IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12507 of 2003

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M/S Shree Bajrang Talkies a partnership firm having its place of business in the town and District Sitamarhi through its one of the partners Shri Babulal Sikaria.

.... Petitioner/s

Versus

1. The State of Bihar
2. The Secretary to the Government cum Commissioner of Commercial Taxes, Bihar, New Secretariat, Patna
3. The Assistant Commissioner of Commercial Taxes, Sitamarhi Circle, Sitamarhi.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ramesh Kumar Agrawal, Advocate
Mr. Shive Kumar, Advocate

For the Respondent/s : Mr. Niraj Kumar Sinha, A.C. to PAAG-2

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 02-02-2017

Heard learned counsel for the parties.

2. The challenge in the present writ application is to a notification issued by Commissioner of Commercial Taxes, Bihar, Patna (Annexure-6), wherein the population of Sitamarhi Municipality was considered as 87268 for the purposes of Section 3A

of the Bihar Entertainment Tax Act, 1948 (hereinafter referred to as "the Act"), which was then in existence, to levy compound fee in terms of Section 3B of the Act.

3. Learned counsel for the petitioner vehemently argued that it is Appendix-1 to Table-6 of 2001 Census, which is relevant for determining the population of Sitamarhi for the purposes of rate of tax. As per the said Table, the population of Sitamarhi is 56769 whereas; the population has been taken to be 87268 which puts the petitioner in a higher category for taxation purposes.

4. Annexure-9 is another Table of 2001 Census which depicts the population, child population in the age-group 0-6 and literates by residence and sex-State, District, Urban Area/ City/ Town, 2001. As per the said Table, in Sitamarhi district the total population is 2669887 and in Sitamarhi Urban Agglomeration, the population is said to be 87268 which consists of Sitamarhi Municipality, Rajopatti-Dumra-Talkhapur and Dumra (Nagar Panchayat).

5. We find that Table-6 is the population given of a city or a town whereas; Table-1 (Annexure-9) gives the population of the Municipality and in the case of Sitamarhi of an Urban Agglomeration consisting of Sitamarhi Municipality, Rajopatti, Dumra-Talkhapur and Dumra (Nagar Panchayat). Therefore, it cannot be said that the impugned notification classifying the Sitamarhi Urban Agglomeration

with the census population of 87268 is illegal or arbitrary.

6. In 2001 Census has found an Urban Agglomerate consisting of three urban local bodies i.e. Sitamarhi Municipality, Rajopatti, Dumra-Talkhapur and Dumra (Nagar Panchayat) forms part of one Block. It may be on account of their close proximity to each other and commonness in the urban area. Therefore, a urban agglomerate has been rightly taken into consideration for the purposes of demanding compound levy in terms of Section 3A read with Section 3B of the Act.

7. It may further be noticed that similar issue has been examined by a Division Bench of this Court in C.W.J.C. No. 13972 of 2002 (M/S Indu Talkies & Ors. Vs. The State of Bihar & Ors.) decided on 28th of March, 2003 and the similar challenge has been found to be untenable. Relevant finding from the said order reads as under:-

> "13. It appears that the District Magistrate having taken note of this fact referred this matter to the Commissioner of Commercial Taxes, Bihar, Patna, for consideration and the latter, after consideration of the same, by order dated 26.6.2002, has found that the total population of Sitamarhi urban area is 87,268 as per census report and its categorization in Category 'H' is correct one on the basis of the census report of 2001. Thus, the said additional point, in our view, is also without any substance."

8. In view of the above, we do not find any merit in the

present writ application. The same is dismissed.

(Hemant Gupta, ACJ)

(Sudhir Singh, J)

P.K.P.

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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