

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1232 of 1998

IN

First Appeal No. 268 of 74

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Municipal Commissioner of Katihar Municipality through the Chairman, Katihar Municipality, Katihar, District Katihar

.... Appellant

Versus

1. R.B.H.M. Jute Mills through its General Manager Sri Ram Kumar Saksaria, resident of Katihar Town Police Station, Katihar, District Katihar
2. Katihar Flour Mill through its Manager Digambar Jha, son of late Sri Chinan Jha resident at Binodpur District and Police Station- Katihar.
3. Parmeshar Mahanath, son of Sri Jaggu Mahanath of Mohalla Naytola within Katihar Town district Katihar.
5. Deoram Karmar Parmar.
7. Kantilal Parmar, son of Raghu Dina Parmar
8. Chothmal Poddar, son of Sheo Narain Lal Poddar, resident of Amlatola Katihar Town District Purnea
9. Dinbandhu Ghosh, son of Sri Sato Charan Ghose
12. M/S I.B. Sah Co. through Partner Indu Bhushan Shaw, son of late Sri B.B. Shaw, resident of Mohalla - Natya Bazar Katihar town dist. Katihar.
13. Nilam Kumar Jageshwar, d/o Sri Suraj Narain Singh.
14. Rita Kumari Jageshwar, daughter of Sri Suraj Narain Singh.
15. Sima Kuer Jageshwar, daughter of Sri Suraj Narain Singh.
16. Dilip Kumar Jageshwar, son of Sri Suraj Narain Singh.
17. Mirtunjay Saran Jageshwaram, son of Sri Suraj Narain Singh.
- Residents of Mohalla Ram Krishna Police Station Katihar District- Katihar
18. Chhote Bhai Patel, son of late Ghagan Bahi Patel, resident of Mohalla Binodpur within Katihar town Police Station- Katihar District- Katihar.
19. Raghunath Pd. Tamukuwala, son of late Chandi Pd. Tamakuwala, resident of Mohalla- Amalatola, Police Station and district- Katihar.
20. Phani Bhushan Das, son of Laxmi Narain Das of Mohalla Rajendra Gram within Katihar town police station and district- Katihar
21. Mohan Lal Puranmalka, son of Mamla Pd. of Mohalla Raniganj within the Katihar town police station and district- Katihar.
23. Sri Krishan Mal, son of late Charan Lal.
24. Sewak Mal, son of Late Charan Lal
- Resident of Mohalla- Binodpur Katihar town police station and district- Katihar.
26. Arshad Ahmad, son of Ajmuddin Mohalla- Barbana Katihar, Police Station and district- Katihar.
27. Bibi Asia Khatoon, d/o- Ajimuddin of Larkania Katihar, Police Station and District- Katihar.
28. Md. Anwar Ahmad, son of Ajimuddin.
29. Md. Nisar Ahmad, son of Md. Ajimuddin.
30. Bibi Najma Khatoon, wife of Md. Ajimuddin, Resident of Mohalla- Amlatoal Katihar Police Station and District- Katihar.
33. Anita Bala Sur, wife of Satish Chandra Sur.
36. Shiv Narain Chaudhary, son of Bari Mohan Chaudhary, Mohalla- Driver Toal Katihar, Police Station- Katihar, District- Katihar.

40. Ram Das Sharma, son of Late Lalji Mistri of Mohalla- Larkshania Katihar, Police Station and District- Katihar.
43. Most. Parwati Devi, wife of Gangan of Mohalla- Larkania Katihar, Police Station and District Katihar.
44. Ram Krishna Pd., son of Late Ram Chandra Prasad of Mohalla- Larkania Katihar Police Station and District Katihar.
45. Satya Narain Agarwal, son of Babu Dugarmal Agarwal, resident of Mohalla- Saifganj Katihar Police Station and District- Katihar
46. Srimati Banarsi Devi, wife of Murlidhar Chawaria of Nayatola Katihar Police Station and District Katihar.
49. Surajdeo Narain Sinha, son of Late Jageshwar Prasad of Mohalla Driver Tola Katihar, Police Station and District- Katihar.
50. Srimati Sail Kumari Singh, son of Surajdeo Sinha of Mohalla Gani Tola Katihar, Police Station and District- Katihar.
55. Shyam Sundar Puran Malka, son of Late Babu Lal Puranmalka of Mohalla Saifganj Katihar, Police Station and District- Katihar.
56. Prahlad Roy Purnamalka, son of Late Babu Lal Purnamalka of Mohalla Naya Tola Katihar, Police Station- Katihar, District- Katihar.
57. Tej Narain Purnmalka, son of Babu Lal Purnamalka of Mohalla Kaya Tola Katihar, Police Station and District- Katihar.
58. Srimati Rukimini Devi, wife of Prahlad Roy Puran Malka of Mohalla Naya Tola Katihar, Police Station and District- Katihar.
59. Amiruddin Nadakh, son of Akali Mian of Mohalla Eraki Tola Katihar, Police Station and District- Katihar.
61. Sd. Hassan Chaudhary, son of Abul Hassan Chaudhary.
62. Md. Ziaul Hussain Chaudhary, son of Abdul Hassan Chaudhary, Mohalla- Eraki Pai Katihar District- Katihar.
63. Raitmal, son of Late Sith Hasanand, resident of Mohalla- Binodpur, Katihar Police station and District- Katihar.
65. Bijoy Kumar Gupta, son of Lalji Ram Bhagat of Mohalla- Rangal Bazar Katihar, Police Station Katihar District- Katihar.
66. Shyama Devi, wife of Lalji Bhagat of Mohalla- Langal Bazar Katihar, Police Station and District- Katihar.
68. Salha Askari Khatoon, daughter of Chaudhary Abid Hussain.
69. Salha Akhtari Khatoon, d/o- Chaudhary Abid Hussain.
70. Salha Asmani Khatoon, daughter of Chaudhary Abid Hussain, resident of Katihar town P.S. and Dist. Katihar.
71. Chaudhary Azizul Hussain, son of Abid Hussain, resident of Moh. Kriki Tola Katihar Police Station and District- Katihar.
72. Arjun Das, son of Late Prabhumal of Mohalla Ram Krishna Police Station and District- Katihar.
73. Prem Chand, son of Late Prabhumal of Mohalla Amlatola Katihar Police Station and District- Katihar.
74. Srimati Devi Khetan, wife of Ram Kumar Khetan of Mohalla- Durgapur, Katihar Police Station and District- Katihar.
76. Ram Narain Gupta, son of Gajadhar Gupta, resident of Naya Tola Katihar P.S. and Dist. Katihar.
77. Harpal Das, son of Bhasamal, resident of Moh. Amla Tola Katihar Police Station and District- Katihar.
78. Gita Devi Poddar, wife of Devi Pd. Poddar of Moh. Amla Tola, Katihar P.S. and District Katihar.
79. K.D. Pannalal, son of Sagarmal of Moh. Station Bazar, Police Station and

