

HIGH COURT OF JUDICATURE AT PATNA

Bench: Justice Anil Kumar Sinha

Date of Decision: 03-11-2023

Criminal Writ Jurisdiction Case No.623 of 2023

Arising Out of PS. Case No.- Year-0 Thana- District- Saran

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AIR COMMODORE RANDHIR PRATAP (RETD.), S/O LATE SHRI VISHWANATH SINGH, R/O AMNOUR HAR NARAYAN, P.O- AMNOUR, P.S- AMNOUR, DISTT.- SARAN, BIHAR, PIN-841401. PRESENTLY RESIDING AT B-804, EXOTICA ELEGANCE, PLOT NO. 9A, MALL ROAD, AHINSA KHAND 2, P.S.-INDRAPURAM, DIST- GHAZIABAD, UTTAR PRADESH, PIN-201014,

... .. Petitioner/s

Versus

1. THE UNION OF INDIA THROUGH SECRETARY, MINISTRY OF HOME AFFAIRS, NORTH BLOCK, NEW DELHI
2. THE STATE OF BIHAR THROUGH THE CHIEF SECRETARY, PATNA BIHAR
3. THE DIRECTOR GENERAL, CENTRAL RESERVE POLICE FORCE, BLOCK NO-1, C.G.O, COMPLEX, LODHI RAOD, NEW DELHI-110003
4. THE DIRECTOR GENERAL OF POLICE, BIHAR POLICE SARDAR PATEL BHAWAN, NEHRU MARG, PATNA-800023.
5. THE SUPERINTENDENT OF POLICE (SARAN) OFFICE COLLECTORATE SARAN, CHAPRA, BIHAR-841301
6. THE STATION HOUSE OFFICER, THANA AMNOUR P.S AMNOUR, CHAPRA, SARAN, BIHAR-841401.
7. SHRI RAJIV PRATAP RUDY, S/O LATE SHRI VISHWANATH SINGH, R/O VILLAGE- AMNOUR, HARNARAYAN, P.O AND P.S- AMNOUR, DISTT.- SARAN, BIHAR-841401 PRESENTLY RESIDING AT 21, TUGHLAQ CRESCENT, NEW DELHI.
8. THE DISTRICT MAGISTRATE, SARAN, AT CHAPRA, CHAPRA

... .. Respondent/s

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Legislation:

Articles 14, 19, 21 of the Constitution of India,

Section 6 of the Specific Relief Act, 1963

Order XXXIX Rules 1 and 2 of the Civil Procedure Code (CPC)

Subject: Alleged misuse of Central Reserve Police Force (CRPF) personnel by a sitting Member of Parliament (respondent no. 7) against the petitioner, a retired Air Commodore, in a family property dispute leading to the denial of access to his ancestral home. The case addresses the invocation of the High Court's writ jurisdiction in the context of alleged violations of fundamental rights and property rights within a family dispute.

Headnotes:

Writ Jurisdiction – Misuse of CRPF personnel for personal disputes – Retired Air Commodore denied access to ancestral home by CRPF personnel at the behest of respondent no. 7, a sitting MP and petitioner's brother – Allegations of fundamental rights violation under Articles 19 & 21 – Writ jurisdiction invoked for redressal. [Para 1-3]

Property Rights – Assertion of joint possession in ancestral property – Filing of partition suit for ancestral properties – Family dispute leading to denial of entry into ancestral home – Dispute over the possession and claim of family arrangement by respondent no. 7. [Para 4-6, 47-49]

Security Personnel Conduct – Allegations against CRPF personnel for obstructing petitioner's entry into property – CRPF's duty to secure 'Z' category protectee's residence – Sentry's polite refusal to allow entry without a key as per security protocol. [Para 16-20, 50-52, 70-73]

Legal Remedy – Maintainability of writ petition in property disputes – Alternative remedies under civil law – High Court's extraordinary jurisdiction not to be used for property disputes resolvable under general law. [Para 28, 60-67]

Fundamental Rights – Claim of violation of dignity and fundamental rights – No conclusive evidence of dignity violation by CRPF or respondent no. 7 – Family property dispute to be resolved under civil jurisdiction, not under writ. [Para 68-77]

Decision – Dismissal of writ application due to the existence of a bona fide property dispute among family members – Availability of alternative remedies – No fundamental rights violation established warranting interference in writ jurisdiction. [Para 74-77]

Referred Cases:

- Kuldip Mahaton and Others v. Bhulan Mahato (dead) by LRS. and Others, reported in (1995) 2 SCC 43
- State of Uttarakhand and Another v. Mandir Sri Laxman Sidh Maharaj, reported in (2017) 9 SCC 579
- Adivappa and Others v. Bhimappa and Another, reported in (2017) 9 SCC 586
- Kaushal Kishore v. State of Uttar Pradesh and Others, reported in (2023) 4 SCC 1
- Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Cooperative Housing Society, Jaipur and Others, reported in (2013) 5 SCC 427
- Indibly Creative Private Limited and Others v. Government of West Bengal and Others, reported in (2020) 12 SCC 436
- Radha Krishan Industries v. State of Himachal Pradesh and Others, reported in (2021) 6 SCC 771
- Ravinder Kaur Grewal and Others v. Manjit Kaur and Others, reported in (2019) 8 SCC 729
- Mohan Pandey v. Usha Rani Rajgaria (Smt.), reported in (1992) 4 SCC 61
- Roshina T. v. Abdul Azeez K.T., reported in (2019) 2 SCC 329
- Sri Lakshmi Narayan Trust v. State of Bihar, reported in 2017 (3) PLJR 484
- Thansingh Nathmal v. The Superintendent of Taxes, Dhubri and Other (AIR 1964 SC 1419)
- Bhagwat Sharan v. Purushottam, reported in (2020) 6 SCC 387
- Dwarka Prasad Agrawal v. B. D. Agrawal, reported in (2003) 6 SCC 230

Representing Advocates:

For the Petitioner/s: Ms. Aparajita Singh, Sr. Adv., Mr. Sanjiv Singh, Mr. Ashish Jha, Mr. Dhananjay Kumar Tiwary, Mr. Karandeep Kumar, Mr. Priyesh Kumar

For the State: Mr. Kumar Alok, SC 7, Mr. Rakesh Kumar, AC to SC 7

For the Union of India: Mr. Krishna Nandan Singh, A.S.G., Mr. Praveen Kumar Sinha, Sr.C.G.C., Mr. Amarjeet, AC to A.S.G.

