

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13263 of 2022

Shyama Shahi, wife of Sri Prashant Kumar Shahi, Resident of Shahi Building
Shahi Lane, S.P. Verma Road, P.S. - Gandhi Maidan, District - Patna.

... .. Petitioners

Versus

1. The State of Bihar
2. The Collector and District Magistrate, Siwan.
3. The Superintendent of Police, Siwan.
4. Ram Janam Shah, Son of Late Shiv Pujan Shah, Resident of Village -
Hathaunji, Panchayat - Angauta, P.S. - Nautan, District - Siwan.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Vikas Kumar, Advocate
For the Respondent/s : Mr. Manish Kumar (GP-4)

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT
Date : 12-09-2023

Though the notice has been served upon the respondent no.4 through Circle Officer, Nautan but he has chosen not to appear in the matter.

2. In this case, the petitioner is seeking a direction to the respondent no.2 (the Collector, Siwan) to enquire regarding illegal and unauthorized possession over a part of land belonging to the petitioner comprised in Khata No.156, Old Plot Survey No.677, 678, 679 and 85 situated in village - Hathaunji, Panchayat-Angauta, P.S. & Block-Nautan, District-Siwan and after enquiry remove the unauthorized possession over the part of aforesaid land occupied by



respondent no.4.

3. The facts of this case, as stated in the writ petition, are that late Hari Shankar Shahi was the grand father-in-law of the petitioner. The petitioner and her husband are descendants of late Hari Shankar Shahi, who possessed the land in question. Pursuant to arrangement amongst the descendants of late Hari Shankar Shahi, the petitioner and her husband came in ownership of the land in question and have been paying the rent to the State of Bihar regularly. The petitioner stays in Patna and she visits her village occasionally to look after her property inherited as one of the descendants of late Hari Shankar Shahi.

4. It is also alleged by the petitioner that taking advantage of her absence, the respondent no.4 has been attempting to forcibly encroach the land in question under the umbrella of a political outfit and also threatened of dire consequences if she prevents from encroaching the land by using his political connections. It is also the case of the petitioner that when the care-taker of the property of the petitioner namely, late Jhulan Singh went to prevent the attempt of forcible encroachment, he was threatened by respondent no.4. In this regard, said late Jhulan Singh approached the Nautan Police Station to lodge a complaint but instead of providing



assistance, the police recommended for initiation of proceeding under Section 144 of the Cr.P.C. but the said proceeding was dropped on account of efflux of statutory period of 60 days. Ultimately, the petitioner approached this Court by way of this writ petition.

5. Learned counsel for the petitioner submits that the land in question belongs to the petitioner and her husband, who are descendants of late Hari Shankar Shahi and they have been paying the rent to the State Government regularly. He further submits that the respondent no.2 in his counter affidavit has attached the joint enquiry report dated 12.09.2022 of the D.C.L.R., Siwan and the Circle Officer, Nautan, wherein it has been admitted that Jamabandi No.926 in respect of Khata No.156 is existing in the name of late Hari Shankar Shahi, great grand father-in-law of the petitioner and while accepting the legal status of petitioner's right as a Raiyat over the land in question, the respondent no.2 simultaneously said that part of Survey No.677 is occupied by respondent no.4 and he has kept his *palany* and also planted maize over the land in question. It is also stated that on field investigation, local people have informed that respondent no.4 who is descendant of Jay Kannu is in possession of the land for last 25-30 years but



surprisingly no intimation of local inspection was given to the petitioner.

6. Learned counsel for the petitioner further submits that merely because somebody is shown as Sikmidar, it does not confer any right of occupancy of the land and it is well settled that the Sikmi right is neither heritable nor transferable unless custom of village is pleaded and proved. He further submits that the private respondent no.4 has never been recognized as *Sikmidar* nor he has ever been in possession of the land and there is in fact no whisper of any proceeding under Section 48 of the Bihar Tenancy Act initiated by respondent no.4 to claim any right title and interest over the land in question. In support of the aforesaid submission, learned counsel for the petitioner has relied upon a decision of this Court rendered in the case of ***Rasik Lal Mahto vs. The State of Bihar & Ors.*** reported in ***2010(3) PLJR 506.***

7. Learned counsel for the petitioner further submits that respondent no.4 is just the front-man of one Shastri Ram, who is a criminal and an absconder in a criminal case and is involved in land grabbing of poor people with the help of respondent no.4 and the petitioner being an old lady she is being harassed by the respondent no.4.



8. In this case, a counter affidavit has been filed by respondent no.2. Paragraph no.7 and 8 of the aforesaid counter affidavit reads as under:-

“7. That in compliance of the order dated 07.09.2022, the District Magistrate, Siwan has caused the enquiry done by the DCLR, Siwan and Circle Officer, Nautan, who has submitted their report dated 12.09.2022 on the basis of spot inspection and revenue records.

