the original vendor, namely, Shri Prakash had filed a suit bearing Title Suit No. 383 of 1975/02 of 1978, before the learned Court of 3rd Additional Munsif, Gaya and the learned Court below vide judgment dated 14.08.1978, had permanently enjoined the defendants herein i.e., namely, 1. Mahesh Singh Yadav s/o Ram Charitar Yadav, 2. Gopal Yadav, 3. Rajendra Yadav s/o Nepal



Yadav, 4. Jaipal Yadav s/o Nepal Yadav and 5. Ram Prit Yadav, all resident of village-Chiraiyatand, P.S. Chandauti, District-Gaya, from making any obstruction in construction of boundary wall and other building over plot no. 87 admeasuring 556 sq. yards, situated in Anugrahpuri Colony, Gaya.

4. It is the grievance of the petitioner that the private persons/respondents are trying to grab the land in question and are interfering with the peaceful possession of the petitioner herein.

5. This Court, by its earlier order dated 14.02.2023 had directed the District Magistrate, Gaya and the Senior Superintendent of Police, Gaya to conduct an enquiry and file a comprehensive counter affidavit in the present case and in pursuance thereof, the District Magistrate, Gaya has filed a counter affidavit wherein it has been stated that he alongwith his subordinate officials, namely, L.R.D.C., Sadar Gaya and Ancahl Adhikari, Town Anchal, Gaya as also along with the Senior Superintendent of Police, Gaya had visited the subject matter/land under



dispute and examined the relevant documents, whereafter under the direction of the District Magistrate, Gaya, the Land Reforms Deputy Collector, Sadar Gaya, had enquired into the matter on each and every aspect and thereupon the following picture has emerged:-

“The main grievance of the petitioner is that private persons are trying to grab the land in question and are interfering with the peaceful possession of the petitioner, herein.

A Title Suit No. 383 of 1975/02 of 1978, for a decree of permanent injunction restraining the defendants from interfering in constructing the boundary wall and building, was filed, in which a decree was passed against the defendants on 14.08.1978 by the Ld. Court of Additional Munsif-Illrd, Gaya, allowing the relief of the plaintiff.

In the light of the judgment and decree, as aforesaid, the Anchal Adhikari, Town Anchal, Gaya had issued notice to the



defendants, and after hearing them, it was found that the said private respondents and their family members had categorically stated that they have got no concern with the land in question.

The matter was also enquired into by the D.S.P., Town Gaya who also confirmed the statement of Anchal Adhikari.

In fact, the writ petitioner has also not disclosed the name of any individual, regarding his alleged grievance.

According to the claim of the petitioner, an area of 556 Sq. yard was acquired in 1989 by way of purchase from Gaya Improvement Trust, through a registered sale deed dated 18.01.1966, in the name of Sri Prakash and Sri D.P.N. Sharma. In course of time said Sri Prakash and Sri D.P.N. Sharma sold the same to Smt. Partibha Singh. Further, the said Pratibha Singh, through a registered deed of sale dated 17.03.1989 sold the same to Dr. Someshwar Narayan Singh



(petitioner), who was then given peaceful possession of the same.

During the course of enquiry, the petitioner had disclosed that at the time of purchase of the land by him, the land was parti, and after purchase, in the year 1990 he got a boundary wall constructed.

At the time, the Revisional survey was being conducted, the writ petitioner had filed an Objection Case No. 374/89, before the competent Survey and Settlement Officer, who after hearing had passed an order dated 13.10.1993, allocating 10 अर as Shiv Asthan and 410 अर as Makan-Mai-Sahan, i.e. equivalent to 508 sq. yard.

The Ancahl Amin had conducted measurement, during the course of enquiry and it was revealed that within the said boundary wall a pucca house with sahan land, parti land alongwith Shiv Asthan totals up to 182.29 sq. yard, out of which over an area of 3112.49 sq. ft. MAKAN



MAI SHAN is situated and an area of 737.66 sq. ft. has been left parti, wherein, in a corner a small structure is situated, in which Shiv Ling and two other Gods have been kept.

Upon enquiry made from the local persons, they stated that they have got no objection if any construction is made by the petitioner over the land in his possession and no one will create any disturbance in case, the petitioner makes any construction."

6. Per contra, the learned counsel for the petitioner has submitted, by referring to the rejoinder affidavit filed in the present case that admittedly temple has been constructed over an area of 22 ft. 9 inch X 36 ft. 3 inch which is equivalent to 794.3 sq. ft., which is part of land measuring 5000 sq. ft., purchased by the petitioner vide sale deed dated 17.03.1989 and possession whereof is required to be restored to the petitioner since the same is not in his possession and the



temple is being utilized by the outsiders. The petitioner has also raised other disputed question of facts such as correction of the draft khatiyan of revisional survey, amalgamation of the land of the petitioner, bifurcated into *ka* and *kha* etc. Nonetheless, the learned counsel for the petitioner has admitted that the present case involves disputed and complex question of facts which cannot be adjudicated in a writ petition under Article 226 of the Constitution of India, hence the petitioner be granted liberty to avail such other alternative remedies as are otherwise available under the law.

7. Having regard to the facts and circumstances of the case, the present writ petition stands disposed off as not pressed, however, with liberty to the petitioner to avail such other alternative remedies as are otherwise available under the law.

S.Sb/-

(Mohit Kumar Shah, J)

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	17.04.2023
Transmission Date	N/A

