

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1097 of 2021

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

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MOST. SUSHILA KUMARI W/o Late Nripendra Kumar Resident of- A/36,
Vijay Nagar, A-Sector, Hanuman Nagar, B.H. Colony, P.S.- Patrakarnagar,
Town and District- Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Chief Secretary, Government of Bihar, Patna Bihar
3. The Direcot General of Police, Bihar, Patna Bihar
4. The District Magistrate, Patna Bihar
5. The Sub-Divisional Officer, Patna Sadar, Patna Bihar
6. The Circle Officer, Phulwarisharif, Patna Bihar
7. The Senior Superintendent of Police, Patna Bihar
8. The Deputy Superintendent of Police, Sadar, Patna Bihar
9. The Officer-In-Charge, Patrakarnagar P.S., Patna Bihar
10. Dig Vijay Narayan S/o Sri Basawan Bhagat R/o village- Mansoor, P.O.-
Vaishali, P.S.- Mansoorpur, District- Vaishali
11. Jay Prakash Narayan S/o Sri Basawan Bhagat R/o village- Mansoor, P.O.-
Vaishali, P.S.- Mansoorpur, District- Vaishali
12. Satendra Narayan S/o Sri Basawan Bhagat R/o village- Mansoor, P.O.-
Vaishali, P.S.- Mansoorpur, District- Vaishali
13. Patna Sadar Gramin Sahkari Nirman Samiti Ltd. Hanuman Nagar, Patna-20
Bihar
14. Thikedar.Com Construction Company, Hanuman Nagar, Patna-20 Bihar
15. Yogendra Prasad S/o Late Hari Gope R/o village- Chamanchak, P.S.-
Gaurichak, P.O.- Dhewa Via Lohiya Nagar, Patna-20 (Vender of the
petitioner)
16. Vijay Kumar S/o Yogendra Prasad R/o village- Chamanchak, P.S.-
Gaurichak, P.O.- Dhewa Via Lohiya Nagar, Patna-20 (Vender of the
petitioner)
17. Ram Iqbal Prasad S/o Yogendra Prasad R/o village- Chamanchak, P.S.-
Gaurichak, P.O.- Dhewa Via Lohiya Nagar, Patna-20 (Vender of the
petitioner)
18. Munna Kumar Yadav S/o Yogendra Prasad R/o village- Chamanchak, P.S.-
Gaurichak, P.O.- Dhewa Via Lohiya Nagar, Patna-20 (Vender of the
petitioner)

... .. Respondent/s

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Appearance :



For the Petitioner/s : Mr. Anwar Karim, Adv.
For the Respondent/s : Mr. Sheo Shankar Prasad

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT/ORDER

5/ **31-07-2023**

The present Criminal Writ application has been filed for a direction to Respondents No. 1 to 9 i.e., officials/respondents to restrain Respondents No. 10 to 13 i.e., private respondents/purchasers from forceful and illegal encroachment and construction of building over the petitioner's land situated in Khata No. 37, Khesra No. 1288, 1258, Thana No. 26 having an area of 8.594 decimals situated at Mauza Jaganpura, PS. Phulwari, Vijay Nagar, Patna. It has further been prayed to direct the Respondent No.9 to register an FIR on the complaint given by the petitioner on 02.08.2021 (Annexure-10).

2. The brief facts of the present case are that the petitioner has purchased a land through a registered sale-deed dated 27.10.1995 from Respondent No. 13, Patna Sadar Gramin Sahkari Nirman Samiti Ltd. Hanuman Nagar, Patna-20 Bihar. After purchase of the land, a possession certificate was issued by the Circle Officer, Patna. The land was mutated in her name vide Mutation Case No. 30/200-2001 and since then the petitioner has been paying land revenue under receipt to the Govt. of Bihar.



3. An Interlocutory Application No. 01/2021 has also been filed by the petitioner for grant of an interim order of stay restraining Respondent No. 14 from any further illegal forcible construction over the land in question.

4. A Title Suit was filed by the petitioner for declaration of title over the land in question which was dismissed and thereafter a title appeal filed by the petitioner also got dismissed by District Appellate Court. Second Appeal No. 493/2010 filed by the petitioner also got dismissed by this Court on 06.02.2012. Against the order passed by this Court in Second Appeal No. 493/2010, the petitioner preferred SLA © No. 23622/2021 in which the leave to appeal was granted vide order dated 27.10.2014 and Civil Appeal No. 009960/2014 is pending before the Hon'ble Supreme Court for hearing.

