IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.632 of 2013

IN

Civil Writ Jurisdiction Case No. 7190 of 2012

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Abhinandan Kumar Suman, Son of Late Ramnagina Kumar, Resident of Flat No. 204, Sarswati Niketan Apartment, I.A.S. Colony, Kidwaipuri, P.S. Kotwali, District- Patna.

.... Appellant/s

Versus

1. State of Bihar through the Commissioner, Patna Division, Patna.
2. The Commissioner, Patna Division, Patna.
3. The District Magistrate, Patna.
4. The Deputy Collector, Land Reforms, Patna Sadar, Patna.
5. The Circle Officer, Sadar, Patna.
6. M/s Anant Homes Pvt. Ltd. through its Managing Director, Chandra Sekhar Kumar having its Office at South Mandiri, P.S. Budha Colony, Patna.
7. M/S Mangalam Homes (India) Pvt. Ltd. through its Director, Mr. Sarwar Nazmi, Null 302, Nafish Place, Sharif Colony, Patna.
8. The Registrar of Companies, Bihar & Jharkhand, Maurya Lok Complex, Block 'A', Western Wing, 4th Floor, Dak Banglow Road, Patna-800001.
9. The Director, Serious Fraud Investigation Officer, Ministry of Corporate Affairs, Government of India.

.... Respondent/s

With

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Letters Patent Appeal No. 638 of 2013

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Rajesh Kumar Gautam, Son of Late D.P. Singh, Resident of Flat No. 402, Saraswati Niketan Apartment, I.A.S. Colony, Kidwaipuri, P.S.- Kotwali, District- Patna.

.... Appellant/s

Versus

1. The State of Bihar through the Commissioner, Patna Division, Patna.
2. The Commissioner, Patna Division, Patna.
3. The District Magistrate, Patna.
4. The Deputy Collectors, Land Reforms, Patna Sadar, Patna.
5. The Circle Officer, Sadar, Patna.
6. M/S Anant Homes Pvt. Ltd. Through Managing Director Chandra Shekhar Kumar Having Its Office At South Mandiri, P.S.- Budha Colony, Patna.
7. M/S. Mangalam Home (India), Pvt. Ltd. Through Its Director Mr. Sarwar Nazmi, 302, Hafish Palace, Sharif Colony, Patna.
8. The Registrar of the Companies, Bihar & Jharkhand, Mauryalok, Patna.
9. The Director, Serious Fraud Investigation Office, Ministry of Corporate Affairs, Govt. of India, New Delhi.
10. The Registrar, Department of Registration, Government of Bihar, Patna.

.... Respondent/s

With

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Letters Patent Appeal No. 1551 of 2013

IN

Civil Writ Jurisdiction Case No. 18124 of 2012

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Mrs. Anjali Sinha, W/O Sri Rai Rajiv Kumar Sinha, Resident of 404, Saraswati Apartment, Patna At Present resident of 1468, Hardy Place, Fremont, California-

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.... Petitioner .... Appellant/s

Versus

1. The State of Bihar through Secretary (Home), Old Secretariat, Patna.
2. Director General of Police, Bihar, Old Secretariat, Patna.
3. District Magistrate, Gandhi Maidan, Patna.
4. District Sub- Registrar, Patna Gandhi Maidan, Patna.
5. M/s. Anant Homes Pvt. Ltd., through its Managing Director, Mr. Chandra Shekhar Kumar, having its Office at South Mandiri, P.S- Buddha Colony, Patna- 800001.
6. M/S Mangalam Homes (India), Pvt. Ltd., through its Managing Director, Sri Sunil Kumar Verma, 190/A, Main Boring Road, Near I.D.P. Petrol Pump P.S- S.K.Puri, District- Patna.
7. Sri Sarwar Nazmi, S/O Late Akhtar Sayeed, Resident of Flat No. 702, Nafish Palace, Sharif Colony, P.S- Pirbahore, District- Patna.
8. Mr. Akildeo Singh, S/O Late Raghuvansh Prasad Singh, Resident of Village Ramdiri Tola Akashpur, P.O- Kamrudinpur, P.S- Begusarai, District- Begusarai (Bihar).
9. Sri Udai Kumar Singh, S/o Shri Saryug Singh, Resident of Village- Bahadarpur, P.S- Arwal, District- Jehanabad (Bihar).
10. Sri Pramod Kumar Singh, S/O Sri Saryug Singh, Resident of Village- Bahadarpur, P.S- Arwal, District- Jehanabad (Bihar).
11. Smt. Bachhi Devi, W/O Late Satyadeo Singh, Resident of Village Dhanauti, P.S- Maharajganj, District- Siwan, Presently At S.K. Nagar, House No, M- 16, P.S- Kotwali, P.O- G.P.O. District- Patna, Presently At Sadar Bazar Danapur, P.S- Danapur, District- Patna.

.... Respondents .... Respondent/s

With

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Letters Patent Appeal No. 654 of 2013

==========

Rani Kumari, Daughter of Sri Akhileshwar Diwedi, Resident of Flat No. 303, Saraswati Niketan Apartment, I.A.S. Colony, Kidwaipuri, P.S.- Kotwali, District- Patna.

.... Appellant/s

Versus

1. The State of Bihar through the Commissioner, Patna Division, Patna.
2. The Commissioner, Patna Division, Patna.
3. The District Magistrate, Patna.
4. The Deputy Collectors, Land Reforms, Patna Sadar, Patna.
5. The Circle Officer, Sadar, Patna.
6. M/S. Anant Homes Pvt. Ltd. through Managing Director, Chandra Shekhar Kumar having its Office at South Mandiri, P.S.- Budha Colony, Patna.
7. M/S. Mangalam Home (India), Pvt. Ltd. through its Director, Mr. Sarwar Nazmi, 302, Hafish Place Sharif Colony, Patna.
8. The Registrar of the Companies, Bihar & Jharkhand, Mauryalok, Patna.
9. The Director, Serious Fraud Investigation Office, Ministry of Corporate Affairs, Govt. of India, New Delhi.
10. The Registrar, Department of Registration, Govt. of Bihar, Patna.

.... Respondent/s

With

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Letters Patent Appeal No. 661 of 2013

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Kumkum Ranjan, Wife of Sri Neeraj Ranjan, Resident of Flat No. 305, Saraswati

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Niketan Apartment, I.A.S. Colony, Kidwaipuri, P.S.- Kotwali, Dist.- Patna.

.... Appellant/s

Versus

1. The State of Bihar through the Commissioner, Patna Division, Patna.
2. The Commissioner, Patna Division, Patna.
3. The District Magistrate, Patna.
4. The Deputy Collectors, Land Reforms, Patna Sadar, Patna.
5. The Circle Officer, Sadar, Patna.
6. M/S Anant Homes Pvt. Ltd. through Managing Director Chandra Shekhar Kumar Having its Office At South Mandiri, P.S.- Budha Colony, Patna.
7. M/S Mangalam Home (India) Pvt. Ltd. through Its Director Mr. Sarwar Nazmi, 302, Hafish Place Sharif Colony, Patna.
8. The Registrar of the Companies, Bihar & Jharkhand, Mauryalok, Patna.
9. The Director, Serious Fraud Investigation Office, Ministry of Corporate Affairs, Govt. of India, New Delhi.
10. The Registrar, Department of Registration, Govt. of Bihar, Patna.

.... Respondent/s

With

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Letters Patent Appeal No. 743 of 2013

IN

Civil Writ Jurisdiction Case No. 7184 of 2012

==========

Madhup Kumar Singh, Son of Parmanand Singh, Resident of Flat No. 102, Saraswati Niketan Apartment, I.A.S. Colony, Kidwaipuri, P.S.- Kotwali, District- Patna.

.... Appellant/s

Versus

1. The State of Bihar through the Commissioner, Patna Division, Patna.
2. The Commissioner, Patna Division, Patna.
3. The District Magistrate, Patna.
4. The Deputy Collectors, Land Reforms, Patna Sadar, Patna.
5. The Circle Officer, Sadar, Patna.
6. M/s. Anant Homes Pvt. Ltd. through Managing Director, Chandra Shekhar Kumar, having its office at South Mandiri, P.S.- Budha Colony, Patna.
7. M/S. Mangalam Home (India), Pvt. Ltd. through its Director Mr. Sarwar Nazmi, 302, Hafish Palace, Sharif Colony, Patna.
8. The Registrar of the Companies, Bihar & Jharkhand, Mauryalok, Patna.
9. The Director, Serious Fraud Investigation Office, Ministry of Corporate Affairs, Govt. of India, New Delhi.
10. The Registrar, Department of Registration, Govt. of Bihar, Patna.

