

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1703 of 2023

Arising Out of PS. Case No.-144 Year-2023 Thana- AMAS District- Gaya

M/S. Cleartech Farming Private Limited, A Company Registered Under The Companies Act Having Its Registered Office At 34, Panchwati Apartment, Near Baldeo Bhawan, P.S- Sashtri Nagar, Distt.- Patna Through One Of Its Directors, Shyam Kishore Prasad, Aged About 67 Years, Male, Son Of Late Deo Nandan Prasad, Resident Of Urmila Villa, Surya Mandir Road, P.O And P.S- Aurangabad, Distt.- Aurangabad (BIHAR).

... .. Petitioner

Versus

1. The State Of Bihar through the Principal Secretary, Home Department, Government Of Bihar, Patna. Bihar.
2. The Director General Of Police, Bihar, Patna. Bihar
3. The District Magistrate, Gaya. Bihar
4. The Senior Superintendent Of Police, Gaya. Bihar
5. The Sub Divisional Police Officer, Sherghati, Gaya. Bihar
6. The Station House Officer, Aamas Police Station, Distt.- Gaya. Bihar
7. The Investigating Officer, Aamas Police Station, Distt.- Gaya. Bihar
8. Sri Jacky Yadav S/O Late Bindi Yadav R/O Asha Singh More, P.S- Rampur, Distt.- Gaya.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. S.D. Sanjay, Sr. Advocate Mr. Mohit Agarwal, Advocate Mr. Vishal Kumar, Advocate Mr. Rahul Kumar, Advocate Mr. Lokesh Kumar, Advocate
For the State	:	Mr. Suman Kumar Jha, AC to AAG-3
For the Respondent no.8	:	Mr. Lalit Kishore, Sr. Advocate Ms. Shrishti Singh, Advocate Mr. Pranav Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT

Date : 20-03-2024

The present criminal writ application has been preferred seeking the following reliefs:-

- i) For a direction upon the Respondent Nos. 1 to 7 to remove the Respondent No.8 from the land



of the petitioner as the Respondent No.8 with his associates have forcibly captured the land of Petitioner by giving him life threat and are continuing over the land by constructing a temporary thatched hutment on the land belonging to the petitioner and has threatened the petitioner not to be seen near his land;

ii) For direction upon the Respondents Nos.1 to 7 to ensure that the land of the petitioner is restored back in his possession as the Respondent No. 2 & 4 to 7 have failed to discharge their duty to protect the life and property of the citizens within their jurisdiction as because of their failure the Respondent No.8 was not restrained when he forcibly with his armed associates captured and possessed the land in broad day light on 30.01.2023 but no action was taken by these respondents in-spite of repeated requests and representations by the petitioner to protect its property and not even the FIR was lodged on 06.03.2023 upto 19.04.2023 and no action has been taken till date to ensure that its possession is restored back to the Petitioner; and/or for any other relief(s) for which the petitioner may be found entitled to in the facts and circumstances of the present case.”

Brief facts of the case

2. The petitioner is a private limited company represented through its Director, namely Sri Shyam Kishore Prasad. The petitioner purchased 23 acres 6 decimal lands by a registered sale deed dated 25.07.2017 from one Khuaza Iradat Jan and his family members. A copy of the registered sale deed has been brought on record as Annexure- ‘P/2’ to the writ application. The description of the land shown in the sale deed are that of village Mahapur, Chak Khata 38/14, Chak Plot



267/71 (part) measuring area 23 acres 6 decimal falling under Thana No.517, Aamas Anchal, Sub-Registry Office, Sherghati in the district of Gaya.

It is the case of the petitioner that the petitioner was put in peaceful possession of the land. An application for mutation was filed before the Circle Officer, Aamas and the entire land got mutated in the name of the petitioner-company, on payment of rent, rent receipts were issued. The petitioner further claims that the circle office, Aamas issued land possession certificate in favour of the petitioner-company which was also updated by the Department of Revenue, Government of Bihar on 20.06.2022.

3. The petitioner alleges that 30.01.2023 at about 11.00 AM when Sri Shyam Kishore Prasad, the Director of company was getting the land leveled through his contractor, suddenly some antisocial elements armed with deadly weapons came to the land of the petitioner and threatened the said Director by saying that the land belonged to them, he must leave it otherwise he will be killed. The efforts taken by the Director to convince them that the land belong to the petitioner-company and it has been purchased through registered sale deed went in vain. The specific case of the petitioner is that the



Director of the Company was threatened by Jacky Yadav, son of late Bindi Yadav of Gaya (respondent no.8) along with his associates who were armed with deadly weapons.

