

(2021) 04 PAT CK 0007

Patna High Court

Case No: Criminal Writ Jurisdiction Case No. 366 Of 2020

Anand Kishore Prasad Sinha

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision: April 5, 2021

Acts Referred:

- Indian Penal Code, 1860 - Section 147, 148, 149, 188, 323, 341, 452, 354, 379, 427, 504
- Specific Relief Act 1963 - Section 6
- Code Of Criminal Procedure, 1973 - Section 456
- Epidemic Diseases Act, 1897 - Section 3
- Constitution Of India, 1950 - Article 21, 32, 226
- Code Of Civil Procedure, 1908 - Order 20 Rules 6, Order 20 Rule 7

Hon'ble Judges: Rajeev Ranjan Prasad, J

Bench: Single Bench

Advocate: Ankit Katriar, Aditya Shankar, Prakash Chandra, Sanchay Srivastava, Ravi Prakash, Prabhu Narayan Sharma, Subodh Kumar

Final Decision: Disposed Of

Judgement

1. This writ application has been preferred seeking issuance of a writ in the nature of a writ of mandamus or any other appropriate writ/order/direction

to the respondent authorities to take immediate steps to protect the life of the petitioner and his family. Further prayer has been made to direct the

respondent authorities to drive out the anti-social elements who have forcibly entered into the office premises of the petitioner who is an Advocate

practising at Samastipur Bar. The petitioner prays that his possession be also restored.

Brief facts of the case

2. It is the case of the petitioner that he is a senior lawyer, aged about 78 years practising in the Samastipur Civil Court. His residence and office are on contiguous piece of land measuring around 4 kathas containing different plots situated in ward no. 12 at Samastipur. According to the petitioner, his residence is situated at new holding no. 187 (old 169) bearing new plot no. 109, 109k (old plot no. 153 and 154). His office as lawyers' chamber is situated at new holding no. 185 (old no. 167), bearing new plot no. 115 (old plot no. 152) and new plot no. 117 (old plot no. 152). The petitioner claims to have purchased these plots during the year 1955 and 1965. It is stated that he is in possession of his residential house and the chambers for two generations. It is a valuable property situated only three buildings after the Civil Court compound at Samastipur. The police station is said to be situated at 200 meters arena.

3. According to the petitioner, the alleged occurrence took place on 09.06.2020 at 06:00 A.M. When the respondent no. 8, namely, Pramodanand Prasad along with about 50 other unnamed accused armed with pistols, hammers, iron rod etc. forcibly entered the house of the petitioner. They broke open the four locks of the two shutters on the Southern end and entered the petitioner's office/chamber. They allegedly tore of all the clients' briefs, files, law journals etc. and threw them out in the residential office campus. They also broke the table, chairs, almirah and a trunk and threw them outside the campus. They also uprooted 8 CCTV cameras.

4. It is further alleged that the accused entered the residential quarters of the petitioner, brutally assaulted the lawyer's wife, son, daughters, son-in-law using sticks and pistol's butt. They destroyed the hard disk attached to the CCTV cameras, smashed LED TV and a dish antenna. They uprooted the electric meter bearing consumer no. 401297398/SM/T-2/SVR which was in the name of the petitioner. They also looted away some jewelry and cash worth Rs.1,75,000/-

5. It is stated that the petitioner's daughter who has graduated in law somehow ran to the police station, narrated the entire incident but the police refused to even hear the petitioner's daughter and told her to get away otherwise she would be locked up in the Hazat of Mahilla Police Station.

The petitioner states that he was somehow able to come out of his house and went to the police station but instead of taking action, the police abused him and asked the petitioner to first submit a written complaint. The petitioner though submitted a written complaint, by that time the accused persons had fled away after inflicting maximum damage to his property.

6. It is stated that the petitioner then pulled down the shutter of his office and put his own locks on them, thereafter in the evening at 06:45 P.M. police personnel came over there in two vans and asked the petitioner to open the locks of his chambers/office in order to enable the police to put their own locks. This was, though resisted by the petitioner and his family but under duress of the police personnel they had to relent and then police personnel put their own locks. The keys were kept with the police station and were not handed over to the petitioner despite repeated request. It is stated that in the meantime, the complaint of the petitioner was registered as Samastipur Nagar P.S. Case No. 102 of 2020 for the offences under Section 147, 148, 149, 452, 341, 323, 354, 504, 379 and 427 of the Indian Penal Code. Another FIR bearing no. 104 of 2020 dated 10.06.2020 was registered against the petitioner at the behest of the named accused person.

