

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(LETTERS PATENT APPELLATE JURISDICTION)**

L.P.A.No. _____ of 2013.

(Arising out of C.W.J.C.No.20388 of 2012)

Shiv Kumar Sharma and another.-----Petitioners/Appellants.

Versus

The Union of India, through the Director, Ministry of Power, New
Delhi and others.-----Respondents/Respondents.

Subject:- L.P.A.

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Shiv Kumar Sh. ^Yama and another.-----PetitionersAppellants.

Versus

The Union of India, through the Director, Ministry of Power, New
Delhi and others.-----Respondents/Respondents.

SYNOPSIS

Reliefs:- The present Letters Patent Appeal is being filed for setting aside the Order dated 21.1.2013 in C.W.J.C.No.20388 of 2012, passed by the Hon'ble Mr. Justice Shailesh Kumar Sinha, Hon'ble Single Judge, Patna High Court, who has disposed of the said Writ Petition inter alia without considering the submissions made on behalf of the appellant as to whether the ~~election~~ ^{erection} of the Pillar Nos.93/2 and 93/3 over the lands of the petitioner may be said to be in unauthorized manner which is not included in the Gazette of India published on 19th May, 2011 which may further be said to be

violative of Article 300 A of the Constitution of India, 1950.

30.3.12-Letter issued after starting of the work.(Annexure-1 in the Writ Petition.

30.5.12-Appellants sent a Pleader Notice in reply to Annexure-1. (Annexure-2).

11.6.12-Respondent No.4 sent a Pleader Notice in reply to the Annexure-2. (Annexure-3).

-Work of installation is being carried by Respondent No.5.

-Respondent No.5 coercively took the signature of the appellants for ~~playing~~^{paying} damages unproportionately.

(Annexure-4 series).

12.9.12-Appellant No.1 filed an application supplying the Respondent Nos.4 and 5 full details concerning rough estimate^{of} damages caused to the lands.(Annexure-5).

22.9.12-Respondent No.5 with the help of police inducing fear and forcefully making the appellants accept unproportionate amount of damages. (Annexure-6_.

-Respondent No.5 handed over the charge.

25.9.12- Form issued to the Appellant No.2.

1.1.2013--Appellant filed C.W.J.C.No.20388 of 1012, which was disposed of on 1.1.2013.

Hence, this L.P.A.



**IN THE HIGH COURT OF JUDICATURE AT PATNA
(LETTERS PATENT APPELLATE JURISDICTION)**

L.P.A.No. _____ of 2013.

(Arising out of C.W.J.C.No.20388 of 2012)

In the matter of an Appeal
Under Clause 10, Appendix E
of the Letters Patent of Patna
High Court Rules;

A n d

In the matter of:

1. Shiv Kumar Sharma, son of Late Bhubneshwar Sharma.
2. Ram Rani Devi, wife of Shiv Kumar Sharma.

Both residents of Alam Nagar, P.S.-Alam Nagar ,District-
Madhepura.

-----Appellants.

Versus

1. The Union of India, through the Director, Ministry of Power,

2.

New Delhi.

2. Bihar Electricity Board, through Chief Electrical Inspector,
Patna, Bihar.
3. District Magistrate, District- Madhepura.
4. East-North Interconnection Company Ltd., at CORE 6 IInd
Floor, SCOPE Complex, 7 Lodi Road, New Delhi-110003.
5. Bajaj Electricals Ltd., through Ranjaya Kumar, Senior Manager,
C/o Mr. S.K.Ghosh (Retd. S.P.), Opposite Hansha Hotel, Zila
School Road, Purnia-854301, Bihar.
6. State Electricity Regulatory Commission.

-----Respondents/Respondents.

To,

The Hon'ble Ms. Justice Rekha M. Doshit, the Chief Justice
of the High Court of Judicature at Patna and Her Companion
Justices of the said Hon'ble Court.

The humble Appeal on behalf
of the above named Appellants.