4. It is further alleged that the Director of the Company remained in fear for 2-3 days, he could not come out of his house, however, he visited Aamas police station on 06.02.2023 and handed over a written application for lodging of the FIR, the SHO took the application and said that he will enquire into the matter but after few days when the Director went to his land, he found that the said Jacky Yadav had forcibly captured the land and was making some pilling over the land. The FIR was not registered at that time. It is only after repeated visit of the Director of the petitioner-company, the FIR giving rise to Aamas P.S. Case No. 144 of 2023 dated 19.04.2023 (Annexure- 'P/1') would be registered.

5. The grievance of the petitioner is that although the FIR was registered after much persistence, the investigating agency did not take any action/step against the respondent no.8 and his associates and no action was taken to remove them from the site. It is stated that in fact the petitioner-company had after taking possession of the land applied for demarcation of the land and measurement thereof before the Circle Officer,



Aamas on 06.08.2022 vide Land Measurement Case No.35 of 2022-23 and thereafter the entire land was measured by order of the Circle Officer and the measurement proceeding was closed by the Circle Officer on 07.09.2022 (Annexure- 'P/5').

Submissions on behalf of the petitioner

6. Mr. S.D. Sanjay, learned senior counsel for the petitioner submits that it is a case of forceful dispossession of the petitioner from the land in question by use of unlawful means taking the law unto his hands by the respondent no.8 and his associates. The petitioner made several representations before all concerned officers such as Senior Superintendent of Police, Gaya, Sub-Divisional Officer, Gaya, District Magistrate, Gaya and Director General of Police, Bihar for protecting the life of the Director and property of the petitioner-company. Referring to the representations, copies of which have been enclosed as Annexure- 'P/6' series, learned senior counsel submits that it is the bounden duty of the State to protect the life and property of its citizen. The life of the Director of the petitioner-company and the property of the petitioner are under grave threat and despite complaints lodged with the police, the administration has not taken appropriate steps to dispossess the illegal occupants who have forcibly



come on the land of the petitioner. Reliance has been placed on the judgment of this Court in the case of **Harrison Continental Pvt. Ltd. Vs. the State of Bihar & Ors.** reported in **(2022) SCC Online Patna 3178** to submit that in the said case this Court has after relying upon the various judgments of the Hon'ble Supreme Court held that the illegal occupants should not have been allowed to stay in the premises and had to be removed by the police as it was a brazen act of lawlessness and the accused had forcibly invaded the premises of the petitioner and has thrown the petitioner in the said case out of the property.

Developments during pendency of the writ-petition

7. This writ application was taken up for consideration for the first time on 14.12.2023. After noticing the submissions of learned senior counsel for the petitioner, this Court issued notice to respondent no.8 and directed the Senior Superintendent of Police, Gaya to ensure that no construction work takes place on the land in question. The Superintendent of Police, Gaya was directed to join the Court hearing through virtual mode and the Station House Officer as well as the Investigating Officer of Aamas police station were called upon to appear in person.

8. On 19.12.2023, the Senior Superintendent of



Police, Gaya appeared through virtual mode and on the said date, this Court passed the following order:-

“Pursuant to the order dated 14.12.2023, Mr. Ashish Bharti, the Senior Superintendent of Police, Gaya has joined the proceeding through online mode. The S.H.O. and the Investigating Officer of the Amas police station are present in person.

2. In course of interaction with the Senior Superintendent of Police, Gaya, this Court has been informed that on his instruction the C.O. and S.H.O have looked into the documents which were produced by the petitioner. The other side could not produce any reliable document and he is of the opinion that, in case, anybody is trying to oust the petitioner from land, such persons dealing with unlawful acts must be dealt with sternly.

3. The Senior Superintendent of Police, Gaya has accordingly assured this Court that he will provide adequate protection to the petitioner in carrying out construction over the land to ensure that no gunda/anti-social element creates any hindrance.

4. This Court has made it clear to the Senior Superintendent of Police, Gaya that it is the duty of the State to provide protection to a citizen if there is any threat to his life or property and unless otherwise ordered by a competent court of law, he would ensure that no anti-social element goes on the land in question.

5. As regards the role of the S.H.O. and the



I.O. of the Amas Police Station in sitting over the matter and allegedly allowing the anti-social elements to use brute force in threatening the petitioner and ousting him from the land when he was carrying on the leveling work, the Senior Superintendent of Police, Gaya shall conduct a proper inquiry and, in case, it is found that the police officers were acting hands in gloves with anti-social elements and they are in contact with them for any extraneous considerations, the Senior Superintendent of Police shall take appropriate action in administrative side. It will be an independent inquiry at his end and this Court at this stage is not forming any opinion on this issue.

