

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.985 of 2023

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

Vijay Sah Son Of Late Jagdish Sah Permanent resident of Ram Charan Tola,
P.S.- Mokama, Dist-Patna at present resident of Mohalla-Sandalpur, in front
of st. Paul School, P.S.- Bahadurpur, Dist-Patna

... .. Petitioner/s

Versus

1. The State Of Bihar Through The Director General Of Police, Government Of Bihar, Patna Bihar
2. The District Magistrate, Patna Bihar
3. The Senior Superintendent Of Police, Patna Bihar
4. The Sub Divisional Magistrate, Patna City, Patna Bihar
5. The S.H.O. Bahadurpur, Patna Bihar
6. Danish Abdin Son Of Sarwar Abdin R/O Sandalpur, St. Paul School, P.O.- Mahendru, P.S.-Bahadurpur, Dist-Patna

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.(Dr.) Anand Kumar, Advocate
For the State	:	Mr. Deepak Kumar, AC to GP-4
For the Respondent no.6	:	Mr. Ramakant Sharma, Sr. Advocate
		Mr. Gautam Kumar Kejriwal, Advocate
		Mr. Mukund Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 31-01-2024 Heard learned counsel for the petitioner, learned counsel for the State (AC to GP-4) and Mr. Ramakant Sharma, learned senior counsel assisted by Mr. Gautam Kumar Kejriwal, learned Advocate for the respondent no.6.

2. Mr. Upendra Kumar Singh, the senior most sub-inspector of police posted in Bahadurpur police station is present in person and has informed that the earlier S.H.O. Mr. Lalmuni Dubey has been transferred to Nalanda and presently

there is no S.H.O. posted in Bahadurpur police station.

3. Petitioner in the present writ application is praying for the following reliefs:-

“(i) For direction to the respondent authority not to disturb the construction work with respect to purchase land of petitioner measuring an area of 1161.28 sq. ft. over M.S. Plot No.715/16 (amalgamated), Tauzi No.303, Thana No.11, Khata No.550, Khesra No.958 situated at Mauza-Sandalpur, P.S.-Bahadurpur, Dist-Patna in the garb of proceeding under Section 144 of Code of Criminal Procedure.

(ii) For direction to the respondent authorities not to initiate the proceeding repeatedly so many times under Section 144 of Code of Criminal Procedure in view of the Title Suit No.59 of 2019 pending in the court of learned Sub Judge-I, Patna City with respect to the land which does not match with the description of the property purchased by the private respondent Danish Aabdin.

(iii) Any other relief or reliefs to which the petitioner is entitled may kindly be given.”

4. When this matter was taken up for consideration yesterday, this Court briefly noted the submissions made on behalf of the petitioner and directed the presence of S.H.O. of Bahadurpur police station to apprise this Court as to why he is repeatedly recommending for initiation of a proceeding under Section 144 Cr.P.C. The order dated 30.01.2024 passed by this Court is being reproduced hereunder for a ready reference:-

“Dr. Anand Kumar, learned counsel for the petitioner has shown to this Court prima-facie that the S.H.O. of Bahadurpur Police Station is acting hand in glove with the private respondent no.6 and

is repeatedly recommending initiation of proceeding under Section 144 Cr.P.C. in respect of a piece of land which is owned and possessed by the petitioner and the learned Civil Court has dismissed the injunction application preferred by private respondent no.6 in Title Suit No. 59 of 2019.

2. Learned counsel for the petitioner submits that earlier respondent no.6 had filed Title Suit No. 84 of 2015 against Vidya Devi and Sanjay Kumar Sinha for declaration of his right, title and interest over the suit property. The vendor of the petitioner has purchased the said property from said Vidya Devi and Sanjay Kumar Sinha after disposal of Title Suit No. 84 of 2015 vide order dated 17.07.2016 passed by the learned Sub-Judge-III, Patna City on the basis of a petition under Order 23 Rule 1 of the Code of Civil Procedure. It is pointed out that the application under Order 23 Rule 1 was filed by the plaintiff who is private respondent no.6 in this case and he has admitted in his application that the defendants are the actual owner and occupier of the said property and he admitted that he had no right, title and interest over the said suit property.

