IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5298 of 2024

CNR No. BRHC010311992024

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1. Ravindra Kumar son of Sriram Prasad, R/of Mohalla-House No. 43, LIG H, Near Kankarbagh Tempo Stand Lohia Nagar, PS-Kankarbagh, District-Patna.
2. Naresh Razzak @ Naresh Prasad, son of Piyari Ram Razzak, R/of Mohalla-Ritz House, 90 feet Road, Janki Nagar Hanuman Nagar, PS-Kankarbagh, District-Patna.

... ... Petitioners

Versus

1. The State of Bihar through the District Collector, Patna.
2. The District Collector, Patna.
3. The Sub Divisional Officer, Patna.
4. The Circle Officer, Phulwari Sharif, P.S.-Phulwari Sharif, Patna.

... ... Respondents

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with

Civil Writ Jurisdiction Case No. 4839 of 2024

CNR No. BRHC010311992024

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1. Sunil Kumar Sharma Son of Late Rajkumar Sharma resident of 90 feet road, Malahipakri, P.S. Patraknagar, District Patna.
2. Smt. Krishna Prasad, Wife of Late Nand Keshwar Prasad resident of 90 feet road, Malahipakri, P.S. Patraknagar, District Patna.
3. Shashi Bhushan Kumar, Son of Late Rameshwar Prasad resident of 90 feet road, Malahipakri, P.S. Patraknagar, District Patna.
4. Ajit Kumar, Son of Late Ram Chandra Sharma resident of 90 feet road, Malahipakri, P.S. Patraknagar, District Patna.
5. Geeta Devi, Wife of Sushil Kumar resident of 90 feet road, Malahipakri, P.S. Patraknagar, District Patna.
6. Satendra Narayan Singh, Son of Late Sitaram Singh resident of 90 feet road, Malahipakri, P.S. Patraknagar, District Patna.

... ... Petitioners

Versus

1. The State of Bihar through the Principal Secretary, Department of Revenue and Land Reforms, Govt, of Bihar, Patna.
2. The Collector cum District Magistrate, Patna.

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3. The Circle Officer, Phulwarisharif Circle, Patna.

... ... Respondents

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Appearance :
(In Civil Writ Jurisdiction Case No. 5298 of 2024)
For the Petitioner/s : Mr. Sushant Kumar, Advocate
For the State : Mr. Subodh Kumar, AC to SC-26
(In Civil Writ Jurisdiction Case No. 4839 of 2024)
For the Petitioner/s : Mr. Rajesh Ranjan, Advocate
For the Respondent/s : Ms. Babita Kumari, AC to SC-1
Mr. Md. Irshad, AC to SC-1

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CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR

C.A.V. JUDGMENT

Date : 05-11-2026

Ref: C.W.J.C. No. 5298 of 2024

Heard learned counsel for the petitioners and the learned counsel for the State.

2. That through this writ application the petitioner makes a prayer for issuance of writ/writ, order/order, direction/directions to the Respondents for following relief/reliefs:

> *"A. To direct the respondent, especially respondent no. 4 to supply certified copies of the final order passed in Land Encroachment case no. 07/2023-24 to the petitioners.*
>
> *B. To quash the notice dated 05.03.2024 issued by Respondent no.4 which was received by the petitioner on 11.03.2024 by which the petitioner no. 1 has been directed to remove the encroachment from the land appertaining to plot no. 274 area 315 sq feet by before 21.03.2024 which is the residential house of the petitioner upon which after purchase of the land in question*

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the petitioner has constructed a pucca house and shop on the land in question and the entire family are residing otherwise it will be removed forcibly and also they are liable for punishment under IPC.

C. To quash the notice dated 05.03.2024 issued by Respondent no.4 which was received by the petitioner on 11.03.2024 by which the petitioner no. 2 has been directed to remove the encroachment from the land appertaining to plot no. 274 area 315 sq feet by or before 21.03.2024 which is the residential house of the petitioner upon which after purchase of the land in question the petitioner has constructed a pucca house and shop on the land in question and the entire family are residing otherwise it will be removed forcibly and also they are liable for punishment under IPC.

D. To stay the notice dated 05.03.2024 issued by Respondent no.4 against the petitioner by which both the petitioners have been directed to remove the encroachment from the land which is the residential house of the petitioners.

E. To direct the respondents not to take any coercive action till the final decision of the present writ application.

F. To stay the Land Encroachment case no. 07/2023-24 pending before the Circle Officer Phulwari Sharif, Patna during pendency of the present writ application.

