

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.104 of 2022

Arising Out of PS. Case No.-5 Year-2021 Thana- BABUBARHI District- Madhubani

1. Chandra Mohan Paswan S/o- Late Gulab Paswan R/o Village- Baunsi, P.S.- Babubarhi, District- Madhubani.
2. Bishwa Mohan Paswan S/o- Late Gulab Paswan R/o Village- Baunsi, P.S.- Babubarhi, District- Madhubani.

... .. Petitioner/s

Versus

1. The State Of Bihar Through The Principal Secretary, Department Of Home, Bihar, Patna.
2. The Principal Secretary, Deptt. of Home, Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The District- Magistrate, Madhubani.
5. The Superintendent of Police, Madhubani.
6. The Sub-Divisional Magistrate, Madhubani.
7. The Circle Officer, Babubarhi, District- Madhubani.
8. The Officer In Charge of Police Station, Babubarhi, District- Madhubani.
9. Raj Kumar Paswan S/o- Late Jatan Paswan R/o Village- Baunsi, P.S.- Babubarhi, District- Madhubani.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Brij Bihari Tiwary, Advocate
For the State	:	Mr. Iqbal Asif Niazi, AC to GP-5
For the Pvt. Respondent	:	Mr. Dharmendra Kumar Paswan, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 11-03-2026

The present writ petition has been preferred by the petitioners seeking writ of mandamus directing the respondent authorities to get the house of the petitioners vacated which is situated at village – Baunsi, P.S. - Babubarhi, District – Madhubani bearing Khata No. 30 (old)/53(new), Khesra No. 364(old)/467(new), Khata No. 30(old)/94(new) and Khesra No.



364(old)/466(new) and vested with right and title in favour of the petitioners which has been illegally encroached upon by private Respondent No. 9/Raj Kumar Paswan. The petitioners are also seeking direction to the respondent authorities, particularly the officer-in-charge of Babubarhi Police Station to investigate the P.S. Case No. 05 of 2021 in a fair and impartial manner as respondent No. 9 has not only encroached the house of the petitioners, but has been even threatening them of dire consequences and police is not taking proper steps to ensure the safety of the petitioners.

2. In counter affidavit, filed by private respondent No. 9/Raj Kumar Paswan, it has been claimed that the possession of the house in question has been got by Private Respondent No. 9 from one Mithilesh Kumar Singh in pursuance of agreement for sale. But as per the claim of the petitioners, they have got the sale deed in regard to the house in question subsequently in the year, 2016 and 2019 and accordingly, they are claiming title to the property. Hence, this is a case of civil dispute regarding right and title in regard to the property in question. Therefore, this writ petition is not maintainable because only the Civil Court of competent jurisdiction can adjudicate the dispute between the parties.



3. Learned counsel for the State has also filed counter affidavit and submits that after proper investigation in Babubarhi P.S. Case No. 05 of 2021, lodged by the petitioners, charge-sheet has been submitted and even in counter FIR bearing Babubarhi P.S. Case No. 06 of 2021, charge-sheet has been submitted after proper investigation, filed by the wife of respondent No. 9 and if the petitioners have any grievance, they have liberty to file protest petition against the charge-sheet and closure of the case against some accused persons.

4. Heard learned counsel for the petitioners, learned counsel for the State and learned counsel for the private respondent No. 9.

5. Learned counsel for the petitioners submits that the petitioners have purchased the land in question from Jyoti Kumar Singh, Ashok Kumar Singh and Mithilesh Kumar Singh in the year, 2016 and 2019 and they got the possession of the land. However, subsequently, when the petitioners were away from the home, because petitioner No. 1 was a Block Development Officer in Naubatpur at Samastipur district and petitioner No. 2 was working as Station Superintendent at Samastipur district, private respondent No. 9 had taken advantage of their absence and they entered into the house of



the petitioners in the year, 2019 itself. Hence, the present writ petition has been filed for eviction of private respondent No. 9 from the house of the petitioners.