3. Learned counsel submits that three years after the said order dated 17.07.2016, respondent no.6 has come out with a Title Suit bearing No. 59 of 2019 wherein he is praying for setting aside of the order dated 17.07.2016 which was passed on his application under order 23 Rule 1 C.P.C. In the said Title Suit No. 59 of 2019, respondent no.6 had filed an injunction application but when it was not pressed, the same was dismissed by the learned court vide order dated 31.03.2022.

4. The grievance of the petitioner is that despite his clear possession emerging from the orders of the Civil Court, the Police is repeatedly initiating proceeding under Section 144 Cr.P.C. and in the garb of said proceeding, the petitioner is being stopped from raising construction over the land.

5. In the nature of the grievance, let the S.H.O. of this case apprise this Court tomorrow as to why he is repeatedly initiating such proceeding.

6. Respondent no.6 is duly represented by his Advocate.

7. List this tomorrow i.e. on 31.01.2024 at 11:30 am.”

5. Today, learned counsel for the State submits, on instruction, that as soon as the S.H.O. would be posted in Bahadurpur police station, Sri Upendra Kumar Singh, S.I., who is present in Court, undertakes to inform him about this case and to take remedial measures not to indulge in any action contrary to law.

6. One thing in respect of which the learned counsel for the petitioner, the State as well as learned senior counsel for the respondent no.6 are unanimous is that in the facts of the present case where a title suit is pending in the court of learned Sub Judge-I, Patna City and the learned court has already recalled the ‘status quo’ order when it was not pursued by the plaintiff, the S.H.O. is not correct in recommending initiation of 144 Cr.P.C. proceeding.

7. Learned senior counsel for the respondent no.6 submits that it would be in the best interest of the parties that the title suit itself be decided by the learned court below. Learned senior counsel has further pointed out that by order dated 31.03.2022 in Title Suit No. 59 of 2019, the learned court has recalled the order

dated 13.06.2019 by which an ex-parte order of status quo had been granted. It is his submission that the respondent no.6 has filed an application for recall of the order dated 31.03.2022 which is still pending.

8. Having regard to the facts and circumstances of the case and the submissions made on behalf of the parties, this Court is of the considered opinion that in the facts of the present case, the then S.H.O., Bahadurpur police station has exceeded his authority conferred by law in recommending initiation of 144 Cr.P.C. proceeding on six occasions. The materials available on the record have been briefly noted by this Court in its order dated 30.01.2024, hence, those are not being repeated in this order.

9. This Court has been informed that the petitioner has lodged as many as three FIRs being Bahadurpur P.S. Case Nos. 415 of 2022, 260 of 2023 and 30 of 2024. It is his grievance that even after lodging of the FIR, the investigation is not taking place properly and because the earlier S.H.O. was acting hand in glove with the respondent no.6, the police rather involved in obstructing the petitioner in raising construction over the land.

10. Let this matter be brought to the notice of the Senior Superintendent of Police, Patna who will review the

progress made in course of investigation of these three FIRs so far and will see whether the I.O. of the case has proceeded properly to conduct investigation in these cases. The role of the then S.H.O. in recommending 144 Cr.P.C. proceeding on six occasions in the facts of the present case would also be examined and an appropriate view would be taken in this regard by Senior Superintendent of Police, Patna. The investigation of all the three cases be conducted through a competent and impartial police officer and a report in this regard be submitted in the court of learned jurisdictional Magistrate.

11. The writ application stands disposed of with a direction that in case the petitioner makes any complaint with regard to threat of his life through any person, the same will be immediately looked into and appropriate protection shall be provided.

(Rajeev Ranjan Prasad, J)

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