

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.2055 of 2016
IN
Civil Writ Jurisdiction Case No. 11187 of 2016**

- =====
1. The State of Bihar through its Principal Secretary, Building Construction Department, Government of Bihar, Patna.
 2. The Joint Secretary, Building Construction Department, Government of Bihar, Patna.
 3. The Executive Engineer, Patna Building Division, Patna.

.... Appellants

Versus

1. Arvind Kumar Singh son of Late Bhuneshwar Singh resident of Mohalla-Bajrangpuri, Gayhat, P.S.- Alamganj, District- Patna.
2. Ram Vidyadhar son of not known to the petitioner Assistant Engineer, PMCH Sub Division, Patna Building Division, Patna.

.... Respondents

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Appearance :

For the Appellants : Mr. P.N. Shahi, Sr. Advocate
Mr. Krishna Chandra, Advocate
For the Respondents : Mr. Tej Bahadur Singh, Sr. Advocate
Mrs. Shashi Priya Pathak, Advocate

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 28-11-2016

Heard learned counsel for the appellants and learned counsel for the respondents.

2. The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench on 21st of September, 2016 in CWJC No. 11187 of 2016 whereby the learned Single Bench has set aside the order of transfer dated 30th of June, 2016.

3. Learned counsel for the appellants contends that disparaging remarks against the Deputy Chief Minister have been



recorded without giving an opportunity of hearing, therefore, such disparaging remarks requires to be expunged. Reliance is placed on a decision in the case Om Prakash Chautala v. Kanwar Bhan, (2014) 5 SCC 417. In the said case, the Court held as under:-

“7. As has been indicated earlier, the appellant was not a party to the proceeding. It is manifest that the learned Single Judge has made certain disparaging remarks against the appellant and, in fact, he has been also visited with certain adverse consequences. The submission of Mr P.P. Rao, learned Senior Counsel, is that the observations and the directions are wholly unsustainable when the appellant was not impleaded as a party to the proceeding and further they are totally unwarranted for the adjudication of the controversy that travelled to the Court.

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9. In *Testa Setalvad v. State of Gujarat [(2004)10 SCC 88]* the High Court had made certain caustic observations casting serious aspersions on the appellants therein, though they were not parties before the High Court. Verifying the record that the appellants therein were not parties before the High Court, this Court observed: (SCC p. 92, para 7)

“7. ... It is beyond comprehension as to how the learned Judges in the High Court could afford to overlook such a basic and vitally essential tenet of the ‘rule of law’, that no one should be condemned unheard, and risk themselves to be criticised for injudicious approach and/or render their decisions vulnerable for challenge on account of violating judicial norms and ethics.”

And again: (SCC p. 92, para 7)

“7. ... Time and again this Court has deprecated the



practice of making observations in judgments, unless the persons in respect of whom comments and criticisms were being made were parties to the proceedings, and further were granted an opportunity of having their say in the matter, unmindful of the serious repercussions they may entail on such persons.”

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12. At this juncture, it may be clearly stated that singularly on the basis of the aforesaid principle the disparaging remarks and directions, which are going to be referred to hereinafter, deserve to be annulled but”

4. The principles of law held in the aforesaid judgment are applicable to the facts of the present case as well. We find that such disparaging remarks could not be recorded without giving an opportunity of hearing to the person against whom such remarks are recorded.

5. In view of the said fact, we deem it appropriate to delete the following paragraph from the order dated 21st of September, 2016, which is as follows:-

“The Deputy Chief Minister-cum-Building Construction Department Minister may be a greenhorn with regard to his present responsibility but since he is holding a high post of responsibility, he is supposed to know the law as well as abide by the law and not get influenced and persuaded by letter having been written by a Member of Legislative Assembly, who has nothing to do even with regard to place of posting of



the present petitioner since he does not belong to the constituency”.

6. But we find no merit in the Letters Patent Appeal as far as setting aside the order of transfer is concerned. Thus, with the said modification, the appeal stands disposed of.

(Hemant Gupta, ACJ)

B.T/-

(Vikash Jain, J)

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