

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1312 of 2022

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

Shobha Pandey, Wife of Late Rang Nath Pandey, R/o- Flat No. 302, Block A,
Ramanand Apartment, Anandpuri, West Boring Canal Road, P.S- Sri
Krishnapuri Dist- Patna Bihar

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Old Secretariate, Patna.
2. The Chief Secretary, Govt of Bihar, Old Secretariate, Patna
3. The Additional Chief Secretary, Home, Govt of Bihar, Patna
4. The Director General of Police, Bihar, Patna
5. The Inspector General of Police, Central Division, Patna
6. The Deputy Inspector General of Police, Central Range, Patna
7. The Senior Superintendent of Police, Patna
8. The City Superintendent of Police, Patna
9. The Deputy Superintendent of Police, Kotwali, Patna
10. The S.H.O. Sri Krishna Puri, Police Station, Dist- Patna
11. The S.H.O. Mahila Police Station, Gardanibagh Patna

Respondent- 1st Set

12. Sweta Pandey Wife of Late Kumar Vivek Recently Married But details are not known to the petitioner. Resident of Village- Semra, P.S- Bikramganj, Dist- Rohtas, Bihar, Her present Address is not known to the petitioner
13. Anushka Pandey, Daughter of Late Kumar Vivek Under the Guardianship of her Mother Sweta Pandey

Respondents- 2nd Set

14. Smt. Kusum Pandey Daughter of Late Rang Nath Pandey, Wife of Late Durgesh Kumar Pandey, Resident of Flat No. 202, Bimla Enclave, Gandhi Path Road, Mithapur, P.S- Jakkanpur, Dist- Patna
15. Smt. Raksha Pandey @ Babli, Wife of Late Milan Pandey R/V- Semra P.S- Bikramganj, Dist- Rohtas
16. Sri Om Pandey, Son of Late Milan Pandey, R/V- Semra P.S- Bikramganj, Dist- Rohtas
17. Smt. Neelam pandey @ Pinky Daughter of Late Rang Nath Pandey, Wife of Sanjay Pandey R/V- Tetari, P.S- Chenari, Dist- Sasaram

... .. Respondents 3rd Set

Appearance :

For the Petitioner	:	Mr. Surendra Kumar Singh
For the State	:	Mr. Deepak Kumar, AC to GP-4
For the Resp 12&13	:	Mr. Surendra Chaubey, Advocate
For the Resp 14&17	:	Mr. Ganesh Prasad Singh, Advocate

For the Resp 15&16 : Mr. Ashok Kumar Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

7 02-02-2024 Heard learned counsel for the petitioner, learned AC to GP-4 for the State and learned counsel for the contesting respondent nos. 12 to 13 (respondent 2nd set).

2. This writ application has been filed for a direction to the respondents first set who are the police officials of the State of Bihar particularly to respondent no. 11 who is the S.H.O of Mahila Police Station, Gardanibagh, Patna to refrain from use of undue force upon the petitioner to allow entry of respondent second set in the self-acquired residential flat of the petitioner.

3. Learned counsel for the petitioner submits that the husband of the petitioner was an employee of the State Bank of India. From his salary income and the *Shtree Dhan* of the petitioner, her husband purchased a residential flat in Boring Road locality. Flat No. A-302 in Ramanand Apartment, Boring Canal Road, Patna measuring area 1219 square feet was registered in the name of her husband, later on, the name of the petitioner has been mutated in respect of the said holding. In this regard, reliance has been placed on the receipt of the Patna Municipal Corporation showing payment of Property Tax for the financial year 2022-2023.