7. Learned counsel for the petitioner has relied upon the following judgments:-

(1) Anju Devi Vs. Commissioner of Police reported in 1994 SCC Online Del 327; (2) Vijay Khanna & Anr. Vs. Union of India reported in 1998 SCC Online Del 846; (3) Waf Alalaulad and Anr. Vs. Sundardas Daulatram and Sons and Ors. reported in 1996 SCC Online All 176 = AIR 1996 All 355.

8. It is submitted that in the facts and circumstances of the present case this Court may direct that the respondent no. 4 be directed to remove the lock and seal placed on the Chambers of the petitioner and put him back in possession of his chambers.

Stand of Respondent No. 8

9. On notice respondent no. 8 has entered appearance. He has denied the allegations of forcibly taking possession of the chambers of the petitioner. It is his submission that there is no complaint at all by the petitioner that he was dispossessed from his chambers on 09.06.2020. The respondent no. 8 claims that he and his wife Smt. Rita Sinha purchased a piece of land including house measuring 17 dhors bearing Khata No. 56, Khesra No. 113,

114, 115 & 116 situated at Kasipur, Kachhari Road, Ward No. 12, P.S. " Samastipur Nagar, District " Samastipur. He has brought on record a

sale deed dated 29.04.2011 said to have been executed by one Sri Jagdeep Prasad. It is stated that said Jagdeep Prasad had purchased the land from

Ram Chandra Shah and Kapileshwar Shah through two sale deeds. The respondent claims that after purchasing the land and house, mutation was

done in his name by order dated 31.07.2013 passed by learned Deputy Collector, Land Reforms, Samastipur. Respondent no. 8 filed a case before

Samastipur Municipality for mutation and said case was registered as Dakhil Khariz Case No. 04/2013-14 where respondent no. 8 prayed to issue the

holding no. 185 in his name which was earlier registered in the name of the petitioner. After hearing both the sides, the application filed by respondent

no. 8 for mutation was allowed vide order dated 24.01.2014 and holding no. 185 was issued to respondent no. 8. Respondent no. 8 claims that he is

paying the holding tax continuously to the Samastipur Municipality and the petitioner did not challenge the order as no appeal was preferred before the

competent court.

10. Giving the background of the title of the vendor of respondent no. 8, it is stated that the vendor of respondent no. 8 had filed a Partition Suit No.

271/2000 titled as Jagdeep Prasad Singh Vs. Anand Kishore Prasad Sinha and others before the Sub- Judge, Samastipur in respect of the same land.

The petitioner was made party Defendant No. 1 and the said suit was ex-parte decreed in favour of Jagdeep Prasad on 16.08.2003. The ex-parte

judgment was challenged by the petitioner by filing a Miscellaneous Application No. 04/2004 but the same has been dismissed vide order dated

23.01.2010. Copy of the order passed in Partition Suit has been brought on record.

11. According to respondent no. 8, the holding number of the petitioner is 187 which is distinguishing the house of the petitioner and the plot of

respondent no. 8. He claims that the petitioner has made illegal attempts to grab the land and house of respondent no. 8.

12. Mr. Sandip Kumar, learned counsel for the respondent no. 8 argued the matter on several dates, however, towards the end of the matter, Mr.

Aditya Shankar, learned counsel assisted by Mr. Prakash Chandra and Mr. Sanchay Srivastava has led the argument on behalf of the respondent no.

8. On both the occasions, learned counsel for respondent no. 8 have heavily relied upon the judgments of the Honâ€™ble Apex Court in the case of

Mohan Pandey & Ors. Vs. Smt. Usha Rani Rajgaria reported in 1992 (4) SCC 61 and the judgment rendered in the case of Roshina. T Vs. Abdul

Azeez K.T. & Ors. reported in 2019 (1) PLJR 230 SC = (2019) 2 SCC 329. Learned counsel for the respondent no. 8 has given much emphasis on

the proposition that where there is an existing civil dispute, civil suit pending between the parties therein and it is claimed that a person has been

dispossessed â€œillegallyâ€ the said person may take back his possession by following proper legal channels.

