

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.702 of 2016

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1. Amar Sinha son of Late Kameshwar Prasad Sinha Resident of village Laxminagar, Police Station Gogri, Post Office Gogri, District Khagaria
 2. Amar Sinha son of Late Kameshwar Prasad Sinha Resident of Village-Laxminagar, Police Station Gogri, Post Office Gogri, District Khagaria

.... Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Munger Division, Munger
2. The Collector, Khagaria
3. The Sub-Divisional Magistrate Gogri, District Khagaria
4. Janardan singh son of Nasib Singh
5. Dilip Kumar Singh son of Rajniti Singh
6. Nageshwar Singh son of Biranchi Singh
7. Chandra Bhushan Singh son of Swaroop singh
8. Arun Singh son of Late Adhiklal Singh
9. Dablu Singh son of Medani Singh
10. Birendra Poddar Son of Lakeshwar Poddar
11. Kishori Singh son of Kuldip Singh
12. Fulit Singh son of Dhruv Singh
13. Mahendra Sharma son of Sukhdeo Sharma
14. Mahendra Singh son of Brahmdeo Singh
15. Bilash Tanti son of Ramswaroop Tanti
16. Naresh Kumar son of Anandi Tanti
17. Pradeep Tanti son of Baijnath Tanti
18. Baleshwar Singh son of Nasib Singh
19. Ramavtar Singh son of Baldeo Singh
20. Ramjee Singh son of Temhi Singh
21. Anil Kumar Singh son of Baldeo Singh
22. Bablu Singh son of Kamleshwari Singh
23. Udai Singh son of Dayali Singh
24. Md. Atmul son of Md. ishab
25. Md. Israil son of Attaullah
26. Mankeshwar Sharma Son of Late Panna Lal Sharma
27. Upendra Poddar Son of Nankeshwar Poddar
28. Sunil Singh son of Saryug Singh
29. Parmanand Singh son of Uchit Singh
30. Kamleshwari Singh son of Harinath Singh
31. Dashrath Sah son of Ram Bahadur Sah
32. Dinesh Kumar Singh Son of Gosai Singh
33. Sukhdeo Poddar son of Uchit Poddar
34. Panchu Sao son of Atwari Sah
35. Md. Razak son of Alauddin
36. Prithvi Singh son of Late Bhumi Singh
37. Suro Sharma son of Bhujangi Sharma
38. Yogendra Singh Son of Saryug Singh
39. Radhe Tanti son of Botal Tanti
40. Dilip Kumar son of Ratilal Singh
41. Sachitanand Singh son of Dashrath Singh
42. Paro Tanti son of Baijnath Tanti



43. Arjun Malakar son of Riro Malakar
 44. Arjun Sharma son of Uchit Sharma
 45. Tuntun Malakar son of Biro Malakar
 46. Satish Poddar son of Sukul Poddar
 47. Ganga Prasad Singh son of Anup Singh
 48. Mahendra Singh Son of Brahmdeo Singh
 49. Sukhlal Singh son of Late Ramdeo Singh
 50. Geeta Poddar son of Uchit Poddar
 51. Satish Singh son of Hira Lal Singh
 52. Parmanand Malakar son of Timbhu Malakar
 53. Satyendra Singh son of Late Manoj Singh
 54. Deep Narayan Singh son of Fulo Singh
 55. Gore Lal Singh son of Sundar Singh
 56. Vakil Singh son of Girji Singh
 57. Viveka Singh son of Late Dashrath Singh
 58. Janardan Singh Son of Nasib Singh
 59. Rajniti Singh son of Parmeshwar Singh,
 60. Ashok Singh, son of Sanichar Singh
 61. Chandeshwar Singh son of Late Lelahu Singh
 62. Om Singh son of Late Jagdish Singh
 63. Nagina Singh Son of Jagdish Singh
 64. Jai Prakash Singh Son of Late Jagdish Singh
 65. Kamo Singh son of Nago Singh
 66. Deepak Kumar Son of Late Upendra Singh
 All residents of village- Mahaddipur, Police Station Pasroha, District
 Khagaria

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Harshwardhan Sahaya, Adv.
 For the State : Mr. Ramadhar Singh, GP-25
 For the Private Respondents : Mr. Anil Kumar Choudhary, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

9 19-01-2018 During the pendency of the writ application, I.A. No.15 of 2017 has been filed for substitution of legal heirs and representatives of the respondent no.15.

The I.A. is allowed.

I.A. No.16 of 2017 has been filed for substitution of legal heirs and representatives of the respondent no.22, which is



also allowed.

I.A NO.17 of 2017 has been filed for substitution of legal heirs and representatives of the respondent no.42, the same is allowed.

