

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1038 of 2023

Arising Out of PS. Case No.-1049 Year-2022 Thana- PHULWARISHARIF District- Patna

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OMI DEVI Wife of Rajnath Singh @ Rajnath Mahto RESIDENT OF
VRINDAWAN COLONY, ROAD NO 1, PHULWARI SHARIF, P.S. -
PHULWARISHARIF, TOWN AND DIST. - PATNA

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Home, Bihar, Patna
2. The Director General of Police, Bihar, Patna Bihar
3. The District Magistrate, Patna Bihar
4. The Senior Superintendent of Police, Patna Bihar
5. The Sub Divisional Magistrate, Danapur, Distt. - Patna Bihar
6. The Sub Divisional Police Officer, Danapur, Distt. - Patna Bihar
7. The Deputy Collector, Land Reforms, Danapur, Distt. - Patna Bihar
8. The Circle Officer, Danapur, Distt. - Patna Bihar
9. The Officer Incharge, Phulwarisharif P.s. , Distt. - Patna Bihar
10. Nanda Devi Wife of Sri Muneshwar Panday Resident of Mohalla - Vrindaban Colony, Road no. 1A, Phulwarisharif, P.S. - Phulwarisharif, Town and Distt. - Patna
11. Rekha Kumari Wife of Sri Jitendra Prasad Resident of Mohalla - Vrindaban Colony, Road no. 1A, Phulwarisharif, P.S. - Phulwarisharif, Town and Distt. - Patna
12. Surajmal Chaudhary Son of Late Benga Chaudhary Resident of Mohalla - Vrindaban Colony, Road no. 1A, Phulwarisharif, P.S. - Phulwarisharif, Town and Distt. - Patna
13. Umesh Chaudhary Son of Surajmal Chaudhary Resident of Mohalla - Vrindaban Colony, Road no. 1A, Phulwarisharif, P.S. - Phulwarisharif, Town and Distt. - Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Arun Kumar Arun, Adv
For the Respondent/s : Mr.Sheo Shankar Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

5 19-02-2024 The allegation is that the Private Respondent No. 13

in collusion with Respondent Nos. 10 to 12 illegally constructed



a wall obstructing ingress and egress of the petitioner through a 4 feet wide passage situated on the adjacent north of the house of the petitioner.

2. It is ascertained from the materials on record as well as submission made by the learned Advocate for the parties that the petitioner and Respondent No. 13 are adjacent owners of their respective property.

3. It is the case of the petitioner that in order to disturb the petitioner and her family members in the enjoyment of their property, the private respondents and others filed Title Suit No. 386 of 2016 before the Competent Civil Court. The Civil Court passed an order of maintaining status-quo in respect of the nature and character as well as possession of the suit property by both the parties. In the meantime, the Respondent No. 13 lodged a complaint against the petitioner and others on the basis of which Phulwarisharif P.S. Case No. 1049 of 2022, dated 28.08.2022, under Sections 447, 341, 323, 337, 338, 307 and 34 of the Indian Penal Code and Section 3(i)(r) (s) /3(ii), v, (a) of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act, was registered.

4. Since the case was registered under the penal provisions of SC and ST (PoA) Act, male members of the



family of the petitioner fled away from their house. The petitioner being an old lady was arrested and subsequently she was granted bail. It is alleged by the petitioner that during the period when the petitioner was in custody and the male members were out of their house, the Private Respondent No. 13 in collusion with Respondent Nos. 10 to 12 made illegal construction over the suit land obstructing ingress and egress of the petitioner through the said 4 feet wide passage. It is also submitted by the learned Advocate for the petitioner that the petitioner has violated the order of status-quo passed by the Civil Court.

5. Learned Advocate for the petitioner draws my attention to paragraph 7 of the order dated 5th of February, 2024 passed by a Co-ordinate Bench which runs thus:-

“In the aforesaid view of the matter, this Court directs the Sub-Divisional Magistrate, Danapur to restore the *Rasta*/passage of the petitioner which was in existence earlier and, in case, any recent construction has been made which is creating hindrance and that is said to have been made after lodging of the FIR against the petitioner when he was behind the Bars, such boundary wall shall be demolished.”

6. It is submitted by the learned Advocate for the Respondent No. 13 that the Co-ordinate Bench by passing the order dated 5th of February, 2024, practically granted entire



relief to the petitioner at an interim stage. It is also submitted by him that it cannot be within the scope of inquiry of the Sub-Divisional Magistrate to ascertain as to whether any construction was recent or old or whether such construction was made after lodging of the FIR against the petitioner or not. In order to have such information, evidence is required to be taken. The Sub-Divisional Magistrate does not have the power to record evidence. Therefore, order dated 5th of February, 2024, is not an executable order.

7. Having heard the learned counsels for the parties, this Court is of the view that when a civil suit is pending between the parties and an order of status-quo remains in force, efficacious relief of the petitioner lies in filing an application under order 39 Rule 4 of the CPC praying for appropriate order for violation of the order for injunction including restoration of the passage.

8. In my considered view, in an extraordinary jurisdiction under Article 226 of the Constitution of India, this Court cannot pass any order in the nature of any order directing Respondents Authorities to remove any obstruction from the suit property especially when there is no document on record that the alleged construction was illegal and liable to be demolished



by the Civic Authority.

9. For the reasons what has been stated above, I do not find any merit in the instant writ petition and accordingly instant the writ petition is dismissed.

(Bibek Chaudhuri, J)

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