13. It is his submission that the petitioner has got his remedy under Section 6 of the Specific Relief Act and further under Section 456 of the Code of

Criminal Procedure where the learned court has got power to restore possession of any immovable property to the person who has been forcibly

dispossessed, if necessary after evicting by force any other person who may be in possession of the property. However, an order under Section 456

Cr.P.C. may be passed only when the respondent no. 8 is found guilty of an offence showing that by force or show of force or intimidation he has

dispossessed the petitioner.

14. Learned counsel for respondent no. 8 has further relied upon the judgments of the Honâ€™ble Madras High Court in the case of M.K.

Sethuraman Vs. District Collector & Ors. passed in W.P.(MD) No. 6589/2019, wherein it has been held that when there is an alternative efficacious

remedy available, the special and extraordinary remedy under Article 226 of the Constitution of India cannot be exercised.

15. During the pendency of the writ application police has completed investigation in the matter and having found sufficient materials against

respondent no. 8 the Investigating Officer has submitted a charge-sheet against respondent no. 8 for the offences alleged under Section

147/148/149/452/341/ 323/354/504/427/188 of the Indian Penal Code read with Section 3 of the Epidemic Act, 1837.

16. Strengthened by the police report finding sufficient materials to proceed against respondent no. 8, learned counsel for the petitioner submits that in

the present case where no suit is pending between the petitioner and respondent no. 8 and circumstances show that the petitioner has been forcibly dispossessed by respondent no. 8 taking the concern police officers in his connivance, this Court cannot remain a mute expectator and the remedy of the petitioner to get instant restoration of dispossession shall not depend upon a long drawn battle in civil side.

17. It is his submission that in the peculiar facts and circumstances of the case where the petitioner has been forcibly deprived of utilizing his chambers, this Court may come to his rescue without going into the issues of right and title of the parties.

18. Learned counsel has also drawn the attention of this Court towards the order dated 29.09.2020 in which the Court has recorded the information

received from the Superintendent of Police, Samastipur. It is his submission that in this case the Investigating Officer as well as the S.H.O. of the

Police Station were transferred as they were found negligent in carrying out their duties and the Superintendent of Police has directed initiation of

departmental proceeding. It is, thus, his submission that without examining the right, title or possession of the parties in the present proceeding, in the

peculiar facts and circumstances of the case, this Court may follow the ratio of the judgment of the Honâ€™ble Apex Court in the case of Anju Devi

(supra).

Consideration

19. In this case both the sides have exchanged voluminous pleadings and they have brought on record their respective documents such as sale deeds,

order of mutation etc. to demonstrate as to how they acquired the portion of plot no. 152 (old) from their respective vendors. While the petitioner

claims that his father and ancestors had acquired a little more than two khatahs of land in plot no. 152(old), the respondent no. 8 claims that he had

purchased 17 dhors of land in plot no. 152. While it is the claim of the petitioner that his Chambers is situated in the plot no. 152(old) which is

contiguous to his residential plot/house, the respondent no. 8 claims that he had purchased 17 dhors of land with construction through Jagdeep Prasad

who had earlier filed Title Partition Suit No. 271/2000 against the petitioner. A copy of the judgment of the learned Sub-Judge, Vth Court, Samastipur

in Partition Suit NO. 271/2000 has been brought on record. It shows that the total area of plot no. 152(old) from which new plot no. 113, 114, 115 and 116 have been carved out is 4 Katha 15 dhoors.

20. In the Suit No. 271/2000, the vendor of respondent no. 8 claimed his share and according to him he was entitled for 17 dhoors of land. From the judgment it also appears that the vendor of respondent no. 8 admitted that the land is an ancestral land of Ramrup Shah and Ram Sundar Shah who had sold the land to several persons. The vendor of respondent no. 8 claims to have purchased 17 dhoors of land by virtue of two sale deeds obtained by him. He admits that the defendant (the petitioner) and others are also purchasers. It was his case that in absence of partition of the land quarrels were taking place in between the plaintiff (vendor of respondent no. 8) and the petitioner. He alleged that the defendant first party (the petitioner) was raising a boundary wall in a portion of the land purchased by the plaintiff, the plaintiff asked the defendant no. 1 to stop the construction but he did not agree. The plaintiff alleged that in December 2000 and January 2001 the defendant first party (the writ petitioner) raised a boundary on a portion of the land which belonged to the plaintiff and made a construction thereon. It is under these circumstances he had brought Partition Suit No. 271/2000.

