

Patna High Court

Amarnath Saw vs State Of Bihar And Ors. on 7 May, 2000

Equivalent citations: 2000 (3) BLJR 1659

Author: S Jha

Bench: S Jha

JUDGMENT Sachchidanand Jha, J.

1. This writ petition has been filed seeking direction to the respondent to restore possession of house at Mohalla Machchuatoli bearing holding No. 76 A within Ward No. 3 at Cantonment Road, Danapur, to the petitioner.

2. The case of the petitioner, shortly stated, is as follows. His father Narayan Sah purchased the house in question under a registered sale-deed dated 23.11.70 from one Sitaram Sah. Respondent No. 9 Om Prakash Goswami fraudulently got a sale-deed in the name of his wife respondent No. 8 Smt. Shanti Devi, from Narayan Sah on 28.4.93 without paying any consideration money to him. The petitioner, however, continued to remain in possession of the house. When he came to know about the fraudulent act of the respondents, he filed a suit bearing Title Suit No. 120 of 1993 seeking declaration that the sale-deed dated 28.4.93 is sham and fraudulent and no title had passed to respondent No. 8. In the alternative, he prayed for relief in terms of Section 4 of the Partition Act. The respondents also filed Eviction Suit No. 17 of 1993 against the petitioner. They also started hobnobbing with the local administration for dispossessing the petitioner. They filed Miscellaneous case No. 105 of 1995 before the Sub-divisional Magistrate, Danapur claiming that the petitioner was tenant in the disputed house and creating hindrance in the exercise of rights by the respondents. The petitioner filed show-cause in the said Miscellaneous case stating that he was not tenant in the house and he had filed a suit for declaration that the saledeed under which the respondents were claiming their rights was a sham transaction. On 16.8.95, the Sub-divisional Magistrate passed an order in the aforesaid Miscellaneous case that he was not competent to decide the claim regarding possession. He, however, directed the police to maintain peace and order. On 12.10.95 one Mahendra Singh, an Assistant Sub-Inspector of Police (ASI) attached with the Danapur Police Station submitted report to the Sub-divisional Magistrate making request for deputation of a Magistrate for maintaining law and order and facilitate the "peaceful induction of the respondents in the house." On 16.11.95 the Sub-divisional Magistrate deputed respondent No. 6 Shri N.K. Verma (Narendra Kumar Verma), Co-operative Extension Officer, Danapur as Special Executive Magistrate. On 27.11.95, the petitioner was forcibly evicted from the house and its possession was delivered to the respondents.

3. In the meantime, apprehending his forcible eviction in the wake of the orders passed by the Sub-divisional Magistrate, referred to above, the petitioner had filed Title Suit No. 131 of 1995 seeking permanent injunction against respondent Nos. 3, 4 and 6 to 9 from disturbing his peaceful possession. On 27.11.95, the Munsif, Danapur passed an order to maintain status quo. The order was also communicated to the aforesaid respondents the same day. The respondents concerned, however, it is said, with full knowledge of the order of the Civil Court hurriedly got the petitioner evicted from the house and gave possession thereof to respondent Nos. 8 and 9. The petitioner has stated that on 2.10.94 also, respondent Nos. 8 and 9 had tried to dispossess the petitioner from the

house for which the petitioner instituted Danapur P.S. Case No. 276/94 under Sections 323, 324 and 341/34 I.P.C. in which respondent No. 9 and his two sons were convicted for the offence under Sections 323/34 I.P.C. on 21.7.98.