For Respondent No. 7: Mr. Jitendra Singh, Sr. Adv., Mr. Mrigank Mauli, Sr. Adv., Mr. Sanket, Mr. Isshan Singh

JUDGMENT AND ORDER

C.A.V.

Date : 03-11-2023

The petitioner, who is a retired Air Commodore, has invoked the extra-ordinary criminal writ jurisdiction of this Court with a grievance that he has been denied access to his own ancestral house by the C.R.P.F. personnel, deployed in the security of respondent no. 7 and on his behest, the C.R.P.F. personnel restrained/obstructed the petitioner and his wife from entering into his ancestral home, situated at village Amnour, in the District of Saran. The respondent no. 7 is a sitting Member of Parliament from Chapra, Saran, and is also the own brother of the petitioner.

2. The petitioner has prayed for the following reliefs:(i) For declaring the acts of the C.R.P.F. personnel deployed for the security of the Respondent No.7 in forcibly restraining/obstructing the Petitioner from ingress and egress to his residential ancestral home in Village- Amnour Harnarayan, P.O. + P.S.- Amnour, District- Saran, Bihar 841401 on 25.12.2022 at the behest of Respondent No.7, as illegal and unconstitutional being violative of the fundamental rights of the Petitioner guaranteed and protected under Articles 19 & 21 of the Constitution of India;
- (ii) For restraining the Respondents Authorities/ Officers/ its personnel or anyone on their behalf particularly the Respondent No.3 and Respondent No.4 its officers/personnels from interfering with the enjoyment, possession and egress and ingress to his ancestral house situated in Village- Amnour Harnarayan, P.O. + P.S.- Amnour, District Saran and residential house situated at Shivanandan Bhawan, Nageshwar Colony, Boring Road PS-Budha Colony, Town and District Patna, Bihar 800001. (iii) For direction to the Respondent Nos 4 to 6 to register the FIR in view of the Complaint dated 25.12.2022 and 26.12.20222 filed by the Petitioner before the P.S.- Amnour, District Saran, Bihar 841401. (iv) For directing the Respondent Authorities/ Officers to provide adequate security with regard to the property situated in Patna at Shivanandan Bhawan, Boring Road, Nageshwar Colony, PS-Budha

Colony, Town and District Patna, Bihar 800001 and at Amnour Village- Amnour Harnarayan, P.O. + P.S.- Amnour, District- Saran, Bihar 841401;

(v) To Direct the Respondents to pay compensation for violating the fundamental rights of the Petitioner guaranteed and protected under Articles 14, 19 & 21 of the Constitution of India for the illegal, wrongful and tortious acts of the CRPF personnel deployed in the security of the Respondent No.7 by obstructing, intimidating and restraining the Petitioner and his wife from entering his ancestral home on 25.12.2022 and causing immense trauma and agony (both mental and physical) for which the quantum of compensation may be decided by this Hon'ble Court, and also the State and its officers who are under obligation and duty to protect and ensure enjoyment of the fundamental rights and holding them liable jointly and severally for which the quantum of compensation may be decided by this Hon'ble Court;

(vi) For direction to the Respondent No.1 and 2 for initiating an inquiry against the erring C.R.P.F. personnel and officials deployed in the security of the Respondent No.7 on 25.12.2022 in accordance with law in the facts and circumstances of the case; (vii) For any other relief/reliefs if petitioner found entitle in the facts and circumstances of the present case.

3. The brief facts, giving rise to the present writ petition, is that the petitioner is a retired Air Commodore from Indian Air Force and is a war veteran, having participated, amongst others, in India-Pakistan War of 1971 and Kargil war of 1999. He was awarded with 'Vishisht Seva Medal' by the President of India for his extra-ordinary service to the nation. He retired in the year 2007-08 and thereafter he worked in the private airlines and was finally appointed as Flight Operations Inspector, Civil Aviation, Government of India from where he retired in the year 2020.

4. As claimed by the petitioner, he, along with his two younger brothers, including respondent no. 7, was in joint possession of the ancestral house at Amnour, in the district of Saran. The petitioner used to frequently visit, along with his other family members, the ancestral house at Amnour, as well as at Patna house. After the demise of the mother of the petitioner, on 25.09.2022, when the petitioner, on 21.11.2022, visited the ancestral house at Amnour, it came as utter shock when he saw the defiant attitude and strange behaviour of the caretaker. The petitioner then put an additional lock over the existing lock in his room and informed about it to the respondent no.

5. As *inter se* dispute arose between the co-sharers, including the respondent no. 7, the petitioner filed a partition suit, bearing Title Partition Suit No. 728 of 2022, on 28.11.2022, before the Sub-Judge 1, Saran at Chapra,

for partition of the ancestral properties, including the ancestral house situated at Amnour and also the house situated at Patna.

6. After filing of the partition suit, on 25.12.2022, when the petitioner, along with his wife, visited his ancestral house at Amnour, the C.R.P.F. personnel deployed over there, at the behest of respondent no. 7, restrained the petitioner and his wife from entering into his ancestral house. However, by the intervention of the Station House Officer, Amnour Police Station, the petitioner was given entry into one of the rooms, wherein he put his luggage and went to the Police Station to register a complaint for wrongful restraint, mischief and criminal intimidation. At about 06:30 PM, when the petitioner returned to his ancestral house, he was surprised to see that his luggage was thrown out.