21. He had prayed for declaration of his title and partition of land in question to the extent of his $\frac{1}{4}$ share equal to 17 dhoors in plot no. 152(old). The said suit was decreed ex parte. The learned Sub-Judge allowed the suit with a direction to prepare a preliminary decree. It is the case of the petitioner that the preliminary decree was never prepared.

22. There is nothing on record showing preparation of preliminary decree, though respondent no. 8 has placed a xerox copy of a decree which is prepared under order XX Rules 6 & 7 of the Code of Civil Procedure in original suit. There is, however, nothing to show that at any stage any application was filed for preparation of final decree, any Pleader Commissioner was appointed for that purpose and final measurement and demarcation were done. There is no final decree.

23. The respondent no. 8 claims to have purchased the land including house measuring 17 dhoors from Sri Jagdip Prasad by a sale deed registered on

29.04.2011. The sale deed shows the map of the land and in the northern boundary of plot no. 152 (old) name of the father of this petitioner is

mentioned in the sale deed. So far as the order of mutation dated 31.07.2013 passed by the D.C.L.R. Samastipur is concerned, it is evident from

Annexure P/14 to the rejoinder of the petitioner that the order of D.C.L.R. has been set aside in mutation revision case no. 99 of 2013

vide order dated 04.06.2015 passed by the Collector, Samastipur. The Collector has noticed that the vendor of respondent no. 8 has executed sale

deed no. 5449 dated 29.04.2011 in favour of the petitioner which has been sought to be cancelled in title suit no. 110/2011 pending in Samastipur and

another sale deed no. 7805 dated 14.06.2011 has been executed in favour of one Amit Kumar Sinha. These facts were not disclosed by respondent

no. 8 in his counter affidavit.

24. The aforementioned documents have been taken note of only to say that a dispute with respect to right, title and possession over a portion of plot

no. 152(old) had arisen at least in the year 2000-2001. The vendor of respondent no. 8 had filed the partition suit and certain facts mentioned therein

have been noted only to notice the kind of disputes which existed prior to execution of the sale deed in favour of respondent no. 8.

25. This Court, is of the view that who has got right and title of the land and who may legally possess the disputed property or can continue with the

possession thereof may only be decided in an appropriate proceeding by a competent court of law where both the parties may adduce their respective

evidences.

26. It, however appears that the materials collected so far in course of investigation does indicate that the alleged occurrence had taken place. In this

connection, this Court would refer briefly the relevant part of the order dated 29.09.2020 hereunder:

Pursuant to the last order dated 25.09.2020, the Superintendent of Police, Samastipur has submitted a report which has been received in this Court

through e-mail. The report dated 27.09.2020 is placed at Flag A. Perusal of the report prima-facie shows that in course of his supervision, the

Superintendent of Police found that there was a newly built brick work closing the entry gate of the office premises which was opening towards the

campus of the informant. It was found newly plastered at the time of supervision. The Superintendent of Police also found that CCTV camera as well as hard-disk were in broken condition and this was shown to him by the son of the informant, photographs have also been taken under the instruction of the Superintendent of Police which has been mentioned in his supervision note-cum-report II. He has then found that a new electric meter as well as new construction in the backside of the office were present and after taking statement of some of the witnesses who are residing in nearby places the Superintendent of Police found that the case is true under Sections 147, 148, 149, 452, 341, 323, 354, 504, 427 and 188 of the Indian Penal Code read with Section 3 of Epidemic Act, 1897 against the respondent no.8 and 50-60 unknown accused persons. He has issued certain directions to the I.O. of this case, but at the same time has found that the I.O. of the case was negligent and he has not taken proper steps towards conducting fair investigation. â€. â€..â€

27. On behalf of the petitioner reliance has been placed on the certain judgments of the Honâ€™ble Apex Court and Honâ€™ble High Court which have been mentioned hereinabove. In the case of Anju Devi (supra) the Honâ€™ble Delhi High Court noticed the fact that the respondent no. 3 and 4 did not controvert the averments made in the writ petition and have not disputed that the petitioner had been living in the premises in question for the last about four years, although, it was claimed that she was living as a licensee of respondent no. 3, when the Honâ€™ble Court noticed that with the active connivance of the police the respondent no. 3 & 4 were inducted in the premises, the Honâ€™ble Delhi High Court directed restoration of â€status quoâ€™ ante and directed respondent no. 1 & 2 to put the petitioner back in possession of the property in question within a week. The Honâ€™ble Court rejected the contention of the respondents that the petitioner has filed a suit for possession which is pending in the civil court and disputed questions of facts and law form part of the said suit and thus the petition was not maintainable.