4. The petitioner has impleaded, besides respondent Nos. 8 and 9, the then Sub-Divisional Magistrate, Danapur and the then Co-Operative Extension Officer, Danapur by name as respondent Nos. 4 and 6. He has also impleaded the Officer-in-Charge, Danapur P.S. as respondent No. 7. Notice of this case was issued to respondent Nos. 8 and 9. The State Counsel was asked to file counter-affidavit on behalf of respondent Nos. 4 and 7, respondent Nos. 7 and 8 & 9 have filed their separate counter-affidavit. Respondent Nos. 8 and 9 in their affidavit have virtually admitted the petitioner's case that the house originally belonged to his father, i.e., Narayan Sah from whom they purchased it in the name of respondent No. 8. Curiously, though they purchased the house from Narayan Sah, they seem to raise a dispute as to whether Narayan Sah had acquired the property from the joint family fund or his own fund. The respondents also admit the petitioner's case regarding institution of Title Suit No. 120 of 1993 and Eviction Suit No. 17 of 1993 against each other. According to them, after the purchase they came in possession of the house, the petitioner, however, also remained in possession of a portion as a tenant. The respondents have denied the petitioner's case that he was dispossessed from the house. According to them, he is still in possession of the tenanted premises. They have described the report of Shri N.K. Verma, Annexure-4, regarding eviction of the petitioner and delivery of possession to the respondents as collusive.

5. In his affidavit, respondent No. 7, the Officer-in-Charge, Danapur Police Station, has stated that, on receipt of the order of the Sub-divisional Magistrate, he simply deputed an ASI of Police Shri Mahendra Singh to execute the order for which a Magistrate was deputed to maintain law and order.

6. Though a dispute is sought to be raised regarding dispossession of the petitioner, muchless forcible dispossession, and it has been stated by respondent Nos. 8 and 9 that the petitioner is still in possession of the tenanted house, there is no reason to disbelieve the report of Shri N.K. Verma dated 27.11.95 contained in Annexure-4. From the said report, it is clear that possession of the house was delivered to respondent Nos. 8 and 9 on 27.11.95 at 2.00 p.m. under his (N.K. Verma) supervision in the presence of Shri R.K. Mishra, Sub-Inspector of Police and Shri Mahendra Singh, Assistant Sub-Inspector of Police and the police force.

7. I called upon Shri Ram Kumar Sharma, Counsel for respondent Nos. 8 and 9 to satisfy this Court as to how possession of the house could be delivered to the respondents with the help of the police and the Magistracy during the pendency of the eviction suit. Counsel could not give any satisfactory answer whatsoever. He referred to the pendency of the title suit.

8. Once the petitioner's case regarding his forcible dispossession from the house, which finds enough corroboration from the report of the Magistrate as well as the counter-affidavit of the Officer-in-Charge, is accepted the question which would immediately arise is whether the action of the respondents in getting the petitioner forcibly evicted, specially during the pendency of the suits filed against each other, was justified. The law on the subject is well settled. Way back in the case of

Midnapore Zamindari Company Limited, 1951 Indian Appeals 243, the Privy Council observed.

In India, persons are not permitted to take forcible possession, they must obtain such possessions as they are entitled to through a Court.

A Full Bench of the Allahabad High Court in *Yar Mohamand v. Lakshmi Das*, stated that the law respects possession even if there is no title to support it and it will not permit any person to take the law in his own hands and to dispossess the person in actual possession without taking recourse to the Court. These observations were approved by the Supreme Court in *Lallu Jaswant Singh v. Sri Jagdish Singh* AIR 1968 SC 620. In *Bishan Das v. State of Punjab*, the Supreme Court observed.

The petitioner could be dispossessed if at all only in pursuance of a decree of Civil Court obtained in proceedings properly initiated. In these circumstances, the action of the Government in taking the law into their hands and dispossessing the petitioner by the display of force, exhibits a callous disregard of the normal requirement of the rule of law, apart from what might legitimately and reasonably be expected from a Government functioning in a society governed by a constitution which guarantees to its citizens against arbitrary invasion by the executive of a peaceful possession of property.

The principle was reiterated in *State of U.P. v. Maharaja Dharmendra Prasad Singh* AIR 1989 SC 1997, in which it was held that the possession of the lessee even after the expiry of the lease and its termination is juridical in nature and the lessee cannot be dispossessed otherwise than in due course of law.