7. The petitioner, along with his wife, was standing at gate with luggage in front of all the villagers assembled there. The petitioner informed about the same to the Station House Officer again, but this time, the Station House Officer showed his helplessness. When the petitioner inquired from the C.R.P.F. about the luggage having been thrown out, then they just said that they do not have any idea about the happenings inside the house. The petitioner, having no option, left that place feeling humiliated and cruelly mocked.

8. The petitioner thereafter on 26.12.2022, at 12:28 AM, in the night, made a written complaint to the Station House Officer, through Whatsapp message and similar communications were sent, via mail, to the District Magistrate and Superintendent of Police, Saran, in the later hours. The petitioner also wrote letter to the Director General of Police, Bihar, Patna, narrating all the facts and events.

9. After exhausting all the remedies, the petitioner has filed the present writ for the harassment and humiliation suffered by him.

10. Per contra, the respondent no. 7, who happens to be the own brother of the petitioner, and is the sitting Member of Parliament from Chapra, has filed counter affidavit, *inter alia*, stating therein that the writ application filed by the petitioner is frivolous and is based upon misconstrued, distorted, incorrect and suppressed facts and is a ploy with the sole intention to grab the possession and control over the land/house of respondent no. 7. The writ petition does not narrate the correct facts and has been filed on the half baked facts/truth inasmuch as the claim of the petitioner is not only baseless and false, but contrary to family arrangement arrived by all the family members

and was acted upon by all the parties for years together. The present writ application, in garb of restraining the petitioner and his wife and the alleged obstruction by the C.R.P.F. personnel of the respondent no. 7 from entering into the ancestral house at Amnour, is nothing, but a ploy by the petitioner to create semblance of co-possession, but the fact is that there was none. The petitioner, prior to filing of the present writ application, has already filed Title Partition Suit No. 728 of 2022, not only against respondent no. 7, but also against the brother of respondent no. 7, excluding the sisters of the respondent no. 7 qua supposed claim as to share in the ancestral properties.

11. The family patriarch, Late Vishwanath Singh and his wife Late Prabha Singh, have three sons, namely, Randhir Pratap (petitioner), Sudhir Pratap Singh and Rajiv Pratap Rudy (respondent no. 7) and two daughters, namely, Chitra Singh and Rekha Singh. During the lifetime of their parents, substantial properties were inherited by them as well as self acquired by them in their individual capacity. Late Vishwanath Singh expired long back in the year 1965; whereas, the mother of the respondent no. 7 as well as the petitioner expired on 25.09.2022. All sons and daughters of Late Vishwanath Singh and Late Prabha Singh are well placed and doing well in their lives.

12. In the aforementioned background the siblings, amongst themselves, while their mother was alive, entered into a family arrangement, according to which respondent no. 7 was given the house at Amnour and to further develop the same as per his requirements since he was the only sibling residing at the native place permanently and is also a public representative, i.e., Member of Parliament from Saran Constituency.

13. The respondent no. 7 has permanently been residing in the ancestral house, at Amnour and had been hosting all the family members whenever they visit the native village on occasions of importance and family functions. During all these years, the respondent no. 7 has invested his own money to develop the property as per his requirements and no one, prior to the present set of events, has ever objected him to construct and/or expand the said house on it being made available to him and entrusted to his exclusive possession for personal and official use.

The respondent no. 7 was in exclusive possession of the ancestral house at Amnour, as per the family arrangement.

14. During all these years, the respondent no. 7 has been in possession over the ancestral house at Amnour as well as Patna. During his long public life, the respondent no. 7 received serious threat to his life and

property from different quarters and particularly, from naxals. The Police and the Intelligence Department, after assessing the threat perception, provided security to the life and property of the respondent no. 7, which constituted of both, the C.R.P.F. as well as the Bihar Police.

15. A separate counter affidavit has been filed by the C.R.P.F., i.e. respondent nos. 1 and 3, stating therein that 'Z' security cover for Bihar was provided to the respondent no. 7 and a security team is deployed to guard his ancestral residence, at Amnour, with effect from 03.03.2021.

16. The petitioner, elder brother of respondent no. 7, came to the ancestral house, at Amnour, along with his wife and attempted to break the lock of the main gate of that house. The Sentry, deployed there, did not identify the petitioner and he stopped him from breaking the lock of the main gate of the house. As per routine, the sentries deployed there are changed after some interval.

17. After enquiry, it came to light that the Sentry requested the petitioner to open the door of the house by opening the lock by key and not by breaking the lock. As per the security guidelines, certain degree of access control is to be exercised with no unexpected visitors are allowed without clearance by the protectee or his family members. Since the respondent no. 7 (protectee) was out of station, so the Sentry made an enquiry for his identification. In the evening of same day, the petitioner came back to his residence and enquired from the Sentry as to why his belongings were kept outside the room. In the meantime, the Sentry, deployed there, realized that there is family dispute between the petitioner and the respondent no. 7 (protectee), so the deployed Sentry replied to the petitioner that he had no idea what had happened inside the house and requested him to approach the Station House Officer, Amnour.

18. On 26.12.2022, the petitioner made conversation with Shri Sourav Roy, 2-1/C, 224 Battalion. During the conversation, the petitioner admitted that the Sentry was very polite, extremely nice and replied to him with folded hands. In the conversation, Shri Sourav Roy, 2-1/C, 224 Battalion, also advised the petitioner not to break the lock for entering the house; rather, to enter the house by opening the lock. The C.R.P.F. never obstructed the petitioner from entering into the house, but only emphasized not to break the lock of the door of the house.

19. A separate counter affidavit has been filed on behalf of the respondent no. 5, the Superintendent of Police, Saran, that when the Superintendent of Police, Saran, got knowledge about the present wit

application, he called for a detailed and up-to-date enquiry report from the Sub-Divisional Police Officer, Marhaura, regarding grievances of the petitioner and the Sub-Divisional Police Officer, Marhaura, after due enquiry, submitted his report, vide memo No. 641/sub, dated 10.04.2023. After going through the report submitted by the Sub-Divisional Police Officer, Marhaura, it is crystal clear that there is bonafide dispute of family property between the petitioner, and his brother (respondent no. 7).

