

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.566 of 2019

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1. Rajesh Kumar S/o Late Bangali Singh Resident of Sumitra Sadan, West Boring Canal Road, P.s.- Srikrishnapuri, Distt.- Patna, partner of S.R.M. Builders having its office at Boring Canal Road, P.s.- Srikrishnapuri, Distt.- Patna
 2. Mukesh Kumar S/o Late Bangali Singh Resident of Sumitra Sadan, West Boring Canal Road, P.s.- Srikrishnapuri, Distt.- Patna, partner of S.R.M. Builders having its office at Boring Canal Road, P.s.- Srikrishnapuri, Distt.- Patna

... .. Appellant/s

Versus

1. Tarun Kumar S/o Jagdish Prasad Resident of Nutan Vihar Apartment, Doctors Colony Road, P.s.- Kankarbagh, Distt.- Patna. Managing partner of S.R.M. Builders having its office at Nepali Kothi Boaring Road, P.s.- Srikrishnapuri, Distt.- Patna
2. Patna Municipal Corporation Maurya Lok Complex, P.s.- Kotwali, Patna through Municipal Commissioner
3. Municipal Commissioner Patna Municipal Corporation, Maurya Lok Complex, P.s.- Kotwali, Patna
4. Shailesh Kumar S/o Late Bangali Singh Resident of Sumitra Sadan, West Boring Canal Road, P.s.- Srikrishnapuri, Distt.- Patna, partner of S.R.M. Builders having its office at Boring Canal Road, P.s.- Srikrishnapuri, Distt.- Patna
5. S.R.M. Builders Nepali Kothi, Near Boring Road Chauraha, P.S.- Srikrishnapuri, Distt.- Patna
6. Surya Nest Build Limited Signature Building beside Hira Sweets Lane, Boring Canal Road, P.S.- Srikrishnapuri, Distt.- Patna

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Kumar Kaushik, Advocate
For the Respondent no.1	:	Mr. P.N. Shahi, Sr. Advocate
	:	Mr. Krishna Chandra, Advocate
	:	Mr. Pratik Kumar Sinha, Advocate
	:	Mr. Shaurabh Kumar, Advocate
For the Respt nos. 2 and 3:	:	Mr. Prabhakar Singh, Advocate
For the Respt. No. 4	:	Mr. Abhimanyu Vats, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT



(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 27-03-2023

In the instant Letters Patent Appeal, appellants have assailed the order of learned Single Judge dated 03.04.2019 passed in C.W.J.C. No. 9864 of 2017.

Brief facts of the case are that Bangali Singh had given gift of three Katha of land to his son Shailesh Kumar-third respondent herein. Bangali Singh had three sons, namely, Shailesh Kumar, Rajesh Kumar and Mukesh Kumar. They have constituted a partnership firm called SRM Builders. Further, they have entered into development of land agreement in the name of SRM Builders to the extent of nine Katha of land to be developed. Third respondent-Shailesh Kumar proceeded to apply for composite plan sanction and Corporation sanctioned the plan. In this regard, the litigation in C.W.J.C. No. 8152 of 2013 was disposed of on 10.05.2013 with an observation that no construction shall be made in the violation of order dated 24.05.2013 stated to have been issued by the Corporation. When things stood thus, SRM Builders proceeded to reconstitute the partnership vide a new deed on 11.07.2013 while giving large chunk of share of 70% to Surya Nest Build Limited and they had entered into agreement. In this regard, there were certain delay in completion of the construction and so also there were certain alleged deviation in construction of



building. The same was noticed by the Patna Municipal Corporation (for short "Corporation"). Corporation proceeded to take action to demolish the building and, thereafter, decision of the corporation was revoked only to the extent of condonation while levying compounding fee. To that effect an order was passed by the Municipal Corporation on 24.11.2015.

Feeling aggrieved and dissatisfied with the order of the Municipal Commissioner dated 24.11.2015, Shailesh Kumar who is the one of the partners of SRM Builders preferred an appeal before the Municipal Building Tribunal-1 and it was allowed in his favour on 31.05.2017. Feeling aggrieved by the order of the Tribunal dated 31.05.2017, Tarun Kumar, Managing Partners, SRM Builders preferred C.W.J.C. 9864 of 2017. The learned Single Judge allowed the writ petition on 13.04.2019 in C.W.J.C. No. 9864 of 2017, hence, the present appeal.

Learned counsel for the appellant submitted that Tarun Kumar in the capacity of Managing Partner, SRM Builders cannot maintain writ petition. It is submitted that he has been arrayed in the name of Tarun Kumar, Director, M/s Surya Nest Build Limited which is one of the partners of SRM Builders and not as a Managing Partner, SRM Builders as is stated in the writ petition. It is further submitted that learned Single Judge has committed error



in taking note that writ petition was filed under Article 227 of the constitution even though in the writ petition it has been shown to be as under Article 226 of the Constitution. To that effect, there is an error committed by the learned Single Judge.