6. List this matter after four weeks on 16th January, 2024 under the same heading maintaining its position.

7. An action taken report shall be sent to this Court by the Senior Superintendent of Police, Gaya in a sealed envelope through the learned Registrar General of this Court.

8. The S.H.O., Amas has placed before this Court a copy of the Letter of the Senior Superintendent of Police, Gaya bearing number 2829 dated 16.12.2023 addressed to the Deputy Registrar of this Court wherein it has been informed that the notice sent to the private respondent no. 8, namely, Jacky Yadav has been served on the given address and it has been received by his cousin (mausera bhai), namely, Ravindra Kumar.

9. Today, there is no appearance on behalf of



Respondent No. 8. Till next date, respondent no. 8 may also file his counter affidavit.

10. A counter affidavit has been filed on behalf of Senior Superintendent of Police, Gaya. Let it be taken on the record.

11. The personal appearance of S.H.O. and I.O. would remain dispensed with on the next date.

12. List accordingly.”

9. Thereafter, the matter was taken up on 16.01.2024 but it was adjourned to 25.01.2024 on the request of the parties who agreed that they will complete the pleadings during this period. This Court also received a report from the Senior Superintendent of Police, Gaya. On the said date, this Court noticed the observations made by the Assistant Superintendent of Police-cum-S.D.P.O., Sherghati, Gaya in his report dated 08.06.2023 with regard to non-availability of the ordersheets of the revised khatiyani camp Section-10(B), Page No.43/90 which indicated some forgery and fabrication of the records. After noticing this observation of the Assistant Superintendent of Police-cum-S.D.P.O., Sherghati, this Court thought it just and proper to get assistance from the Circle Officer with the entire materials in his possession. Learned AC to AAG-3 for the State also agreed for the same.

10. On the said date, learned senior counsel for the



petitioner made a submission that considering the observations of the Assistant Superintendent of Police, Gaya indicating at this stage that the records are forged and fabricated, this Court may consider sending the entire investigation to the Vigilance or the Economic Offence Unit. This Court observed that the submission would be considered on the next date of hearing.

11. Thereafter, the Circle Officer, Aamas appeared with the records on 25.01.2024. This Court passed the following order on 25.01.2024:-

“Heard learned Senior Counsel for the petitioner, learned A.C. to learned A.A.G.-III for the State, the Circle Officer, Amas who has appeared with the records and learned Senior counsel for the respondent no.8.

2. As prayed by learned counsel for the parties, further hearing of this case shall take place on 31st of January, 2024 at 12:30 pm.

3. The Circle Officer, Amas has to prepare a list of dates and events from the records in his possession. This Court would briefly note that the controversy in this case centers around the records showing that upon an objection allegedly raised by the applicants Sushila Devi, Alok Kumar and Churia Devi under Section 10(B) of the Bihar Consolidation of Holding Act, the Consolidation Officer had passed an order in which survey Khesra No. 330 corresponding Chak Khesra 267 measuring area 23 acre were



ordered to be recorded in the name of the objectors from whom the respondent no.8 is said to have purchased. The petitioner is purchaser from the raiyat whose name was entered in Register-2 by virtue of the sale deed executed in his favour by the erstwhile zamindar. The bone of contention is that these chak records are forged and fabricated and it has been prepared in connivance with the government officials and this is required to be investigated by a credible agency of the State.

4. Learned Senior counsel for the petitioner submits that it would be appropriate if the entire consolidation records pertaining to this plot be produced before this Court.

5. The Circle Officer, Aamas submits that the records of the consolidation proceeding are in possession of the Circle Office, Aamas, hence he would produce all the records.

6. Learned Senior counsel for the respondent no.8 has also raised certain doubts over the rent fixation order of 1956 in respect of the land in question by which the rent fixation was done in respect of the land in favour of the petitioner.