MOST RESPECTFULLY SHEWETH:-

1. That the present Letters Patent Appeal is being filed before
this Hon'ble Court on behalf of the Appellants for setting

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aside the Order dated 21.1.2013 in C.W.J.C.No.20388 of 2012, passed by the Hon'ble Mr. Justice Shailesh Kumar Sinha, Hon'ble Single Judge, Patna High Court, who has disposed of the said Writ Petition inter alia without considering the submissions made on behalf of the appellant as to whether the ~~election~~^{erection} of the Pillars Nos.93/2 and 93/3 over the lands of the petitioner may be said to be in unauthorized manner which is not included in the Gazette of India published on 19th May, 2011 which may further be said to be violative of Article 300 A of the Constitution of India, 1950.

2. That the appellants had /have not moved before this Hon'ble Court earlier by filing Letters Patent Appeal arising out of the aforesaid Order.
3. That the appellants have got land as follows:-
 - (i) Khata No.117, Khesra No.7619, 7620, 7621, 7622 Khata No.264, Khesra No.7623, total area 6 Acres.
 - (ii) Khata No.1876, Khesra No.7555, area 1.65 Acres, 7554- 1.55 acres, Khata No.233, Khesra No.7556-0.52 acres, Khata No.510, Khesra No.7557- 1.49 acres, total area 5.21 Acres.

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4. That it may be stated that for laying over head Electrical Lines for Electric Supply, the Pillar namely 93/2 is going to be fixed over the lands as follows:-

Khata No.117, Khesra No.7619, 7620, 7621, 7622, Khata No. 264, Khesra No.7623, area 6 Acres and the work of Pillar No.93/3, which falls over the land as follows:-

Khata No. 1876, Khesra No. 7555-1.65 acres, 7554-1.55 Acres, Khata No. 233, Khesra No. 7556-0.52 Acres, Khata No.510, Khesra No. 7557-1.49 Acres, total area 5.21 Acres.

5. That the appellants had no information regarding the said installation of the Pillars and also no notice had been issued to them for the said installation aforesaid.
6. That it may be stated that a Letter dated 30.3.12, issued under the signature of Senior Manager of Bajaj Electrical Ltd. having addressed C/o Mr. S.K.Ghosh (Retd. S.P.) opposite Harsha Hotel, Zila School Road, Purnia- 854301, Bihar.
7. That in reply to the said letter, contained in Annexure-1, a Pleader's Notice dated 30.5.12 had been sent to Senior Manager Bajaj Electrical Ltd. stating inter alia therein that the Gazette Notification of India dated 19.5.2011 does not contain the land

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of the appellant and also it does not mention therein by whom the said work of installation used to have been done. It has further been stated therein that although the information had been given to the District Magistrate, Madhepura but no information had been given and as such the work which is being done, is contrary to Gazette Notification of India which ~~contravenes~~ ^{contravenes} the provisions of the Constitution of India.

8. That in reply to the said Pleader Notice contained in Annexure-2, a Pleader Notice had been sent to the appellant through the lawyer attached to Respondent No.4, stating therein that his lawyer had wrongly been instructed as instead of giving Pleader's notice to Respondent No.4, the Pleader's notice had been issued to Respondent No.5.
9. That it may be relevant to state that the appellants are residing in the remote Village and they are said to be unknown to the said work whatsoever is being done by the Company and as such the petitioners acknowledge the work which is being done by Respondent No.5 and as such the Pleader Notice had been sent to Respondent No.5.

6.

10. That it may further be stated that the field Officer attached to the Company of Respondent No.5 had suo-motto told the appellant to put the signature upon 5 forms so that the details of damage caused to lands may be mentioned therein and accordingly the Field Officer above mentioned procured the signatures of the appellants, seal and signatures of the Mukhiya of the concerned Gram Panchayat, out of the five said forms two had been cancelled, one form is said to have been lost and two forms containing the details of the damage caused to the lands of the appellant in installation of the Pillars namely 93/2 and 93/3 over the two different plots, have been sent.
11. That it may be stated that after having received the said forms out of which two forms contained the details of the damage caused to the lands of the appellants, the Appellant No.1 filed an application on 12.9.12 in the name of Bajaj Electricals Ltd. stating therein that in installation of Pillar No93/2 and 93/3 the damage caused to the appellants' land is Rs. 15,00,000/- only in foundation work and the details of damage caused to the land are mentioned in the said application.