20. It has further been stated that the allegation levelled by the petitioner against the police and C.R.P.F. personnel was also enquired and after enquiry, it was found that when the house of the respondent no. 7 was locked, the petitioner tried to break the same for which police personnel deployed there, with full regard, requested him not to do so in absence of Respondent no. 7. It has further been reported that the allegation levelled by the petitioner regarding misbehaviour committed to his wife was also enquired into and the same has not been found true.

21. Ms. Aparajita Singh, learned Senior Counsel, appearing for the petitioner, argued that it is settled proposition of law that possession by anyone of the family members in joint property is possession of all. The act of respondent authorities caused disrespect and humiliation to the petitioner. The grievance against respondent no. 7 is not in the capacity of his brother, but as a public representative, who tames the State machinery and upon is behest, the C.R.P.F. personnel restrained the petitioner from entering into his own ancestral house and caused humiliation to his dignity and self-respect in front of the villagers.

22. The act of the C.R.P.F. personnel, deployed in the security of the respondent no. 7 restraining the petitioner and his wife from entering into his own ancestral house is illegal and have caused agony and have also shattered the dignity of the petitioner. Hence, there is flagrant violation of the fundamental rights of the petitioner, under Articles 14, 19 and 21 of the Constitution of India. The respondent no. 7, being a public representative, has exercised his influence and power to settle personal scores by using Government machinery., She further argued that Army lives and dies by honour and dignity, but the dignity of the petitioner was infringed, which is the part of fundamental right, as held, in the case of **K. S. Puttaswami and Another v. the Union of India and Another**, reported in **(2017) 10 SCC 1**.

23. She further contended that the possession claimed is possession of law and not on facts.

24. In support of her argument, learned Senior Counsel has placed reliance on the decisions of the Supreme Court, in the cases of **Kuldip Mahaton and Others v. Bhulan Mahato (dead) by LRS. and Others**, reported in **(1995) 2 SCC 43**, **State of Uttarakhand and Another v. Mandir Sri Laxman Sidh Maharaj**, reported in **(2017) 9 SCC 579**, **Adivappa and Others v. Bhimappa and Another**, reported in **(2017) 9 SCC 586**, **Kaushal Kishore v. State of Uttar Pradesh and Others**, reported in **(2023) 4 SCC 1**, **Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Cooperative Housing Society, Jaipur and Others**, reported in **(2013) 5 SCC 427**, **Indibly Creative Private Limited and Others v. Government of West Bengal and Others**, reported in **(2020) 12 SCC 436**, **Radha Krishan Industries v. State of Himachal Pradesh and Others**, reported in **(2021) 6 SCC 771** and **Ravinder Kaur Grewal and Others v. Manjit Kaur and Others**, reported in **(2019) 8 SCC 729**.

25. Learned Senior Counsel further argued that any act of omission/commission on the part of public functionary or is done by the Officers, resulting in harm or loss to a person/citizen, then the same may be actionable as a constitutional tort and the respondents are liable to pay compensation for violating the fundamental rights of the petitioner guaranteed and protected under Articles 14, 19 and 21 of the Constitution of India for their illegal, wrongful and tortious act. The C.R.P.F. personnel, deployed in the security of the respondent no. 7, obstructed/ intimidated/restricted the petitioner and his wife from entering into his ancestral house and causing immense trauma and agony for which the quantum of compensation may be decided by this Court.

26. Learned Senior Counsel placed the nomination documents of 2014 election filed by the respondent no. 7, having details of immovable property, wherein the Amnour house has been shown by respondent no. 7 as ancestral house and also the nomination documents of 2019 Election to show that it is completely silent about the house at Amnour and only house of Patna has been shown therein.

27. She further argued that there is presumption that the property in Hindu family is joint unless otherwise shown. The nomination and other documents show that the property, in question, is joint and denial of access to the petitioner in his ancestral house, which is still a joint property, is impermissible in law.

28. On the other hand, Mr. Jitendra Singh, learned Senior Counsel, appearing on behalf of the respondent no. 7, argued that the present writ application is not maintainable as the petitioner has effective remedy under Order XXXIX Rules 1 and 2 of the C.P.C. and/or under Section 6 of the Specific Relief Act, 1963.

29. He further argued that there are certain facts and chain of events, which are necessary to be brought in the notice of this Court for proper adjudication of the case.

30. The first version of the petitioner regarding the incident is the first complaint before the police, dated 25.12.2022, which was lodged immediately after the alleged restraint by the C.R.P.F. personnel and that the entry was facilitated into one of the rooms by the Station House Officer. The aforesaid complaint states that there was internal dispute between the co-sharers with regard to the ancestral property, but there is no whisper about the intervention of the Station House Officer, facilitating the petitioner to enter into one of the rooms of the ancestral property, at Amnour.

31. The alleged story about facilitation of entry into one of the rooms at the ancestral house, at Amnour, by the Station House Officer and thereafter the luggage being thrown out is just false and cooked story to make up this case. It has not been brought on record that whether the Station House Officer facilitated entry of the petitioner by breaking the lock of the main gate or the Station House Officer arranged for the keys. There is no such evidence or facts on record.

32. He further argued that the petitioner was stopped by the State security officials as he was trying to get forceful entry into the ancestral house, at Amnour, by breaking the lock. The officials present there, with utmost respect, humbleness and politeness, requested the petitioner, taking into consideration his status, that he should not break the lock. The C.R.P.F. has also supported the said narration which has not been denied by the petitioner.

33. Annexure 7 is the transcript of the conversation held between Shri Sourav Roy, 2-1/C, 224 Battalion, and the petitioner to show that Shri

Sourav Roy, 2-1/C, 224 Battalion, told the petitioner not to break the lock but to open it by key.