8. That the above enquiry report has revealed the following facts:-

- i. The Survey No.678, 679 appertaining to Khata No.156 are laying vacant with tree etc. standing thereon.*
- ii. The private Respondent No.4 has put Gumti and Palani in portion of Survey No.677 and behind it he has grown Makka Crop.*
- iii. The local persons have told that the Respondent No.4 has been in possession of Survey No.677 for 35-30 years.*
- iv. The Survey No.85 appertains to Khata No.221 which is recorded in Khatiyan in the name of Ram Kishun Bhagat and Ram Lagan Bhagat and does not pertain to the petitioner.*
- v. As per Khatiyan the land of Khata No.156 is recorded in name of Fauzdaar Shahi son of Mithu Shahi but Survey No.677 is mentioned as Sikmi in the name of Jay Kanu i.e. ancestor of the private*



Respondent No.4 as Sikmidar. Similarly Survey No.679, 679 and 845 are also mentioned in Khatiyani in the name of other Sikmidar.

- vi. *Furthermore, as per Jamabandi Register, Jamabandi No.926 in respect of Khata no.156 is existing in the name of Harishankar Shahi i.e. father-in-law of the petitioner. “*

9. Learned counsel for the State submits that Sikmi entry in respect of the land in question has been entered in Khatiyani during survey operation of 1919 after final publication under Section 103(B) of the Bihar Tenancy Act and thus correctness of records of right shall be conclusive evidence of such publication.

10. I have heard learned counsel for the parties and perused the materials on record.

11. It is an admitted position that the land in question is in the name of late Hari Shankar Shahi. The petitioner is the descendant of late Hari Shankar Shahi and upto date rent has been paid by the petitioner for the land in question, for which rent receipts have also been issued by the revenue authorities. The respondent no.4 is claiming himself as Sikmidar on the ground that he is the son of one Jay Kannu, whose name has been recorded as Sikmidar in the Khatiyani. However, it is



an admitted position that in order to claim Khatiyani right, no proceeding has ever been initiated by the respondent no.4 under the Bihar Tenancy Act.

12. This Court in the case of ***Rasik Lal Mahto vs. The State of Bihar & Ors. (supra)*** has held in paragraph nos. 8 and 9 as under:-

- “8. *A proceeding under Section 48D of the Act virtually deprives a person of his land as the tenant thereon becomes the landlord himself and, that too, for a meager compensation whereas the consequences are drastic. Thus, the authorities are, generally required to observe strict compliance of the procedural safeguards that are available to a party.*
9. *Learned counsel for the petitioner has also drawn attention of this Court towards the order dated 22.4.1993 passed in CWJC No. 6807 of 1991 by a Division Bench of this Court holding that it is now well known that the sikmi right is neither heritable nor transferable unless a custom prevailing in the village is pleaded and proved. From a bare perusal of the order passed by the original authority, as contained in Annexure-1, it is manifest that though a finding has been recorded that such custom prevails in the area but there is no discussion as to whether it was pleaded by the concerned party and how was it proved, there is no discussion about any such evidence in the aforesaid order. That apart, it has also not been considered that the sikmidar*



had died leaving behind how many heirs. No finding has been, recorded in this regard that the petitioner was the only heir of the sikrnidar and, thus, he alone in exclusion of all others had inherited sikmi rights. The date of death of the earlier sikmidar and the date of coming into possession by the petitioner as under raiyats also do not stand discussed in the impugned order. The petitioner also could not answer to the question as to how a dead person was impleaded as a party before the original authority.”

13. In view of the aforesaid, it is clear that in order to claim Sikmi right, a proceeding should have been initiated and in that proceeding the case of the claimant has to be looked into. A person can be declared Sikmidar under the Bihar Tenancy Act after following due procedure of law. Further, this Court vide orders dated 07.09.2022, 15.09.2022 and 20.09.2022 directed the respondent authorities to act on the complaint of the petitioner and take necessary action against the respondent no.4, who is trying to encroach upon the land belonging to the petitioner at the instance of one criminal namely, Shastri Ram, who is absconder in a criminal case. This Court finds that the respondent no.4 has no right over the land in question.

14. In view of the aforesaid facts, this Court



directs the District Magistrate, Siwan, Superintendent of Police, Siwan, the Circle Officer, Nautan, Siwan and the Station House Officer, Nautan Police Station to remove the encroachment over the land in question, which has been allowed because of the connivance of respondent no.4 with the official respondents within two weeks from the date of receipt/production of a copy of this order.

15. The contention of the respondent no.4 as Sikmidar etc. can be claimed by him in a Court of law but at present he cannot be allowed to enter into the property of any person forcibly on the basis of any order of any authority other than the competent Court of law.

(Sandeep Kumar, J)

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AFR/NAFR	NAFR
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