28. The Honâ€™ble Delhi High Court held that it was not concerned with the title of the property in question and on noticing the fact that the

respondent no. 3 & 4 were inducted into possession in connivance with police and the petitioner was thrown out of the house where she was living for

about four years, the court took a view that it has quite and ample powers to pass appropriate orders including orders for restoration of possession.

The Honâ€™ble Court observed inter alia as under:-

â€œ.....In such circumstances, this Court, to do complete justice between the parties, has wide and ample powers to pass appropriate orders

including orders for restoration of possession. On the facts like the present it is the duty of the Court to come to the aid of person who is oppressed

and is in disadvantageous position and, therefore, it is necessary to make innovations and forge new tools when atrocities are committed by those who

are required to enforce the rule of law. The alleged offender cannot be permitted to take advantage of delay in justice delivery system. The contention

that they may have prima facie committed the offence of trespass for the purpose of registration of FIR, which may be registered, and that the law

will have its own course after registration of the FIR and at this stage no orders for delivery of possession can be passed, cannot be accepted on the

peculiar facts of this case. Of course, the criminal law will have its own course. Of course, the suit would also be decided on its own merit and this

order will not prejudice parties in those proceedings but all this does not persuade us to deny the relief of putting the petitioner back into possession. All

situations are not alike. What relief deserves to be given in exercise of jurisdiction under Article 226 cannot be placed in a rigid mould. It cannot be put

in a straight jacket. The relief is to be moulded as the facts and circumstances of the case and cause of justice may demand.â€

29. In the case of Vijay Khanna and Anr.(supra) again the Honâ€™ble Division Bench of Delhi High Court was examining a case in which

restoration of possession was sought for in writ jurisdiction. The petitioners were alleging dispossession from the ground floor portion of the house by

respondent no. 15 and others while from first floor portion by respondent no. 16 and others on 14th April, 1994 and 26th April 1994 respectively. The

Honâ€™ble High Court rejected the contention of the respondents that the petitioner may get restored their possession in terms of Section 456

Cr.P.C. and expressed its views in the following words:-

â€œ..... It will not be out of place to state that power to restore possession of immovable property under Section 456 Cr.P.C. can be resorted to

by the court only after recording the finding of guilt against the accused and the decision in case FIR No. 259/1994 is likely to take couple of years

time. Taking note of the ratio in Smt. Anju Deviâ€™s case (supra) and the facts and the circumstances of the case, the petitioners deserves to be put

back into possession of their house.â€

30. Learned counsel for the petitioner has referred the judgment of the Honâ€™ble Allahabad High Court in the case of Waf Alalaulad and Anr.

(supra). Paragraph 14, 15, 16, 17, 19, 20 and 21 from the said judgment may be usefully extracted hereunder in the facts of the present case.

â€œ14. But dispossessing a person from his property otherwise than in due course of law is different from grabbing the property by terrorising the

person in possession. To capture the property forcibly by creating terror by applying brute force is not a simple case of dispossessing a person from

property. In a country governed by rule of law no person can be deprived of his life, liberty and property by third degree methods, such as terrorising

and man-handling the person concerned. In such a case not only the person who has been dispossessed of his property but the society itself is taken to

ransom by brute force. Such an act creates terror in the minds of the people and has the effect of shaking the social fabrics of the society. These acts

also hit and damage the authority of the Government with the result that the public order, peace and tranquility of the society are disturbed. In such

cases it is the duty of the Government to come to the rescue of the persons who are threatened or have been dispossessed from their property by

brazen act of law-lessness.