34. Learned Senior Counsel, then, contended that on one hand, the petitioner tried to get forcible entry into the house, in question, by breaking the lock and on the other hand contends that his dignity was shattered. If the situation was such that the lock was being broken, then two things can be clearly inferred,

(a) The petitioner was not in possession because had he been in possession, then he would certainly have the keys, and

(b) there is no question of dignity being vandalized as there are no supporting facts to show as to how dignity of the petitioner was lost.

35. The fact of applying an additional lock on 21.11.2022 is nowhere discussed in the complaint filed before the police on 25.12.2022. There is no whisper as to what happened to the additional lock. Even if the said story of the petitioner is taken to be true, it shows that till that specific day, he had no possession. It is clear that he had no access in any of the rooms as no room was assigned to him. The case is not that the petitioner was dispossessed, but the case of the petitioner is that he was denied ingress and egress.

36. He further argued that the respondent no. 7 has got the house, in dispute, by family arrangement in the year 2015, i.e during the life time of his mother, which was never

disputed/challenged till the mother of respondent no. 7 was alive.

He relied upon the electricity bills and phone bills, which is part of R/7/1 series, in order to show his possession upon the house, in question. The respondent no. 7 was out of the town on the date of alleged incident.

37. Lastly, he argued that in the partition suit, the petitioner has included all the properties, i.e. self-acquired properties of the co-sharers and the properties, which is not disputed before this Court, but th house, at NOIDA (which is shown as the present address of the petitioner in the writ petition) has not been included. The other brother and sisters, who are necessary parties to this writ application as they could have thrown much light in the matter has not been made parties in this writ petition. The petitioner has attempted a shortcut method by filing the present writ application instead of approaching the Civil Court in the partition suit filed by him. The petitioner in order to show the jointness in possession over the properties has filed this

writ application with an intention to prevail/pre-empt over any order passed in the partition suit.

38. Learned Senior Counsel has relied on the decisions of the Supreme Court, in the cases of **Mohan Pandey v. Usha Rani Rajgaria (Smt.)**, reported in **(1992) 4 SCC 61**, **Roshina T.**

v. Abdul Azeez K.T., reported in **(2019) 2 SCC 329**, **Sri**

Lakshmi Narayan Trust v. State of Bihar, reported in **2017 (3) PLJR 484**, **Thansingh Nathmal v. The Superintendent of**

Taxes, Dhubri and Other (AIR 1964 SC 1419), **Bhagwat**

Sharan v. Purushottam, reported in **(2020) 6 SCC 387** and

Dwarka Prasad Agrawal v. B. D. Agrawal, reported in **(2003) 6 SCC 230**.

39. Mr. Krishna Nandan Singh, learned Additional

Solicitor General, appearing on behalf of the respondent nos. 1 and 3 (C.R.P.F.) argues that the respondent no. 7 is under 'Z' category security cover, wherein the C.R.P.F. personnel deployed at the ancestral house of the respondent no. 7, at Amnour, keeps on changing from time to time and the C.R.P.F. personnel deployed on duty are always respectful and humble, which would be evident from the transcript of the telephonic conversation with the petitioner and Shri Sourav Roy, 2-1/C, 224 Battalion, which has been brought on record by the petitioner himself (Annexure 7).

40. Learned Counsel for the State respondents (respondent nos. 4 to 6) argues that from perusal of first complaint, dated 25.12.2022, it is evident that there is no exact place and time. No cognizable offence is made out from the bare perusal of the complaint, but then also the matter was enquired by the superior authority wherein the alleged allegations levelled by the petitioner were not found true.

41. Learned Senior Counsel for the petitioner, in reply, argued that the reputation of the writ petitioner has been tarnished, as such the argument of respondent no. 7 of alternative remedy is fallacious. The petitioner has the right of possession under the law and as a co-sharer, he has right of entering into the property, but the C.R.P.F. personnel, acting on behalf of the respondent no. 7, who is also a public functionary and is a Member of Parliament, using force and criminal intimidation, violated the right of dignity

of the petitioner. The respondent no. 7, being the member of the joint family and public functionary also failed to discharge his constitutional duty.

42. She further submitted that the petitioner never said that the C.R.P.F. personnel disrespected the petitioner, but the allegation is that they restrained the petitioner from entering into his ancestral house, which is in itself wrong on the part of the respondent authorities (C.R.P.F.). The act of restraining, even if done politely, does not makes the offence less. To give strength to her argument learned Senior Counsel argued that even if a person kills someone by administering sweet poison, then also he will be charged for murder, though done in a peaceful manner. In every Hindu family, there is a presumption of jointness. The respondent no. 7 has falsely alleged that there was previous partition; rather, the true facts are that the respondent no. 7 had earlier denied the suggestion of family arrangement. She reiterated the fact that the property is still in jointness as per the nomination papers filed by the respondent no. 7 on oath. She further submitted that from the pleadings of the respondents, it is evident that respondent no. 7 is claiming adverse possession, but in law, possession by one co-heir is said to be possession by all the co-heirs.

43. On the argument of payment of electricity/telephone bills, she has submitted that it is settled principle of law that even mere mutation in revenue records does not show title of one cosharer. As such, on the basis of payment of electricity/telephone bills, respondent no. 7 cannot claim title. The District Magistrate was under statutory duty as well to protect the senior citizens, which was not followed nor even answered by the respondent. She further submits that even if the wrongdoer is a private person, then also the state has to protect the constitutional right and the contention of the petitioner and the allegations were not traversed by the respondents.

44. I have heard learned Counsel for the parties and have also gone through the materials on record.

45. The short question, which requires consideration by this Court is as to whether the C.R.P.F. personnel deployed in the security of the respondent no. 7, at his ancestral house, at Amnour, who is the brother of the petitioner and a sitting Member of Parliament, have exceeded their call of duty and have tarnished the image/reputation/dignity of the petitioner, who is a retired Air Commodore, by obstructing and restraining him and his wife from entering into his ancestral home, at Amnour.