.... Respondent/s

With

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Letters Patent Appeal No. 783 of 2013

IN

Civil Writ Jurisdiction Case No. 7186 of 2012

==========

Ashok Kumar Sinha, Son of Late Bisheshwar Prasad Sinha, Resident of Flat No. 302, Saraswati Niketan Apartment, I.A.S. Colony, Kidwaipuri, P.S.- Kotwali, District- Patna.

.... Appellant/s

Versus

1. The State of Bihar through the Commissioner, Patna Division, Patna.

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2. The Commissioner, Patna Division, Patna.
3. The District Magistrate, Patna.
4. The Deputy Collectors, Land Reforms, Patna Sadar, Patna.
5. The Circle Officer, Sadar, Patna.
6. M/S Anant Homes Pvt. Ltd. through Managing Director, Chandra Shekhar Kumar having its Office at South Mandiri, P.S.- Budha Colony, Patna.
7. M/S Mangalam Home (India), Pvt. Ltd. through its Director Mr. Sarwar Nazmi, 302, Hafish Palace, Sharif Colony, Patna.
8. The Registrar of the Companies, Bihar and Jharkhand, Mauryalok, Patna.
9. The Director, Serious Fraud Investigation Office, Ministry of CorporateAffairs, Govt. of India, New Delhi.
10. The Registrar, Department of Registrar, Govt. of Bihar, Patna.

.... Respondent/s

With

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Letters Patent Appeal No. 843 of 2013
IN
Civil Writ Jurisdiction Case No. 7193 of 2012

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1. Vijay Kumar Sharma, Son of Shri Ram Balak Singh, Resident of Flat No. 201, Saraswati Niketan Apartment, I.A.S. Colony, Kidwaipuri, P.S.- Kotwali, District- Patna.
2. Smt. Sunaina Sharma, Wife of Sri Vijay Kumar Sharma, Resident of Flat No. 501, Saraswati Niketan Apartment, I.A.S. Colony, Kidwaipuri, P.S.- Kotwali, District- Patna.
3. Sudhir Kumar Singh, Son of Baleshwar Prasad Singh, Resident of Flat No. G-3, Saraswati Niketan Apartment, I.A.S. Colony, Kidwaipuri, P.S. - Kotwali, District- Patna.
4. Anil Kumar Singh, Son of Late Ram Japo Singh, Resident of Flat No. G-2, Saraswati Niketan Apartment, I.A.S. Colony, Kidwaipuri, P.S. - Kotwali, District- Patna.
5. Indira Kumari, Wife of Neeraj Ranjan, Resident of Flat No. 306, Saraswati Niketan Apartment, I.A.S. Colony, Kidwaipuri, P.S.- Kotwali, District- Patna.
6. Akildeo Singh, Son of Late Raghunath Prasad Singh, Resident of Flat No. 206, Saraswati Niketan Apartment, I.A.S. Colony, Kidwaipuri, P.S.- Kotwali, District- Patna.
7. Rajiv Kumar, Son of Late Hari Nandan Singh, Resident of Flat No. 503, Saraswati Niketan Apartment, I.A.S. Colony, Kidwaipuri, P.S.- Kotwali, District- Patna.
8. Damyanti Kumari, Wife of Late Suresh Kumar, Resident of Flat No. 301, Saraswati Niketan Apartment, I.A.S. Colony, Kidwaipuri, P.S.- Kotwali, District- Patna.

.... Appellant/s

Versus

1. The State of Bihar through the Commissioner, Patna Division, Patna.
2. The Commissioner, Patna Division, Patna.
3. The District Magistrate, Patna.
4. The Deputy Collectors, Land Reforms, Patna Sadar, Patna.
5. The Circle Officer, Sadar, Patna.
6. M/S Anant Homes Pvt. Ltd. through its Managing Director, Chandra Shekhar Kumar, having its Office at South Mandiri, P.S.- Budha Colony, Patna.
7. M/S Mangalam Home (India) Pvt. Ltd. through its Director Mr. Sarwar Nazmi, 302, Hafish Palace, Sharif Colony, Patna.
8. The Registrar of the Companies, Bihar & Jharkhand, Mauryalok, Patna.
9. The Director, Serious Faud Investigation Office, Ministry of Corporate Affairs,

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Govt. of India, New Delhi.
10. The Registrar, Department of Registration, Govt. of Bihar, Patna.

.... Respondent/s

With

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Letters Patent Appeal No. 841 of 2013
IN
Civil Writ Jurisdiction Case No. 7187 of 2012

==========

Lalita Singh, Wife of Nagendra Singh, Resident of Flat No. 106, Saraswati Niketan Apartment, I.A.S. Colony, Kidwaipuri, Police Station- Kotwali, District- Patna.

.... Appellant/s

Versus

1. The State of Bihar through the Commissioner, Patna Division, Patna.
2. The Commissioner, Patna Division, Patna.
3. The District Magistrate, Patna.
4. The Deputy Collector Land Reforms, Patna Sadar, Patna.
5. The Circle Officer, Sadar, Patna.
6. M/S Anant Homes Private Limited through its Managing Director, Chandra Shekhar Kumar, having its Office at South Mandiri, Police Station- Budha Colony, Patna.
7. M/S Mangalam Home (India), Private Limited through its Director, Mr. Sarwar Nazmi, 302, Nafish Palace, Sharif Colony, Patna.
8. The Registrar of Companies, Bihar & Jharkhand, Mauryalok, Patna.
9. The Director, Serious Fraud Investigation Office, Ministry of Corporate Affairs, Govt. of India, New Delhi.
10. The Registrar, Department of Registration, Govt. of Bihar, Patna.

.... Respondent/s

With

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Letters Patent Appeal No. 820 of 2013
IN
Civil Writ Jurisdiction Case No. 7188 of 2012

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Subir Kumar, Son of Shri Krishna Prasad Singh, resident of Flat No.202, Saraswati Niketan Apartment, I.A.S. Colony, Kidwaipuri, P.S. Kotwali, District – Patna.

.... Appellant/s

Versus

1. The State of Bihar through the Commissioner, Patna Division, Patna.
2. The Commissioner, Patna Division, Patna.
3. The District Magistrate, Patna.
4. The Deputy Collectors, Land Reforms, Patna Sadar, Patna.
5. The Circle Officer, Sadar, Patna.
6. M/S Anant Homes Pvt. Ltd. through Managing Director, Chandra Shekhar Kumar, having its Office at South Mandiri, P.S. Budha Colony, Patna.
7. M/S Mangalam Home (India), Pvt. Ltd. through its Director Mr. Sarwar Nazmi, 302, Hafish Palace, Sharif Colony, Patna.
8. The Registrar, of the Companies, Bihar & Jharkhand, Mauryalok, Patna.
9. The Director, erious Fraud Investigation Office, Ministry of Corporate Affairs, Govt. of India, New Delhi.
10. The Registrar, Department of Registration, Govt. of Bihar, Patna.

.... Respondent/s

With

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Letters Patent Appeal No. 866 of 2013
IN
Civil Writ Jurisdiction Case No. 7173 of 2012

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Smt. Priyanka Singh, D/O Sri Mahatam Singh, Wife of Sri Abhayendra Mohan Singh, Resident of Village and P.O.- Baghawan Mahammadpur, P.S.- Gangpur Siswan, District- Siwan (Bihar), Presently Resident of Flat No. 304, Saarswati Niketan Apartment, I.A.S. Colony, Kidwaipuri, P.S.- Kotwali, District- Patna.