G. To stay the Land Encroachment case no. 07/2021-22 pending before the Circle Officer Phulwari Sharif, Patna during pendency of the present writ application.

H. Any other relief / reliefs for which the petitioner is entitled under the facts and circumstances of the case".

3. The petitioners are aggrieved by the notice dated 05.03.2024, served on 11.03.2024 in Land Encroachment Case

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No. 07/2023-24, by which they have been directed to remove the alleged encroachment from Plot No. 274 by 21.03.2024, failing which it will be removed forcibly. The case of the petitioners is that Mrs. Anju Kumari, wife of petitioner no. 1, acquired the status of Raiyat in respect of the residential house on a part of Survey Plot No. 274, Khata 12, Tauzi No. 355, Kankarbagh, Patna, through registered absolute sale deed No. 10882 dated 05.12.2015. Her name was thereafter mutated in the year 2017 and rent has been paid up to date. As regards petitioner no. 2, the land in Khata No. 22, Plot No. 274 is joint property, in his possession after purchase, and was mutated in the year 1982. His entire family has since been residing there and paying rent, and an LPC has been issued in favour of his family. An earlier notice issued in Land Encroachment Case No. 07/2021-22 was challenged by the petitioners along with others in CWJC No. 2080/2022, which was disposed of on 29.11.2022 with liberty to file replies/objections within four weeks. The Circle Officer, Phulwarisharif was directed to consider them and pass a final order under Section 6(1) of the Bihar Public Land Encroachment Act, 1956 in accordance with law, and status quo was to be maintained in the meantime. The petitioners filed their objections, but no final order was passed in Land Encroachment

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Case No. 07/2021-22, which is still pending, and another notice was instead issued on 05.03.2024 in Land Encroachment Case No. 07/2023-24.

4. Learned counsel for the petitioners submitted that the notice dated 05.03.2024 was issued under Section 6 of the Land Encroachment Act without issuing the mandatory notice under Section 3 of the Act, and placed reliance on ***Shailesh Kumar vs. State of Bihar,*** reported in ***2019 (6) BLJ 96***, in which it was held that not less than two weeks' time to appear is a mandatory requirement for the notice under Form-1. It was also submitted that the notice dated 05.03.2024 was issued despite the interim protection of status quo granted with regard to the houses of the petitioners in CWJC No. 2080/2022, and while Land Encroachment Case No. 07/2021-22 remains pending with no final order.

5. Learned counsel for the petitioners further submitted that on 12.03.2024 the petitioners submitted a chirkut at the office of the Circle Officer, Phulwari Sharif for a certified copy of the final order passed in Land Encroachment Case No. 07/2023-24 so that they could challenge it in appeal before the learned District Collector, but the order was not provided. It was lastly submitted that the petitioners came to know through

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reliable sources that the District Administration and the Circle Officer were going to demolish their house on 21.03.2024, and that the action of the respondents violates Article 300A of the Constitution of India, which provides that no person shall be deprived of property save by authority of law, and that it amounts to violation of the fundamental principle of law and fair play.

6. Learned counsel for the State/Respondent Nos. 2, 3 and 4 submitted that the petitioners were given notice under the provisions of the Bihar Public Land Encroachment Act in Encroachment Case No. 7/2023-24, and the notice issued by the Circle Officer is just and proper because it was issued after the passing of the final order in that case, so the allegation of the petitioners is unfounded. It was also submitted that the petitioners have encroached upon public land, as is evident from the report of the Circle Amin dated 20.12.2021, and that they are encroachers of public land.

7. Learned counsel for the State/Respondent Nos. 2, 3 and 4 further submitted that after the order dated 29.11.2022 in CWJC No. 2080 of 2022, the petitioners filed their objection and the final order was passed on 05.03.2024, and therefore notice under Section 6(ii) of the Bihar Public Land

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Encroachment Act was given to the petitioners. It was also submitted that after passing of the final order in Land Encroachment Case No. 7 of 2021-22, notice was issued to the petitioners to remove the encroachment and that the house of the petitioners has not been demolished, and that it is wrong to say that the final order has not been provided to the petitioners.

8. Learned counsel for the State/Respondent Nos. 2, 3 and 4 lastly submitted that the petitioners have an alternative remedy to file an appeal in the court of the learned Collector against the order of the Circle Officer, and that the writ application is devoid of any merit and is fit to be dismissed.

