

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL WRIT No.3787 of 2019

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Ram Narayan Yadav S/o Raghuni Yadav R/o Village Jhajhra, PS
Kusheshwarsthan, District-Darbhanga

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Revenue and Land Dept.
Government of Bihar, Patna
2. The District Magistrate, Darbhanga
3. The Circle Officer, Kusheshwarsthan, Darbhanga

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Alok Kumar @ Alok Kr Shahi
For the Respondent/s : Mr.Subash Chandra Yadav (GP15)

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

2 26-02-2019 Heard the parties.

In the present writ application, the petitioner has prayed for issuance of writ in the nature of certiorari for quashing the order dated 30.11.2018 (Annexure-4) passed by the Respondent No.2, by which the Appeal bearing No.76 of 2018, filed against the notice issued to the petitioner under Section 3 of the Bihar Public Land Encroachment Act, 1956, in Case No.15/17-18 has been dismissed.

Considering the facts and circumstances of the case, the petitioner is directed to file objection under Section 4 of the Act on 14.03.2019 before the Respondent No.3. The Respondent No.3 shall look into the objection filed on behalf of the petitioner and fix a date of hearing as per Section 5 of the Act and pass an appropriate order in accordance with law as provided under Section 6 of the Act. Further it is made clear that the order dated 30.11.2018 and the



findings made therein passed by the Appellate Authority in Appeal No.76 of 2018 shall not come in the way while passing a final order considering the merit of the case by the Respondent No.3.

It must be indicated here that orders passed under Sections 6, 7 or 8 being amenable to appeal in terms of Section 11 of the Act. A notice issued in terms of Section 3 of the Act is not amenable to appeal before any authority under Section 11 of the Act. In the present case the petitioner instead of submitting his defence in terms of Section 4 of Act, misused the remedial legal recourse of appeal under Section 11 of the Act, either deliberately or on the wrong legal advice, but more surprising is the order of the Collector passed in appeal impugned here under, which suffers from vice of error of jurisdiction.

Therefore, the order dated 30.11.2018 (Annexure-4) is, accordingly, set aside with the direction made above. The entire proceeding shall be concluded by the Respondent No.3, within a period of three months from the date of filing objection under Section 4 of the Act.

The present writ application stands disposed of.

(Sudhir Singh, J)

Narendra/-

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