.... Appellant/s

Versus

1. The State of Bihar.
2. The Commissioner, Patna Division, Patna.
3. The District Magistrate, Patna.
4. The Deputy Collector, Land Reforms, Patna Sadar, Patna.
5. The Circle Officer, Patna Sadar, Patna.
6. Smt. Sangeeta Kumari, D/O Late Surendra Bahadur Prasad, W/O Shri Ajit Kumar, Advocate. at present resident of Flat No. B-204, Puspanjali Enclave, North Mandiri, P.S. - Budha Colony in the Town and District of Patna.
7. Shri Ajit Kumar, S/O Late Baidyanath Sahay at Present Resident of Flat No. B-204, Puspanjali Enclave, North Mandiri, P.S.- Budha Colony, in the Town and District of Patna.
8. M/S Anant Homes Pvt. Ltd. Company through its Managing Director, Chandra Shekhar Kumar having its Office at South Mandiri, P.S.- Budha Colony, Patna.
9. Smt. Bachchi Devi, Wife of Late Satyadeo Singh At Village- Dhanauti, P.S.- Maharajganj, District- Siwan.
10. Saroj Kumar, S/O Sri Siya Sharan Singh, Resident of Village- Rajapur, P.S.- Paraiya, District- Gaya through his Power of Attorney Holder Uday Kumar Singh, Village- Bahadurpur, P.S.- Arwal, District- Arwal.
11. Binod Kumar Singh, S/O Sri Raj Ballabh Sharan Singh, Resident of Village- Rajpur, P.S.- Paraiya, District- Gaya through his Power of Attorney Holder, Namely Pramod Kumar Singh, S/O Sri Sarju Singh, Village- Bahadurpur, P.S. Arwal, District- Arwal.
12. M/S Manglam Homes (India) Pvt. Ltd. Patna through its Managing Director, Sunil Kumar Verma, 190/A, Main Boring Road, Near I.B.P. Petrol Pump, P.S.- S.K. Puri, District- Patna.
13. Sarvar Nazami, S/O Late Akhtar Sayeed, resident of Flat No. 302, Nafish Palace, Sharif Colony, P.S.- Pirbahore, District- Patna.
14. The Registrar of Companies, Bihar and Jharkhand, Patna.
15. The Director, Serious Fraud Investigation Office, Ministry of Corporation Affairs, Govt. of India, New Delhi.
16. The Registrar, Registration Department, Govt. of Bihar, Patna.

.... Respondent/s

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Appearance :
(In LPA No.632 of 2013)

For the Appellant/s	:	Mr. Ashish Giri, Adv. Mr. Raju Giri, Adv. Mr. Vivek Prasad, Adv.
For the Respondent-State	:	Mr. Rajiv Kr. Singh, GP-2
For Respondent No.6	:	Mr. Amit Shrivastava, Adv Mr. Ranjan Kumar Shrivastava, Adv. Mr. Prabhakar Jha, Adv.
For the Intervener	:	Mr. Ravikesh Kr. Sinha, Adv. Mr. Dhirdyuti Kr. Verma, Adv.
For the Respondent-UOI	:	Mr. S.D. Sanjay, Sr. Adv.

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Mr. Kumar Priya Ranjan, Adv.
Mr. Rajesh Verma, Adv .
Mr. Ansuman Singh, Adv.

(In LPA No.638 of 2013)
For the Appellant/s : Mr. Arun Kumar Arun, Adv.
For the Respondent/s : Mr.

(In LPA No.1551 of 2013)
For the Appellant/s : Mr. Manoj Kumar Sinha, Adv.
For the Respondent No.8: Mr. Arun Kumar, Arun, Adv.
Mr. Ashish Giri, Adv.

(In LPA No.654 of 2013)
For the Appellant/s : Mr. Arun Kumar Arun, Adv.
For the Respondent/s : Mr. Parth Sharthi,Adv.

(In LPA No.661 of 2013)
For the Appellant/s : Mr. Y.V. Giri, Sr. Adv. with
Mr. Arun Kumar Arun, Adv.
For the Respondent/s : Mr. Manoj Kr. Ambastha, SC-26
Mr.Tripurari Nath Ambastha, AC to SC-26

(In LPA No.743 of 2013)
For the Appellant/s : Mr. Arun Kumar Arun, Adv.
For the Respondent/s : Mr. Vinay Kirti Ssingh, GA-2.

(In LPA No.783 of 2013)
For the Appellant/s : Mr. Arun Kumar Arun, Adv.
For the Respondent/s : Mr. Amar Nath Deo, Adv.

(In LPA No.843 of 2013)
For the Appellant/s : Mr. Arun Kumar Arun, Adv.
For the Respondent/s : Mr. A.Ujjwal, Adv.

(In LPA No.841 of 2013)
For the Appellant/s : Mr. Ashish Giri, Adv.
Mr. Rajat Kumar Tiwary, Adv.
For the Respondent/s : Mr. Rana Pratap Singh

(In LPA No.820 of 2013)
For the Appellant/s : Mr. Arun Kumar Arun
For the Respondent/s : Mr.
For the Intervener : Mr. Ran Vijay Kumar, Sinha, Adv.

(In LPA No.866 of 2013)
For the Appellant/s : Mr. Bindhyachal Singh, Adv.
Mr. Prashant Sinha, Adv.
For the Respondent/s : Mr. S.S.P. Yadav, SC-14

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)
Date: 10-10-2018

This batch of appeals arise from a common judgment and order passed by a learned Single Judge of this Court in a batch of writ petitions arising from CWJC No.6547 of 2012 (Man Mardan

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Shukla vs. The State of Bihar) and analogous cases, whereby and whereunder the appellant-writ petitioners have been relegated to the forum of the Bihar Land Tribunal for redressal of their grievances as according to the learned Single Judge, a writ proceeding was not an appropriate forum for adjudication of the dispute raised by the parties contesting.

Since the orders impugned in this batch of appeals is common that these appeals have been heard together and are being disposed of by a common judgment at the stage of admission itself with the consent of the parties.

The facts involved in these batch of appeals, are rather brief. Some aggrieved purchasers from the respondent M/s Anant Homes approached the Deputy Collector Land Reforms, Patna (hereinafter referred to as the 'DCLR, Patna' under the provisions of the Bihar Land Dispute Resolution Act, 2009 questioning the sale made by M/s Mangalam Homes. The 'DCLR. Patna' refused to exercise jurisdiction considering the nature of grievance raised and advised them to approach the forum of civil court. Feeling aggrieved these purchasers filed appeal before the Commissioner, Patna Division, which was allowed with direction to put the purchasers from M/s Anant Homes in possession of the flat purchased from him. It was following the order of the Commissioner, Patna Division that eviction notices were issued to the appellant-petitioners by the Circle Officer, Patna Sadar asking the appellants who were

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purchasers from M/s Mangalam Homes, to vacate their flats. The purchasers from M/s Mangalam Homes filed the writ petition(s) in question which have been disposed of with advise to approach the Bihar Land Tribunal. Feeling aggrieved that the appeals in question have been filed.

Before I would proceed to deal with the individual cases, I deem it necessary to mention that this is a second round proceeding for the appellant-writ petitioners.

This batch of appeals was earlier heard by a Bench presided over by the then Hon'ble the Chief Justice and by a judgment and order passed on 07.07.2014 the batch of appeals was allowed in following terms:

> "Recently, on 24th June 2014 this Bench had occasion to consider the scope, ambit and applicability of the Act. With respect to clause (g) of Sub-section-(1) of Section-4 The Bench has held, **"clause (g) of Sub-section (1) of Section 4 of the Act of 2009 which provides for "Declaration of the right of a person" also requires to be read down. Again the right referred to in the said clause (g) has to be a right conferred by or accrued under any of the aforesaid six enactments and none other. „A person" would mean an allottee/ a settlee of a land or a Raiyat as defined in clause (f) of Section 2 of the Act of 2009. No person other than an allottee/ a settlee or a Raiyat can have an access to the remedy under the Act of 2009. Clause (i) of Sub-section (1) of Section 4 of the Act of 2009 which refers to "construction of unauthorized structure" should also be read down to mean the construction of unauthorized structure on the land of a Raiyat allotted or settled under any of the above referred six enactments and no other land or structure."**
>
> We have also held Sub-section (4) of Section 4 of the Act to be arbitrary and ultra vires the

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Constitution of India. Similarly, we have read down Sub-section (5) of Section 4 of the Act in the following words:

"Sub-section (5) of Section 4 of the Act of 2009 empowers the Competent Authority to allow the parties to approach the Civil Court for adjudication of complex issues of title. Although the said Sub-section (5) is directory, should be read as mandatory. It shall be the duty of the Competent Authority to refer the complex issues of adjudication of title to the concerned Civil Court having jurisdiction to entertain and adjudicate such disputes. (Per CJ)

In other words, the said phrase occurring in sub-section (5) of Section 4 of the Act of 2009 envisages that no sooner than a question of adjudication of title which is inherently a complex one is involved, the Competent Authority is required to invariably close the proceeding. The word „complex" has not been used in contradistinction to the word 'simple'.

