**Case Note:** The plaintiff has filed the petition against the nuisance derived from the accumulation of filth and sewage matters of various kinds and stagnant water in the drain due to the negligence of the defendant in letting the drain remain unrepaired and unattended.



**Equivalent Citation:** AIR1959Pat273

**IN THE HIGH COURT OF PATNA**

A.F.A.D. No. 71 of 1953

Decided On: 25.11.1958

**Brijbala Prasad and Ors.**
**Vs.**
**Patna Municipal Corporation and Ors.**

**Hon'ble Judges:**
V. Ramaswami, C.J. and Kanhaiya Singh, J.

**JUDGMENT**

**Kanhaiya Singh, J.**

1. This is a Second Appeal by the plaintiffs from the decision of the Additional Subordinate Judge, Patna, dated 10-9-1952, by which he, in reversal of the decision of the Munsif of the same place dated 29-3-1952 dismissed their suit with costs.

2. The plaintiffs appellants are the residents of Mosalabpur Hat, Ward No. 36, in the town of Patna and are rate-payers of the Patna Municipal Corporation. The Patna City Municipality was the defendant. Now, it has been substituted by the Patna Municipal Corporation. In this action the plaintiffs claimed a nominal damage of Re. 1 on account of nuisance derived from the accumulation of filth and sewage matters of various kinds and stagnant water in the drain due to the negligence of the defendant in letting the drain remain unrepaired and unattended to.

The houses of the plaintiffs abut on a public lane bearing plot 1881 to the adjacent east which emanates from a road on the north and joins a Nahar (canal) comprised in plots 1282 and 1915 to the South. To the immediate east of this lane there is a pucca municipal drain, which is sufficiently wide and deep running along-side the lane from North to South and emptying itself in the aforesaid Nahar. This is an important drain running in continuation of another drain which drains off several Mahallas of the town. Untreated sewage, filth and rubbish of the town are carried northward through this drain and are discharged into the Nahar.

The case made out by the plaintiffs is that due to the negligence of the defendant the drain has been damaged at several places obstructing the free flow of water into the Nahar and further at the point where the drain falls into the Nahar it has silted up with the result that the level at that place has risen higher than the level of the drain itself.

The canal and the drain have not been desilted for several years and have not been repaired with the result that there is accumulation of stagnant water, full of refuse, sewage and filth emitting foul smell and being a sort of nursery for growth of germs and is, therefore, a menace to the sanitation of the locality and consequently the health of the people.

The plaintiffs' real ground of complaint is that the sewerage work has gone out of repairs and, therefore, does not allow free now of the sewage and filth of the locality causing nuisance, and it is alleged that the noxious and offensive effluvia amount to a nuisance and are injurious to the health of the people of the locality and in fact have caused diseases, bodily pains, mental worry and torture, and the defendant in spite of repeated requests and reminders has failed to maintain the drain and the Nahar in proper order so as to permit free How of the water and filth. The plaintiffs alleged that they were entitled to damage from the defendant, but they have assessed the damage at Re. 1 only.

3. In their written defense the Patna Municipal Corporation did not deny categorically the allegation of disrepair of the drain and the Nahar and accumulation of filth and rubbish due to the obstructed carriage of the contents through them. It, however, denied emphatically the imputation of negligence and alleged that it did all that lay in its power to improve the condition of the drain and that it could not be completely improved without introduction of modern sewerage scheme which was beyond the existing financial resources of the Corporation.

It is said that the State Government has already been moved for financial help, as the cost of effecting improvement was prohibitive running into crores of rupees. It further denied that the plaintiffs were entitled to any damage for breach of its statutory duty and in fact had suffered any damage. It also pleaded non-service of notices under Section 377 of the Bihar and Orissa Municipal Act, 1922, and Section 80 of the Code of Civil Procedure in bar of the suit.

4. Both the Courts have concurrently held that notice under Section 377 of the Bihar and Orissa Municipal Act was duly served. They have further held that the drain and the Nahar were constructed by the defendant and they are completely out of repairs, They have further held that this has resulted from the non-performance by the Corporation of its duty to maintain the drainage channel in proper state of repairs. There is accumulation of filth, rubbish and water, so much so that during rains the drain water overflows on the road and people have to wade through it in going to and coming from their houses.

