

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21511 of 2018

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Umesh Sharma, son of late Yadu Singh, resident of Village- Mustafapur, P.S.
Dharnarua, District Patna.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate- cum-Collector, Patna.
3. The Additional District Magistrate, Patna.
4. The Sub-Divisional Magistrate, Masaurhi, Patna.
5. The Circle Officer, Dhanaura, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arvind Kumar, Advocate
For the Respondent/s : Mr. Subash Chandra Yadav, GP-15

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE JYOTI SARAN
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

2 22-11-2018 Heard Shri Arvind Kumar, learned counsel for the

petitioner and Shri Subash Chandra Yadav, learned Government

Pleader-15, for the State.

This petition has been filed praying for a direction
against the respondents who are proceeding for demolition of
the constructions stated to be situate over Plot No. 395 of Khata
No. 125 which the petitioner alleges to be attempted by the
respondents without notice or opportunity to him.

It appears from the record that the notices had been
issued according to the respondents, but the petitioner claims
that the order dated 15th October, 2018 came to be recorded
without any notice served or any objection having been



entertained on behalf of the petitioner. It is after coming to know of the said order and the notice dated 8th November, 2018 that the petitioner has filed his objection before the District Magistrate, Patna, a copy whereof has been filed as Annexure-5 to the I.A. No.8718 of 2018.

Learned counsel for the State contends that the petitioner has a remedy of filing an appeal under the provisions of the Bihar Public Land Encroachment Act, 1956 and consequently the writ petition may not be entertained.

It is correct that an appeal lies against an order under the said Act, but in the instant case, we find that the order dated 15th October, 2018 recorded against the petitioner does not appear to have been passed after putting the petitioner to notice. In the circumstances, the question of relegating the petitioner to the alternative remedy of appeal does not arise keeping in view the law laid down by the Hon'ble Supreme Court in the case of **Whirlpool Corporation Versus Registrar of Trade Marks, Mumbai and others**, reported in **(1998) 8 SCC 1**. The question of availability of alternative remedy, therefore, would not be a bar in entertaining the writ petition where there has been a breach of principles of natural justice.

Consequently, we quash the order insofar as it relates



to the petitioner dated 15th October, 2018 as well as consequential notice dated 8th November, 2018 and call upon the respondents to consider the objection filed by the petitioner dated 19th November, 2018 and then pass an appropriate order in accordance with law, preferably within a period of six weeks from today. The petitioner shall cooperate with the respondents in the disposal of the said matter.

The writ petition stands allowed subject to the aforesaid observations.

A certified copy of this order shall be issued to the learned counsel for the petitioner on payment of usual charges urgently today.

The counsel for the State shall communicate this order to the concerned authorities accordingly.

(Amreshwar Pratap Sahi, CJ)

(Jyoti Saran, J)

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