7. List accordingly.”

12. Thereafter, the matter was heard on various dates.

Learned AC to AAG-3, in presence of the Circle Officer, Aamas, has placed before this Court a copy of the letter no.110 dated 31.01.2024 written by the Circle Officer, Aamas to the



Law Officer in which he has given his observations on perusal of the revenue records. Request has been made in presence of the C.O. to take the communication on the records. The Circle Officer has confirmed that his observations in the communication are for the purpose of assisting this Court in reaching to a just and proper conclusion. The observations of the Circle Officer are worth taking note of hereunder for a ready reference:-

“कार्यालय अंचलअधिकारी, आमस (गया)।

पत्रांक 110/सा0, दिनांक 31/01/24

प्रेषक,

अंचल अधिकारी,
आमस, गया।

सेवा में,

श्रीमान अपर महाधिवक्ता संख्या – 3,
पटना, उच्च न्यायालय, पटना।

विषय :- CWJC 1703/ 2023 के तथ्य विवरण हेतू।

प्रसंग :- CWJC 1703/ 2023 में 25.02.2024 को पारित आदेश।

महाशय,

उपरोक्त विषयक एवं प्रासंगिक पत्र के संबंध में उपलब्ध राजस्व अभिलेखों के अनुसार बिंदुवार जाँच प्रतिवेदन निम्न प्रकार है :-

1. C.S खतियान (1916) के अनुसार भूमि का विवरण निम्न प्रकार है :-

मौचा / थाना नं0	C.S खाता नं0	C.S. प्लॉट नं0	रकवा ए0डी0	किस्म जमीन	अभिधारी का नाम
महापुर / 517	14	60	56.80	जंगलझाड़ी	गैरमजरुआ मालिक
महापुर / 517	14	71	175.00	जंगलझाड़ी	मजकुर (मालिक का नाम – अब्दूलगानी खॉ)

(अनुलग्नक-1)

2. तत्पश्चात् 1924 में मालिक (अब्दूलगानी खॉ) द्वारा वजरीय केवाला द्वारा खान बहादुर ख्वाजा मो0 नुर व ख्वाजा हकीम

खॉ वल्दान वहीद खॉ मरहुम अक्वाम- सैयद को खेवट नं0- 01 में रकवा 544.53 ए0 दिया गया।

(अनुलग्नक-2)



3. तत्पश्चात् वर्ष 1956 में भूत पूर्व जमीनदार द्वारा दाखिल रिटर्न के आधार पर बने जमाबंदी पंजी में ख्वाजा इफतेखार जान का विवरण प्राप्त होता है साथ ही वर्ष 1956 के वाद संख्या 07/1955-56 अनुमण्डल पदाधिकारी, गया के द्वारा Rent Fixation के माध्यम से रकवा 100.37 ए० के लगान निर्धारण का आदेश प्राप्त हुआ।

(अनुलग्नक-3 एवं अनुलग्नक-4)

4. पुनः 1989 में चकबन्दी प्रक्रिया के दौरान उक्त C.S प्लॉट (60 एवं 71) से क्रमशः 267 एवं 244 प्लॉट का चकबन्दी खतियान बना। जो निम्न प्रकार है -

मौचा / थाना नं०	चक खाता नं०	चकप्लॉट नं०	रकवा ए० डी०	किस्म जमीन	डिमांडधारी का नाम
महापुर / 517	38	267	23.06	भीठ	ख्वाजा वसीम जान वगैरह पिता इफतेखार जान
महापुर / 517	38	244	1.64	भीठ	ख्वाजा वसीम जान वगैरह पिता इफतेखार जान

(अनुलग्नक-5)

उक्त चकबन्दी खतियान के आधार पर कायम जमाबंदी का विवरण निम्न प्रकार है :-

मौचा / थाना नं०	डिमांड नं०	खाता नं०	प्लॉट नं०	रकवा ए० डी०	डिमांडधारी का नाम
महापुर / 517	90/1	38	267	23.06	ख्वाजा वसीम जान वगैरह पिता इफतेखार जान
महापुर / 517	90/1	38	267	1.64	ख्वाजा वसीम जान वगैरह पिता इफतेखार जान

(अनुलग्नक-6)

5. तत्पश्चात् उपरोक्त चकबन्दी खतियान के विरुद्ध वादी क्रमशः सुशिला देवी, चूरिया देवी व आलोक कुमार में चकबन्दी अधिनियम की धारा 10 (B) के तहत वाद संख्या 43/1990 (जबकि संशोधित खतियान पर केश नं० 39/1990 दर्ज है।) द्वारा अपने नाम से खाता सुधार करने का आदेश प्राप्त करवाते हुए संशोधित खतियान बनवाया गया है। (जिसके अभिलेख के रूप में अंचल कार्यालय, आमस गया में सिर्फ आदेश कॉपी प्राप्त होता है अन्य साक्ष्य नहीं)

(अनुलग्नक-7)