In the opinion of both of them this has given rise to nuisance. Both of them, however, differ on the question of the liability of the Corporation. In the opinion of the learned Munsif this non-repair and consequential nuisance amounted to misfeasance on the part of the defendant, and therefore it was liable in damages to the plaintiffs. He accordingly decreed the suit. The learned Subordinate Judge,, however, differed from him and held that the present nuisance resulted from non-feasance for which-the Corporation is not liable. He accordingly dismissed the suit.

5. Mr. R. S. Sinha appearing for the appellants has raised the contention that the defendant had damaged the plaintiffs by nuisance arising from the largely accumulated filth and sewage and stagnant water and that it was a case of

misfeasance. On the other hand, Mr. B. P. Samaiyar representing the Corporation contended that the nuisance, if any, has resulted from non-repair, and the local authority is not liable to pay any damages for not carrying out proper repairs, or, in other words, for breach of duty, and, therefore, it is a case of non-feasance and not misfeasance, and the only remedy of the plaintiffs was to approach the Government for the purpose.

6. In my opinion, the angle of approach to this case adopted by the lower appellate Court is faulty, and the distinction between misfeasance and non-feasance is of little consequence in a case of this nature. Even in England, this distinction has been confined strictly to the case of highways repairable by the public at large, and the principles enunciated in those cases should not be extended to cover all cases cf breach of duty by the local authorities.

In my opinion, the case has to be decided on the principle of general law of tort. In this connection I would refer to a recent decision of the Court of Appeal in Pride of Derby and Derbyshire Angling Association Ltd. v. British Celanese Ltd., (1953) 1 Ch 149. In this case the first plaintiffs were the owners of a fishery in the Rivers Trent and Derwent, and the second plaintiff was the riparian owner of a considerable stretch of both rivers.

In this action, the plaintiffs claimed an injunction to restrain the pollution of the rivers and damages. There were three effective defendants to the action. It was alleged that the first defendant, a commercial company, caused pollution by pouring injurious effluents into the River Derwent and by returning water to the river at so high a temperature as to be injurious to fish; that the second defendants, the Derby Corporation, were polluting the rivers by pumping from their sewerage works insufficiently treated sewage into the Dorwent; and that the third defendants, the British Electricity Authority, polluted it by discharging heated effluent.

The plaintiffs based their action on nuisance; negligence was not alleged. The first defendants agreed to submit to an injunction. Harman J., found that the plaintiffs had established a good cause of action against the second and third defendants and granted an injunction restraining them from discharging effluent into the River Derwent so as generally to alter the quality (including the temperature) of the water of the river to the injury of the plaintiffs or so as to interfere with the plaintiff's rights of fishery.

The operation of the injunction was, however, suspended until 30-4-1954. The British Electricity Authority appealed against the form of the injunction granted against them. The main appellant was the Derby Corporation. On the appeal it was not disputed that their operations resulted in pollution. It was contended by their learned counsel, however, that the damage to the plaintiffs was the result of non-feasance and not misfeasance and that the plaintiffs' only remedy was by application to the Minister of Local Government and Planning under the Public Health Acts. Evershed M. R., delivering the judgment of the Court observed as follows:

"The proposition that a local authority is not liable for non-feasance in regard to highways rests, I understand, upon particular historical grounds, and may, I venture to suggest, lead to error or confusion if it is assumed that a similar proposition can be necessarily applied in the case of sewers and drains. As regards sewers and drains, it is, in my judgment, necessary to keep clearly in mind the possibility of two distinct

causes of action, namely, (1) for nuisance, and (2) for negligence. I venture to think that the distinction may not always have been clearly observed in certain of the earlier cases.

As regards negligence (and I may say that we are not in this case concerned with negligence at all, there being no claim for negligence in the statement of claim) It may well be that non-feasance, in the sense of failing to perform some positive statutory duty, does not give rise to a cause of action for negligence against the local authority in respect of its sewerage system. In regard to nuisance, however, I think that the question of non-feasance, as distinct from mis-feasance, has no real relevance. As regards nuisance, the question is whether the thing complained of as a nuisance is expressly or impliedly authorized by the Act of the legislature in accordance with which the works were constructed, or whether (and this is perhaps the same thing) the nuisance complained of is the inevitable consequence of that which the Act both authorized and contemplated. On this question, it seems to me that whether the thing complained of can be described as non-feasance or misfeasance is wholly beside the point."