46. From the facts narrated by the parties, it is not in dispute that the house situates at Amnour, where the petitioner had visited along with his wife on 25.11.2022, is the ancestral property and for the partition of the family properties, including the ancestral house, at Amnour, the petitioner has filed Title Partition Suit No. 728 of 2022 on 28.11.2022, i.e. before the filing of the present writ application. The petitioner is claiming his joint possession over the said property and the respondent no. 7 is claiming that there was a family arrangement during the lifetime of his mother in the year 2015 itself, in which the property/house, situated at Amnour, has been given to respondent no. 7.

47. From perusal of Annexure R7/3 to the counter affidavit filed by respondent no. 7, the elder sister of respondent no. 7 as well as the petitioner, namely, Chitra Singh, wife of Wing

Commander Shambhu Pratap Singh, lodged a complaint before the

Station House Officer, Amnour Police Station, on 21.11.2022, that the petitioner was trying to take possession of the ancestral house and lands forcibly and illegally, which also include the house in question. On 19.11.2022, the respondent no. 7 also informed the Buddha Colony Police Station, at Patna, raising the similar apprehension regarding the house situated at Nageshwar Colony, Patna.

48. Thus, it is evident that prior to the incident, which has allegedly taken place on 25.12.2022, the respondent no. 7 and his elder sister had informed the respective Police Stations, at Amnour as well as Patna, regarding the intention of the petitioner to get the possession over the properties, situated at Amnour and Patna.

49. Thus, it emerges from the fact available on record that there is bonafide property dispute amongst the family members of the petitioner, including his brothers and sisters.

50. The respondent-C.R.P.F., in its counter affidavit as well as argument advanced by learned Additional Solicitor General, has submitted that the C.R.P.F. personnel never obstructed the petitioner nor interfered in their family matter. As a matter of security, the Sentry deployed have to see that all access gates are closed and would not allow any person to enter without his/her identification is established. The Sentry only emphasized the petitioner not to break the lock of the gate and asked him to open the door by the key in order to enter into the house.

51. The petitioner has annexed the transcript of mobile conversation between him and Shri Sourav Roy, 2-1/C, 224 Battalion, and

from perusal of the same, it is evident that the petitioner has told Shri Sourav Roy, 2-1/C, 224 Battalion, during the conversation, that “They did stop me. They obstructed me. I am telling you they were extremely nice, they were very polite, they were with folded hands *Sir humari Naukri ka kya. Mainey Bola ki apne Jawan ki naukri ke upar mein nahi khelonga*. So I stopped at that”.

52. From perusal of Annexure 2 to the writ application, which is a complaint made by the petitioner before the Station House Officer, Amnour Police Station, on the date of incident, on 25.12.2022, it appears that the petitioner has stated that due to internal dispute between the co-owners with regard to the ancestral property and other properties has led to a strained relations between the parties and co-owners. A civil suit has also been filed on 28.11.2022 by the petitioner before the Sub Judge-I, Saran, at Chapra and immediately after filing of the civil suit, various persons, not only trespassed on the private property of the complainant/petitioner, at times at the behest of co-owners and at various other times, unilaterally espousing the cause of co-owners. The C.R.P.F. personnel, who have been deployed for providing security to respondent no. 7, at the behest of their Commandant and on instructions of respondent no. 7, interfered in the internal matters of the family by obstructing the petitioner and his wife from entering their ancestral house. Such deliberate acts of threats, criminal trespass and criminal intimidation to the petitioner and his family members had been committed by various persons at times at the behest of the co-owners and unilaterally also in order that the petitioner after retirement does not enjoy his rights in the ancestral property.

53. In the case of **Adivappa** (supra), relying on the point of presumption of jointness of Hindu family, the Supreme Court, in paragraph 19, has observed that It is a settled principle of Hindu law that there lies a legal presumption that every Hindu family is joint in food, worship and estate and in the absence of any proof of division, such legal presumption continues to operate in the family.

54. The another decision, relied upon by the petitioner, in the case of **Ravinder Kaur Grewal** (supra), is on the proposition that the joint possession/co-owner possession is not presumed to be adverse. Personal law also plays a role to construe nature of possession.

55. In yet another decision relied upon by the petitioner, in the case of **Radha Krishan Industries** (supra), on the ground of maintainability of a writ and availability of alternative remedy, the Supreme Court, in paragraph 27.6, has observed that in cases, where there are disputed questions of fact,

the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with.

56. Learned Senior Counsel for the petitioner also relied on the decision of the Supreme Court, in the case of **Kaushal Kishore** (supra), on the point of constitution tort, seeking relief of compensation for violating fundamental rights of the petitioner. In paragraphs 167 and 168 of **Kaushal Kishore** (supra), the Supreme Court has observed that the Supreme Court and the High Courts have been consistent in invoking constitutional tort whenever an act of omission and commission on the part of a public functionary, including a Minister, caused harm or loss and the courts cannot turn a blind eye but may have to imaginatively fashion the remedy to be provided to persons who suffer injury or loss, without turning them away on the ground that there is no proper legal framework. If as a consequence of such statement, any act of omission or commission is done by the officers resulting in harm or loss to a person/citizen, then the same may be actionable as a constitutional tort.

57. Learned Senior Counsel for the petitioner also placed reliance on the decision of the Supreme Court, in the case of **Kuldip Mahaton** (supra), to bring home a point that one coowner cannot plead adverse possession against another co-owner unless there is an express plea and proof of hostile title asserted to and remained in possession in assertion of that right to the knowledge of the other co-owners. In absence of such a pleading and proof, the finding of the Court that one had acquired the title to the property by prescription is clearly illegal.

58. Yet another decision relied by the petitioner, in the case of **Mandir Sri Laxman Sidh Maharaj** (supra), on the proposition that declaration of ownership rights over the suit property could not be granted to a party on the strength of adverse possession in absence of material on record and beyond the pleadings.