12. That it may be relevant to state that after the said application contained in Annexure-5 in the name of Respondent No.5 had been filed, the Senior Manager namely Ranjay Kumar and the Field Manager attached to Respondent No.5 having gone to Alam Nagar P.S., persuaded the S.H.O. of the said P.S. to call the appellants to the P.S. and accordingly the Chaukidar attached to the P.S. had been sent to call the appellants. The Appellant No.1 and his son Sri Raghunandan Sharma went to the P.S. and both the said persons attached to Respondent No.5 with the help of the S.H.O. of the said P.S. threatened to face dire consequences, if the appellant would not accept the amount by COC No.93/2 and COC No.93/3.
13. That it may be stated that a draft of Rs. 41,390/- and another Draft of Rs. 32,042/- of the S.B.I. had been handed over to the Appellant No.1 after having received his signature thereupon. Although the appellant filed an application dated 12.9.12 giving the details of loss that had been caused in the foundation work of Pillar No.93/2/ and 93/3 which falls over the lands of aforesaid appellant.

14. That it may further be stated that a form containing the damage caused to the trees attached to the lands of the appellant has been issued to the Appellant No.2 under the signature of the Supervisor attached to Respondent No.5 .The said form which contained details of the trees clearly suggest that the cost of which can be assessed in Lacs according to the prevalent price of the wood. The said damage caused to the trees only in erecting the Pillars but at the time of laying over head electric wires some more trees might be cut.
15. That it may be stated that at present the over head electric lines are in progress and for the purpose of laying over head electric lines, the electric lines need to be stretched with the help of Tractors through the electric lines/wires used to have been pulled and due to this the entire area of lands has completely been damaged which would render the lands uncultivable for years together in future.
16. That the appellants are out and out an agriculturist who depend upon the agricultural produce and since March, 2011 the lands are under the control of Respondent Nos. 4 and 5 and prior to March, 2011 the said lands contained around

2000 banana tree planted in an area measuring 1½ acres, in some portion of the land as stated above contained Chilly crop in an area measuring 4 acres and remaining area measuring 5½ acres contained the maize crops. At the time of commencement of work the aforesaid crops were damaged, but the Respondent Nos.4 and 5 in spite of the objections raised by the petitioners they did not pay any heed and as such this Hon'ble Court may be pleased to direct the Respondent Nos.4 and 5 and the authorities of electricity department to pay the amount against the damage caused to the lands and standing crops of the appellants.

17. That it may be relevant to state that at the very inception of the hearing of the Writ Petition being C.W.J.C.No.20388 of 2012 this Hon'ble Court on several dates heard the petitioners counsel and the concerned respondents who had been made party in the said Writ Petition. It appears that this Hon'ble Court passed an Order on 8.11.12 directing the petitioner to file ^{notice in} ordinary process and registered cover with A/D for which Talbana requisites etc. to ~~the~~ ^{be} filed by tomorrow and the Office was directed to issue notice tomorrow or in any case before the

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High Court closes for Diwali Holidays and in the meantime it was directed that execution of work be stopped forthwith until the Respondents No.4 and 5 appear and inform this Court about the Commission which is vested with the Jurisdiction to adjudicate the damage suffered by the petitioners.

18. That the said situation had arisen due to the fact that all the concerned respondents had raised their hands that they are not authorities vested with the Jurisdiction to adjudicate the adequacy of damage suffered by the petitioners/appellants.

The said Order has been annexed as Annexure-8 of the rejoinder to the Counter Affidavit filed on behalf of Respondent No.4.

