

(2024) 02 PAT CK 0053

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 6560 Of 2023

Azhar Sharful Haque

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: Feb. 12, 2024

Hon'ble Judges: Rajiv Roy, J

Bench: Single Bench

Advocate: Raj Kishore Roy, Mukund Prasad, Bindhya Keshari Kumar, Rajendra Nath Sinha

Final Decision: Disposed Of

Judgement

1. No one appears on call on behalf of the petitioner and Mr. Mukund Prasad, learned AC to GP 18 as also Mr. Bindhya Keshari Kumar, learned Senior Counsel for the respondent nos. 9 to 12.

2. The present writ petition has been filed for the following reliefs:-

(i) for issuance of an appropriate writ, order or direction particularly in the nature of writ of mandamus, directing and commanding the respondents to discharge their obligation to restrain the private respondent nos. 9 to 12 in interfering the peaceful possession of the petitioner over the land pertaining to Mauza: Kumhrar, Thana No. 12, Khata No. 588, Plot No. 1400 area 56 decimals in Patna Sadar Anchal, in view of the order dated 13.10.2022 passed in Cr.W.J.C.No. 802 of 2021, by which the Hon'ble Court held that the physical possession of the land has been restored in favour of the petitioner and forceful demolition by the private respondent is illegal as the aforesaid land is the ancestral land of the petitioner and he has been running his shop namely 'Delta Marble Point' for last about 13 years over the said land;

(ii) to declare the Land Possession Certificate issued in favour of the private respondent by the Circle Officer, Patna Sadar contained in certificate no. 506/30.04.2019 is null and void because the same has been issued during pendency of the aforesaid Cr.W.J.C.No. 802 of 2021, in which the Superintendent of Police, Patna has assured the Hon'ble Court that the physical possession has been restored in favour of the petitioner;

(iii) to declare the letter no. 243 dated 19.02.2021 (issued) written by Deputy Collector, Land Reforms, Patna City to A.C.L.R., Patna is null and void because same has been issued during pendency of Cr.W.J.C.No. 802 of 2021;

(iv) further for issuance of direction to expedite the disposal of Jamabandi Cancellation Case No. 88/2020-21 lodged by the petitioner and same is pending before the Additional Collector, Land Reforms, Patna.

3. The case of the petitioner is that he was in the marble business in the name of M/s Delta Marble Point on the said land, Khata No. 588, Plot No. 1400 (area-56 decimal), Thana No. 12 in the District of Patna having right, title and interest over the said land.

4. However, the respondent nos. 9 to 12 came in the premises with JCB/musclemen and demolished the boundary wall of the premises of the petitioner, assaulted them as also damaged their valuable property. This led to lodging of Agamkuan P.S. Case No. 868 of 2020.

5. It is also the contention of the writ petitioner that as he was not getting proper protection from the police, he preferred Cr. W.J.C. No. 802 of 2021 which was disposed of on 13.10.2022 after taking note of the submission of the parties whereafter the S.S.P., Patna has issued direction to the I.O. to provide protection to the petitioner and arrest the remaining accused of the case.

6. However, he wanted the respondent nos. 9 to 12 to be restrained from interfering with the peaceful possession of the land.

7. Learned Senior Counsel appearing for the respondent nos. 9 to 11 has taken this Court to paragraph 11 to show that Title Suit No. 68 of 2023 has been filed in the Court of the learned Sub-Judge, Patna City in which both the brothers namely, Azhar Sharful Haque (the petitioner herein) as also Arshad Sharful Haque have been made necessary parties.

8. The details of the land has already been incorporated in paragraph 11 which is similar to what has been incorporated by the petitioner in paragraph 4 of the petition.

9. In view of the fact that a title suit has already been filed, the parties shall appear and make their respective submissions so that the title suit is taken to its logical conclusion. As per the record, the police protection has also been granted to the petitioner and S.S.P., Patna has further directed the I.O. to take necessary steps in the criminal case lodged by the petitioner.

10. Now, comes the question that in the given facts and circumstances, whether the petitioner has made out a case that the respondent nos. 9 to 12 have taken the law in their own hand, entered the premises occupied by him, demolished the boundary wall and damaged the valuable properties including the marbles and vehicles which can be seen from the number of photographs attached with the petition (refer Annexure 2 to the petition) and whether any cost be imposed upon the respondent nos. 9 to 12 or not.

11. This Court would like to reproduce the statement made in paragraph 5 of the petition which read as follows:-

“That it is relevant to state herewith that one Ram Awadhesh Yadav, Nawab Lal Yadav, both sons of Late Rambabu Yadav, Rohit Kumar and Rahul Kumar sons of Nawab Lal Yadav of Kumhrar (all respondent no. 9 to 12) came to the premises of the petitioner with JCB alongwith other musclemen started demolishing the boundary wall of the premises of the petitioner and when petitioner and his staff went to stop them, they were brutally assaulted and damaged the property of the petitioner. They looted more than 3 lakhs cash from the chest of the office which was kept for payment to the company, from whom petitioner used to purchase the marble and tiles. They also damaged the marbles and tiles kept in the godown worth of about 2 crore rupees. On the gun point, they also looted mobile from the petitioner and his staffs. They totally damaged the two motorcycles and scooty, they also damaged and vandalized the pickup van for the said occurrence, on

instance though police instituted an F.I.R. being Agamkuan P.S. Case No. 868/2020 but not in proper appropriate sections to help the miscreants so that they can get bail easily from the court and they also got the bail from C.J.M., Patna City.”

12. The reply of the respondent nos. 9 to 12 in paragraph 10 read as follows:-

“That statement made in paragraph no. 5 is highly probable and misconceived as petitioner has already, illegally occupied plot no. 1400 from possession of private respondent and wrongly operating his business by the name of Delta Marble on the land of private respondent nos. - 9 to 12. Said all the point of writ petition has already been raised in Cr. W.J.C. No. 802 of 2021 and in additional prayer sought police protection on which basis he had obtained Police Protection from S.S.P., Patna.”

13. From the aforesaid facts, it is clear that the respondent nos. 9 to 12 deliberately chose to ignore/overlook the allegation made in paragraph 5 of the petition.

14. In that circumstances, when the private respondent nos. 9 to 12 having not made a categorical statement to the allegation, it is the opinion of the Court that they have accepted the said allegation. In that background, the petitioner is entitled to a suitable cost.

15. This Court cannot estimate the loss the petitioner suffered but the way the respondent nos. 9 to 12 have taken the law in their own hand, stormed the shop/godown of the petitioner and damaged valuable properties, that too in the capital city of the State, an allegation not rebutted by them, a cost of Rs. 1 lakh is imposed upon them. The cost so imposed has to be paid by the respondent nos. 9 to 12 to the petitioner within a period of three months from today.

16. The writ petition is disposed of with the aforesaid observations.