

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13783 of 2016

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Chandeshwar Prasad Gupta

.... Petitioner/s

Versus

The State of Bihar & Ors

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Krishna Kant Singh

For the Respondent/s : Mr. Md.Khurshid Alam-AAG12

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR

JHA

ORAL ORDER

4 07-05-2018 I.A. No.3535 of 2018 is filed for deletion of the name of the petitioner who died during the pendency of this writ petition on 14.04.2018 and for substitution of his legal heirs/representatives fully described in Para 2 of the I.A.

I.A. is allowed. The name of petitioner is ordered to be expunged and the name of his widow, three sons and two daughters fully described in para 2 of the I.A. are ordered to be substituted.

Heard both sides.

The petitioner seeks following relief:

(i) To issue a writ in the nature of mandamus to direct the respondent to execute the order passed in Execution case No.4 of 2013 arising out of order and decree dated 29.06.2013 and 12.07.2013 passed in Title Suit No.68 of 1986 passed by Munsif 1st, Madhubani whereby and whereunder learned C.O. has denied



to execute the order for the reasons that land in questions are government land whereas matter has been adjudicated by the competent court of law in favour of the petitioner hereof

(ii) To hold and declare that communication dated 13.06.2016(Annexure-7) issued under the authority of Circle Officer, Basopatti, District-Madhubani is without jurisdiction and beyond the frame of law.

(iii) To hold and declare that until and unless the aforesaid order of Learned Munsif is not assailed in the Superior Court of law in appropriate jurisdiction of Appeal and order is not stayed or set aside; the Learned C.O. has no power and jurisdiction to deny to comply the order passed in a suit and execution call referred hereunder.

(iv) To direct the respondents to enforce and execute the order dated 29.06.2013 and decree dated 12.07.2013 passed in T.S. No.68 of 1986 passed by Munsif 1st, Madhubani in accordance with law and for the interest of justice.

(v) To grant any other reliefs to the petitioner for which he is entitled to have in connection with aforesaid grievance.

Admittedly, the facts of the present case are admitted. Chandeshwar Prasad Gupta (now deceased) and others filed Title Suit No.68 of 1986 for declaration of title and recovery of possession over the suit land detailed in Schedule 2 and 2(a) of



the plaint and further prayed that the defendants be directed to remove the temporary structures erected on the suit land and delivered the vacant possession of the suit land of the plaintiff. The suit was decreed vide judgment dated 29.06.2013. The decree was also prepared. The petitioner (now deceased) substituted by legal heirs filed Execution Case No.4 of 2013. The Executing Court passed the order but the Circle Officer reported that the suit land is Government land. Thereafter the Executing Court did not pass any order. It is admitted that the Executing Court is to execute the judgment and decree and also decide objection if any filed by the decree holder or any stranger during the pendency of the execution proceeding. This Court in writ jurisdiction cannot direct the respondent to comply the directions of the Executing Court. Executing Court itself is competent to get its order complied with and execute the judgment and decree passed by the competent jurisdiction.

Having considered the facts aforesaid, I dispose of this writ petition with a direction to the Executing Court to act in accordance with law and in order to execute the judgment and decree filed by the petitioner in execution case.

Accordingly, this writ petition is disposed of.

Saurabh/-

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(Prabhat Kumar Jha, J)