4. Learned counsel further submits that unfortunately, the elder son of the petitioner died living behind his wife and a minor son. After the death of her elder son, the elder daughter of the petitioner was married to one Durgesh Pandey, but unfortunately he too died in the year 2022. The husband of the respondent no. 12 died in the year 2013. It is stated that after death of her husband, respondent no. 12 along with her minor daughter was staying with the petitioner. Certain facts and circumstances have been stated to show that things were going well somehow with the earnings of the husband of the petitioner but the husband of the petitioner died on 06.05.2021 due to corona. It is alleged that on 17.07.2021, respondent no. 12 left the house and thereafter she has performed a second marriage. It is stated that the petitioner is an old-aged lady aged about 68 years suffering from various ailments. On advice from her neighbours, she got the information about respondent no. 12 entered in the police station.

5. Learned counsel submits that the respondent no. 12 has filed a Title Partition Suit No. 25 of 2022 on 17.01.2022 in which she has claimed partition inter alia in respect of the flat in question. During pendency of the said title suit, the respondent no. 12 has tried to create disturbances. With respect to the

alleged occurrence which took place on 21.08.2022 which is recorded in the CCTV Camera of the building, the petitioner has filed a complaint vide Annexure '6' to the application.

6. At this stage, it is stated that respondent no. 12 has filed an application before the S.H.O, Mahila Police Station, Gardanibagh, Patna and at her instance, the Mahila Police Officer noticed this petitioner. She appeared in the Mahila Thana on 28.09.2022 where nobody listened to her and in a very blunt manner, the Mahila Police Officer told this petitioner to make preparation for herself as on the next date, i.e. 18.10.2022, Mahila Thana will forcibly make the entry of the respondent no. 12 in the flat of the petitioner and nobody can stop her.

7. It is contended that the petitioner is a senior citizen and she is protected under the provisions of the Maintenance and Welfare of the Parents and Senior Citizen Act, 2007. It is an admitted position that respondent no. 12 is not in possession of the flat in question but she is trying to make forcible entry into the flat without there being any order of a competent court of law.

8. Mr. Deepak Kumar, learned AC to GP-4 submits that he has instruction to say that police has no role to play in this matter and the apprehension of the petitioner that the

Mahila Police Officer from the concerned police station would try to make forcible entry of the respondent no. 12 into the flat of the petitioner is completely baseless. There is no such threat to the petitioner from police and he can make a statement that unless there is an order of a competent court of law directing a competent officer to enforce entry of respondent no. 12 into the said flat with the help of the police force, no police officer shall make any endeavour on his own to provide entry to respondent no. 12 in the said flat.

9. Learned counsel for respondent nos. 12 and 13 submits that from the statements made in the writ application itself, it would appear that the respondent nos. 12 and 13 were residing in the said flat. It is alleged that they have been illegally stopped from entering into the flat in question which is a Hindu undivided family property. It is further submitted that the respondent no. 12 is being subjected to domestic violence as envisaged under the Domestic Violence Act, 2005 (hereinafter referred to as the 'Act of 2005'), however, it is also admitted that till date, the respondent no. 12 has not filed any complaint under the provisions of the said Act of 2005 for an appropriate relief.

10. Having heard learned counsel for the parties and on perusal of the records, this Court is of the considered opinion that so far as the role of police in this matter is concerned, learned

counsel for the State has taken a correct approach which has been recorded hereinabove. Unless there is an order of a competent court of law, the police officer is not under any duty to ensure entry of a person in any particular house which is owned and possessed by an another person.

11. To this Court, it appears that respondent no. 12 is alleging that she is being subjected to domestic violence and the property in question is a shared household within the meaning of the Act of 2005. If this is the case of respondent no. 12, her remedy lies by taking appropriate steps to vindicate her grievances under the provisions of the Act of 2005 where the competent court can take a view as to whether the property in question is a shared household and, in case, it is found that it is a shared household, appropriate order may be passed. The respondent no.12 may avail any other remedy as may be advised to her.

12. This writ application is, therefore, disposed of with liberty to respondent no. 12 to seek her remedy before a court of competent jurisdiction in an appropriate proceeding.

(Rajeev Ranjan Prasad, J)

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