जिसके अनुसार इसका विवरण निम्न प्रकार है :-

मौचा / थाना नं०	चक खाता नं०	चकप्लॉट नं०	रकवा ए० डी०	किस्म जमीन	डिमांडधारी का नाम
महापुर / 517	82/42	267	23.00	भीठ	सुशिला देवी, पति युगल पासवान वो चूरिया देवी, पति- विसुनदेव यादव वो आलोक कुमार, पिता - अशोक कुमार
महापुर / 517	38/42	244	1.64	भीठ	सुशिला देवी, पति युगल पासवान वो चूरिया देवी, पति- विसुनदेव यादव वो आलोक कुमार, पिता - अशोक कुमार

(अनुलग्नक-8)

6. तत्पश्चात्- 25/07/2017 के उपरोक्त डिमांडधारी (ख्वाजा वसीम जान वगैरह पिता - इफतेखार जान) द्वारा क्लीयर टेक लिमिटेड को 23.06 ए० भूमि चक खाता - 38/14 चक प्लॉट - 267/71 रकवा - 23.06 केवाला के माध्यम से बिक्री किया गया है।

(अनुलग्नक-9)

जिसका दाखिल खारिज केश नं०- 573/2019-20 के द्वारा क्लीयर टेक के नाम पर जमाबंदी



कायम हुआ।
जमाबंदी का विवरण निम्न प्रकार है :-

मौचा / थाना नं०	डिमांड नं०	खाता नं०	प्लॉट नं०	रकवा ए० डी०	डिमांडधारी का नाम
महापुर / 517	11/3	38	267	23.06	क्लीयर टेक फार्मिंग प्रा० लि० पंचवटी अपार्टमेंट शास्त्री नगर पटनास निर्देशक श्यामकिशोर प्रसाद पिता- देवनन्दन प्रसाद

(अनुलग्नक-10)

7. पुनः दुसरी तरफ संशोधित खतियानधारी (सुशिला देवी, पति युगल पासवान वे चुरिया देवी, पति- विसुनदेव यादव वो आलोक कुमार, पिता - अशोक कुमार) द्वारा सुयक्तरूप से दिनांक - 30/08/2019 को क्रेता विन्देश्वरी प्रसाद यादव को चक खाता सं०-82 /42 चकप्लॉट सं०-267 रकवा 23.00 ए० भूमि वजरीय केवाला नं०-6724 दिनांक - 30/08/2019 के माध्यम से बेचा गया।

(अनुलग्नक-11)

जिसका दाखिल खारिज केश नं०- 564 /2019-20 के द्वारा क्रेता के पक्ष में किया गया। तत्पश्चात जमाबंदी का विवरण निम्न प्रकार है: -

मौचा / थाना नं०	खाता नं०	प्लॉट नं०	रकवा ए० डी०	डिमांड नं०	डिमांडधारी का नाम
महापुर / 517	82/42	267	23.00	5/3	विन्देश्वरी प्रसाद यादव, पिता - बुद्धुदेव प्रसाद यादव

(अनुलग्नक-12)

वर्ष 2022 में दोनो पक्षों के बीच दखल कब्जा संबंधित विवाद बाने पर दोहरी जमाबंदी का मामला प्रकाश में आया।

पहले पक्ष का जमाबंदी निम्न प्रकार है :-

मौचा / थाना नं०	डिमांड नं०	खाता नं०	प्लॉट नं०	रकवा ए० डी०	डिमांडधारी का नाम
महापुर / 517	11/3	38	267	23.06	क्लीयर टेक फार्मिंग प्रा० लि० पंचवटी अपार्टमेंट शास्त्री नगर पटनास निर्देशक श्यामकिशोर प्रसाद पिता- देवनन्दन प्रसाद

द्वितीय पक्ष का जमाबंदी निम्न प्रकार है :-

मौचा /	खाता नं०	प्लॉट नं०	रकवा ए०	डिमांड नं०	डिमांडधारी
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थाना नं०			डी०		का नाम
महापुर / 517	82/42	267	23.00	5/3	विन्देशवरी प्रसाद यादव, पिता – बुद्धुदेव प्रसाद यादव

तत्पश्चात् कार्यालय अंचल अधिकारी आमस के पत्रांक- 595/सा० दिनांक 23.06. 2023 के माध्यम से अपर समाहर्ता गया के न्यायालय में जमाबंदी रद्दीकरण संबंधित वाद भेजा गया। जो अभी विचाराधीन है। (अनुलग्नक-13)
वर्तमान में स्थल पर पीलर पाईलिंग का कार्य किया गया जो लोगो के द्वारा, पुछ-ताछ करने पर बताया गया कि पाईलिंग के साथ लोहाजाली से घेराबन्दी विन्देशरी प्रसाद यादव के वंशजो के द्वारा किया गया है जिसपर विन्देशवरी प्रसाद यादव के वंशजों का दखल कब्जा है।