19. That it may be relevant to state that Respondent No.4 appeared and filed a Counter Affidavit but from the perusal of this Counter Affidavit it appears that the stand which had been taken by the appellants/petitioners that the Gazette Notification had not included the Mauza/Village of the petitioners/appellants where the land situated and the Pillars i.e. 93/2, 93/3 are being fixed have not been controverted by Respondent No.4 rather the stand of the Respondent No.4 is to the extent that

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who are the authorities before whom the grievance should have been raised by the petitioners/appellants. The stand of the Respondent No.4 has been accepted by Respondent No.5 by filing a separate Counter Affidavit.

20. That it may be stated that in reply to Counter Affidavit filed by respondent No.4 the petitioners/appellants stand was only to the extent that there is clear violation of the Gazette Notification of India which empowers the Respondent Nos.4 and 5 to execute the work in accordance with the dictator the Gazette .It may further be made clear that in the Gazette Taluk/Head Quarters named Kisanganj, Murliganj, Singheshwar, Alam Nagar have been mentioned Villagers namely Manjora, Hababitta Lashkari, Mohammadpur are under Kishanganj Anchal, Villages namely Bisunpur, Mahumuda ,Dhalak, Tilakpur, Bhagwat tola and Bachhibara are within Alamnagar Taluk (Anchal) but the name of the Village (Mauza) of the petitioners/appellants as Alam Nagar has not been mentioned in Alam Nagar Taluk like it is specified in other Head Quarters and Taluks.
21. That it may further be stated that on behalf of the Respondent No.4 it has been submitted that the transmission line can pass

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through, over, around and between the named Villages towns and Cities although this statement has not been made in Counter Affidavit of Respondent No.4 and even if this submissions may be taken into consideration the named villages does not appear in Taluk/Anchal Alam Nagar.

22. That it may be submitted that the learned Single Judge has not appreciated the case of the petitioners and no specific finding has been given in the Order under challenge to the extent that the name of Villages which fall under Alamnagar Taluk/Anchal have been mentioned and in unauthorized manner the land mentioned in Paragraph No.5 of this appeal has completely been devastated for years to come which is contrary to the mandate of the Article 300 A of the Indian Constitution.

23. That it may further be stated and submitted that the Gazette Notification, which is an instrument of power, in favour of the Respondent No.4 does not allow any deviation other than the routes prescribed in the Gazette itself and the encroachment of land in the name of petitioners/appellants by the Respondent No.4 situated about 25 K.Ms. from the routes prescribed in

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the Gazette.

Being aggrieved by and dissatisfied with the Order, passed by Learned Single Judge, Patna High Court dated 21.1.13 in C.W.J.C.No.20388 of 2012, the appellants aforesaid beg to file the present Letters Patent Appeal on amongst others the following:

G R O U N D S :-

- I. For that the Hon'ble Single Judge of this Hon'ble Court may be said to have failed to consider the specific case of the appellants which is contrary to Gazette Notification.
- II. For that the Respondent No.4 may be said to have acted in unauthorized manner in encroaching/ trespassing over the agricultural land of the petitioners/appellants which is the only source of their livelihood.
- III. For that the Gazette Notification of India which is annexed in the Writ Petition as well as Counter Affidavit filed by Respondent No.4 clearly excluded the Mauza/Village of the petitioners/appellants and as such the Respondent No.4 is not authority under the law to fix the Pillars No.93/2, 93/3 for the

transmission of over head electric lines.

- IV. For that the learned Single Judge has failed to appreciate the case of the appellants to the extent that it is not the case of the appellants to whom they may approach for the compensation for the damage caused to the land of the appellants which has been encroached in unauthorized manner by ~~devolving~~^{deviating} from the proposal/requisition mentioned in the Gazette notification of India.
- V. For that the Gazette Notification which is an instrument of power in favour of Respondent No.4 does not allow any deviation other than the names mentioned in the Gazette Notification itself and the encroachment of lands in the name of appellants by the Respondent No.4 situates about 25 K.Ms. from the routes preserved in the Gazette.
- VI. For that from the perusal of Order dated 21.1.2013 ,passed by this Hon'ble Court in C.W.J.C.No.20388/12 it appears that all the authorities concerned have raised their hands to usurp their responsibility to the damage caused to the appellants.