District- Katihar.

80. Panalal, son of Sagarmal of Moh. Station Bazar P.S. Station and District Katihar.

-----Plaintiffs in the court below

-----Respondents-Respondent 1st Party.

81. The State of Bihar through Collector, Purnea

----- Defendant-Respondent-Respondent second party.

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Appearance :

For the Appellant/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 12-03-2015

None appears for the appellant. Same was the position even yesterday (11.03.2015).

2. This Letters Patent Appeal has been filed by Municipal Commissioner, Katihar Municipality (hereinafter referred to as the “Municipality”) through Sri Naresh Kumar Sinha, Advocate. Sri Vijay Kumar, Assistant Counsel to Sri Naresh Kumar Sinha informed this Court on 10.03.2015 that panel of Advocates of Municipality for the High Court has been revised and in the revised panel name of Sri Naresh Kumar Sinha, Advocate is not included. He also informed us that Sri Priya Ranjan, Advocate has been included in the new panel of Advocates notified by the Municipality and he has been informed about the present case. Accordingly, in order to secure appearance of Sri Priya Ranjan, Advocate in the present case on behalf of the appellant, we directed



under our order dated 10.03.2015 to publish his name on the daily cause list. Name of Sri Priya Ranjan has been published in the daily cause list as the counsel for the appellant on 11.03.2015, yet he did not appear in the matter. We, however, passed over the matter. Even today, neither Sri Priya Ranjan nor any other counsel is available to press the appeal. In these circumstances, considering the fact that the appeal itself was filed on 11.11.1998 and notice was issued under order dated 09.12.1998, we chose to proceed with the hearing of the appeal.

3. Present appeal is arising out of judgment dated 13.07.1998, passed by learned Single Judge, in First Appeal No. 268 of 1974 whereunder judgment and decree dated 14.03.1974, passed in Title Suit No. 81 of 1966 has been affirmed holding that the water tax cannot be realised by Defendant No. 1 within the limits of Municipality, as imposition of the said tax is contrary to the provisions of Sections 82(1)(C), 85(1)(D) and 150(D) of the Bihar and Orissa Municipal Act, 1922.

4. It appears, plaintiffs-owner of different holdings within the Municipality filed Title Suit No. 81 of 1966 asserting that the Municipality has approved scheme for supply of drinking water within the Municipality in its meeting dated 28.06.1954 whereafter State Government in the Public Health Engineering



Department also approved the said scheme for its execution. The scheme, however, was not executed in all the 30 localities of the Municipality. Pipelines could be laid in only 16 localities. In rest of the 14 localities pipelines could not be laid until the date of suit/decree. Even without laying the pipelines in 14 localities in which the plaintiffs resided water tax was imposed on the inhabitants.

5. Court below having considered the evidence led by the plaintiffs and the Municipality concluded that water pipelines for supply of drinking water in the 14 localities have not been laid, water tax should not be imposed on plaintiffs-respondents, the inhabitants of the 14 localities. Learned Single Judge under the impugned judgment having re-appreciated the evidence has found the findings recorded by the Court below to be just. We see no reason to interfere with the impugned judgment. Appeal is dismissed. However, before parting with this judgment, we would like to observe that if during pendency of this appeal water pipelines have been extended in the remaining 14 localities and potable water is supplied to the inhabitants of the 14 localities and other areas wherever potable water is supplied, Municipality shall levy water tax in accordance with law.

6. Let a copy this order be communicated to the appellant Municipal Commissioner, Katihar Municipality through

fax by the office of this Court.

(V.N. Sinha, J.)

(Ahsanuddin Amanullah, J.)

Rajesh/-

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