

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13946 of 2025

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Yashvant Kumar Choudhary, S/o Late Phul Kumar Choudhary, a resident of Nehara, Darbhanga. Presently residing at Village- Azraqube Govindpur, P.S.- Biraul, District- Darbhanga, State- Bihar, PIN- 847233.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Panchayati Raj, Government of Bihar, Patna
2. The District Magistrate, Darbhanga.
3. Senior Deputy Collector-cum-Nodal Officer in the Janta Durbar Programme Of District Magistrate, Darbhanga.
4. The District Panchayati Raj Officer, Darbhanga.
5. The Sub Divisional Officer, Biraul, District- Darbhanga.
6. The Anchal Adhikari, Biraul, District- Darbhanga.
7. The Block Development Officer, Biraul, District- Darbhanga.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajni Kant Jha, Adv.
For the Respondent/s : Mr. Manish Kumar, GP-4
: Mr. Ajay Kumar, AC to GP-04

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CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT

Date : 02-09-2025

Heard Mr. Rajni Kant Jha, learned counsel appearing for the petitioner and Mr. Ajay Kumar, learned AC to GP-4, appearing for the State-respondents.

2. This application has been filed by the petitioner under Article 226 of the Constitution of India, seeking the following reliefs :-

“(i) That the respondents be restrained from constructing the building of Panchayat Bhawan on the



raiyati agricultural land in cultivating possession of the petitioner pertaining to Khata No. 48 (old)/109 (new), Khesra No. 6/135 (old)/40 (new), raqba,-1, Acre 76 decimal, Mouza-Azraqbe Govindpur, Anchal-Biraul, District-Darbhanga.

(ii) That the respondents be directed to restore the possession of the land of the petitioner.

(iii) That the respondents be directed to make a just payment of compensation for the period during which the petitioner was deprived from use and occupation of his property without any legal justification.

(iv) That any other relief/reliefs be granted to the petitioner to which he may be found entitled in the fact and circumstances of the case.”

3. Mr. Rajni Kant Jha, learned counsel appearing for the petitioner, submits that the petitioner is the grandson of one, namely Bhupati Narain Choudhary, who, along with Mahipat Narain Choudhary, Raj Kishore Narain Choudhary, Brij Kishore Narain Choudhary, and Nathuni Choudhary, was co-proprietor of 148 Bigha 4 Kattha 6 Dhoor of land of Mahal Azraqbe Gobindpur in the District of Darbhanga, which included Plot No. 6/135 of Khata No. 48. The interest of one of the co-proprietors, namely Nathuni Choudhary S/o Fateh Narain Choudhary, was acquired by purchase by Mossomat Janakbati Choudhary, who applied for separation of her 3 annas 4 ganda share under Section 30 of the P.A. in the partition in T. No. 342 of 1923/24. It is



further submitted that the land in question was recorded as Gairmajarua Khas in the C.S. Khatian and the Revenue Officer, on the basis of local inspection, found that the said land fell in the category of Bakasht land and accordingly fixed rent at Rs 10/- per Bigha by his order dated 15.12.1924 passed in T. No. 342 of 1923-24, i.e., in the Partition Case of Mahal Azraqbe Gobindpur. In the recent Revisional Survey, new Plot No. 40 under Khata No. 109 has been carved out from the land of Plot No. 6/135, and on perusal of the R.S. Khatian of Plot No. 40 under Khata No. 109, it is evident that the land in question has been recorded as Anabad Bihar Sarkar, however, the nature of the land is described as Dhanhar and in the remarks column, the said land has been shown to be in illegal possession of Phul Kumar Choudhary, the father of the petitioner. The entry of Raiyat is patently wrong as the petitioner's predecessor-in-interest, who was the ex-proprietor of the land in question, had been in peaceful possession of the land for more than a century. It is further submitted that the petitioner's father and the petitioner have been paying rent to the State of Bihar since 16.03.1991 and 25.08.2000 respectively, and the State of Bihar has issued rent receipts. It is further submitted that the petitioner came to know regarding the demarcation of land for construction of Panchayat



Bhawan of Dumri, thereafter, he made an application on 03.06.2025 at Darbhanga against making any construction on his raiyati land, but in vain. Thereafter, on 23.06.2025, by making an online application, the petitioner appeared in the Janta Darbar of the District Magistrate, Darbhanga, to save his raiyati land from being grabbed by the local administration. Subsequently, on 24.06.2025, the Anchal Adhikari, Biraul, along with the police force, arrived at the aforesaid land of the petitioner, who was doing agricultural work on his land at that time, and threatened him with dire consequences if he did not vacate his possession over the land in question. It is further submitted that it is an admitted position that the petitioner has been in actual physical possession of the land in question since the time of his grandfather and the respondents have not taken any step for cancellation of the Jamabandi of the petitioner in respect of the land in question, nor have they initiated any land acquisition proceeding for acquiring the raiyati land of the petitioner prior to starting the construction of the Panchayat Bhawan on his land, which is completely in violation of Articles 21 & 300A of the Constitution of India.