Ref: C.W.J.C. No. 4839 of 2024

9. Heard learned counsel for the petitioners and learned counsel for the State.

10. In the instant writ petition, the petitioners have prayed for the following relief(s):

> *"(i) For issuance of a writ in the nature of certiorari for quashing the notice dated 05/03/2024, whereby and whereunder the respondent no.3 has directed the petitioners to remove encroachment from their self - acquired land within 15 days from the date of notice failing which they shall be liable to the penalty provided under section 188 of Indian Penal Code.*
>
> *(ii) During the pendency of the present writ*

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petition the operation of the impugned notice dated 05/03/2024 may be stayed and the respondents may be restrained from taking any coercive step against the petitioner.

(iii) Any other writ/writs, order/orders or direction/directions as the facts and circumstances of the case may require and deemed fit by this Hon'ble Court may also be issued".

11. The case of the petitioners is that they acquired their respective lands in Mauza Jaganpura through registered sale deeds, and Jamabandis were created in their names, that rent receipts are issued, and that they have constructed residential houses on the land and have been residing there since then and that an Encroachment Case No. 07/2021-22 was initiated by the Circle Officer against them and others and a notice under Section 6(2) of the Bihar Land Encroachment Act, 1956 was issued on 19.01.2022. They challenged it in CWJC No. 2080 of 2022, which was disposed of on 29.11.2022 by quashing the notices under Section 6(2), with a direction to file objections in the ongoing case and to the Circle Officer to consider them and pass a final order under Section 6(1) of the Act. The petitioners filed their show cause replies in compliance, and on 25.01.2024 they again received a notice under Section 3(1) of the Act, in response to which they filed their show cause on 10.02.2024. then suddenly the petitioners

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received the notice dated 05.03.2024, directing them to remove encroachment from their self-acquired land within 15 days, failing which they would be liable to the penalty under Section 188 of the Indian Penal Code, and they are aggrieved by this notice.

12. Learned counsel for the petitioners submitted that respondent no. 3 issued the direction for removal of encroachment without holding any proceeding under the Bihar Public Land Encroachment Act, without considering the show cause filed by the petitioners, and without giving them any opportunity of hearing, and that this is also in wilful disobedience of the order dated 29.11.2022 passed in CWJC No. 2080 of 2022, in which status quo was directed to be maintained. It was submitted that the petitioners have no knowledge of any order passed under Section 6(II) of the Act till date, and that the so-called measurement report, on the basis of which the land and construction were declared an encroachment, was not provided to them.

13. Learned counsel for the petitioners further submitted that the land of the petitioners is raiyati, as is established from the khatian, rent receipts and Jamabandi register copy, and that the respondents failed to investigate the

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nature of the land and proceeded on the premise that it is public land. Reliance was placed on Rekha Singh vs. State of Bihar, 1992 (2) PLJR, for the proposition that the summary procedure under the Act cannot be invoked when a title dispute is involved, and on Hafiza Khatoon vs. State of Bihar, 1991 (1) PLJR 384, wherein it was held that the first responsibility is on the State to prima facie show that the land alleged to be encroached is public land. It was also submitted that the finding of encroachment rests on mere presumption, that no measurement was conducted in a scientific manner with regard to khesra nos. 1150 and 1151, and that the respondents had no jurisdiction to proceed against the petitioners under the Act.

14. Learned counsel for the State/Respondent Nos. 2 and 3 submitted that the Encroachment Case No. 7 of 2021-22 was initiated against the petitioners and others, and that after the order dated 29.11.2022 in CWJC No. 2080 of 2022 the petitioners filed their objections, which were considered and the petitioners were heard at length by the Circle Officer. It was also submitted that after hearing the parties, the final order under Section 6(1) of the Act was passed on 05.03.2024, and thereafter the petitioners were served notice under Section 6(ii) of the Act, which is according to law and that the Circle Officer had also

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issued a notice under Section 3(i) of the Act directing the petitioners to file their show cause.

15. Learned counsel for the State/Respondent Nos. 2 and 3 further submitted that the petitioners have encroached upon public land, that their show cause was not satisfactory, and that the show cause and representation of the petitioners were duly considered by respondent no. 3 and their cases were not found genuine. It was also submitted that, by Memo No. 2001 dated 19.08.2021 of the Circle Officer regarding measurement of the 90 feet road (Malahi Pakri to NH-30), the Circle Amin measured the land and found that the petitioners have encroached upon the public road, and recommended initiation of an encroachment proceeding, on which the encroachment case was initiated.