I.A. No.1711 of 2017 has been filed for deletion of the name of respondent no.32 from the array of the parties.

The I.A. is allowed.

On the last occasion, when the matter was listed before this Court under the heading for orders (on petition), in the nature of the present case, the matter was passed over with an understanding that the case itself shall be heard on merit and shall be disposed of.

Heard learned counsel for the parties.

Petitioner in the present case is aggrieved by inaction on the part of the respondent nos.1 to 3 who are the State of Bihar through the Commissioner, Munger Division, Munger, the Collector, Khagaria and the Sub-divisional Magistrate, Gogri, District-Khagaria as according to the petitioner even though he had succeeded in the proceeding under Section 145 Cr.P.C. vide Case No.468(M) of 1994 in the court of learned Sub-Divisional Magistrate, Gogri and it has been categorically held in favour of the petitioner that he was forcibly dispossessed within a period of



two months from the date of initiation of the proceeding under Section 145 Cr.P.C., the order passed by the learned Sub-divisional Magistrate court's has not been implemented in accordance with law. Learned counsel submits that the order dated 19.08.2011 passed in Case No.468(M) of 1994, as contained in Annexure-1, was subject matter of revision in the court of learned 1st Adhoc Additional Sessions Judge, Khagaria who vide his order dated 20th August, 2013 dismissed the revision application holding that "from the documents filed by the opposite parties it is crystal clear that the suit land is their raiyati land and the revisionists are having no prima facie right to possess the concerned land." The order passed by the learned Sub-divisional Magistrate, Gogri has been upheld. The criminal miscellaneous application preferred before this Court against the impugned order passed by the Sub-Divisional Magistrate, Gogri as well as the learned 1st Adhoc Additional Sessions Judge, Khagaria vide Cr.Misc.No.47375 of 2013 was also dismissed by this Court vide order dated 17.09.2015.

Learned counsel submits that despite the fact that the order passed by the learned Sub-Divisional Magistrate has sustained the test before the higher courts and as of today no civil suit is pending in relation to the land in question and no interim



order of injunction of any kind is operating, the State authorities have failed to hand over the possession of the land and the same has been illegally and unauthorizedly being occupied by the private respondents. He also submits that an Execution Case in the court of learned Sub-Divisional Magistrate, Gogri is going on, but for one reason or another step for handing over possession is not being taken. Learned counsel submits that unless the authorities of the State particularly those who are responsible to control the administration and law and order cooperate the petitioner cannot get the fruit of the order.

Learned counsel representing the 42 private respondents in the present case has opposed the writ application. There are some private respondents who have not entered appearance despite service. In view of the order proposed to be passed in this case as the Court is not deciding any issue inter-se the matter is not required to linger further for appearance of substituted respondents.

Learned counsel representing the State submits that the State is always ready and willing to cooperate in executing the order and as and when required, on the direction of the executing court an appropriate and effective measure shall be taken to implement the order passed by the learned Sub-divisional



Magistrate.

This Court put a specific question to learned counsel representing the 42 private respondents in opposition of writ application as to whether any civil suit is pending in connection with the land in question, he has categorically stated that no civil suit is pending against the land in question and no interim injunction is operating against the petitioner. He has manifold arguments, the main contention is that the persons in possession are having title over the land in dispute. This Court cannot go into this kind of argument placed on behalf of the private respondents who despite having lost in Section 145 Cr.P.C. proceeding up to this Court in Cr.Misc. No.47375 of 2013 did not challenge the order or filed a civil suit of any nature claiming title and possession. The arguments advanced on behalf of the answering private respondents are without any substance which cannot be accepted by this Court on the face of the orders referred hereinabove. This Court is not going into the question of title sitting in its jurisdiction under Article 226 of the Constitution of India.

In the facts and circumstances stated hereinabove, this writ application is being disposed of with a direction to the learned Sub-divisional Magistrate, Gogri, Khagaria where the



execution case is said to be pending to proceed with the execution, hear the parties of the case in accordance with law and take it to its logical end within a period of two months from the date of receipt/production of a copy of this order.

The State authorities particularly the District Magistrate, Khagaria and the Superintendent of Police, Khagaria are directed to cooperate in the matter of execution of order which will be passed by the executing court to give effect to its order which has already attained finality.

The authorities must remember that the country is governed by rule of law and whatsoever be the number of persons who have forcibly possessed the land that should not be a reason not to execute the order. So long as the petitioner has an order in his favour in accordance with law he will be entitled for execution of the order following the procedure for this purpose. Non-cooperation by the authorities shall be viewed seriously.

The writ application is disposed off with the above observations and directions.

Arvind/-

(Rajeev Ranjan Prasad, J)

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