4. In support of his aforesaid submission, particularly to substantiate the petitioner's claim as to his right having accrued



in his favour on the basis of his long possession over the land in question, the petitioner's counsel has placed reliance upon the following judgments of this Court as well as of the Hon'ble Supreme Court: -

(i) Ramowtar Lakhotia v. State of Bihar through the Chief Secretary and Ors. Passed in **CWJC No. 16494 of 2018**, reported in **2024 SCC OnLine Pat 800** and the relevant paragraph No. 26 of the said judgment upon which reliance has been placed, reads as under: -

“26. In the case of Tukaram Kana Joshi v. Maharashtra Industrial Development Corporation, (2013) 1 SCC 353, the two Judge Bench of the Apex Court highlighting the essence of right to property held it to be not only a constitutional or statutory right but also a human right. It is succinctly held that even after the right to property ceased to be a fundamental right, taking possession of or acquiring the property of a citizen most certainly tantamounts to deprivation and such deprivation can take place only in accordance with the “law”, as the said word has specifically been used in Article 300-A of the Constitution. In paragraph 17 of the afore-noted judgment, it was held that depriving the appellants of their immovable properties was a clear violation of Article 21 of the Constitution.”

(ii) Rame Gowda (Dead) by Lrs. v. M. Varadappa Naidu (Dead) by Lrs. and Another, reported in **(2004) 1 SCC 769** and the relevant paragraph No. 8 of the said judgment upon which reliance has been placed, reads as under: -



“8. It is thus clear that so far as the Indian law is concerned, the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking the law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.”

(iii) Ramesh Chand Ardawatiya v. Anil Panjwani,

reported in **(2003) 7 SCC 350**, paragraph no. 34 of the judgment

upon which reliance has been placed reads as under:-

“34. A contract for sale does not confer title in immovable property. Section 54 of the Transfer of Property Act provides that a contract for the sale of immovable property is a contract that a sale of such property shall take place on terms settled between the parties; it does not of itself, create any interest in or charge on such immovable property. However still, if a person has entered into possession over immovable property under a contract for sale and is in peaceful and settled possession of the property with the consent of the person in whom the title vests, he is entitled to protect his possession



against the whole world, excepting a person having a title better than what he or his vendor possesses. If he is in possession of the property in part-performance of contract for sale and the requirements of Section 53-A of the Transfer of Property Act are satisfied, he may protect his possession even against the true owner. (See Shrimant Shamrao Suryavanshi v. Pralhad Bhairoba Suryavanshi [(2002) 3 SCC 676]). Section 6 of the Specific Relief Act, 1963, provides for any person dispossessed without his consent of immovable property otherwise than in due course of law being entitled to claim and successfully sue for recovery of possession thereof, notwithstanding any other title that may be set up in such suit if the suit is brought before the expiry of six months from the date of dispossession except against the Government. Article 64 of the Limitation Act, 1963 contemplates a suit for possession of immovable property based on previous possession, and not on title, being brought within twelve years from the date of dispossession. Such a suit is known in law as a suit based on possessory title as distinguished from proprietary title. The law discourages people from taking the law into their own hands, howsoever good and sound their title may be. Possession is nine points in law and law respects peaceful and settled possession. Salmond states in Jurisprudence (12th Edn.)—

“These two concepts of ownership and possession, therefore, may be used to distinguish between the de facto possessor of an object and its de jure owner; between the man who actually has it and the man who ought to have it. They serve also to contrast the position of one whose rights are ultimate, permanent and residual with that of one whose rights are only of a temporary nature. (p. 59)

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In English law possession is a good title of right against anyone who cannot show a better. A wrongful possessor has the rights of an owner with respect to all persons except earlier possessors and except the true owner himself. Many other legal systems, however, go much further than this, and treat possession as a provisional or temporary title even against the true owner himself. Even a wrongdoer, who is deprived of his possession, can recover it from any person whatever, simply on the ground of his possession. Even the true owner, who takes his own, may be forced in this way to restore it to the wrongdoer, and will not be permitted to set up his own superior title to it. He must first give up possession, and then proceed in due course of law for the recovery of the thing on the ground of his ownership. The intention of the law is that every possessor shall be entitled to retain and recover his



possession, until deprived of it by a judgment according to law. Legal remedies thus appointed for the protection of possession even against ownership are called possessory, while those available for the protection of ownership itself may be distinguished as proprietary. In the modern and medieval civil law the distinction is expressed by the contrasted terms petitorium (a proprietary suit) and possessorium (a possessory suit).” (p. 60):”

5. On the other hand, Mr. Ajay Kumar, learned AC to GP-4, submits that from the averments made by the petitioner in the writ petition as well as from the annexures, it is clearly evident that the land in question is presently recorded as *Anabad* Bihar Sarkar, the nature of which has been described as *Dhanhar*, and in the remarks column, the same has been shown as being in illegal possession of the petitioner’s father. The petitioner has a specific remedy for redressal of his grievance under the Civil laws if he has been dispossessed from the land in question, and insofar as the entries in the revenue records are concerned, they are not in favour of the petitioner.