16. Learned counsel for the State/Respondent Nos. 2 and 3 lastly submitted that by order dated 19.03.2024 this Court directed that no demolition shall be made during the pendency of the case, and that in compliance no demolition has been made by the respondents.

17. Having heard the parties and perused the record, it is evident that the order passed under Section 6(1) of the Bihar Public Land Encroachment Act, 1956, by the Circle

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Officer, Phulwarisharif, is silent on the objection filed by the petitioner. It is relevant to indicate here that such objections were filed in the light of the order passed by a Coordinate Bench of this Court. The non-consideration of these objections vitiates the order of the authorities concerned. It is a settled principle of law that a judicial, quasi-judicial, or administrative body cannot pass an order affecting anyone's rights in a mechanical manner without applying its mind to the objections raised. In a catena of judgments, the Hon'ble Apex Court has expressed its view that objective consideration and reasons are the foundation of an order.

18. In ***Harinagar Sugar Mills Ltd. v. Shyam Sunder Jhunjhunwala,*** reported in ***AIR 1961 SC 1669***, the Central Government set aside a company's refusal to register a share transfer without giving any reason. Even though the decision was administrative, the Court insisted on reasons. It held that the Government acted as a tribunal in exercising appellate powers, and that such powers cannot be effectively exercised if reasons are not given by the Central Government in support of the order.

Similarly in ***Travancore Rayon Ltd. v. Union of India,*** reported in ***(1969) 3 SCC 868,*** the Hon'ble Apex Court,

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while dealing with the revisional jurisdiction of the Central Government under the then Section 36 of the Central Excise and Salt Act, 1944, held that the Central Government was actually exercising judicial power of the State and in exercising judicial power reasons in support of the order must be disclosed on two grounds. The first is that the person aggrieved gets an opportunity to demonstrate that the reasons are erroneous and secondly, the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power.

19. Further in ***M/s. Mahabir Prasad Santosh Kumar vs. State of U.P and others***, reported in ***(1970) 1 SCC 764***, while dealing with U.P. Sugar Dealers License Order under which the license was cancelled, the Apex Court held that such an order of cancellation is quasi-judicial and must be a speaking one. It was further held that merely giving an opportunity of hearing is not enough and further pointed out where the order is subject to appeal, the necessity to record reason is even greater. The learned Judges held that the recording of reasons in support of a decision on a disputed claim ensures that the decision is not a result of caprice, whim or fancy but was arrived at after considering the relevant law and that the decision was just.

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Later on in ***Union of India vs. Mohan Lal Capoor and others***, reported in ***(1973) 2 SCC 836***, the Apex Court while dealing with the question of selection under Indian Administrative Service/Indian Police Service (Appointment by Promotion Regulation) held that the expression "reasons for the proposed supersession" should not be mere rubber stamp reasons. Such reasons must disclose how mind was applied to the subject matter for a decision regardless of the fact whether such a decision is purely administrative or quasi-judicial. The Apex Court also held that the reasons in such context would mean the link between materials which are considered and the conclusions which are reached. Reasons must reveal a rational nexus between the two.

20. It has been held time and again that recording reasons is one of the attributes of quasi-judicial functioning and that natural justice requires reasons to be written for the conclusions to be reached, the same was reiterated by the Hon'ble Supreme Court in ***Ram Chander vs. Union of India and others***, reported in ***(1986) 3 SCC 103***, the Apex Court was dealing with the appellate provisions under the Railway Servants (Discipline and Appeal) Rules, 1968 condemned the mechanical way of dismissal of appeal in the context of

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requirement of Rule 22(2) of the aforesaid Rule and held that the word “consider” occurring to the Rule 22(2) must mean the Railway Board shall duly apply its mind and give reasons for its decision. The learned Judges held that the duty to give reason is an incident of the judicial process and emphasized that in discharging quasi-judicial functions the appellate authority must act in accordance with natural justice and give reasons for its decision.