In above view of the matter, I am of the considered opinion that Sub-section (5) of Section 4 of the Act of 2009 strictly forbids the Competent Authority to entertain matters involving questions of adjudication of title. I am of the view that the Competent Authority, irrespective of nature of cases involving issues of title, is bound to close the proceedings for want of jurisdiction and leave it open to the parties to seek remedies before the competent Civil Court." (Per Ashwani Kumar Singh, J)

In view of the above precedent, we do not have to discuss the matter elaborately. We must hold that the entire exercise by the D.C.L.R., the Divisional Commissioner, Patna, the Tribunal and the learned single Judge was uncalled for.

For the aforesaid reasons, these Appeals are allowed. The common judgment and order dated 7th May 2013 passed by the learned single Judge in C.W.J.C. Nos. 7190 of 2012, 7191 of 2012, 7189 of 2012, 7185 of 2012, 7184 of 2012, 7186 of 2012, 7188 of 2012, 7187 of 2012, 7193 of 2012, 7173 of 2012 and 6547 of 2012 is set aside. The writ petitions are allowed. Judgment and order dated 6th March 2013 passed by the Divisional Commissioner, Patna in Appeal Nos. 210/11 and 225/11 is quashed and set

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> aside.
>
> Although we have held that the Competent Authority, the D.C.L.R., has no jurisdiction to entertain the civil disputes, since the applications made before the Competent Authority are dismissed on the grounds of the contentious issues raised in the applications, we do not disturb the said order. We clarify that the parties will be at liberty to avail of the remedy under the law.
>
> Interlocutory applications stand disposed."

A cursory glance of the judgment and order of the Division Bench so passed in the case of these appellant-writ petitioners would confirm that reliance was placed on the earlier judgment and order of the Division Bench passed in the case of **Maheshwar Mandal** since reported in **2014(3) PLJR 281**.

The records would confirm that the State feeling aggrieved by the judgment and order of the Division Bench in the case of **Maheshwar Mandal** (supra) as well as in the present set of appeals, filed separate Special Leave Petitions which, on leave being granted, were registered as Civil Appeals. One of the grounds raised by the State of Bihar as an appellant before the Supreme Court in the case of **Maheshwar Mandal** (supra) was, that even when the appellant-writ petitioners had not questioned the vires of the Bihar Land Disputes Resolution Act, 2009 (hereinafter referred to as the 'Act') yet the Division Bench had commented upon its validity to strike down the provisions of section 4 of 'the Act' while reading down the other sub-sections attached to section 4 of the said Act. It is taking note of such submissions made by the State which was not correct

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nor supported by the records but misled by the submissions, that the order of the Division Bench in the case of **Maheshwar Mandal** was set aside by the Supreme Court and the matter was remanded back to this Court.

The appeal arising from the judgment and order of **Maheshwar Mandal** (supra) bearing Civil Appeal No.4726 of 2017 was allowed in following terms:-

> "From perusal of the writ petition, which has been filed as Annexure P6 of the present appeal, we find that there is no challenge to the vires of any of the provisions of the Bihar Land Disputes Resolution Act, 2009 (hereinafter referred to as "the Act of 2009"). Merely because during the course of the hearing, arguments were advanced questioning the validity of any of the provisions of an enactment it is not open to a Court of law to decide its validity and declare it to be unconstitutional, without there being any pleadings to that effect. This fact is not disputed by the learned counsel appearing for the parties.
>
> In this view of the matter, the appeal is allowed and the impugned order dated 24th June, 2014 passed by the High Court of Judicature at Patna cannot be sustained in the eyes of law and is hereby set aside and the matter is remanded back to the High Court for deciding afresh in accordance with law expeditiously.
>
> It shall be open to the parties to take such plea which are available to them in accordance with law."

The Special Leave Petitions preferred by the State as against the judgment and order passed by the Division Bench in the present set of appeals was heard analogous with the appeal arising in the case of **Maheshwar Mandal** (supra) and by a judgment and order passed on 28th of March, 2017, the appeals arising from the judgment and order of this Court passed on the present set of appeals was allowed in following terms:

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> "Civil Appeals arising out of SLP (Civil) Nos.6603-6613/2015:
>
> Leave granted.
>
> We have heard the learned counsel for the parties.
>
> From the perusal of the impugned order dated 7th July, 2014, we find that the High Court, while deciding the Letters Patent Appeals, relied upon the order dated 24th June, 2014 passed in Maheshwar Mandal & Anr. Vs. State of Bihar and Ors. Since we have already set aside that judgment, these appeals are also allowed and the impugned judgment is set aside. These matters are also remanded to the High Court. Having regard to the facts and circumstances of the case, the High Court is requested to decide the Letters Patent Appeals as expeditiously as possible in accordance with law.
>
> It will be open for the parties to take such plea which are available to them in accordance with law.
>
> The interim order passed by the Division Bench of the High Court shall continue to remain in operation, till these matters are finally decided.
>
> Pending applications also stand disposed of."

It is on remand of the matter that these appeals have been posted for fresh consideration and disposal. In between this period the Letters Patent Appeal filed by **Maheshwar Mandal** has been considered on remand by a Division Bench presided by the then Hon'ble the Chief Justice and again allowed vide judgment and order passed on 31.07.2018 reported in **2018(3) PLJR 1007 (Maheshwar Mandal & Anr. Vs. The State of Bihar)**.

Having given a brief description of the chain of events, I would now be dealing with the individual grievance raised in each of the appeals being heard analogous, before I would record my opinion on the same, keeping in mind the position settled in the case of **Maheshwar Mandal** (supra) on its remand.

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LPA No.632 of 2013 arising from CWJC No.7190 of 2012:

The dispute relates to Flat No.204 purchased by the appellant-writ petitioner by entering into an agreement to sale with M/s Mangalam Homes on 10.08.2010 and which agreement was translated in a registered sale deed executed on 1.12.2010.

Mr. Ashish Giri has appeared for the appellant-writ petitioner to submit that the appellant was neither arraigned as a party before the 'DCLR' nor before the Commissioner, Patna Division, Patna and thus the orders passed is ex-parte. He submits that the eviction notice dated 03.04.2012 resting on such illegal exercise and on adjudication by an authority not vested with such jurisdiction, is a perpetuation of illegality. He submits that while the 'DCLR' realizing the complexity of the issue, dismissed the case while affording liberty to the parties to take recourse to an appropriate forum but the Commissioner, Patna Division has exceeded his jurisdiction to adjudicate on the complex issue of title and possession as well as on the contesting rights claimed by the two developers. In reference to the provisions underlying 'the Act', he submits that section 3 gives the list of enactments and it is only disputes arising thereunder which can be resolved through the process of 'the Act' and not every dispute. He submits that even otherwise 'the Act' does not vest any jurisdiction in the statutory authorities to adjudicate on 'homestead' land rather it is only a dispute relating to 'raiyati land' over which any adjudication can

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be made provided it does not involve complex issues of title and possession.

Placing reliance on the judgment passed in the case of **Maheshwar Mandal** (supra) on remand he submits, that the illegality in the action of the Commissioner, Patna Division in adjudicating over the issue of title and possession is confirmed for being struck down and so follows the eviction notice.

LPA No.638 of 2013 arising from CWJC No.7191 of 2012:

Mr. Arun Kumar Arun, learned counsel appearing for the appellant-writ petitioner while adopting the argument advanced by Mr. Giri has submitted that the appellant-writ petitioner is a purchaser of Flat No.402 from M/s Manglam Homes through registered sale deed dated 17.03.2010 and mutation has been done in the Municipal records. He submits that there is none claiming the said flat which is in possession of the appellant-writ petitioners since the date of purchase. It is the submission of Mr. Arun that following the illegal order of the Commissioner, Patna Division that the eviction notice has been issued on 03.04.2012 by the Circle Officer, Patna Sadar which is impugned in the writ petition.

