

(2007) 05 PAT CK 0123
In the Patna High Court
Case No : LPA No. 529 of 1998

Adalat Mahto and Another	Vs	APPELLANT
The State of Bihar and Others		RESPONDENT

Date of Decision : 11-05-2007

Acts Referred:

Citation : (2008) 1 PLJR 72

Hon'ble Judges : Navaniti Pd. Singh, J; Barin Ghosh, J

Bench : Division Bench

Advocate : Jai Prakash Verma, for the Appellant; Raju Giri for Respondents No. 5 to 9, for the Respondent

Final Decision : Dismissed

Judgement

Barin Ghosh and Navaniti Pd. Singh, JJ.—Heard learned counsel for the parties. The appellants filed an application before the Circle Officer, Kateya contending therein that the writ petitioners-respondents have encroached a public land. On the basis of the said application, Land Encroachment Case No. 12/92-93 was started. Upon conclusion of the said case, the Circle Officer concerned passed an order dated 22nd October, 1992 and thereby directed the writ petitioners-respondents to remove themselves from the land in question within thirty days and in default it was held out that steps will be taken to remove the encroachments created by them on the land in question. The writ petitioners-respondents then preferred an appeal against the said order dated 22nd October, 1992. Before the appellate authority, the writ petitioners-respondents contended that they are raiyats of the land in question and that before the impugned order was passed they were not properly noticed and no hearing was given to them. They purported to represent before the appellate authority that on the basis of the documents, as produced by them before the appellate authority, the writ petitioners-respondents have sufficient title to remain on the land in question. The appellate authority dismissed the appeal, but while doing so did not utter a single word as to service of notice, which was the requirement of law, before

passing of the impugned order dated 22nd October, 1992. At the same time the appellate authority did not hold that the documents upon which the writ petitioners-respondents were seeking to rely, they were improperly procured documents. The appellate authority at the same time did not pronounce that even on the basis of those documents the writ petitioners-respondents cannot claim to be entitled to remain on the land in question. In such view of the matter, the writ petitioners-respondents approached this Court challenging the orders of the Circle Officer as well as the appellate authority.

2. The Court found that no attempt has been made to ascertain the right, if any, of the writ petitioners-respondents to remain in possession of the land in question and there is nothing on record that before the order directing removal of encroachment was passed, any notice was given to the alleged encroachers. In the circumstances, the Writ Court while set aside the orders of the Circle Officer as well as of the appellate authority remanded back the matter to the Circle Officer with a direction upon him to decide the matter de novo upon giving notice to the writ petitioners-respondents as well as the appellants. It is not the case of the appellants that the facts found by the Writ Court are incorrect. We have thus not found any error in the order impugned in this appeal and accordingly we have no reason to interfere with the order under appeal. The appeal accordingly fails and the same is dismissed.