

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Writ Jurisdiction Case No.331 of 2025**

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

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Sharda Devi Wife of Kanhaiya Prasad Gupta Resident of Village-Bhuawal,  
PO- Chilhar, PS -Dinara, District -Rohtas, presently residing at Bairiya near  
Patliputra Bus Terminal, PS- Samachak, District- Patna

... .. Petitioner/s

Versus

1. The State Of Bihar Through The District Magistrate, Patna Bihar
2. The Senior Superintendent Of Police, Patna Bihar
3. The Sub-Divisional Magistrate, Patna City, Patna Bihar
4. The Executive Magistrate, Patna City, Patna Bihar
5. The Circle Officer, Patna Sadar, Patna Bihar
6. The S.H.O. Gopalpur Police Station, Patna Bihar
7. Rina Kumari Wife Of Late Rakesh Prasad Singh Resident Of Village And  
P.O.- Ghostwa, P.S.- Silaw, Distt.-NALANDA At Present- Principal  
Samarpan School Illahibag Near Bairiya Bus Stand, Police Station- Sampat  
Chak, Distt.- Patna
8. Shivjee Kumar Son Of Late Mahant Singh Resident Of Mohalla- Samarpan  
Colony, Illahibag Near Bairiya South Of Patliputra Bus Stand, Police  
Station- Sampat Chak, Gopalpur, Distt.- Patna
9. Amrendra Kumar Singh Son Of Shivsagar Singh Resident Of Village-  
Salempur, P.S.- Sakurabad, Distt.- Jehanabad
10. Aman Kumar Son Of Sadanand Singh Resident Of Mohalla- Rohini Nagar,  
South Of Patliputra Bus Stand Bairiya, P.S.- Sampatchak, Distt.- Patna
11. Prabhu Giri Son Of Bhola Giri Resident Of Village- Bari Pahari, P.S.-  
Agamkuan, Distt.- Patna
12. Manoj Singh Son Of Baleshwar Singh Resident Of Village- Daulatpur,  
Gandhi Tola, P.S.- Caurichak, Distt.-PATNA
13. Vikash Kumar Son Of Ramanand Prasad Resident Of Village- Dhawalpura,  
Karmalichak, P.S.- Sampatchak, Distt.- Patna

... .. Respondent/s

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**Appearance :**



For the Petitioner/s : Mr. Jitendra Prasad Singh, Sr. Advocate  
Mr. Binod Kumar Sinha, Advocate  
Mr. Ajay Kumar Prasad, Advocate  
Mr. Prabhat Ranjan Singh, Advocate  
For the State : Mr. Pankaj Kumar Singh, AC to Ex-G.A.9  
For the Private respondents: Mr. Parth Gaurav, Advocate  
Mr. Akash Raj, Advocate

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**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA**  
**ORAL JUDGMENT**

**Date : 18-09-2025**

The petitioner has filed the present writ petition seeking following relief(s):-

*"A. For direction to the Respondent Ist Set to provide protection to the life and property of the petitioner which is in danger at the hands of private respondents 2nd Set who illegally without authority making obstruction at the time of construction of the residential house of the petitioner and threatened for dire consequences.*

*B. For quashing the order dated 11.11.2024 passed by the Sub-Divisional Magistrate, Patna City in Misc. Case No. 709 of 2024 by which he has converted the proceeding Under Section 166 of the Bharatiya Nyaya Sanhita, 2023 (147 of the Cr.P.C.) from Section 163 of the B.N.S. (144 of the Cr.P.C.) without valid dispute concerning right of use of land and without police report which is mandatory requirement under the law.*

*C. For grant of any other relief and relief as Your Lordships may deem fit and proper in*



*view of the fact and circumstances of the present case."*

2. Heard learned senior counsel for the petitioner as well as learned counsel for the State and learned counsel for the private respondents.

3. The brief facts of the case is that the petitioner is purchaser of a plot having area of 1600 sq. feet of Mauza - Pahari, Police Station - Alamganj, Sub-registry office, Patna City, Thana No. 14, Khata No. 205, Survey Plot Nos. 1455 and 1456. The private respondents filed a case before learned Sub-divisional Magistrate, Patna City under Section 163 of BNSS making allegation that the petitioner has been constructing a boundary wall and obstructing the right of way of public. Thereafter, Misc. Case No. 709 of 2024 was instituted. However, while the proceeding has been going on in miscellaneous case, the learned S.D.M. called for a spot verification report from the Executive Magistrate. Though the report has not been received, yet the learned S.D.M. vide order dated 11.11.2024, converted the proceeding of Misc. Case No. 709 of 2024 from Section 163 of BNSS to Section 166 of BNSS. This order is under challenge before this Court.

4. Learned senior counsel submits that the private



respondents have been claiming 16 feet wide road which is about 2 km long closed to the purchased plot of the petitioner which is part of Survey Plot Nos. 1455 and 1456 but neither in the sale deeds of the private respondents nor in the sale deed of the petitioner, there is mention of any such road. The learned S.D.M. did not consider this fact while ordering for conversion of the proceeding from 163 BNSS to 166 BNSS. The learned S.D.M. entirely went with the report of Circle Officer and the police official and did not even adhere to his own order. He did not wait for the report of the Executive Magistrate and in undue haste converted the proceeding into 166 BNSS. Learned senior counsel further submits that the private respondents are claiming easementary rights over the land of the petitioner which is denied by her and on this disputed issue, they should file civil suit before the court of competent jurisdiction and even on this point the proceeding under Section 166 BNSS is not maintainable. Thus, learned senior counsel submits that the impugned order dated 11.11.2024 is not sustainable and the same be set aside.