15. In Charan Lal Sahu v. Union of India, AIR 1990 SC 1480, generally known as ""Bhopal Gas leak disaster case"" the Supreme Court while dealing

with the concept known as ""parens patrias"", has held that the Government has the sovereign power of guardianship over the persons under disability

and it is its duty to protect them. It was further held that where the citizens are not in a position to protect their rights the Government must intervene

and fight for their rights. Relevant extract from the above decision of the Supreme Court is reproduced below at page 1504 :

There is a concept known both in this country and abroad, called ""parens patriae"". Dr. B. K. Mukherjee in his 'Hindu Law of Religious-and Charitable Trusts,' Tagore Law Lectures, Fifth Edition, at p. 454, referring to the concept of parens patriae, has noted that in English Law, the Crown as parens patriae is the constitutional protector of all property subject to charitable trusts such trusts being essentially matters of public concern. Thus the position is that according to Indian concept parens patriae doctrine recognised King as the protector of all citizens and as parent. In *Budhkaran Chaukhani v. Thakur Prasad Shah*, AIR 1942 Cal 311 the position was explained by the Calcutta High Court at page 318 of the report. The same position was reiterated by the said High Court in *Banku Behary v. Banku Behary Hasra* AIR 1943 Cal 203 at pp. 205 of the report. The position was further elaborated and explained by the Madras High Court in *Kumaraswami Mudaliar v. Rajammal* AIR 1957 Mad 563 at p. 567 of the report. This Court also recognised the concept of parens patriae relying on the observations of Dr. K. Mukherjee aforesaid in *Ram Saroop v. S. P. Sahi*, (1959) 2 Supp SCR 583 at pp. 598 and 599; AIR 1959 SC 951 at pp. 958-959. In the æœwords and phrases"" permanent Edition, Vol. 33 at p. 99, it is stated that parens patriae is the inherent power and authority of a Legislature to provide protection to the person and property of persons non sui juris, such as minor, insan, and incompetent persons, but the words ""parens patriae"" meaning thereby 'the father of the country', were applied originally to the King and are used to designate the state referring to its sovereign power of guardianship over persons under disability. (Emphasis supplied). Parens patriae jurisdiction, it has been explained, is the right of sovereign and imposes a duty on sovereign, in public interest, to protect persons under disability who have no rightful protector. The connotation of the term ""parens patriae"" differs from country to country, for instance, in England it is the King, in America, it is the people, etc. The Government is within its duty to protect and to control persons under disability. Conceptually, the parens patriae theory is the obligation of the State to protect and take into custody the rights and the privileges of its citizens was discharging its obligations. Our Constitution makes it imperative for the State to secure to all its citizens the rights guaranteed by the Constitution and where the citizens are not in a

position to assert and secure their rights, the State must come into picture and protect and fight for the rights of the citizens. The preamble to the Constitution, read with the Directive Principles. Arts. 38, 39 and 39A enjoins the State to take up the responsibility. It is the protective measure to which the social welfare State is committed. It is necessary for the State to ensure the fundamental rights in conjunction with the Directive Principle of State Policy to effectively discharge its obligation and for this purpose, if necessary, to deprive some rights and privileges of the individual victims or their heirs to protect their rights better and secure these further.

16. The position of the Government being that of parent it has to act, intervene and protect lives, liberty and property of the people when threatened or invaded. Its duty is much greater in the case of a person under disability. A person is under disability not only when he suffers from physical or legal infirmities, but also when he is unable to stand up and protect his right and property from invasion by or with the help of anti social elements, Mafias and terrorists. In such a case it is not only duty of the Government to protect a person in distress and restore the possession of his property to him, but it is also the duty of this Court, when approached, to pass appropriate orders and issue necessary directions to the Government to protect his life, liberty and property and, when found necessary, to restore him the possession of his property.

17. A learned Single Judge of this Court in *Jai Prakash Vashisht v. Addl. District Magistrate*, 1995(26) All LR 46 has, in this connection, laid down as under:

Illegal house grabbing seems to be rapidly becoming the order of the day in many places in Uttar Pradesh. This Court will be failing in its duty if it does not voice its protest against these brazen acts of lawlessness. A man's house is said to be his castle. But when the castle is invaded illegally by a mob of anti social elements who beat up the inhabitants, throw them out and illegally occupy the same, it is the matter of great concern for all law abiding citizens. Several instances of such illegal house grabbing have lately come to the notice of this Court, and reports about them have been published widely by the newspapers.