The said Order has been annexed as Annexure-8 to the Counter reply to the Counter Affidavit of Respondent No.4.

VII. For that in view of the aforesaid submissions made on behalf of the appellants the Order passed by the Hon'ble Single Judge may be set aside in the light of mandate of Article 300 A of the Constitution of India, 1950 and the Respondent No.4 may be directed to pay just, adequate and fair compensation.

It is, therefore, prayed that your Lordships may graciously be pleased to admit the [present Letters Patent Appeal and after hearing the parties allow this appeal setting aside the Order dated 21.1.13, passed in C.W.J.C. No. 20388/12 and further a direction may be given to respondents to pay the compensation to the damage caused to the lands of the appellants mentioned in Paragraph No.5 of this appeal

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or be pleased to pass such other
Order or Orders as your
Lordships may deem fit and
proper.

And for this, the appellants, as in duty bound, shall ever pray.

AFFIDAVIT

I, Raghunandan Kumar Sharma, aged about 39 years, son of Shiv Kumar Sharma, resident of Village-Alam Nagar, P.S.-Alam Nagar, District-Madhespura, do hereby solemnly affirm and state as follows:-

1. That I am son of the Appellants No.1⁸² and as such am well acquainted with the facts and circumstances of the case. They are unable to move and I have been authorized by them.
2. That the contents of this Appeal have been read over and explained to me in Hindi, which I have understood and the statements made in Paragraph Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13..... 14, 15, 16, 17, 18, 19..... are true to my knowledge and those made in Paragraph Nos. 14, 15, 16, 17, 18, 19, 20, 21, 22 and 23.... are based upon information, derived from the records of the case, which I believe to be true and rests are by way of submissions to this Hon'ble Court.
3. That the Annexures are True/Photo copies of their respective originals.

CERTIFICATE

Certified that the grounds set forth above are good grounds for this L.P.A. and I shall support the same at the time of hearing of the same.

Certified further that my instruction is that the matter out of which this L.P.A. arises has never come against the impugned Oder.

Certified further that no notice is necessary to serve upon the Attorney General of India or to the Advocate General of Bihar Under Order XXVII A, Rule 1 of C.P.C.

A d v o c a t e .

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20388 of 2012

1. Shiv Kumar Sharma Son Of Late Bhuvneshwar Sharma Resident Of Alam Nagar, P.S. - Alam Nagar, District - Madhepura
2. Ram Rani Devi Wife Of Shiv Kumar Sharma Resident Of Alam Nagar, P.S. - Alam Nagar, District - Madhepura

..... Petitioner/s

Versus

1. The Union Of India , Through The Director, Ministry Of Power, New Delhi
2. Bihar Electricity Board, Through Chief Electrical Inspector, Patna, Bihar
3. District Magistrate, District - Madhepura
4. East-North Interconnection Company Ltd., At Core 6 Iind Floor, Scope Complex, 7 Lodi Road, New Delhi - 110003
5. Bajaj Electricals Ltd., Through Ranjay Kumar, Senior Manager C/O Mr. S.K. Ghosh (Retd. S.P.) Opposite Harsha Hotel, Zila School Road, Purnia - 854301, Bihar

..... Respondent/s

Appearance :

For the Petitioner/s

Mr. Hare Krishna Kumar, Advocate
Mr. Amiya Kunal, Advocate.

For the Respondent/s

Mr. Pabitra Pal Chowdhury, Advocate
Mr. Mrigank Mauli, Advocate.
Mr. Prabhat Ranjan Singh, Advocate.
Mr. Vinay Kirti Singh, Advocate.
Mr. Vijay Kumar Sharma, Advocate
Mr. Shivnandan Prasad Singh, Advocate
Mr. Ashok Kumar, Advocate.