LPA No.820 of 2013 arising from CWJC No.7188 of 2012:

Mr. Vindhya Keshari Kumar, learned senior counsel assisted by Mr. Rana Sanjay Kumar Singh has appeared in support of the appeal to submit that the appellant-writ petitioner is a purchaser of Flat No.202 from M/s Mangalam Homes. He submits

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that the appellant writ petitioner had entered into an agreement to sale on 06.05.2010 with the developer and a formal sale deed was executed subsequently on 30.03.2011. He submits that the possession of the flat in question was given to the writ petitioner on 10.05.2010 which possession the appellant-writ petitioner continues to enjoy. It is adopting the arguments of Mr. Giri he submits that it is following the order passed by the Commissioner, Patna Division, Patna on 06.03.2012 that eviction notice was issued to the appellant on 03.04.2012 which is impugned in the writ petition.

The plea advanced is opposed by Mr. R.V.K. Sinha, learned counsel appearing for the intervener seeking intervention through I.A. No.5628 of 2018 to claim the said flat through a registered sale deed, dated 20.01.2011 executed by M/s Anant Homes. According to Mr. Sinha, the intervener is an earlier purchaser and thus has right of possession to the said flat. It is his submission that M/s Anant Homes from whom the intervener has purchased the flat in question is the lawful developer of the flat and it is only M/s Anant Homes who has the right to sell Flat no.202. According to Mr. Sinha a serious fraud has been committed to deny the flat to the intervener.

Opposing the plea of intervention it is the argument of Mr. Kumar, learned senior counsel appearing for the appellant-writ petitioner that at no stage of the proceedings before the statutory

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authorities did the intervener come forward to claim the flat in question and it is riding on an illegal order passed by the Commissioner, Patna Division, Patna that a right is being claimed after 7 years of the alleged purchase and at a stage when this matter is being heard on remand.

LPA No.654 of 2013 arising from CWJC No.7189 of 2012:

Mr. Arun Kumar Arun has appeared for the petitioner to submit that the dispute relates to Flat no.303 which was purchased through a registered sale deed dated 13.09.2010 from M/s Manglam Homes. He submits that there is no claimant to this flat nor the appellant petitioner was made party before the statutory authorities and yet an eviction notice has been issued by the Circle Officer, Patna Sadar on 03.04.2012 which is impugned at Annexure 1 to the writ petition. He adopts the argument of Mr. Giri to question the proceedings.

LPA No.661 of 2013 arising from CWJC No.7185 of 2012:

Mr. Y.V. Giri, learned senior counsel has appeared for the appellant writ petitioner to submit that the appellant is a purchaser of Flat No.305 purchased through a registered sale deed dated 21.12.2010 from M/s Mangalam Homes. He submits that mutation has been carried out with the Patna Municipal Corporation on 25.07.2011 and possession taken. It is submitted that the appellant writ petitioner was not made party at any stage of the proceeding yet eviction notice was issued by the Circle Officer,

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Patna Sadar on 03.04.2012 impugned at Annexure 1 to the writ petition.

He further submits that there is no claimant to the flat at any stage until an interlocutory application is filed by one Savitri Devi at the stage of remand of the matter bearing I.A. No. 5971 of 2018 claiming purchase of the same flat from M/s Anant Homes on 03.03.2012 which is after two years from the date of purchase made by the appellants. Mr. Rashid Izhar appears for the intervener to claim the said flat and to submit that the sale made by M/s Mangalam Homes to the appellant-writ petitioner is an act of fraud because they had no authority to sell the flat.

LPA No.743 of 2013 arising from CWJC No.7184 of 2012:

Mr. Arun Kumar Arun appears to submit that the appellant-writ petitioner is a purchaser of Flat No.102 through sale deed dated 26.10.2010 from M/s Mangalam Homes. He submits that mutation has been done with the Patna Municipal Corporation in February, 2012. He further submits that there is no claimant to the flat, the possession of which is with the appellant. He further submits that never did the appellant-writ petitioner was impleaded as a party before the statutory authority yet eviction notice was issued on 03.04.2012 by the Circle Officer which is impugned at Annexure 1 to the writ petition.

LPA No.783 of 2013 arising from CWJC No.7186 of 2012:

Mr. Arun Kumar Arun, learned counsel appearing for

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the appellant-writ petitioner submits that the matter relates to Flat No.302 purchased by the appellant through a registered sale deed dated 09.05.2011 from M/s Mangalam Homes. He submits that there are no claimant to this flat, the possession of which is held by the appellant. He submits that mutation has been done with the Patna Municipal Corporation. It is submitted that though the appellant was never impleaded before the statutory authority yet eviction notice was issued on 03.04.2012 by the Circle Officer, Patna Sadar which is impugned at Annexure 1 to the writ petition.

LPA No.841 of 2013 arising from CWJC No.7187 of 2012:

Mr. Arun Kumar Arun appears for the appellant-writ petitioner to submit that the appellant-writ petitioner is a purchaser of Flat No.106 through a registered sale deed dated 29.03.2011 and is in possession thereof. He submits that there is no claimant to the flat and though the appellant-petitioner was not party to the proceedings yet eviction notice has been issued by the Circle Officer, Patna Sadar dated 03.04.2012 impugned at Annexure 1 to the writ petition.

LPA No.866 of 2013 arising from CWJC No.7173 of 2012

Mr. Prashant Sinha appears for the appellant-writ petitioner to submit that the appellant-writ petitioner is a purchaser of Flat No.304 through sale deed dated 20.11.2010 executed by M/s Mangalam Homes and is in possession of the same. He submits that there are no claimant to the flat nor the appellant-writ

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petitioner was a party to the proceedings before the Commissioner, Patna Division yet he has received notice dated 03.04.2012 from the Circle Officer, Patna Sadar which is impugned at Annexure 7 to the writ petition.

LPA No.843 of 2013 arising from CWJC No.7193 of 2012:

Mr. Arun Kumar Arun appears to inform that there are 8 appellants before this Court in this appeal. He submits that while the claim of most of the appellants was not under challenge, there are some new claimants who have cropped up subsequently but have no lawful support to their claim. Explaining the case of each of the appellants he submits that:

(i) The appellant no.1, Vijay Kumar Sharma is a purchaser of Flat No.201 from M/s Mangalam Homes, the possession of which is held by this appellant since 24.09.2010. He submits that although a possession letter has been issued by M/s Mangalam Homes pursuant to the deposit of sale amount but a sale-deed is yet to be executed. He submits that the appellant-writ petitioner is aggrieved by the eviction notice dated 03.04.2012 impugned at Annexure 1 series to the writ proceedings.

Dr. Anshuman appears in reference to an interlocutory application bearing I.A. No.6025 of 2017 and submits that the intervener Namita Kumari Pandey is a genuine purchaser from M/s Anant Homes through a sale deed dated 17.02.2011. He submits that mutation of the land has been done with the intervener on

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18.06.2011 and she came into possession on 04.07.2011 but the appellant-writ petitioner put another lock on 05.07.2011 for which she has filed a complaint with S.H.O., Kotwali and has also approached the higher authorities in the Police Department but without success. According to Dr. Anshuman, it is simply exercising muscle power that despite the intervener being a bonafide purchaser through a registered sale deed, she is not being allowed to enjoy the benefit of the sale by the appellant-writ petitioner who does not even have a sale-deed to support his claim. Dr. Anshuman even while advocating as such, does not have any explanation as to why the intervener had got dispossessed from the flat and had never moved the appropriate forum either under the criminal jurisdiction or under a civil jurisdiction for espousing her claim for restoration of possession and eviction of the appellant writ petitioner from Flat No.201.

(ii) Appellant no.2, Sunaina Sharma is a purchaser of Flat No.501 from M/s Mangalam Homes through a registered sale deed dated 04.08.2010. It is submitted by Mr. Arun that the possession of the flat is with the appellant-writ petitioner with no claimants to the same and yet eviction notice was issued on 03.04.2012 which is a part of Annexure 1 series.

(iii) Appellant no.3, Sudhir Kumar Singh is a purchaser of Flat No.G-3 through a registered sale deed dated 03.10.2012 executed by M/s Mangalam Homes. According to Mr. Arun,

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learned counsel appearing for the appellant-writ petitioner, the possession of the flat is with the appellant and mutation has been carried out and there is no other claimant to this flat. He submits that eviction notice dated 03.04.2012 issued to the appellant-writ petitioner by the Circle Officer, Patna Sadar is impugned as a part of Annexure 1 series.