5. On the other hand, learned counsel appearing on behalf of private respondents vehemently contends that there is no infirmity in the impugned order. Learned counsel submits



that admittedly the petitioner is purchaser of 1600 sq. feet of land but the demarcation report and site report of Anchal Amin and Revenue Officer show that the petitioner has been making construction over 1687 sq. feet of land. The private respondents are the neighbours of the petitioner and they have been using the land adjoining to the land of the petitioner for commenting as a *Rasta*. As the petitioner has been trying to make construction on more than her purchased land, she started obstructing the way (*Rasta*) of the private respondents and general public. This fact is also apparent from the sale deed of the petitioner as the sale deed mentioned the land as commercial vacant land with 2 feet high boundary wall. Learned counsel further submits that the petitioner, after demolishing 2 feet high boundary wall, has encroached the land beyond the said boundary wall and thus obstructed the way/road of 16 feet used by the private respondents.

6. Learned counsel further submits that the order passed by the learned S.D.M. converting the proceeding from Section 163 BNSS to 166 BNSS does not suffer from any infirmity as the learned S.D.M., after being satisfied with the report and documents placed by the parties, recorded a finding that the matter needed evidence and it was not possible to



conclude the same within the limited time span of proceeding under Section 163 BNSS. Therefore, recording his satisfaction, the learned S.D.M. rightly converted the proceeding from 163 BNSS to 166 BNSS. Learned counsel further submits that, thereafter, the report of Executive Magistrate has also come on record and if the petitioner is so aggrieved by non-submission of the report of Executive Magistrate, as the same has come on record, the petitioner should join the proceeding before the learned S.D.M. along with her document and establish her claim.

7. I have given my thoughtful consideration to the rival submission of the parties and perused the record. The petitioner is aggrieved by the conversion of proceeding which was initiated under Section 163 BNSS/144 CrPC into 166 BNSS/147 CrPC. Section 166 BNSS reads as under:-

**"166. Dispute concerning right of use of land or water.**

*(1) Whenever an Executive Magistrate is satisfied from the report of a police officer or upon other information, that a dispute likely to cause a breach of the peace exists regarding any alleged right of user of any land or water within his local jurisdiction, whether such right be claimed as an*



*easement or otherwise, he shall make an order in writing, stating the grounds of his being so satisfied and requiring the parties concerned in such dispute to attend his Court in person or by an advocate on a specified date and time and to put in written statements of their respective claims.*

*Explanation.-For the purposes of this sub-section, the expression "land or water" has the meaning given to it in sub-section (2) of section 164.*

*(2) The Magistrate shall peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them respectively, consider the effect of such evidence, take such further evidence, if any, as he thinks necessary and, if possible, decide whether such right exists; and the provisions of section 164 shall, so far as may be, apply in the case of such inquiry.*

*(3) If it appears to such Magistrate that such rights exist, he may make an order prohibiting any interference with the exercise of such right, including, in a proper case, an order for the removal of any obstruction in the exercise of any such right:*

*Provided that no such order shall be made where the right is exercisable at all times of*



*the year, unless such right has been exercised within three months next before the receipt under sub-section (1) of the report of a police officer or other information leading to the institution of the inquiry, or where the right is exercisable only at particular seasons or on particular occasions, unless the right has been exercised during the last of such seasons or on the last of such occasions before such receipt.*

*(4) When in any proceedings commenced under sub-section (1) of section 164 the Magistrate finds that the dispute is as regards an alleged right of user of land or water, he may, after recording his reasons, continue with the proceedings as if they had been commenced under sub-section (1), and when in any proceedings commenced under sub-section (1) the Magistrate finds that the dispute should be dealt with under section 164, he may, after recording his reasons, continue with the proceedings as if they had been commenced under sub-section (1) of section 164."*

8. From the aforesaid provision it is clear that the learned Magistrate can initiate a proceeding under Section 166 BNSS on the report of a police officer or upon other information. In the present case, the report of the police officer



was already on record. Thereafter, the report of the Circle Officer was also considered by the learned S.D.M. Subsequently, the report of Executive Magistrate, earlier sought for by the learned S.D.M., also came on record though after passing of the order for converting the proceeding into 166 BNSS. As the learned S.D.M. proceeded on the basis of material available before him finding it to be sufficient, I do not think any illegality or impropriety has been committed by the learned S.D.M. while passing the order dated 11.11.2024.

9. If there is claim of the private respondents about existence of 16 feet wide road and 2 km long *Rasta* which they have been using and denial of this claim by the petitioner on the ground of her sale deed not showing any such *Rasta* in its boundary, the course open to the parties is to agitate their claim before the learned S.D.M.

10. Therefore, finding no infirmity in the order dated 11.11.2024 passed by learned S.D.M., Patna City, the said order is affirmed. The parties are directed to approach the learned S.D.M. with documents in support of their contention and the learned S.D.M. is directed to consider the contention of the parties and pass a reasoned order within three months from the date of receipt/production of a copy of this order.



11. Accordingly, the present writ petition stands disposed of.

**(Arun Kumar Jha, J)**

DKS/-

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