21. Further in the case of ***Charan Singh vs. Healing Touch Hospital and others***, reported in ***(2000) 7 SCC 668***, a three-Judge Bench of the Apex Court, while dealing with a grievance under CP Act, held that the authorities under the Act exercise quasi-judicial powers for redressal of consumer disputes and it is, therefore, imperative that such a body should arrive at conclusions based on reasons and that the said Act, being one of the benevolent pieces of legislation, is intended to protect a large body of consumers from exploitation as the said Act provides for an alternative mode for consumer justice by the process of a summary trial. The powers which are exercised are definitely quasi-judicial in nature and in such a situation the conclusions must be based on reasons and held that requirement of recording reasons is “too obvious to be reiterated and needs

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no emphasizing".

22. Later on the Apex Court in ***Kranti Associates Private Limited v. Masood Ahmed Khan,*** reported in ***(2010) 9 SCC 496***, stressed upon the importance of reasoned judicial orders and elaborated on why "reason is the soul of justice." The Court in its para 47 summarized the following points:

> ***"a.*** *In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
> ***b****. A quasi-judicial authority must record reasons in support of its conclusions.*
> ***c.*** *Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
> ***d****. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*
> ***e****. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.*
> ***f****. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*
> ***g****. Reasons facilitate the process of judicial review*

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by superior Courts.

***h**. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice. i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.*

***j**. Insistence on reason is a requirement for both judicial accountability and transparency.*

***k**. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.*

***l.** Reasons in support of decisions must be cogent, clear and succinct. A pretense of reasons or `rubber-stamp reasons' is not to be equated with a valid decision making process.*

***m**. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to*

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errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

***n**. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".*

***o**. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".*

(Emphasis Supplied)

23. Recently the Apex Court in ***Zulfiquar Haider v. State of U.P., 2025 INSC 480***, held that the right to shelter is an integral part of Article 21 of the Constitution and can be taken away only by following due process of law. Since the rule of law is part of the basic structure of the Constitution, the Court held that residential structures of citizens cannot be demolished

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in a summary manner without following the principles of natural justice. It held that a show-cause notice must be genuinely served and the owner given a real chance to show cause and to appeal, and it awarded costs of Rs. 10 lakh in each case for a demolition carried out in disregard of this.

Also in the case of ***Rajeev Singh and Ors. v. State of Uttar Pradesh and Anr. (2026 INSC 938)***, the Hon'ble Supreme Court has held that the lack of reasons is indicative of non-application of mind and it handicaps the higher Court from discerning the basis upon which the conclusion was arrived at and testing its legality and/or correctness. The relevant paras are reproduced below;

> ***"6****. Although, we are conscious of the immense burden that Hon'ble Judges of the High Court are required to shoulder, a laconic order (such as the impugned order) can neither be appreciated nor countenanced. Writing brief orders, in the circumstances of the heavy burden being shouldered, could be a prudent approach but not at the cost of reasons. Every judicial order must meet the basic minimum standard required from a Judge of the High Court while disposing of any matter before him, more so in a criminal appeal of the present nature, where the appellants not found involved initially is forced to face trial.*
>
> ***7.*** *We may remind ourselves of the decision*

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of this Court in ***Asma Lateef and Another versus Shabbir Ahmad and Others****, where the observations made in paragraphs 57 and 58, though in respect of civil proceedings, have equal relevance even in respect of adjudication of criminal proceedings. The cardinal principle of the justice delivery system was reiterated that every judicial verdict, which determines the rights and liabilities of the parties to the proceedings, must disclose not only the outcome, but also the reasons therefor, i.e., why one party has succeeded and the other has not. The insistence on reasons for the decision is for the simple reason that it ensures application of mind by the adjudicator to the material on record and also enables the unsuccessful party to test the same before the higher forum. Lack of reasons, indicative of nonapplication of mind, handicaps the higher court from discerning the basis upon which the conclusion was arrived at and testing its legality and/or correctness".*

(Emphasis Supplied)

24. From the above, it can be held that an administrative or judicial order that lacks reasons or justifications, or demonstrates a failure to apply its mind, cannot legally deprive a person of their right to property under Article 300A, particularly when passed in a summary proceeding like the Bihar Public Land Encroachment Act, 1956. Hence, the

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order dated 05.03.2024, being cryptic, unreasonable, and arbitrary, is hereby quashed.

25. The matter is remanded to the authorities concerned to pass an appropriate and reasoned order after giving an adequate opportunity of hearing to the petitioner.

26. With the aforesaid observations, the present writ petitions are allowed.

(Alok Kumar, J)

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AFR/NAFR	**A. F. R.**
CAV DATE	27.08.2026
Uploading Date	05.11.2026
Transmission Date	N.A

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