
(2000) 09 PAT CK 0069
In the Patna High Court
Case No : C.W.J.C. No. 9473 of 2000

Mani Kant Chaudhary and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 25-09-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 144

Citation : (2001) 1 PLJR 333

Hon'ble Judges : R.M. Prasad, J

Bench : Single Bench

Advocate : Navin Sinha and Niraj Kumar, for the Appellant; V.N. Sinha, for the Respondent

Judgement

R.M. Prasad, J.—In this writ petition, prayer is to issue an appropriate writ in the nature of mandamus or any other appropriate writ, order or direction commanding the Respondents to provide due protection to the Petitioners for their life and properties and to oust the unlawful elements who have under political patronage, forcibly occupied the Petitioners' lands.

2. Petitioners claim absolute owner of the land in question situated in village Chandauli, P.S. - Ujiarpur, District-Samastipur. It is alleged that recently certain antisocial elements and persons with political patronage approached the Petitioners and asked them to voluntarily part with possession of 15 Bighas of lands out of the total of 17 Bighas of lands belonging to them. They refused to do so upon which unlawful elements forcibly entered on the properties in the night of 31st August, 2000. It is also alleged that the Petitioners were warned of physical harm and forceful dispossession, if they refused to do so voluntarily including physical elimination by such undesirable elements, if they interfered with or prevented the unlawful elements from taking forceful possession of their lands, including approaching this Court for grant of appropriate relief.

3. It appears that on the complaint made by the Petitioners enquiry was conducted by the Sub-divisional Officer, Dalsingsarai (Respondent No. 4), from

whose report dated 5.9.2000, contained in Annexure-C, it appears that he found unlawful and illegal occupants over the lands of the Petitioners who claim to have political patronage. It appears that the Petitioners thereafter filed representation on 7.9.2000 to the District Magistrate, Samastipur with a copy to the Inspector General of Police, Darbhanga amongst others for appropriate action, but when no action was taken to protect the property, present writ application was filed. Petitioners also claimed to have represented the Commissioner, Darbhanga on 8.9.2000, but from him also there was no response.

4. Earlier this matter was heard on 21.9.2000 and on the request of the learned Government Pleader, the matter was directed to be listed today in the supplementary list. Meanwhile, this Court directed that he must take instruction and file counter affidavit especially with respect to the averment made in paragraph 7 of the writ petition, wherein Petitioners mentioned about the aforementioned submissions of report by Respondent No. 4 in which he confirmed that unlawful and antisocial elements with political patronage have occupied the land of the Petitioners to the extent of 15 Bighas.

5. District Magistrate, Samastipur (Respondent No. 2) has filed counter affidavit, which has been sworn by Baiju Nath Kumar Singh, Sub-Election Officer, Samastipur, who claims to have been duly authorised by the District Magistrate to affirm this counter affidavit on his behalf. Learned Government Pleader No. IX has produced a letter No. 4255 dated 22.9.2000 from the District Magistrate, Samastipur to show that Baiju Nath Kumar Singh, Sub-Election Officer, Samastipur has been authorised and deputed by the District Magistrate to swear this counter affidavit on his behalf.

6. In the said counter affidavit the fact regarding submission of report by the Respondent No. 4 is not disputed. It is stated that Respondent No. 4 and Dy. S.P. was directed to take necessary steps. However, it is stated that the members of the Bihar Administrative Service Association posted in the district of Samastipur in any capacity have proceeded on mass casual leave from 24.8.2000 and have not reported for duty. It appears that meanwhile proceeding under Sections 144 & 107 Code of Criminal Procedure was initiated, but on account of Officers going on mass casual leave no further action has been taken and the said proceedings could not be disposed of. It is further stated that the land in question is also subject matter of the ceiling case bearing No. 12 of 1973-74/8 of 1996-97 State v. Mahanth Balram Das in which only draft publication u/s 10(2) of the Act have been made and objections have been invited. However, Respondent does not claim that any final order was passed in the said ceiling case.

7. It is really shocking that in paragraph 15 of the said counter affidavit on behalf of the District Magistrate, it is stated that the Petitioners without waiting for the result of the steps taken by the Respondents have moved this Court and further that if this Court passes any order that will be complied. This Court fails to appreciate such approach of the Collector in the matter, where citizens are deprived of their lawful possession over the land by some unauthorised

occupants and the district administration or the State administration fail to give protection to them until and unless there is direction issued by the High Court. It is the duty and responsibility of the authorities concerned to protect the life and property of a citizen and on their failure to do so only depicts that no Rule of law prevails and might is right.

8. This Court cannot appreciate that for such relief one has to knock the door of the High Court for protection of their life, liberty and property, which is solely within the domain of the State authorities, but when they fail the citizens are left with no option and are forced to knock the door of the Court for enforcement of their Constitutional and legal right.

9. However, having regard to the facts and circumstances aforementioned, this Court directs the District Magistrate to see that possession of the land in question is restored to the Petitioners within a week of the receipt/production of a copy of this order and soon thereafter he should submit compliance report to this Court.

10. The writ petition is, accordingly, disposed of.