19. In *National Human Rights Commission v. State of Arunachal Pradesh (I)* JT 1996 SC 163 : 1996 AIR SCW 1274 a public interest petition under

Article 32 of the Constitution was filed before Supreme Court in order to protect and enforce the rights under Article 21 of the Constitution of

Chakma tribals by preventing their eviction from the State of Arunachal Pradesh. Supreme Court while granting necessary relief, has laid down as

under :--

We are a country governed by the Rule of law. Our Constitution confers certain rights on citizens.

Every person is entitled to equality before the law and equal protection of the laws. So also, no person can be deprived of his life or personal liberty

except according to procedure established by law. Thus the State is bound to protect the life and liberty of every human-being, be he a citizen or

otherwise, and it cannot permit any body or group of persons e.g. the AAPSU to threaten the Chakmas to leave the State, failing which they would be

forced to do so. No State Government worth the name can tolerate such threats by one group of persons to another group of persons, it is duty bound

to protect the threatened group from such assaults and if it fails to do so, it will fail to perform its constitutional as well as statutory obligations. Those

giving such threats would be liable to be dealt with in accordance with law. The State Government must act impartially and carry out its legal

obligations to safeguard the life, health and well being of Chakmas residing in the State without being inhibited by local politics." Supreme Court

accordingly directed the State of Arunachal Pradesh to ensure that life and personal liberty of every Chakma residing within the State is protected and

any attempt to forcibly evict or drag them out of the State by organisations or group of persons shall be repelled, if necessary by requisitioning service

of para-military or police force. It was further directed that the Chakmas will not be denied domestic life and comfort therein.

20. When a person, who has been dispossessed from his property by brazen acts of lawlessness by or with the help of anti-social elements, approaches

this Court under Article 226 of the Constitution, this Court does not exercise its power to enforce the contractual and legal obligations of the parties. It

only directs the Government to enforce the Rule of law and to protect the lives, liberty and the properties of the people and, if found necessary, to restore the possession of the property to the person who has been dispossessed therefrom, leaving it open to the parties to get their rights adjudicated through Civil Court. To tell a person whose property has been forcibly captured and seized by or with the help of anti social elements, to file a suit for its recovery and be on the street till the suit is decided by the last Court, is nothing but slapping a person in distress. The first two preliminary objections raised by the learned counsel for the owner are, therefore, rejected.

21.As regards the third preliminary objection it may be mentioned that Supreme Court in Krishna Ram Mahale v. Mrs. Shobha Venkat Rao, (1989) 4

SCC 131 : AIR 1989 SC 2097 (supra), relevant extract from which has been reproduced before, has held that no person can forcibly be dispossessed

from property even by the owner except by recourse to law. If a person is sought to be dispossessed by brute force he has a right to approach this

Court, to protect his possession and it is the duty of this Court to issue appropriate order, direction or writ in the nature of mandamus to the

Government to protect the possession of the property of such a person till he is dispossessed therefrom through a Court. In the instant case period of

lease expired on 31-12-1994. But the tenants have a right to continue in its possession till they are evicted through Court. They thus have the right to

approach the Court to protect their possession of the property. Their writ petition as such cannot be said to be not maintainable. The third preliminary

objection is also rejected.

31. So far as the judgments on which reliance has been placed by learned counsel for the respondent no.8 is concerned, in the case of Mohan Pandey

& Anr. (supra) the Hon^{ble} Apex Court has discussed the facts of the said case. The facts of the case revealed that a suit for eviction of the

appellants from the building was pending in the trial court. The respondent no. 1 claimed that she had let-out the same to one Sri B.K. Pandey who

later on illegally handed over possession thereof to the appellant no. 1. A portion of the said house property which was the subject matter of the

present suit was beyond the purview of the pending suit. The respondent claimed that the occasion for initiating the present proceeding with respect to

this portion arose because of the high handedness of the appellant who illegally trespassed beyond the area which the subject matter of the pending suit and indulged in several illegal activities.

32. The Honâ€™ble Apex Court found that the appellants were said to be a trespasser. On this, in the facts of the said case, the Honâ€™ble Apex

Court held that the regular suit is the appropriate remedy for settlement of disputes. This Court finds that facts noted in the judgment of the

Honâ€™ble Apex Court nowhere discloses use of force and it was an admitted position that the appellant no. 1 was in possession of a portion of the

property though it was alleged that he was put in possession illegally by the tenants.

33. In the case of Roshina T (supra) the facts of the case would disclose that the dispute relates to the possession of a Flat on third floor of a building.