6. Learned counsel for the petitioners further submits that to get the house back, they have filed one application before the concerned Circle Officer, but respondent No. 9 did not appear. Hence, the petitioners were constrained to move this Court and they have also filed one criminal case bearing Babubarhi P.S. Case No. 05 of 2021.

7. I considered the submissions advanced by both the parties and perused the materials on record.

8. It clearly transpires that there is a disputed claim by both the parties regarding right and title to the house in question. There is also dispute regarding possession of the property. As per the petitioners, they have got this house in question by way of sale deed with possession in the year, 2016 and 2019. However, in the year, 2019, private respondent No. 9 has forcibly entered into the house of the petitioners. As per claim of Respondent No 9, he has got the possession of the house in question in pursuance of agreement for sale in the year, 2014 from one Mithileshwar Prasad Singh and it is false to say that the petitioners have ever got possession of the house in



question.

9. As such, it is a disputed question of facts regarding right and title and possession and hence, only the Civil Court is competent to adjudicate the civil dispute between the parties and the writ Court cannot decide the disputed question of facts. It is only Civil Court who can decide the right, title and possession of the parties in regard to the property in question.

10. Hence, the petitioners have alternative efficacious remedy by way of filing appropriate Civil Suit before the competent Civil Court.

11. As far as proper investigation in Babubarhi P.S. Case No. 05 of 2021 is concerned, as per learned counsel for the State charge-sheet has been submitted in this case. Hence, if the petitioners have still any grievance regarding investigation done by the police, they have remedy to file protest petition before the concerned Magistrate. As such, here again there is alternative efficacious remedy to the petitioners in regard to the grievance of improper investigation, if any, in the FIR bearing Babubarhi P.S. Case No. 05 of 2021.

**Availability of Efficacious Alternative Remedy And
Entertainability/Maintainability of Writ Petition Under
Article 226 Of The Constitution.**

12. Now question arises, whether the writ petition is



maintainable in view of the availability of the efficacious alternative remedy to the Petitioners. Here, it may be pointed out that maintainability and entertainability of a writ petition are distinct concepts. The objection as to maintainability goes to the root of the matter and if such objection is found to be of substance, the Court is rendered incapable of even receiving the lis for adjudication. However, the question of entertainability is entirely within the realm of discretion of the High Court, as writ remedy is discretionary. Writ Petition, despite being maintainable may be not entertained by a High Court for many reasons or relief could even be refused to the Petitioners, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. It may be further pointed out that availability of efficacious alternative remedy is not an absolute bar to maintainability of a writ petition. However, the Court can still refuse to entertain the writ petition, if the Petitioner has efficacious alternative remedy as held by Hon'ble Supreme Court in **Godrej Sara Lee Ltd. Vs. Excise and Taxation Officer-cum-Assessing Authority and Others** as reported in (2023) SCC OnLine SC 95. Relevant paragraph of the judgment reads as follows:

“4. Before answering the questions, we feel the urge to say a few words on the exercise of writ powers



