

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.11864 of 2017**

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1. Ram Kishore Sharma, son of late Kishundeo Singh
  2. Pravash Kumar, son of late Shyam Kishore Sharma
  3. Shiv Kishore sharma, son of late Kapil Deo Singh
- All 1 to 3 are resident of village-Tineri Gopalpur, P.O. –Nadaul, P.S.-  
Mashaurhi, District –Patna.

.... .... Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Revenue Department,  
Govt. of Bihar, Patna.
2. The Collector, Patna, District- Patna.
3. The Sub-Divisional Magistrate, Mashaurhi, District-Patna
4. The Anchal Adhikari, Anchal- Mashaurhi, District- Patna.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Niraj Kumar, Adv.

For the Respondent/s : Mr. Sajid Salim Khan –SC-25

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR  
SINGH**  
**ORAL ORDER**

2      18-08-2017                      Heard Mr. Niraj Kumar, learned Counsel appearing  
  
on behalf of the petitioners and Mr. Sajid Salim Khan, learned SC-  
  
25, appearing on behalf of respondents.

The present writ application has been filed for setting  
aside the order dated 08.07.2017, passed by Respondent No.4, the  
Circle Officer, Masaurhi, as contained in Annexure-14, whereby  
the petitioners have been declared encroacher over the land  
pertaining to Khata No. 136, Plot No. 1735, situated in Village –  
Tineri, P.S.-Masaurhi, District – Patna. Further prayer has been  
made to set aside the notice dated 28.07.2017, contained in  
Annexure-15, issued under the signature of Respondent No.4, the



Circle Officer, Masaurhi, under section 6(2) of the Bihar Public Land Encroachment Act (hereinafter called as 'the Act'), in Form-II, directing the petitioners to remove the encroachment by 04.08.2017.

By way of supplementary affidavit, the letter issued vide Memo No. 7, dated 05.08.2017, issued under the signature of Respondent No.4, the Circle Officer, Masaurhi, addressed to Respondent No.3, the Sub-Divisional Officer, Masaurhi, has been brought on record, which stipulates that 18.08.2017 at 11.00 A.M. has been fixed the date for removal of encroachment in pursuance to the order passed in Encroachment Case No. 02/2007-08.

Learned Counsel appearing on behalf of the petitioners submits that there is threat of residential house being demolished situated on the land in question as he could not file the appeal since he was not aware about the final order passed in encroachment proceeding.

It is submitted by Mr. Sajid Salim Khan, learned SC-25 appearing on behalf of the respondents that final order has been passed under section 6(1) of the Act, which is appealable under section 11 of the Act. Hence, the petitioners ought to have availed the alternative remedy of appeal.

Considering the rival submissions of the parties the



writ application is disposed of with a liberty to the petitioners to file appeal under section 11 of the Act within a period of three weeks against the final order, as contained in Annexure-15 along with an application for condonation of delay in filing of such appeal. It is expected from the Appellate Authority to consider the condonation of delay in filing such appeal.

However, if the order dated 08.07.2017, passed in Encroachment Case No. 02 of 2007-08, by Respondent No.4, the Circle Officer, Masaurhi, as contained in Annexure-14, has not been implemented till date, then it shall not be implemented till disposal of appeal, if it is filed within a period of three weeks.

Let a copy of this order be handed over to Mr. Sajid Salim Khan, learned SC-25, appearing on behalf of respondents.

**(Dinesh Kumar Singh, J)**

Ashwini/-

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