

THE HIGH COURT OF TRIPURA
AGARTALA

CRP 49 OF 2011

1. Shri Bhaskar Bhattacharjee,
S/O. Late Profullya Kumar Bhattacharjee.
2. Smt. Sukla Bhattacharjee,
W/O. Late Ashoke Kumar Bhattacharjee.
3. Smt. Indira Bhattacharjee,
D/O. Late Profullya Kumar Bhattacharjee.
4. Smt. Manishi Bhattacharjee,
D/O. Late Profullya Kumar Bhattacharjee.
5. Smt. Alo Bhattacharjee,
W/O. Late Tapan Bhattacharjee.
6. Shri Subhadra Bhattacharjee,
S/O. Late Tapan Bhattacharjee.
7. Shri Sukalpa Bhattacharjee,
S/O. Late Tapan Kumar Bhattacharjee.
8. Smt. Sutapa Bhattacharjee,
D/O. Late Tapan Kumar Bhattacharjee.
9. Smt. Parama Bhattacharjee,
D/O. Late Tapan Kumar Bhattacharjee.
10. Smt. Sujata Bhattacharjee,
W/O. Late Jayanta Bhattacharjee.
11. Shri Subham Bhattacharjee,
S/O. Late Jayanta Bhattacharjee.
12. Shri Sidhartha Sankar Roy,
S/O. Late Hari Sankar Roy,

All are resident of Ranalsay Road,
P.O. Agartala, P.S. West Agartala,
District-West Tripura.

..... **Petitioners-Plaintiffs.**

- V e r s u s -

1. The State of Tripura,
Represented by the Secretary
to the Govt. of Tripura,
Revenue Department, Civil Secretariat,
New Capital Complex, P.O. Kunjaban,
P.S. East Agartala, District-West Tripura.

2. The Director of Settlement & Land Records,
Govt. of Tripura, Agartala, P.O. Agartala,
District-West Tripura.
3. The District Settlement Officer,
Govt. of Tripura, West Tripura District,
P.O. Agartala, District-West Tripura.
4. Agartala Municipal Authority,
Represented by its Chairman,
Agartala, West Tripura.
5. The Deputy Collector (Revenue),
Sadar, Agartala, P.S. West Agartala,
District-West Tripura.

..... **Respondents-Defendants.**

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA**

For the petitioners : Dr. H.K. Bhattacharji,
Advocate.

For the respondent
Nos.1 to 3 & 5 : Ms. A.S. Lodh, Addl. G.A.

For the respondent No.4 : Mr. K.K. Pal, Advocate.

Date of hearing & judgment : 11.02.2015.

Whether fit for reporting : **NO.**

JUDGMENT & ORDER (ORAL)

This revision petition is directed against the order dated 25-05-2011 passed by the learned Civil Judge (Junior Division), Court No.1, Agartala, West Tripura in case No.T.S. 105 of 2003 whereby the application filed by the petitioners (hereinafter referred to as the plaintiffs) seeking permission to withdraw the suit with liberty to file a fresh one has been rejected only on the ground that the application had been filed at a highly belated stage

when the evidence of the defendants was almost complete and, therefore, the application should not have been entertained at that belated stage.

2. The defect which has been pointed out is that the suit was filed against the Agartala Municipality (now Agartala Municipal Corporation) without serving a notice upon the Corporation in terms of Section 271 of the Tripura Municipal Act, 1994. The defect is formal and, therefore, liberty could have been granted. The only question is whether liberty should have been granted at the stage when the case was ripe for evidence. In such a case, the affected parties, i.e. the defendants who have had to face trial can be compensated for attending the case for many years by costs.

3. In the present case, the suit was filed in the year 2003. The written statement was filed in the year 2004 wherein a specific objection was taken that no notice had been issued under the Municipal Act. Despite the fact that this objection was raised in the year 2004, for 7 long years the plaintiff took no steps to withdraw the suit. He continued to prosecute the suit, led evidence, and his witnesses were cross-examined. The defendants also led evidence and it was only the Municipal Corporation which was to lead its evidence.

4. At this stage, the application for withdrawal was filed. The withdrawal application has, therefore, been filed at a highly belated stage and accordingly, heavy costs will have to be imposed

upon the plaintiff to compensate the two sets of defendants, i.e. the State of Tripura and the Agartala Municipal Corporation.

5. Before granting leave, it is also made clear that because the evidence in the previous case has been recorded, the petitioner-plaintiff cannot be now permitted to wriggle out of the evidence which has been recorded in the earlier case and if a subsequent case is filed, then the record of the previous case shall be tagged with the subsequent case so that the witnesses can be confronted with their earlier statements.

6. In light of the above discussion, the revision petition is allowed and the petitioner-plaintiffs are granted leave to withdraw the suit with liberty to file a fresh suit on the following terms and conditions:-

(i) That, they shall pay costs of Rs.5,000/- (rupees five thousand) each to the State of Tripura and Agartala Municipal Corporation;

(ii) The subsequent suit must be filed on or before 31-03-2015 and if it is not filed, no suit after that date shall be entertained;

(iii) That, the file of Title Suit No.105 of 2003 shall be tagged with the subsequent suit;

(iv) At the time of filing of the suit, the plaintiffs shall produce material before the trial Court to show that they have paid the costs to the State and the Agartala Municipal Corporation;

(v) Plaintiffs may if they so like deposit the costs with the Court concerned at the time of filing of the suit. The suit shall not be entertained if the plaintiffs fail to show that the costs have not been paid or deposited as directed hereinabove.

7. With the above observation, the revision petition is disposed of.

8. Send down the lower court records forthwith.

CHIEF JUSTICE