9. In view of the above enunciation of law, there can be no doubt that the action of the respondents in securing forcible possession of the house and evicting the petitioner by using police force bypassing the Civil Court where suits are pending was a gross Act of abuse of power and authority of law. In his order dated 16.5.95, the Sub-divisional Magistrate had passed a rather innocuous looking order regarding maintaining peace and order. In the garb and on the pretext of maintaining peace and order, how ever, collusive request was made for deputing a Magistrate and after respondent No. 6, an Officer of the Co-operative Department was deputed with the powers of Special Executive Magistrate, he along with police force headed by Shri R.K. Mishra, S.I. of police and Shri Mahendra Singh, ASI of police got the petitioner evicted from the house and inducted the respondents in his place. Suits are pending and I do not wish to make comments on the case of the parties. But, prima fade, the plea of respondent Nos. 8 and 9 that they came in possession of the house after the purchase does not appear to be true. Whether the sale made by Narayan Sah was valid and respondent Nos. 8 and 9 acquired valid title are matters to be gone into by the Civil Court. Even if the answers to these questions are in the affirmative and it is held that respondent Nos. 8 and 9 had validly acquired title from the father, i.e., Narayan Sah rendering the status of the son, ie., the petitioner to be of a tenant, in view of the provisions of Section 11 of the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1982, the petitioner could not be evicted except in accordance with a decree of eviction or any of the grounds mentioned in that Section by the Civil Court. The action of the respondents must be held to be grossly illegal and arbitrary. In these premises, I have no hesitation in directing the respondents to restore possession of house to the petitioner subject to the

result of the eviction and/or title suits filed by the parties.

10. In the facts and circumstances of the case, I am of the view that mere restoration of the possession of the house to the petitioner would not be doing full justice between the parties. The petitioner should also be compensated for his loss and harassment which he has suffered at the hands of the respondents. Since the act of dispossession was the result of conjoint and collusive efforts by all the respondents concerned including respondent No. 6 Shri N.K. Verma, Shri R.K. Mishra and Shri Mahendra Singh, it would have been only proper to direct them also to pay compensation along with respondent Nos. 8 and 9, but unfortunately Shri R.K. Mishra and Shri Mahendra Singh have not been made party in the present case and notice was not issued to respondent No. 6. In such situation, it is not possible to direct them to pay compensation. The proper course so far as they are concerned would be to direct the authorities concerned to take suitable administrative action against them. So far as the Officer-in-Charge, Danapur Police Station, respondent No. 7 is concerned, nothing serious has been brought on record or to my notice to warrant any action against him. Whatever might have been done by him behind the scene, all that he seems to have done on paper was to depute Shri Mahendra Singh "to maintain law and order."

11. Respondent Nos. 8 and 9 are accordingly directed to immediately hand over possession of the house to the petitioner. If they fail to restore possession, the Sub-divisional Magistrate, Danapur shall deliver possession within two weeks from receipt/production of a copy of this order giving notice to respondent Nos. 8 and 9 regarding the date and time of such delivery of possession. Besides delivering possession, respondent Nos. 8 and 9 shall also pay compensation of Rs. 10,000/- to the petitioner. If such payment is not made within four weeks, it will be open to the petitioner to realise the amount as decree in Execution Munsif's Court, Danapur in accordance with law.

12. As regards Shri N.K. Verma, the then Co-operative Extension Officer, Danapur, Shri R.K. Mishra and Shri Mahendra Singh, the then S.I. and A.S.I, of Police, Danapur Police Station, I would direct the Registrar of the Co-operative Societies, Bihar and Sr. S.P. Patna to take suitable administrative action after giving them an opportunity of hearing.

13. This writ petition is thus allowed in the above terms.

14. It is made clear that the findings and observations made hereinabove will not cause any prejudice to the respondent Nos. 8 and 9 in the pending suits.

15. Let copies of this order be sent to (a) Sub-divisional Magistrate, Danapur, (b) Registrar, Co-operative Societies, Bihar, Patna and (c) Senior Superintendent of Police, Patna for necessary action.