विश्वासभाजन

ह०/-
अंचल अधिकारी
आमस (गया)''

**No record of Consolidation Case No.43/1990
available in the office**

13. This Court having gone through the materials placed before this Court by the Circle Officer, called upon him to say as to whether copy of the application of Sushila Devi, Churiya Devi and Alok Kumar filed under Section 10(B) of the Bihar Land Consolidation of Holdings and Prevention of Fragmentation Act, 1956 (hereinafter referred to as the 'Consolidation Act') is/are on the record? The Circle Officer says that no such record is available. This Court thereafter called upon him to say that whether service report of the notice to the opposite parties in the consolidation proceeding is available on the record? The answer is that no copy of the service report is on the record. It has been pointed out by



learned senior counsel for the petitioner that in the order dated 23.02.1990 of Case No.43/1990 (Khata Sudhar) it is stated that the applicant in support of their case produced a *Hukumnama Bandobasti* issued by the ex-landlord Babu Abdul Gani Khan for land measuring 42 acres and the raiyat is Aklu Dangi, son of Chulhan Dangi. The applicant Alok Kumar said in course of enquiry that Aklu Dangi was his grandfather who had been given the *Hukumnama Bandobasti* by the ex-landlord. His grandfather had taken some loan from the ancestors of Sushila Devi and Churiya Devi which could not be returned, therefore, he was persuaded to get the name of Sushila Devi and Churiya Devi entered in the records whereafter he got right to plough 23 acres of land. There were other co-sharers with whom there was a compromise with respect to 24 acres 64 decimal of land. It is stated that except the oral statement of Alok Kumar recorded in the order dated 23.02.1990 said to have been passed in the consolidation proceeding (Section 10B), there is nothing on the record to verify these facts. A revised *khatiyani* was prepared under Section 10(B) of the Consolidation Act in Case No.43/1990 and it has been shown in the order dated 25.02.1990 that vendor of the petitioner namely Khawaja Sahib Jan was present that day and had conceded in favour of the



three persons namely Sushila Devi, Churiya Devi and Alok Kumar. It is pointed out that in 1990 when Alok Kumar is said to have made the statement as recorded in the order dated 23.02.1990 of Case No.43/1990, his age would be of five years. The age of Churiya Devi would come to 17 years only and this fact may be verified from the sale deed dated 30.08.2019 executed by them in favour of respondent no.8. In the said sale deed they have mentioned their age as 46 years and 34 years respectively. The Circle Officer, Aamas has in fact admitted in this Court that except the ordersheet of Case No.43 of 1990 whereunder a revised *khatiyān* was ordered to be prepared, there is no other document available in his office.

Stand of respondent no.8

14. In this case, respondent no.8 has filed a counter affidavit. It is the stand of the respondent no.8 that the petitioner has not approached this Court with clean hands. It has not been disclosed that a case bearing No.1 of 2023-24 has been filed by the petitioner for cancellation of Jamabandi created in favour of the father of respondent no.8. It has not been disclosed that there exists a mutation dated 27.05.2020 in favour of the father of respondent no.8. The respondent no.8 has contested the writ application on the ground that a writ



application for restoration of possession of the petitioner and dispossession of respondent no.8 would not be entertainable, if not maintainable.

15. Mr. Lalit Kishore, learned senior counsel representing the respondent no.8 has argued that it is a case involving dispute of title and possession which may be adjudicated by a civil court of competent jurisdiction.

16. It is the stand of respondent no.8 that his father late Bindeshwari Prasad Yadav had purchased the land vide sale deed no.6724 dated 30.08.2019 and prior to the execution of the registered sale deed a site investigation report was issued by the Circle Officer, Aamas (Gaya) through letter no.549 dated 11.07.2019. According to this report, the mutation existed in favour of the vendors who were also said to be in possession of the land under consideration. The land possession certificate dated 16.11.2018 was issued in respect of the land under consideration in favour of Sushila Devi. Subsequent to the sale deed, mutation was done in the name of late Bindeshwari Prasad Yadav on 27.05.2020 in Mutation Case No.564/R27/2019-2022. It is his stand that the respondent no.8 has been in possession of the land much before the alleged date of dispossession i.e. between 30.01.2023 to 06.02.2023.



