

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.606 of 2018
IN
Civil Writ Jurisdiction Case No. 5682 of 2016**

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1. Md. Shamim Alam @ Md. Shamim @ Nasim Alam Son of Md. Nazir residents of Mohalla- Chawani, P.S.- Tekari, District- Gaya

.... Appellant/s

Versus

1. The State of Bihar through its Chief Secretary, Government of Bihar, Patna
2. The District Magistrate, Gaya
3. The Sub Divisional Officer, Tekari, District- Gaya
4. The Circle Officer, Tekari, District- Gaya
5. The Executive Officer, Tekari Municipality, Tekari, District- Gaya
6. Md. Hussain son of Late Sarfuddin Mina,
7. Ram Suresh Singh, son of Late Gariban Choudhary
8. Arjun Chaudhary, Son of Late Gariban Chaudhary,
9. Mahendra Yadav, Son of Late Nathun Yadav,
10. Muneshwar Sharma, S/o Late Harihar Sharma,
- All residents of Mohalla- Chawani, Ward No.- 10, Government of Bihar, Patna

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Md. Javed Jafar Khan

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

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 16-05-2018

In this Letters Patent Appeal challenge has been made to the order dated 08.01.2018 passed by the learned writ Court in C.W.J.C No.5682 of 2016 by which in the nature of the order proposed to be passed by the learned writ Court, without any notice to the private respondent nos.6 and 7, the learned writ Court has directed that the grievance of the petitioner for removal of encroachment from



the public land/road or drainage may be taken care of in a proceeding which can be initiated by the Collector under the Bihar Public Land Encroachment Act (hereinafter referred to as the 'Act'), if it appears to the Collector under the said Act from an application made by any person or upon the information received from any source that any person has made or is responsible for the continuation of encroachment upon any public land.

2. Learned writ Court found that an Encroachment Case No.2 of 2013 seems to have been initiated after a prima-facie finding was recorded by the Circle Officer but there was nothing on the record to suggest that final order under Section 6 (1) of the Act was passed. The learned writ Court has after taking note of the relevant provisions of the Act directed the respondent no.4 the Circle Officer, Tekari, District-Gaya, to take the proceeding of Encroachment Case No.2 of 2013 to its logical conclusion as per the procedure prescribed under the Act after due notice to all affected persons including respondent nos.6 and 7.

3. Learned counsel for the appellant who was respondent no.6 in the writ application submits that the learned writ Court has passed the impugned order in violation of principles of natural justice inasmuch as, no notice was issued to respondent no.6 before passing of the impugned order.



4. On going through the impugned order passed by the learned writ Court, we are unable to accept the submission of learned counsel representing the appellant. The learned writ Court having found that a proceeding being Encroachment Case No.2 of 2013 was initiated earlier and there was no clarity on the order required to be passed under Section 6(1) of the Act, has simply directed the Circle Officer (respondent no.2) to take the proceeding of encroachment to its logical conclusion. The learned writ Court has taken care of the interest of respondent nos.6 and 7 by pointing out in the impugned order itself that the Circle Officer shall give due notice to all affected persons including respondent nos.6 and 7.

5.The Letters Patent Appeal has thus no merit. It is, therefore, dismissed.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/R.R.Ojha

AFR/NAFR	
CAV DATE	
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