6. Heard both sides, perused the annexures filed by the petitioner with this writ petition, and also gone through the averments made in the writ petition.

7. In the Indian Judicial system, there are mainly three layers to get justice in respect of a Civil wrong. The first layer is the District court, the second layer is the High Court, and the third layer is the Hon’ble Supreme Court. Likewise, in revenue matters,



there are also several layers for redressing the grievance of one relating to revenue matters under revenue laws, such as an application or case before the Circle Officer, an appeal before DCLR, Collector and in some cases before Additional Collector, further a revision before Commissioner etc., and application/case before a tribunal established to deal with revenue matters under specified revenue laws, and finally, before the High Court and the Hon'ble Supreme Court. The purpose of setting up these layers is to correct or scrutiny the judicial decision of a forum/court by a superior forum/court that is in the interest of the people who claim themselves to be sufferers on account of a civil wrong or a wrong relating to revenue matters. Though in several cases, particularly in the case of **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and Others** reported in (1998) 8 SCC 1, the Hon'ble Apex Court held that one can approach the Constitutional court like the High Court without exhausting the alternative remedies in three contingencies, namely, (i) where the writ petitioner seeks an enforcement of any of the fundamental rights, (ii) where there is a violation of the principle of natural justice, or (iii) where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. However, one who approaches the Constitutional court referring to the existence



of any of these contingencies should consider that after getting the decision from the High Court on merit, he will have further limited remedies either before the larger bench of the High Court as per rules or before the Hon'ble Apex Court. Although after getting a decision from the High Court in writ jurisdiction, one is not restricted from availing other remedies before the other forums or courts at District level, however, it should be kept in mind that any observation made by the High Court in writ jurisdiction on the merit of an issue may have some effect on the judicial approach of the District Court/forum, and it should also be kept in mind that at District level, the courts/forums have much more time to go through the issues and examine the relevant evidence. So, sometimes directly approaching the Constitutional court in a hasty manner may not be more beneficial than getting the alleged wrong redressed from the other courts/forums step by step, as after the decision of the Constitutional court on an issue on merit, the further remedies will remain limited. Nowadays, the High Court is countering a flood of writs relating to civil wrong(s) in respect of revenue matters wherein the parties approach the Constitutional court directly without exhausting several efficacious alternative remedies available to them. Though, in the presence of any of the aforesaid contingencies, one can directly



approach the Constitutional court, but he/she must show the emergent situation which has forced him/her to approach the Constitutional court, and simply pleading the requirement of enforcement of any of the fundamental rights by such person is not sufficient as most of the wrongs involve the violation of fundamental rights directly or indirectly. In respect of other contingencies, the facts and circumstances of every matter should be looked into, which may vary case to case and it should be left to the discretion of the Constitutional court.

8. Now, I come to the present matter. The main relief which the petitioner has sought for is to restrain the construction of the building of Panchayat Bhawan upon his land pertaining to Khata No. 48 (old)/109 (new), Khesra No. 6/135 (old)/40 (new), Raqba 1 acre 76 decimal, Mauza - Azraqbe Govindpur, Anchal - Biraul, District - Darbhanga, and restore his possession over the land in question. In view of these prayers, it is *prima facie* evident that the petitioner has no possession over the land in question. The petitioner has based his claim mainly on the basis of the land in question being recorded as *Gairmajarua Khas* in C.S. Khatiyani and deeming the land in the category of *Bakasht* land by the Revenue Officer. However, it is a settled proposition of law that revenue records are not considered documents of title, and mere



entries in the revenue records or issuance of rent receipts do not create one's title nor divest the real title owner of a land of his right, title, and interest in the land. It is an admitted position that the land in question is presently recorded as *Anabad* Bihar Sarkar in RS Khatiyar, which was prepared several years ago, and the nature of the said land is described as *Dhanhar*, and in the remarks column, the said land has been shown to be in illegal possession of Phul Kumar Choudhary, the father of the petitioner. The petitioner has not satisfied this Court as to why he has not taken steps to get the land in question entered in his name in the revenue records by using the legal recourse. However, such complex question which requires evidences should be examined by the concerned revenue court/civil court if the petitioner approaches them. Accordingly, I am of the view that the petitioner has not made out a case for invoking the writ jurisdiction of this Court, and the circumstances pointed out by him are not persuading this Court to invoke the writ jurisdiction to decide the main issue raised by the petitioner by bypassing the efficacious legal remedies which are available to him. Accordingly, the instant writ petition stands rejected.

9. The petitioner will have the liberty to approach the concerned court/forum for redressing his grievance relating to the



alleged civil wrong/wrong. If the petitioner avails of the liberty, then the concerned court/forum will decide his prayer without being prejudiced by this judgment according to merit. It is clarified that the aforesaid observations made by this Court in respect of the petitioner’s issue will not affect the merit of the issue if he raises the same before any competent court/forum.

(Shailendra Singh, J)

Siddharthkr/-
BKS/-Annu/-

AFR/NAFR	AFR
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