17. It is further stated that no alleged incident has taken place and the FIR has been registered without any basis, the land belongs to and is in possession of the respondent no.8. It is his submission that to his knowledge, no evidence could be found against the respondent no.8. It is further stated that the petitioner has indulged in criminal offence by disturbing the possession of respondent no.8 and for this purpose a FIR being Aamas P.S. Case No.148 of 2023 dated 23.04.2023 has been registered for the offences under Sections 341, 323, 379, 386, 387, 461, 468, 471 and 120B of the Indian Penal Code and Section 3(1)(r)(s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'SC/ST Act'). The case has been lodged by one Jugal Paswan, husband of Sushila Devi (vender of the land in favour of father of respondent no.8).

18. Learned senior counsel for the respondent no.8 has sought to distinguish the judgment of this Court in the case of **Harrison Continental Pvt. Ltd.** (supra) by submitting that Harrison was an admitted case of possession of the petitioner over the property but in the present case there is a dispute over title and peaceful possession of the petitioner, hence, the present case would require determination of an existing



executable right in favour of the petitioner. It is also submitted that the petitioner had earlier approached this Court in Cr. Misc. No.57086 of 2023 which was withdrawn after some arguments.

Consideration

19. Having heard learned senior counsel for the parties, the learned AC to AAG-3 for the State and the Circle Officer, Aamas, at this stage, this Court would form the following opinion:-

It is certainly a case in which both the parties are claiming their title and possession over the 23 acres 6 decimals of land in question based on their own respective records. The facts of the case are not similar much less identical to the case of **Harrisons Continental Pvt. Ltd. (*supra*)**.

The materials which have been placed on the records are showing that there are serious allegations of forgery and fabrication of records in the Circle Office, Aamas and in the Consolidation Office, Aamas where the exercise for preparation of *chakbandi khatiyani* and revised *khatiyani* were taken up. It is evident from the report of the Circle Officer, which has not been disputed by the parties, that in the *Jamabandi* Register which was prepared on the basis of the return submitted by the



ex-landlord/Jamindar in the year 1956, the name of Khwaja Iftikhar Jan appears. According to the Circle Officer, the Sub-Divisional Officer, Gaya had fixed the rent in the year 1956 itself *vide* Case No. 07/1955-56, for the land measuring area 100.37 acre.

During 1989 consolidation proceeding, from the cadastral survey Plot No. 60 and 71, two plots bearing number 267 and 244 were carved out and *chakbandi khatiyani* was prepared showing Chak Khata No. 38, Chak Plot No. 267, area 23.06 acre, the name of the *Raiyat* has been shown as Khwaja Wasim Jan and others, son of Iftikhar Jan. On the basis of said *Chakbandi Khatiyani*, a *Jamabandi* was also created by Demand No. 90/1 in the name of Khwaja Wasim Jan.

At this stage, on the basis of an application by way of objection under Section 10(B) of the Consolidation Act submitted by one Sushila Devi, Churiya Devi and Alok Kumar, an order sheet is showing existence of Case No. 43/1990 in which there is a direction to rectify the *khata* and prepare a revised *khatiyani*. On the basis of the said order sheet, a revised *khatiyani* has been prepared showing Chak Khata No. 82/42, Chak Plot No. 267 measuring area 23 acre and it has been shown in the name of Sushila Devi, wife of Yugal Paswan,



Churiya Devi, wife of Vishundev Yadav and Alok Kumar, son of Ashok Kumar. Surprisingly, the Circle Officer has observed that on the revised *kahtiyān*, the case number mentioned is 39 of 1990 and not 43 of 1990.

As recorded hereinabove, the Circle Officer, Aamas has categorically stated that in the records of the Consolidation Office/Circle Office, save and except the copy of order sheet of Case No. 43 of 1990, there is no other material at all. Without prejudice to the case of respondent no.8, it is observed that this is a highly suspicious kind of document and the whole case of respondent no. 8 rests upon it. Respondent No. 8 has though tried to demonstrate that it is a case of civil dispute alone but this Court is of the considered opinion that the kind of materials and the stand of C.O., Aamas present on the record, those are clearly showing that this case is required to be investigated taking note of the fact that how order sheet of Case No. 43 of 1990 has been prepared without there being any document showing that there was any application under Section 10(B) of the Consolidation Act. The genuineness of the order-sheets and other materials are liable to be seriously investigated and taken to a logical end. The issue of title and possession may be adjudicated separately by a competent civil



court.