Per contra, learned counsel for the respondent resisted the aforesaid contention and submitted that Tarun Kumar-petitioner was a party before the Municipal Building Tribunal in Appeal Case No. 44(N) of 2015 decided on 31.05.2017 as he has been arrayed as second respondent in the capacity of Tarun Kumar, Director, M/s Surya Nest Build Limited is one of the partner of M/s SRM Builders. Therefore, he is necessary and proper party and rightly Tarun Kumar has presented writ petition in the capacity of Managing Partner. It is also submitted that Letters Patent Appeal is not maintainable in the light of the fact that writ petition was decided with reference to Article 227 of the Constitution of India.

Heard learned counsel for the respective parties.

It is necessary to reproduce cause title before the Municipal Building Tribunal in Appeal Case No. 44(N) of 2015 which reads as under:-

*"1. Shailesh Kumar, S/o Bangali Singh,
One of the partners of S.R.M. Builders, Resident
of Sumitra Sadan, West Boring Canal Road, P.S.-
Srikrishnapuri, District-Patna.*



.....Appellant.

V/s

1. The Patna Municipal Corporation having its Office at Maurya lok complex, P.S.-Kotwali, District-Patna.

2. Tarun Kumar; Director,

M/s Surya Nest Build (P) Ltd., One of the partner of M/s S.R.M. Builders, Having its office-Boring Canal Road, P.S.-Srikrishnapuri, District-Patna.

3. Rajesh Kumar

4. Mukesh Kumar

Both sons of Sri Bangali Singh and Partners of M/s S.R.M. Builders, Resident of Sumitra Sadan, West Boring Canal Road, P.S.-Srikrishnapuri, District-Patna.

.....Respondents

It is also necessary to reproduce cause title in C.W.J.C.

No. 9864 of 2017 which reads as under:-

"Tarun Kumar, Son of late Jagdish Prasad, resident of Nutan Vihar Apartment, Doctor's Colony Road, P.S.-Kankarbagh, District-Patna, Managing Partner S.R.M. Builders, having its office at Nepali Kothi Boring Road, P.S.-Srikrishnapuri, District-Patna.

.....Petitioner

Versus

1. Patna Municipal Corporation, Maurya Lok Complex, P.S.-Kotwali, Patna, through Municipal Commissioner.

2. Municipal Commissioner, Patna Municipal Corporation, Maurya Lok Complex, P.S.-Kotwali, Patna.

.....Respondent 1st Set

3. Shailesh Kumar, Son of Late Bangali Singh, resident of 'Sumitra Sadan', West Boring Canal Road, P.S.-Srikrishnapuri, District-Patna, Partner of S.R.M. Builders,



*having its office at Boring Canal Road, P.S.-
Srikrishnapuri, District-Patna*

.....Respondent 2nd Set

4. Rajesh Kumar

5. Mukesh Kumar

*Both son of Late Bangali Singh, resident of
'Sumitra Sadan', West Boring Canal Road, P.S.-
Srikrishnapuri, District-Patna, Partners of
S.R.M. Builders, having its office at Boring
Canal Road, P.S.-Srikrishnapuri, District-Patna*

.....Respondent 3rd Set

*6. S.R.M. Builders, Nepali Kothi, Near
Boring Road Chauraha, P.S.-Srikrishnapuri,
District-Patna, through its Managing Partner Sri
Tarun Kumar*

.....Respondent 4th Set

*7. Suryanestbuild Limited, Signature
Building, Beside Hira Sweets Lane, Boring
Canal Road, P.S.-Srikrishnapuri, District-Patna*

.....Respondent 5th Set"

Perusal of the name of the second respondent before the Municipal Building Tribunal read with the petitioner-Tarun Kumar in C.W.J.C. No. 9864 of 2017, it is totally in different capacity. On this score itself, writ was not maintainable. The same was not noticed by the learned Single Judge. Further, it is to be noted that writ petition was filed under Article 226 of the Constitution whereas the learned Single Judge has taken note of that the writ petition is filed under Article 227. We find *prima facie* that it may be a typographical error for the reasons that there is no averment or discussion of the respective parties insofar as whether writ petition was filed under Article 227 of the Constitution or it has been converted under Article 227 of the Constitution by the



learned Single Judge. The learned Single Judge has not analyzed whether writ petition was filed under Article 226 or 227 of the Constitution. Therefore, one has to draw inference that order of the learned Single Judge which indicate that writ petition was filed under Article 227 of the Constitution may be typographical error. Further reading of prayer in the writ petition shown it relates to writ of certiorari insofar as quashing of order dated 31.05.2017 passed by the Municipal Building Tribunal in Appeal Case No. 44(N) of 2015.

In the light of these facts and circumstances, appellant has made out *prima facie* case so as to interfere with the order of the learned Single Judge to the extent that petitioner-Tarun Kumar cannot maintain writ petition in the capacity of Managing Partner SRM Builders. On the other hand, he should have filed a writ petition in the capacity of Director, M/s Surya Nest Build Limited as is indicated in the cause title of the Tribunal in the Tribunal Appeal. Accordingly, writ petition filed on behalf of petitioner-Tarun Kumar in the capacity of Managing Director SRM partners stands rejected as not maintainable. Accordingly, the present Letters Patent Appeal stands allowed and the order dated 03.04.2019 passed in C.W.J.C. No. 9864 of 2017 is set aside reserving liberty to the petitioner-Tarun Kumar to file fresh writ



petition in the capacity of Director of M/s Surya Nest Build
Limited.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