CORAM: HONOURABLE MR. JUSTICE SHAILESH KUMAR
SINHA
ORAL ORDER

9 21-01-2013

Heard learned counsels for the petitioners and the respondents.

The petitioners pray for a direction to the respondent nos. 4 and 5 to pay just and adequate compensation, for the damage caused to the lands, the standing crops and standing tress on the lands of the petitioners as detailed in paragraph-1 of the writ application due to erection of the pillars and other ancillary works were

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required to be carried out for laying over-head Transmission line

Learned counsel for the petitioners submits that compensation is not being paid to the extent of damages caused to the lands as also the standing crops, even though the respondent nos. 4 and 5 could not have carried out the aforesaid work in the lands of the petitioners, as the villages over which, the electric line has to pass was mentioned in the Gazette of India notification dated 19th of December 2011, as contained in Annexure -1, however, the name of the village of the petitioners i.e. Alam Nagar within the Taluk of Alam Nagar is not mentioned. It is further submitted that petitioners were paid first installment of compensation on account of the erection of pillars which was accepted due to the pressure of the concerned police officials.

On the other hand, learned counsels appearing for the respondent nos. 4 and 5 submits that even before filing of the writ application, the work of erection of the pillars and connecting the electrical wire were completed by the month of October 2012, as stated in paragraph-5 of the counter affidavit whereas; the present writ application is filed after the aforesaid date, however, the said facts were not mentioned in the writ application. It is further submitted that petitioners were paid the first installment of the compensation, on the basis of the reports, received from the Department of Agriculture and Forest, Government of Bihar. Besides the above, it is further

submitted that transmission line with respect to the carrying work on the concerned villages, learned counsel has drawn attention of the court to the aforesaid gazette notification in order to show that the transmission line which is to be covered under the scheme, will pass through, over, around and between the villages, town and cities. It is further submitted that Taluk of the petitioner is Alam Nagar and as such, no illegality or any deviation from the gazette notification can be validly alleged in carrying out the work of laying of Transmission line. It is further submitted that the grievances with respect to the quantum of compensation, petitioners ought to have availed the recourse of the statutory forum under Section 10 of the Telegraphic Act which authorizes the District Magistrate of the concerned district to pass appropriate orders on the quantum of compensation.

Learned counsel for the State submits that under the provision of Electricity Act, 2003 the appropriate authority is Regulatory Commission (respondent no. 6) for assessing the quantum of compensation.

Upon considering the rival submissions of the parties, it would appear that primarily, the writ application is for directing the respondent nos. 4 and 5 to pay adequate compensation on account of the damage caused to the lands of the petitioners, the standing crops and the trees. However, in course of submission, counsel for the petitioners also raised the question that the authority could not have taken the

transmission line over the lands of the petitioners as the villages mentioned in the gazette notification did not mention the name of the village of the petitioners. However, it is also not in dispute that first installment of the compensation has been paid although the submission is that the Bank drafts were handed over on account of the undue pressure. The encashment of the bank drafts by the petitioners has not been disputed. With respect to the quantum of compensation under the law if petitioners have got any grievance, petitioners may avail the statutory forum for assessing the quantum of compensation. As regards submissions of the petitioners, that the transmission line has been carried over the lands of the villages which was not included in the gazette notification, cannot be accepted at this stage when the erection of the pillars and the transmission line has been fixed, which was completed even before filing the writ application, as stated in the counter affidavit filed on behalf of the respondent no. 5 and the electric line is to be charged by 31st of January 2013. Moreover, the transmission line can pass through over, around and between the named villages, town and cities.

In the result, the writ application stands disposed of with the above observations/directions.

Jagdish/-

3d/-
(Shailesh Kumar Sinha, J)

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28/1/2013
For Joint Registrar (J)
Patna High Court
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