conferred by article 226 of the Constitution having come across certain orders passed by the High Courts holding writ petitions as "not maintainable" merely because the alternative remedy provided by the relevant statutes has not been pursued by the parties desirous of invocation of the writ jurisdiction. The power to issue prerogative writs under article 226 is plenary in nature. Any limitation on the exercise of such power must be traceable in the Constitution itself. Profitable reference in this regard may be made to article 329 and ordinances of other similarly worded articles in the Constitution. Article 226 does not, in terms, impose any limitation or restraint on the exercise of power to issue writs. While it is true that exercise of writ powers despite availability of a remedy under the very statute which has been invoked and has given rise to the action impugned in the writ petition ought not to be made in a routine manner, yet, the mere fact that the petitioner before the High Court, in a given case, has not pursued the alternative remedy available to him/it cannot mechanically be construed as a ground for its dismissal. It is axiomatic that the High Courts (bearing in mind the facts of each particular case) have a discretion whether to entertain a writ petition or not. One of the self-imposed restrictions on the exercise of power under article 226 that has evolved through judicial precedents is that the High Courts should normally not entertain a writ petition, where an effective and efficacious alternative remedy is available. At the same time, it must be remembered that mere availability of an alternative remedy of appeal or revision, which the party invoking the jurisdiction of the High Court under article 226 has not pursued, would not oust the jurisdiction of the High Court and render a writ petition "not maintainable". In a long line of decisions, this court has made it clear that availability of an alternative remedy does not operate as an absolute bar to the "maintainability" of a writ petition and that the rule, which requires a party to pursue the alternative remedy provided by a statute, is a rule of policy, convenience and discretion rather than a rule of law. Though elementary, it needs to be restated that "entertainability" and "maintainability" of a writ petition are distinct concepts. The fine but real distinction between the two ought not to be lost sight of. The objection as to "maintainability" goes to the root of the matter and if such objection were found to be of substance, the courts would be rendered incapable of even receiving the lis for adjudication. On the other hand, the question of "entertainability" is entirely within the realm of discretion of the High Courts, writ remedy



being discretionary. A writ petition despite being maintainable may not be entertained by a High Court for very many reasons or relief could even be refused to the petitioner, despite setting up a sound legal point, if grant of the claimed relief would not further public interest. Hence, dismissal of a writ petition by a High Court on the ground that the petitioner has not availed the alternative remedy without, however, examining whether an exceptional case has been made out for such entertainment would not be proper.

(Emphasis supplied)

13. It has been also held by Hon'ble Supreme Court in **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors.** as reported in **(1998) 8 SCC 1** that power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. The High Court has discretion to entertain or not to entertain a writ petition and the High Court has imposed upon itself certain restrictions, one of which is that if an effective and efficacious alternative remedy is available to the Petitioner, the High Court would not normally exercise its jurisdiction. However, this restriction is not an absolute bar to maintainability of the writ petition. The High Court can entertain the writ petition in the following three contingencies, namely the writ petition has been filed for enforcement of any of the Fundamental Rights or where there has been any violation of Principle of Natural Justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is



challenged. The relevant paragraph of the judgments reads as follows:

“14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for “any other purpose”.

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

(Emphasis supplied)

14. In Radha Krishan Industries vs. State of Himachal Pradesh and Others as reported in (2021) 6 SCC 771 Hon’ble Supreme Court has further held as follows after referring to relevant Judicial precedents:

“27. The principles of law which emerge are that:

27.1. The power under Article 226 of the Constitution to issue writs can be exercised not only for the enforcement of fundamental rights, but for any other purpose as well.



27.2. The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person.

27.3. Exceptions to the rule of alternate remedy arise where : (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged.

27.4. An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law.

27.5. When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion.

27.6. In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

28. These principles have been consistently upheld by this Court in Chand Ratan v. Durga Prasad, (2003) 5 SCC 399, Babubhai Muljibhai Patel v. Nandlal Khodidas Barot, (1974) 2 SCC 706] and Rajasthan SEB v. Union of India, (2008) 5 SCC 632] among other decisions.”

Present Case

15. Coming to the case on hand, I find that the petitioners have alternative efficacious remedy as discussed above and there is no exceptional circumstances pleaded in writ petition which may warrant any interference by this Court.

16. Under such facts and circumstances, the present



petition is dismissed with liberty to the petitioners to move competent Civil Court in regard to Civil matter. They can also move the concerned Jurisdictional Magistrate by way of filing protest petition against improper investigation, if any, done by the police in the subject FIR or the petitioners are at liberty to pursue any other remedy as per advice.

(Jitendra Kumar, J)

shoaib/-

AFR/NAFR	AFR
CAV DATE	N/A
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