5. Learned counsel for the petitioner submits that Respondent No. 14 has encroached upon the land and is illegally making construction over the same. He has pasted threatening notice to shoot down the trespassers. The petitioner approached the Officer incharge, Patrakarnagar Police Station on 02.08.2021 with a written complaint but the police has failed to register the FIR. Since Civil Appeal filed by the petitioner is pending before the Hon'ble Apex Court with regard to the land



in dispute, the Respondent has no right to make any construction. The police authority has failed to protect the right of the petitioner of peaceful enjoyment of her property and also failed to register the FIR against forceful capturing and illegal construction over the property of the petitioner. The Respondents are still constructing over the land but no action is being taken by the police authority.

6. Learned counsel for the State submits that the complaint of the petitioner was inquired into by the police officer by visiting the place in question. During inquiry both petitioner and private respondents were contacted and both the parties claimed the title over the land. The police, on apprehension of breach of peace, regarding land in question recommended to the SDO, Sadar, Patna for initiating a proceeding under Section 144 CrPC *vide* Patrakar Nagar PS non FIR No.02 dated 18.08.2020. He further submits that the matter related to a land dispute between two private parties in which the petitioner has lost up to High Court in Second Appeal and the matter is subjudiced before the Hon'ble Supreme Court.

7. A counter affidavit has been filed by Respondents No. 10 to 12 who are purchasers of disputed land from the *Raiyats* stating therein that the writ petitioner is claiming her



right, title and interest over the subject land by virtue of sale-deed dated 27.10.1995. A Title Suit No. 418/2000/180/2006 was filed by the petitioner along with Respondent No. 13, Patna Sadar Gramin Sahkari Nirman Samiti Ltd. Hanuman Nagar, Patna-20 Bihar against Private Respondents No. 10 to 12 and 15 to 18 claiming therein that the petitioner purchased the land by virtue of sale deed executed by Patna Sadar Prakhanda Gramin Sahkari Grih Nirman Samiti Limited (in short 'Samiti') on 27.10.1995. The 'Samiti' claims to have purchased the land from the Raiyats by virtue of sale-deed dated 18.11.1991. The suit filed by the petitioner and others was dismissed *vide* judgment dated 28.02.2009 in which learned trial court was pleased to hold that the 'Samiti' did not have right, title and possession over the suit property. As such, 'Samiti' could not have transferred right, title and possession to the petitioner by virtue of sale-deed dated 27.10.1995. Being dissatisfied with the judgment and decree dated 28.02.2009 and 09.03.2009 passed in Title Suit No. 418/2000/180/2006, the writ petitioner and the 'Samiti' filed Title Appeal No. 27/2009 and the learned appellate court by its judgment and decree dated 07.06.2010 dismissed the Title Appeal filed by the writ petitioner and confirmed the judgment and decree of the learned trial court.



Being dissatisfied with the decree of first appellate court the writ petitioner filed Second Appeal before this Court vide S.A. No. 493/2010 and this Court vide its order dated 06.02.2012 dismissed the Second Appeal holding that no substantial question of law is arising for consideration by this Court.

8. Upon hearing learned counsel for the parties and after perusal of the material on record, it emerges that there is a land dispute between the petitioner and the private respondents in which the petitioner has lost up to the High Court and Second Appeal filed by her has been dismissed. As submitted by the parties, the Civil Appeal filed by the petitioner is still pending before the Hon'ble Supreme Court and the matter is subjudiced there. The petitioner instead of filing appropriate petition of restraintment before the Hon'ble Supreme Court has filed the present criminal writ application restraining the private respondents from making construction by directing the police authorities.

9. On the basis of conspectus of facts discussed hereinabove and upon consideration that the matter is subjudiced before the Hon'ble Supreme Court, no direction can be issued to the police authorities for restraining the private respondents from making further construction inasmuch as this



Court is of the opinion that the dispute between the parties is purely of civil nature. Accordingly, the instant petition sans merit and the same stands dismissed.

(Anil Kumar Sinha, J)

Md. Perwez Alam

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	12.09.2023
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