

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17622 of 2022

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Mohammad Abbas Ali Ansari Son of Samtullah @ Mohammad Amanullah
Ansari Resident of Village-Nechuaa Pandey Tola Police Station-Kuchaikote
District-Gopalganj (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Collector/District Magistrate, Gopalganj.
3. The Block Development Officer, Kuchaikote Block-Kuchaikote District-Gopalganj
4. The Circle Officer, Kuchaikote, Anchal-Kuchaikote District-Gopalganj.
5. The District Education Officer, Gopalganj, District-Gopalganj.
6. The Headmaster, Primary Maktab, at Nechuaa Pandey Tola Post Office-Nechuaa Jalalpur Police Station-Kuchaikote, District-Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Umesh Kumar Singh, Adv.
For the Respondent/s : Mr. Ebadur Rahman Shakib (AC to AAG- 12)

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CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL ORDER

7 22-07-2025 In the instant petition, the petitioner has prayed for
following reliefs:-

“(i) For issuance of an appropriate writ in the nature of Mandamus for directing the respondents to vacate the lands and rooms of the petitioner bearing khata no. 17 khesra no. 14 area about 1 katha 07 dhurs, on which Primary Makhtab at village Nechuaa Pandey Tola police station Kuchaikote district Gopalganj is running, which is purchase land of the petitioner and constructed by the petitioner.

(ii) For issuance of any other appropriate writ /writs, order/ orders, direction/ directions for which the writ petitioner will be found entitled in the facts and circumstances of this case.”

2. Learned counsel for the petitioner submits that land



in question appertaining to Khata no.17, Kheshra No.14 area about 1 katha 07 dhurs, on which Primary Makhtab at village Nechuaa Pandey Tola, Police Station-Kuchaikote, District-Gopalganj belongs to the petitioner. Learned counsel for the petitioner further submits that on the basis of sale deed and physical possession, father of the petitioner and other persons got mutation vide Mutation no. 84 by the Government of Bihar and he started to pay the rent to the Government of Bihar. He further submits that there was no single room for running the Makhtab for reading and teaching the children of the village and the villager came and requested to the father of the petitioner and others to provide the rooms and vacant land for Makhtab for reading and teaching till the alternative arrangement and finally the petitioner's father handed over the land in question for teaching the students.

3. Learned counsel for the State has filed counter affidavit and submits that in para 9 the Amin of Anchal Office, Kuchaykot has submitted a report related to the land measurement of the Primary Makhtab to the Anchal Adhikari, Kuchaikot, in which it has been mentioned that the land on which the Primary Makhtab, (Nechua Pandey Tola) is being constructed, is situated at Mauza-Nechua Khurd, Thana no.689,



Khata no. 73, Khesra no.16, Area-01, Katta, 07 dhur. He further submits in para 12 it has been mentioned that the said school is running on a land which is different from the land as mentioned in the instant writ petition. It is mentioned that the land of school has been donated by the villagers and it was established in the year 1933 i.e. prior to purchase of alleged land of the petitioner. He further submits that there is dispute between the private party over the land in question and therefore, the present writ is not maintainable.

4. In the light of submission made on behalf of both parties, it is clear that there is dispute between the parties over the land in question.

5. The Hon'ble Supreme Court in *catena* of judgments has held that regular suit is appropriate remedy for settlement of dispute relating to property rights between private persons. The remedy under Article 226 of the Constitution shall not be available except where there is violation of some statutory duty on the part of statutory authority is alleged. It is held that the High Court cannot allow its constitutional jurisdiction to be used for deciding disputes, for which remedies under the general law, civil or criminal are available. The jurisdiction under Article 226 of the Constitution being special



and extra-ordinary should not be exercised casually or lightly on mere asking by the litigant. In this context, the decision of the Hon'ble Supreme Court in the case of ***Sohan Lal Vs. Union of India & Anr.*** reported in ***AIR 1957 SC 529*** and in the case of ***Radhey Shyam & Anr. Vs. Chhabi Nath and Ors***, reported in (2015) SCC 423 are quite relevant.

6. In the case of ***Sohan Lal (supra)***, Hon'ble Supreme Court has observed as under :

“We do not propose to enquire into the merits of the rival claims of title to the property in dispute set up by the appellant and Jagan Nath. If we were to do so, we would be entering into a field of investigation which is more appropriate for a Civil Court in a properly constituted suit to do rather than for a Court exercising the prerogative of issuing writs. These are questions of fact and law which are in dispute requiring determination before the respective claims of the parties to this appeal can be decided. Before the property in dispute can be restored to Jagan Nath it will be necessary to declare that he had title in that property and was entitled to recover possession of it. This would in effect amount to passing a decree in his favour. In the circumstances to be mentioned hereafter, it is a matter for serious consideration whether in proceedings under Art. 226 of the Constitution such a declaration ought to be made and restoration of the property to Jagan Nath be ordered.”

7. In the case of ***Radhey Shyam (supra)***, Hon'ble Supreme Court in paragraphs 64 and 65 has observed as under :



“64. However, this Court unfortunately discerns that of late there is growing trend amongst several High Courts to entertain writ petition in cases of pure property disputes. Disputes relating to partition suits, matters relating to execution of a decree, in case of dispute between landlord and tenant and also in a case of money decree and in various other cases where disputed question of property are involved, writ courts are entertaining such disputes. In some cases the High Courts, in a routine manner, entertain petitions under Article 227 over such disputes and such petitions are treated as writ petitions.

65. We would like to make it clear that in view of the law referred to above in cases of property rights and in disputes between private individuals writ court should not interfere unless there is any infraction of statute or it can be shown that a private individual is acting in collusion with a statutory authority.”

8. In the light of the discussion made above, the disputed aspect with respect to the title over the land cannot be decided in writ jurisdiction and the appropriate remedy, in the facts and circumstances of the case, is before the Civil Court.

9. Accordingly, the present writ petition is disposed of with liberty to the petitioner to approach before the appropriate authority/forum.

(Alok Kumar Pandey, J)

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