59. Learned Senior Counsel for the petitioner also relied upon the decision of the Supreme Court, in the case of **Indibly Creative Private Limited** (supra), in which the Supreme Court has granted remedial compensation to the petitioners as a consequence of pulling of the films from the theaters where it was screened on 16.02.2019, holding that the petitioners have suffered violation of their fundamental right to free speech and

expression and of their right to pursue a lawful business. This has been occasioned by the acts of commission and, in any event, of omission on the part of the State in failing to affirm, fulfill and respect the fundamental freedoms of the petitioners.

60. On the other hand, learned Senior Counsel for the respondent no. 7 relies upon the decision of the Supreme Court, in the case of **Mohan Pandey** (supra). The Supreme Court, in **Mohan Pandey** (supra), has observed that it has repeatedly been held by this Court as also by various High Courts that a regular suit is the appropriate remedy for settlement of disputes relating to property rights between private persons and that the remedy under Article 226 of the Constitution shall not be available except where violation of some statutory duty on the part of a statutory authority is alleged. The High Court cannot allow the constitutional jurisdiction to be used for deciding disputes, for which remedies, under the general law, civil or criminal, are available. It is not intended to replace the ordinary remedies by way of a suit or application available to a litigant. The jurisdiction is special and extraordinary and should not be exercised casually or lightly.

61. In yet another decision, relied upon by learned Senior Counsel for the respondent no. 7, the Supreme Court, relying on the decision of **Mohan Pandey** (supra), has held, in paragraph 14, as follows:-

“**14.** It has been consistently held by this Court that a regular suit is the appropriate remedy for settlement of the disputes relating to property rights between the private persons. The remedy under Article 226 of the Constitution shall not be available except where violation of some statutory duty on the part of statutory authority is alleged. In such cases, the Court has jurisdiction to issue appropriate directions to the authority concerned. It is held that the High Court cannot allow its constitutional jurisdiction to be used for deciding disputes, for which remedies under the general law, civil or criminal are available. This Court has held that it is not intended to replace the ordinary remedies by way of a civil suit or application available to an aggrieved person. The jurisdiction under Article 226 of the Constitution being special and extraordinary, it should not be exercised casually or lightly on mere asking by the litigant.”

62. In the case of **Sri Lakshmi Narayan Trust** (supra), a single Bench of this Court has held that in respect of an immovable property, if a person claims title and he does not have a possession, the remedy lies in filing a suit for declaration and possession with or without consequential

injunction may be in a given facts and circumstances of a case along with declaration to his title or interest. Further, where there is merely an interference with person's rightful possession or where there is a threat of dispossession, or where there is frustration or interference in the free and full enjoyment of the property, the remedy lies to sue for an injunction simplicitor.

63. In paragraph 11 of **Sri Lakshmi Narayan Trust** (supra), this Court has opined that a writ application, under the guise of seeking a writ of mandamus directing the police authorities to give protection to the petitioner, cannot be made forum for adjudicating on civil rights. Thus, it would not be proper for this Court to issue any writ of mandamus against the private respondents in the present writ proceeding.

64. Learned Senior Counsel for the respondent has relied on yet another decision of the Supreme Court, in the case of **Thansingh Nathmal** (supra) on the point of alternative remedy and exercise of jurisdiction by the High Court. The Supreme Court, in paragraph 7 of **Thansingh Nathmal** (supra), has held that the jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain selfimposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed.

65. Learned Senior Counsel also relied upon the decision of Supreme Court, in the case of **State of Orissa v. Ram Chandra Dev (AIR 1964 SC 685)**, paragraph 8 of which reads as under:

"8. On the merits, the position is absolutely clear. Under Article 226 of the Constitution, the jurisdiction of the High Court is undoubtedly very wide. Appropriate writs can be issued by the High Court under the said article even for purposes other than the enforcement of the fundamental rights and in that sense, a party who invokes the special jurisdiction of the High Court under Article 226 is not confined to cases of illegal invasion of his fundamental rights

alone. But though the jurisdiction of the High Court under Article 226 is wide in that sense, the concluding words of the article clearly indicate that before a writ or an appropriate order can be issued in favour of a party, it must be established that the party has a right and the said right is illegally invaded or threatened. The existence of a right is thus the foundation of a petition under Article 226. The narrow question which falls for our decision in the present appeals is whether the respondents can be said to have proved any legal right in respect of the properties of which they apprehended they would be dispossessed by the appellant.”\

66. Learned Senior Counsel also placed reliance on the decision of the Supreme Court, in the case of **Bhagwat Sharan** (supra). Paragraphs 11 and 12 of **Bhagwat Sharan** (supra) reads as under:

“11. The Privy Council in *Randhi Appalaswami v. Randhi Suryanarayanamurti* [*Randhi Appalaswami v. Randhi Suryanarayanamurti*, 1947 SCC OnLine PC 42

: ILR 1948 Mad 440] held as follows : (SCC OnLine PC)

“... The Hindu law upon this aspect of the case is well settled. Proof of the existence of a joint family does not lead to the presumption that property held by any member of the family is joint, and the burden rests upon anyone asserting that any item of property was joint to establish the fact. But where it is established that the family possessed some joint property which from its nature and relative value may have formed the nucleus from which the property in question may have been acquired, the burden shifts to the party alleging self-acquisition to establish affirmatively that the property was acquired without the aid of the joint family property.”

The aforesaid view was accepted by this Court in *Shrinivas Krishnarao Kango v. Narayan Devji Kango* [*Shrinivas Krishnarao Kango v. Narayan Devji Kango*, (1955) 1 SCR 1 : AIR 1954 SC 379].

12. In *D.S. Lakshmaiah v. L. Balasubramanyam* [*D.S. Lakshmaiah v. L. Balasubramanyam*, (2003) 10 SCC 310] this Court held as follows : (*D.S. Lakshmaiah case* [*D.S. Lakshmaiah v. L. Balasubramanyam*, (2003) 10 SCC 310] , SCC p. 317, para 18)

“18. The legal principle, therefore, is that there is no presumption of a property being joint family property only on account of existence of a joint Hindu family. The one who asserts has to prove that the property is a joint family property. If, however, the person so asserting proves that there was nucleus with which the joint family property could be acquired, there would be

presumption of the property being joint and the onus would shift on the person who claims it to be self-acquired property to prove that he purchased the property with his own funds and not out of joint family nucleus that was available.”