(iv) Appellant no.4, Anil Kumar Singh is a purchaser of Flat No.G-2 through a sale deed dated 07.03.2010 executed by M/s Mangalam Homes. Mr. Arun submits that the possession of the flat is with the appellant, the mutation has been carried out and there is no claimant yet eviction notice has been issued by the Circle Officer, Patna Sadar on 03.04.2012 which is impugned at Annexure 1 series.

(v) Appellant no.5 is Indira Kumari, a purchaser of Flat no.306 through a registered sale deed dated 04.08.2010 executed by M/s Mangalam Homes. Mr. Arun informs that the possession is with the appellant, the mutation has been carried out with the Patna Municipal Corporation and no claimant is there for this flat. He informs that eviction notice dated 03.04.2012 is impugned at Annexure 1 series.

(vi) Appellant no.6, Akildeo Singh is a purchaser of Flat No.206 through a sale deed dated 04.08.2010 enclosed at Annexure 2 to the writ petition. According to Mr. Arun, the possession of the flat is with the appellant and mutation has been

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carried out in his favour.

The claim of this appellant has been opposed by intervenor Anjali Sinha by filing I.A. No.5023 of 2017 and through a separate writ petition bearing CWJC No.18124 of 2012 which was disposed of analogous by a common judgment and order passed by the learned Single Judge which is impugned in all these appeals and feeling aggrieved she has also filed LPA No.1551 of 2013 which is being heard analogous with this batch of appeals.

According to the intervener, Anjali Sinha who is appellant in LPA No.1551 of 2013, the execution of sale deed in favour of appellant no.6, Akildeo Singh in LPA No.843 of 2013 is an act of fraud and it is questioning this transaction that the writ petition was filed. According to Mr. Saurendra Pandey who appears for said Anjali Sinha as an intervener in LPA No.843 of 2013 and Mr. Manoj Kumar Sinha who appears on her behalf in appeal, the said Anjali Sinha has purchased the house from M/s Anant Homes who had exclusive right to sale the flat in question because the entire transaction done by M/s Manglam Homes is a fraud and an outcome of criminal conspiracy. According to learned counsel appearing for the intervener who is appellant in LPA No.1551 of 2013, the authentication of the development agreement is an act of fraud and the right claimed by the appellant no.6 Akildeo Singh on the basis of such act of fraud is not sustainable.

Learned counsel appearing on behalf of the said Anjali

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Sinha who is appellant in LPA No.1551 of 2013 admits that the sale deed executed by M/s Anant Homes in favour of the intervener-appellant is dated 29.01.2011 i.e. after the execution of the sale deed in favour of Akhildeo Singh in respect of the said flat by M/s Manglam Homes.

(vii) Appellant no.7, Rajiv Kumar is a purchaser of flat no.503 through a registered sale deed dated 01.12.2010. Mr. Arun informs that the appellant is in possession of the flat and mutation has also been carried out. He submits that there is no claimant to this flat yet eviction notice dated 03.04.2012 has been mechanically issued by the Circle Officer, Patna Sadar.

(viii) Appellant no.8, Damyanti Kumari is a purchaser of Flat No.301 through a registered sale deed dated 30.03.2010, a copy of which is enclosed at Annexure 2 series. According to Mr. Arun, Mutation has taken place with the Patna Municipal Corporation and possession of the flat is with the appellant. He submits that eviction notice was issued on 03.04.2012 which is impugned at Annexure 2 series.

The claim of this appellant is opposed by an intervener Manoj Kumar and Mr. Ashok Kumar Choudhary learned counsel standing in support of the intervener submits that the said flat no.301 has been purchased by the intervener through a sale deed dated 24.3.2012 from M/s Anant Homes. He fairly accepts that despite consideration amount having been paid, the possession of

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the house was never given to the intervener. On query by the Court as to the steps taken by the intervener for the enforcement of the sale-deed executed by M/s Anant Homes before a competent forum, no satisfactory information could be given by Mr. Choudhary.

LPA No.1551 of 2013 arising from CWJC No.18124 of 2012:

The appellant Anjali Sinha claims to be the purchaser of Flat no.206 from M/s Anant Homes through a sale deed dated 29.01.2011. Mr. Manoj Kumar Singh appears for the appellant. The Flat is in possession of the private respondent no.8, Akildeo Singh who is also appellant in LPA No.843 of 2013 claiming purchase through a registered sale deed dated 04.08.2010 which was questioned by this appellant through the writ petition in question.

The discussions above, would show that except for Flat Nos.202, 305, 201, 206 and 301, there is no claimant to the other flats which are subject matter of present proceedings and yet eviction notices have been issued to them by the Circle Officer, Patna Sadar in mechanical compliance of the direction present in the order passed by the Commissioner, Patna Division which was impugned in the writ petition together with the eviction notice.

Mr. Amit Shrivastava, learned counsel appearing for M/s Anant Homes along with Mr. Ranjan Kumar Shrivastava do stand up to argue that even if there be no other individual claimant to the

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other flats which are subject matter of the present contest, it is M/s Anant Homes who had exclusive right to sale these flats and thus it is not proper on the part of the appellants to submit that there are no claimant to the flats. It is also the argument of learned counsel that M/s Mangalam Homes has committed a fraud in entering into transactions with the appellants without authority of law.

I have heard learned counsel appearing for the contesting parties and have perused the records of the proceedings.

Since the earlier disposal of the present batch of appeals was resting on the earlier judgment passed by the Division Bench in the case of **Maheshwar Mandal** (supra), I deem it necessary to reproduce the relevant extract of the judgment passed by the Division Bench in the case of **Maheshwar Mandal** (supra) on its remand because it has a strong bearing to the issues arising in the present batch of appeals:

> "This writ application has come up for a fresh consideration by virtue of the order dated March 28, 2017 passed by Hon'ble Supreme Court of India in Civil Appeal No.4726/2017 { arising out of SLP (Civil) No.3821/2015 [**State of Bihar and Ors. Vs. Maheshwar Mandal and Ors.**]}.
>
> 2. On perusal of the order passed by the Hon'ble Supreme Court it appears that while challenging the judgment dated 24.06.2014 passed by the then Hon'ble Division Bench in this case an impression was given to the Hon'ble Apex Court that in the writ petition before this court, there was no challenge to the *vires* of any of the provisions of the Bihar Land Disputes Resolution Act, 2009 (hereinafter referred to as the "Act, 2009") and only in course of hearing of the writ petition, arguments were advanced questioning the validity of the provisions of the Act, 2009 and the Hon'ble Division Bench of this court had decided the validity

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of certain provisions of the Act, 2009 and declared them to be unconstitutional, without there being any pleadings to that effect.

3. We are constrained to record that apparently a wrong submission was made before the Hon'ble Apex Court and what was a matter of record before this court in I.A. No. 8999/2013 which was allowed vide order dated 20.12.2013 passed by this court were not brought to the notice of the Hon'ble Apex Court. We record the order dated 20.12.2013 passed by the learned writ court while allowing I.A. No. 8999/2013 as under: -

"The interlocutory application has been filed for amendment in the prayer made in the main writ application so as to add relief Nos. (iii) and (iv) for declaring the entire enactment being Bihar Land Dispute Resolution Act, 2009 being in excess of power and contrary to the provisions of the Constitution and various other Central enactments as illegal, arbitrary, unconstitutional and ultra vires and for consequential relief.

In the facts and circumstances of the case, the prayer for amendment is allowed.

I.A. No.8999 of 2013 is, accordingly, disposed of.

In view of the fact that the vires of the Act has been challenged, let the matter go out of my list and be placed before a Division Bench of this Court after obtaining the orders of the Hon'ble the Chief Justice."

4. Learned counsel representing the writ petitioners has given much emphasis on this aspect of the matter that the Hon'ble Supreme Court of India was not duly informed about the pleadings and it seems to be a case of misleading the court by suppressing the records. Prima facie the submissions seems to be correct but we are not willing to detain ourselves on this issue when we find that the Hon'ble Apex Court has recorded in its order to the effect that what was submitted before the Hon'ble Apex Court as mentioned above was not disputed by learned counsel appearing for the parties. We therefore find that even the respondents did not point out the aforementioned facts to the Hon'ble Apex Court and because both the parties could not assist the Hon'ble Apex Court properly, the judgment of this court was set aside on the solitary ground that the validity of the Act was challenged by way of oral submissions and this court

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has declared it unconstitutional without there being any basis.