20. It is well settled that in an appropriate case a civil as well as criminal proceeding can go together. Reference in this regard may be made to the judgment of the Hon'ble Supreme Court in the case of **Rajesh Bajaj Vs. State NCT of Delhi and Ors.** reported in **(1999) 3 SCC 259**.

21. The respondent no.4 has filed a counter affidavit in this case. In his counter affidavit, he has stated that after examination of the witnesses, inspection of place of occurrence and consideration of documents submitted by both the parties, Aamas P.S. case number 148 of 2023 has been found to be untrue while Aamas P.S. Case No. 144 of 2023 has been found true under Section 147, 149, 341, 323, 387, 504 and 506 IPC against 10-15 unknown persons and the accusation against the named accused persons of Aamas P.S. Case No. 144 of 2023 is subject to further investigation. The respondent no.4 has further stated in paragraph '19' of the counter affidavit that no evidence regarding possession of accused persons on the land in question has been found, however, the witnesses of Aamas P.S. Case No. 144 of 2023 have failed to identify the culprit by name and upon technical investigation and obtaining CDR of mobile numbers of named accused persons, their location could



not be traced near place of occurrence on the alleged date and time of occurrence i.e. 30.01.2023 at about 11 AM. According to him, this case is that of a land dispute.

22. Having regard to the entire materials on the record while this Court is of the considered opinion that the parties be left free to seek their remedies before appropriate court with respect to the issue of title and possession, the manner in which revised *khatiyān* has been prepared showing Case No. 39 of 1990 but a bare order sheet of Case No. 43 of 1990 has been produced before this Court without there being any record to support the basis of the initiation of the proceeding, it smacks forgery and fabrication of the records. Involvement of the officials engaged in the work of consolidation, preparation of *khatiyān* and revised *khatiyān* are required to be enquired into. How two mutation cases were opened and the competent authority in the Circle Office allowed mutation in favour of both the parties are prima-facie some of the questions which are to be resolved after conducting appropriate enquiry/investigation. It has been submitted that the so-called vendors, namely Sushila Devi, Churiya Devi and Alok Kumar are either non-existent persons or they have been set up by respondent no.8 for making forged documents. The



sale deed in favour of father of respondent no.8 mentions the age of Alok Kumar as 34 years on 30.08.2019, therefore in the year 1990, he was about five years of age and similarly Churiya Devi, whose age has been shown as 46 years in 1990 would have been only 17 years of age on 05.03.1990 when the order for preparation of revised *khatiyān* was passed. It has also been shown that at the time of registration of sale deed in the year 1990 the PAN card was required to be produced by the purchaser and seller because income tax is required to be deducted at source. In the PAN card, the age of parties to the sale deed are mentioned but in the present case even though the PAN number of father of respondent no.8 is mentioned but there is no mention of PAN card of any of his vendors. No Aadhar number of the vendors is anywhere mentioned, therefore, it has been submitted that it is a case of forgery and fabrication of records in the Office of Sub-Registrar, Aamas. It has also been stated that the sale deed mentions payment of a consideration amount of Rs. 1,26,80,000/- vide different cheques but this also seems to be highly suspicious and requires verification because the PAN number of the so-called persons who are said to have been paid are missing and there is no mention of deduction of one percent income tax at source on



the sale consideration.

Directions

23. The Investigation of Aamas P.S. Case No. 144 of 2023 be handed over to a better equipped agency of the State. Since it requires investigation as to the role of various officials of the State involved in the Consolidation Office, Circle Office, Aamas and Office of the Sub-Registrar, Aamas, in the District of Gaya, D.G.P., Bihar is directed to get the entire matter investigated through a SIT headed by an officer of repute in the Economic Offences Unit, within a reasonable time. For this purpose, the D.G.P., Bihar shall be the competent authority to pass such other order/orders as may be required to unveil the truth. The Senior Superintendent of Police, Gaya is directed to maintain law and order on the spot/land in question and unless and until an order of adjudication as to right, title and possession or an appropriate order is passed by a court of competent jurisdiction/competent authority in accordance with law neither party shall be allowed to go on the land in question.

24. It is made clear that the observations whatsoever made in this order are only for the purpose of this case and in case any of the parties approaches the civil court of competent jurisdiction for appropriate relief, the same will be considered



by the court concerned without being influenced by the observations of this Court.

25. This application stands disposed of.

(Rajeev Ranjan Prasad, J)

arvind/-

AFR/NAFR	
CAV DATE	06.02.2024
Uploading Date	20.03.2024
Transmission Date	20.03.2024