Respondent no. 1 filed a writ petition in the High Court of Kerala seeking a relief of restoration of possession over the Flat. The Division Bench of the

High Court allowed the writ petition and directed the restoration of possession of the Flat in question to respondent no. 1. Before the Honâ€™ble

Supreme Court, a question was raised as to whether the High Court was justified in entertaining the writ petition filed by the respondent no. 1 and

whether the High Court was justified in issuing a mandamus against the appellant directing him to restore the possession of the Flat to respondent no.

1. In paragraph â€™11â€™ of the said judgment the Honâ€™ble Apex Court noticed the fact that one Civil Suit no. 807/2014 was pending between

the appellant and respondent no. 1 in relation to the Flat in question for grant of injunction. It was not in dispute that appellant and the respondent no. 1

were private individuals and both were claiming their rights of ownership and possession over the Flat in question on various factual grounds. In that

background, the Honâ€™ble Apex Court took a view that civil suit is a proper remedy. The judgment of the Honâ€™ble Apex Court in the case of

Mohan Pandey (supra) and Dwarka Prasad Agrawal Vs. BD Agrawal reported in (2003) 6 SCC 230 were referred to.

34. To this Court, it appears that the facts of the case of Roshina T (supra) and that of the present case are clearly distinguishable. In this case no lis

was pending between the petitioner and respondent no. 8 with respect to right, title and possession over any portion of plot no. 152(old). There is

nothing on the record to show that in Title Partition Suit No. 271/2000 the construction allegedly raised by the petitioner were either demolished or the petitioner was ousted from the occupied portion of the disputed land through the process of the court. Without prejudice to the rights and contentions of the either parties, this Court would notice that the vendor of respondent no. 8 had himself taken a plea in Partition Suit No. 271/2000 that the present writ petitioner had constructed a boundary over a portion of plot no. 152(old) and had raised a construction thereon in the shape of a house.

Whether or not the petitioner has right, title or interest over the said portion of plot no. 152(old) and whether the petitioner is entitled to possess the said portion of land will be a question which may be adjudicated by a competent civil court.

35. For the present, this Court is required to consider the matter from the angle as to whether the petitioner has been forcefully dispossessed from his chambers in connivance with the police officers who allegedly did not act in time and later on put their lock on the chambers of the petitioner. On behalf of the State respondents, there is no denial of the statements made in paragraph 6 of the writ application wherein the petitioner has claimed that he was asked to remove his lock and under duress of the police personnel the petitioner was asked to open his locks whereafter the police personnel put their own lock on the premises and took away the keys. Petitioner has made specific statements indicating how he has been thrown out from his chambers by use of force and the police has connived with the respondent no. 8. If these uncontroverted statements of the petitioner are considered together with the information furnished to this Court by the Superintendent of Police, Muzaffarpur, as recorded in the order dated 25.09.2020, the same strengthens the views of this Court that in the facts and circumstances of the case, the ratio of the judgments relied upon by learned counsel for the petitioner must be followed. To ask the petitioner to await the outcome of the criminal case or to recover his possession of chambers through a civil suit, in the opinion of this Court would only amount to adding assault to his injury.

36. This Court, therefore, forms an opinion that the line of judgments relied upon by learned counsel for the petitioner would be applicable in the facts

and circumstances of the present case.

37. From the materials on the records, it appears that the Superintendent of Police, Samastipur had in course of his inspection of the spot noticed that

there was a newly built brick work closing the entry gate of the office premises opening towards the campus of the informant. It was found newly

plastered at the time of supervision. This Court, therefore, directs the Superintendent of Police, Samastipur to restore status quo ante by allowing the

petitioner to restore his possession to the extent over the Lawyersâ€™ Chambers by opening the lock within 15 days from the date of receipt of a

copy of the judgment.

38. This Court would reiterate that whatever observations have been made hereinabove shall not be taken as any opinion of this Court on any of the

issues in any civil or criminal proceeding and it will be open for the parties to get each and all issues involved in the matter resolved in accordance with

law through the competent civil court/Tribunal of competent jurisdiction. In such adjudication neither party shall rely upon any observation of this Court

in the present proceeding.

39. The observations are only for purpose of the present case and without prejudice to either party.

40. This Writ Application stands disposed off accordingly.