… … … … … … …

53. Further, the word 'A person' would mean an allottee/settlee of land or of raiyat as defined in Clause (f) of Section 2 of the Act of 2009. No person other than an allottee/settlee or raiyat can have an excess (sic- access) to the remedy under the Act of 2009. … … … …."

54. We finally conclude that Clause (e), (g), (i) & (j) under sub-section (1) of Section 4 of the Act of 2009 are to be read down in the manner stated hereinabove. So far as sub-section (4) of Section 4 of the Act, 2009 is concerned, in view of the discussions made hereinabove, since we find that sub-section (4) of Section 4 has an effect of taking in its fold any real or imaginary right which may be claimed by a allottee or a settlee or a raiyat not conferred by any of the aforesaid six enactments, the wide powers conferred upon the competent authority is found to be unbridled, unfettered, uncanalized and unguided, hence, they are being grossly abused. It is, therefore not possible to save sub-section (4) of Section 4 of the Act of 2009 by applying the principles of harmonious construction of the statute. Sub-section (4) of Section 4 of the Act of 2009 is therefore held to be arbitrary and unconstitutional.

55. In the light of the discussions which we have made hereinabove, it is also declared that sub-section (5) of Section 4 of the Act of 2009 has to be read in consonance with sub-section (2) and sub-section (3) of Section 4 of the Act of 2009. Sub-section (5) of Section 5 has to be taken as a mandatory provision. It shall be the duty of the competent authority to close the proceeding which involve question of title and rights and are in the nature of disputes covered under any of the six enactments mentioned under schedule 'I' of the Act of 2009 which have not been adjudicated by a competent civil court. In all such cases the competent authority shall while closing the proceeding leave it open to the parties to seek their remedies before the competent civil court.

56. In result, the writ application is allowed. The impugned order dated 27th December, 2011 passed by the Competent Authority –cum- Collector, Land Reforms, Forbesganj, Araria in B.L.D.R. Act Case No.91 of 2011-12 is hereby quashed. As a consequence of the same the appellate order dated 8th

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> August, 2012 passed by the Divisional Commissioner, Purnea in Land Dispute Appeal No.69 of 2012 also stands quashed. The B.L.D.R. Act Case No.91 of 2011-12 is not fit to proceed before the Competent Authority –cum- Deputy Collector Land Reforms, Forbesganj, therefore, the same is dismissed with liberty to respondent no.4 and the parties of this proceeding to pursue their claim for declaration of their rights to the disputed land before a competent Civil Court."

The discussions above, is a confirmation of the fact that the legal position as regarding the exercise of jurisdiction by the statutory authority under 'the Act' has not undergone any change whether in the opinion expressed by the Division Bench in the earlier round or on remand. The legal position that the statutory authorities under 'the Act' cannot exercise jurisdiction in matters involving complex issues of title and possession rather can only exercise jurisdiction in relation to any dispute involving a settlement or allotment under any of the enactment(s) as discussed in Section 3 of 'the Act', stands confirmed.

In view of the legal position so finally settled, it is now to be seen whether the opinion expressed by the learned Single Judge in the common judgment and order passed on the batch of writ petitions relegating the appellant-writ petitioners to the jurisdiction of the Bihar Land Tribunal, is sustainable and/or whether there is any occasion for this Court to deviate from the earlier view expressed by the Division Bench in the judgment and order passed on 07.07.2014 in this batch of appeals.

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For recording my opinion on the dispute raised, in the backdrop of the legal position settled in the case of **Maheshwar Mandal** (supra) on remand, I deem it necessary to record a few representational facts essential for disposal of these appeals which are as follows:

(i) All these appellants except the appellant in LPA No.1551 of 2013 namely Anjali Sinha, are purchasers from M/s Mangalam Homes (India) Pvt. Limited, a company incorporated under the Companies Act, 1956 engaged in the business of civil construction;

Appellant Anjali Sinha and the intervenors in the appeals are purchasers from M/s Anant Homes.

(ii) M/s Mangalam Homes claims construction of a residential building by the name of Saraswati Niketan situated in Mohalla- Kidwaipuri in the town and district of Patna under the development agreement entered with the land owner;

(iii) Another company, namely, M/s Anant Homes Pvt. Ltd. claiming exclusive rights of sale of flats in Saraswati Niketan under a development agreement executed by the land owner, raised a dispute before the Civil Court in Title Suit No.373 of 2010 seeking a declaration against M/s Mangalam Homes of not having constructed or concerned with the building namely, Saraswati Niketan as also for

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declaration that the sale-deed executed by M/s Mangalam Homes in respect of Flat nos.101, 301 and 402 are illegal and unlawful.

A temporary injunction was also prayed, to restrain M/s Mangalam Homes from alienating any portion of the building in respect of which the suit is pending. However, the injunction prayed for restraining M/s Mangalam Homes was rejected by the Sub-Judge-I, Patna on 30.4.2011.

(iv) It is on rejection of the injunction petition that some of the purchasers together with the plaintiff M/s Anant Homes approached the 'DCLR, Patna by invoking the provisions of 'the Act' questioning the sale made by M/s Mangalam Homes.

(v) The 'DCLR, Patna' by his order dated 22.10.2011 passed in Case No.45 of 2011-12 initiated on the application of one Sangeeta Kumari claiming rights over Flat No.401, dismissed the case in following terms:

"सभी पक्षकारों के विद्वान अधिवक्ता को सुनने एवं दाखिल कागजातों के अवलोकन के पश्चात यह तथ्य बिल्कूल स्पष्ट है कि वर्तमान विवाद विषयगत भूमि को लेकर नही बल्कि उस भूखण्ड पर निर्मित अपार्टमेंट के एक फ्लैट को लेकर है। उक्त अपार्टमेंट के निर्माण को लेकर दो Developer द्वारा दावा किया जा रहा है जिसमे से एक Developer अनन्त होम्स (प्रा0) लि0 से आवेदिका ने उक्त फ्लैट कय किया है । इसी Developer ने उक्त अपार्टमेंट के

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निर्माण संबंधी स्वत्व निर्धारण हेतु विपक्षी के विरुद्ध सब जज प्रथम, पटना के न्ययालय में स्वत्व वाद सं0 373/2010 दायर कर रखा है जो अंतिम निर्णय हेतु अभी लंबित है। स्पष्टतः वाद में स्वत्व संबंधी जटिल प्रश्न निहित है एवं आवेदिका के विकेता द्वारा पूर्व में भी व्यवहार न्यायालय पटना मे स्वत्व वाद दायर कर रखा है। उपरोक्त परिस्थिति में इस न्यायालय द्वारा न्याय निर्णय किया जाना संभव नही है। अतः आवेदिका के आवेदन पत्र को खारिज करते हुए सक्षम न्यायालय में वाद दायर करने का निर्देश दिया जाता है।"

(vi) Feeling aggrieved the parties approached the Commissioner, Patna Division, Patna as the appellate authority under 'the Act' and who vide order passed on 06.03.2012 upheld the right of M/s Anant Homes to sell the flats with further direction that the appellants therein be put in possession over the subject matter of dispute so claimed by them.

(vii) It is following the order passed by the Commissioner, Patna Division, Patna that eviction notice was issued by the Circle Officer, Patna Sadar to the appellant-writ petitioners all dated 03.04.2012 and it is feeling aggrieved by this exercise of jurisdiction of the Commissioner, Patna Division, Patna to adjudicate upon the contesting rights of the two developers as well as on the claim put forth by the claimants to the different flats in Saraswati Niketan followed by eviction notice issued by the Circle Officer, Patna Sadar that the appellant-writ petitioners approached this Court and since the learned Single Judge has relegated

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these appellants to the forum of Tribunal constituted under the Bihar Land Tribunal Act, 2009 that the present set of appeals have been filed and having been allowed earlier by a common judgment and order passed on 07.07.2014, it is being heard afresh on remand by the Supreme Court.