Similar view was taken in *Rukhmabai v. Lala Laxminarayan* [*Rukhmabai v. Lala Laxminarayan*, (1960) 2 SCR 253 : AIR 1960 SC 335] and *Appasaheb Peerappa Chamdgade v. Devendra Peerappa Chamdgade* [*Appasaheb Peerappa Chamdgade v. Devendra Peerappa Chamdgade*, (2007) 1 SCC 521] . The law is thus well settled that the burden lies upon the person who alleges the existence of the Hindu Undivided Family to prove the same.

67. In the case of **Dwarka Prasad Agrawal** (supra), the Supreme Court has held that the remedy under Article 226 of the Constitution of India cannot be invoked for resolution of a private law dispute as contradistinguished from a dispute involving public law character. It is also well settled that a writ remedy is not available for resolution of a property or a title dispute. Indisputably, a large number of private disputes between the parties and in particular the question as to whether any deed of transfer was effected in favour of M/s Writers & Publishers Pvt. Ltd. as also whether a partition or a family settlement was arrived at or not, were pending adjudication before the civil courts of competent jurisdiction. The reliefs sought for in the writ petition primarily revolved around the order of authentication of the declaration made by one of the respondents in terms of the provisions of the said Act. The writ petition, in the factual matrix involved in the matter, could have been held to be maintainable only for that purpose and no other.

68. Learned Senior Counsel for the petitioner vehemently argued that the interference by the C.R.P.F. personnel in approaching the ancestral house at Amnour, by the petitioner and his wife at the behest of respondent no. 7, who is a public functionary, being the sitting member of Parliament, violates the right of dignity of the petitioner as there was disrespect of the petitioner at the hands of the C.R.P.F. personnel by not allowing him to access his ancestral house at Amnour, due to which his dignity and pride has been damaged. Further, disrespect and loss of dignity has been caused to the petitioner due to the act of the public functionary, who is also his brother, with the help of C.R.P.F. personnel, in throwing out the luggage of the petitioner. The petitioner has also contended that there is presumption of jointness of co-

sharer in a Hindu joint family property and the petitioner has a legal right to enjoy his right to reside in the ancestral property.

69. The constitutional tort relief is based on the fact that the respondent no. 7, being the public functionary, committed an act causing loss of dignity, pride and honour of the petitioner with the help of the C.R.P.F. personnel, who were deployed in the house of respondent no. 7.

70. It is an admitted position that the respondent no. 7, in his capacity as a Member of Parliament, and after assessment of his threat perception at the hands of naxals, has been given security at the level of 'Z' category. For a 'Z' category protectee, the security is provided around his residence and office. Regular and thorough anti-sabotage checks of the places of stay/office, venues of functions to be attended by the protectees are carried out by the trained/security personnel. Armed static guards at the residence is also provided to the protectee of 'Z' category. It is under that circumstances that the C.R.P.F. personnel is deployed at the residence of respondent no. 7, who usually reside at his house, at Amnour, which falls in the parliamentary constituency of respondent no. 7.

71. The respondent no. 7 has claimed that the house, at Amnour, is falling in his share after the family arrangement, which came into existence in the year 2015, during the lifetime of the mother of the petitioner and the respondent no. 7. The petitioner has not brought on record any material to show that the respondent no. 7 was present in his ancestral house, at Amnour, when the petitioner had visited that house, along with his wife and instructed the C.R.P.F. personnel to stop entry of the petitioner and his wife in the said house.

72. The respondent-C.R.P.F., in its counter affidavit, has stated that the petitioner came to the house along with his wife and attempted to break the lock of the residence, upon which the Sentry, posted there, requested him to open the door by key and not by breaking the lock of the door. In the transcript between Shri Sourav Roy, 2-1/C, 224 Battalion, and the petitioner, the petitioner has admitted that Sentry was very polite, extremely nice and replied to him with folded hands while dealing with him.

73. An enquiry has also been conducted by the Sub- Divisional Police Officer, Marhourah, on the direction of the Superintendent of Police, Saran, on the incident taken place on 25.12.2022 and a report was submitted by him to the Superintendent of Police, Saran. In paragraph 4 of the said report, it is stated that on 25.12.2022, the petitioner had arrived at his ancestral house at

Amnour, but the respondent no. 7 was not present in the said house and the house was locked. When the lock was being broken by the petitioner, then the security personnel deployed there politely told him not to break open the lock. The report also disclosed that both the petitioner and the respondent no. 7 are own brothers and a civil suit for partition of the ancestral properties has been filed by the petitioner, bearing Title Partition Suit No. 728 of 2022. The report further says that during the course of enquiry, it has come to light that nobody misbehaved and/or marred the dignity of the petitioner and/or his wife.

74. Upon the aforesaid discussion and objective consideration of the entire facts, I come to the conclusion that the dignity of the petitioner has not been violated/interfered with and/or tarnished either by the C.R.P.F. personnel deployed at the residence of respondent n o. 7 at Amnour or by respondent no. 7 himself. There appears to be family dispute between the petitioner and the respondent no. 7 and other family members, for which a suit has already been filed by the petitioner for partition of the ancestral properties before filing of the present writ application. Before the date of incident, i.e. 25.12.2022, the elder sister of the petitioner and the respondent no. 7 had lodged complaints that the petitioner was trying to take possession of the ancestral house and lands forcibly and illegally.

75. As such, I am of the considered opinion that the petitioner has not been able to make out a case for grant of reliefs, claimed by him, requiring interference by this Court in its extraordinary writ jurisdiction.

76. In the result, this writ application is dismissed.

77. There shall be no order as to costs.

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