On remand the matter was listed before a coordinate Bench who taking note of the seriousness of the matter and the nature of dispute raised and contested, by order dated 25.08.2017 allowed impleadment of the Registrar of Company, Bihar and Jharkhand as well as the Director, Serious Fraud Investigation Office, Ministry of Corporate Affairs, Government of India as party respondents for initiating an investigation on the acts of the two companies each claiming right of developing the land in question and it is following the order so passed that investigation has been taken up by the Serious Fraud Investigation Agency, an investigation agency constituted under the provisions of sections 211 and 212 of the Companies Act, 2013. The investigating agency has been carrying on their investigation and submitting its report intermittently and since it was complaining of non-cooperation by the State authorities who are lawfully obliged under section 217(9) of the Companies Act, 2013 to provide assistance to the Investigating Agency that this Court by order passed on 25.4.2018 and 19.7.2018 while reminding the State machinery of their obligation, has noted that any failure on their part to provide

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assistance would amount to contempt.

The direction issued by this Court as discussed above is a step taken for resolving the issue of fraud, if any, in the transaction complained of but in so far as the action complained of by the appellant-writ petitioners as against the statutory authorities under 'the Act' is concerned, the legal position settled in the case of **Maheshwar Mandal** (supra) draws the contest in favour of the appellant-petitioners because unquestionably, the Commissioner, Patna Division has exceeded his jurisdiction to adjudicate on a complex matter, which required leading of evidence and appreciation thereof even when a title suit remains pending before the civil court for adjudication on the contesting rights of the two warring developers.

In the nature of the dispute in hand I deem it useful to refer some of the relevant provisions of 'the Act' which has a strong bearing on the outcome of the present proceedings.

Section 4 of 'the Act' deals with the jurisdiction of the competent authority under the said Act and a glance thereof does confirm that it limits such exercise exclusively in respect of unauthorized/unlawful dispossession of any settlee/allottee from any land or part thereof, settled or allotted to him under any Act contained in Schedule 1 thereof and includes any other dispute raised by such settlee/allottee in connection with such settlement/allotment.

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Section 4(1) of 'the Act' reads as under:

> Section 4. Jurisdiction and authority to resolve disputes:- (1) The Competent Authority shall have jurisdiction and authority to hear and adjudicate, on an application or complaint or on any application referred to by a Prescribed Authority or officer, any issue arising out of following types of disputes:-
>
> (a) Unauthorised and unlawful dispossession of any settlee or allottee from any land or part thereof, settled with or allotted to him under any Act contained in Schedule-1 to this Act by issuance of any settlement document/ parcha by a Competent Authority;
> (b) Restoration of possession of settled/allotted land in favour of legally entitled settlee/allottee or his successors/heirs, upon adjudication of unauthorized and unlawful dispossession;
> (c) Threatened dispossession of a legally entitled settlee/ allottee;
> (d) Any of the matters enumerated in (a), (b) and (c) above appertaining to raiyati land;
> (e) Partition of land holding;
> (f) Correction of entry made in the Record of Rights including map/survey map;
> (g) Declaration of the right of a person;
> (h) Boundary disputes;
> (i) Construction of unauthorized structure; and
> (j) Lis pendens transfer.

Schedule-1 to the said Act gives the list of enactments which runs as follows:

1. The Bihar Land Reforms Act, 1950
2. The Bihar Tenancy Act, 1885
3. The Bihar Privileged Persons Homestead Tenancy Act, 1947
4. The Bihar Bhoodan Yagna Act, 1954
5. The Bihar Land Reforms (Fixation of Ceiling and Acquisition of Surplus Land) Act, 1961
6. The Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956

It is thus manifest from above that it only in circumstances where, an allottee or a settlee under the enactments referred to in

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the Schedule, is dispossessed unauthorizedly or a dispute is raised in connection with settlement/allotment under any of the enactments mentioned in the schedule that the authority can exercise his jurisdiction. 'The Act' under Section 4(1) while conferring jurisdiction on the competent authority draws very clear limits for exercise of such jurisdiction in Sub-section (5) thereof which reads as follows:

> Section 4(5). The Competent Authority, wherever it appears to him that the case instituted before him involves complex question of adjudication of title, he shall close the proceeding and leave it open to parties to seek remedies before the competent Civil Court.

It is thus eloquent from the provisions of 'the Act' that it is only in cases where a person raises any grievance of dispossession or any dispute is raised claiming settlement or allotment under either of the enactments mentioned in the Schedule that the competent authority can exercise his jurisdiction vested under 'the Act' but an exercise of jurisdiction on disputes bordering on issue of title and possession has clearly been kept outside the purview of 'the Act'.

In view of the legal position so clearly well settled and the statutory exercise so clearly delineated under 'the Act', the order of the 'DCLR, Patna' in advising the applicants to take recourse under the civil law remedies, was completely in tune with the statutory prescriptions. It is so surprising that despite clear indication given by the 'DCLR, Patna' in his order as to the nature

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of dispute that was raised by the applicants, the Commissioner, Patna Division failed to appreciate his limits for such exercise even when the dispute raised before him, did not fall within any of the enactments listed in Schedule-1 as reproduced hereinabove.

The discussions on facts leave no room for confusion but to hold that in a fight in between the two developers of the land in question, as to the right of sale of flats in Saraswati Niketan apartment, the Commissioner, Patna Division has illegally proceeded to adjudicate thereupon even when the dispute did not fall under any of the enactments mentioned in the schedule to 'the Act' and the contest was pending adjudication before the civil court.

The learned Single Judge has failed to appreciate this legal position because where the very exercise of jurisdiction by the Commissioner, Patna Division is an act c*oram non-judice*, the order passed by him exercising such jurisdiction becomes void ab-initio. There was inherent lack of jurisdiction in the Commissioner, Patna Division to adjudicate upon such disputes and in such situation, the relegation of the appellant-writ petitioners by the learned Single Judge by the judgment and order impugned to the forum of the Bihar Land Tribunal is a futile remand because where the order of the Commissioner, Patna Division lacked jurisdiction it had to be set aside at the very threshhold of the proceedings.

Since I have chosen to strike down the order of the

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Commissioner, Patna Division on the issue of lack of jurisdiction, I do not deem necessary to express any opinion on the other issues raised by the contesting parties taken note of above, which shall be open for canvassing in an appropriate proceeding before the appropriate forum, should there be any.

For the reasons so discussed the judgment and order dated 07.05.2013 of the learned Single Judge passed in CWJC No.6547 of 2012 and analogous cases cannot be upheld and is accordingly set aside and consequentially the order dated 06.03.2012 passed by the Commissioner, Patna Division in Bihar Land Dispute Resolution Appeal No.225 of 2011 and 210 of 2011 reversing the order dated 21.10.2011 of the 'DCLR, Patna' in Case No.45 of 2011-12 together with the eviction notices dated 03.04.2012 issued by the Circle Officer, Patna Sadar impugned in the respective writ petitions, are quashed and set aside. Since there is already a liberty present in the order of the 'DCLR, Patna' in Case No.45 of 2011 allowing the applicants to take recourse for redressal of grievance before a court of competent jurisdiction, the aggrieved parties shall be at liberty to take recourse thereto.

In so far as LPA No.1551 of 2013 arising from CWJC No.18124 of 2013 is concerned, the appellant-writ petitioner has sought to enforce her sale deed through the process of writ jurisdiction and has also been relegated to the forum of the Tribunal along with others. Since the judgment and order of the learned

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Single Judge has already been set aside, in my opinion, the advise given by the 'DCLR, Patna' to the applicant before him, would well apply to the grievance so raised by this appellant as well because in the nature of the dispute so raised by her, a writ remedy is not the proper course and if so advised, she can well take recourse to the civil law remedies.

The appeals are accordingly allowed with no order as to costs.

In so far as monitoring the progress on the investigation by the Serious Fraud Investigating Agency is concerned, LPA No.632 of 2013 exclusively would now be posted on 31st of October, 2018 for enabling Mr. Kumar Priya Ranjan appearing on their behalf and Mr. Prabhakar Jha, learned Government Pleader No.27 to intimate the progress. The said appeal would be posted exclusively for ascertaining the progress of investigation.

(Jyoti Saran, J)

I agree
Chakradhari Sharan Singh, J

(Chakradhari Sharan Singh, J)

SKPathak/-

AFR/NAFR	AFR
CAV DATE	20-09-2018
Uploading Date	27-10-2018
Transmission Date	NA

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