In a concurring judgment Denning L.J. made the following significant observations which bring out the distinction quite clearly and wholly apply to the facts of the present case:

"In submitting the appeal of the corporation, Sir Andrew Clark urged that there was a difference between misfeasance and non-feasance. He admitted that the corporation had been guilty of non-feasance, because they had not enlarged their sewerage works so as to cope with the increased population. But that, he said, did not give rise to an action at law; the only remedy was by complaint to the Minister. There is one decisive answer to that argument, and it is this: the distinction between mis-feasance and non-feasance is valid only in the case of highways repairable by the public at large. It does not apply to any other branch of the law.

I am well aware that in 1924, in Hasketh v. Birmingham Corporation, (1924) 1 KB 260 (271), Scrutton LJ, said that 'The -general rule is that a local authority is liable for misfeasance, but not for non-feasance'; but when he said that, I fear that for once Homer nodded. It would, I think, be very unfortunate if the exemption for non-feasance was extended to local authorities generally. Even in highway cases, it has been said to be unsatisfactory; ..... it introduces distinctions so fine as to be scarcely perceptible; ..... and it is only to be explained on historical erounds .....

If we put highway cases on one side, there are mmerable cases to be found where public authorities have been held liable for non-feasance. (sic) me give just four instances over the centuries. (sic) the parson at Quareley in Hampshire was under a public duty to keep a common bull for the service of the cows of his parishioners. For three years he neglected to find a bull, and it was held that every inhabitant who had suffered damage was entitled to bring an action..... In 1800 the corporation of Lyme Regis were under a public duty to repair the sea wall; they failed to do it, and the sea came in and overran some cottages. It was argued that the corporation were not liable for non-feasance, but they were held liable by all the courts, and by the House of Lords ..... In 1800 the Portslade Urban District Council failed to clean out its sewers, and thus caused a nuisance to the plaintiff. It was held by this court that they were liable to an action ..... Finally, in 1943, the Islington Borough Council had taken over

a disused tramway, but had taken no steps to rid the highway of the danger caused by the derelict tramlines, and they were held by this court to be liable for the consequent death of a cyclist.....

The only cases, other than highway cases, where it has been suggested, at any rate by this court, that a local authority are exempt from liability for non-feasance are Glossop v. Heston and Isleworth Local Board, (1879) 12 Ch D 102; A.G. v. Dorking Guardians, (1882) 20 Ch D 595; Robinson v. Workington Corporation, (1897) 1 QB 619 and the Birmingham case, (1924) 1 KB 260, but those were all cases of a particular kind of non-feasance. They were cases where all that could be said against the local authority was that they had failed to carry out their statutory duty to drain their district and, on the true construction of the statute, the remedy for that omission was not by action at law, but by complaint to the Minister. Those four cases do not illustrate any general exemption for non-feasance, but only the rule that the question whether an action lies for breach of a statutory duty depends on the true construction of the statute .....

Once rid of the distinction between misfeasance and non-feasance, the case can be reduced to simple terms. The first question is: have the plaintiffs a prima facie cause of action at common law? If so, the second question: have the defendants a defense by reason of statutory authority? In this! case, negligence is not alleged. The only cause of action available to the plaintiffs is an action for nuisance .....

This liability for nuisance has been applied in the past to sewage and drainage cases in this way: when a local authority take over or construct a sewage and drainage system which is adequate at the time to dispose or the sewage and surface water for their district, but which subsequently becomes inadequate owing to increased building which they cannot control, and for which they have no responsibility, they are not guilty of the ensuing nuisance. They obviously do not create it, nor do they continue it merely by doing nothing to enlarge or improve the system. The only remedy of the injured party is to complain to the Minister. That was the position in the four 'non-feasance' cases which I have mentioned. In the Isleworth (1879) 12 Ch D 102 and Dorking (1882) 20 Ch D 595 cases, the local authority had not themselves constructed the sowers; they had only taken them over from others, and done nothing. In the Workington, (1897) 1 QB 619 and Birmingham, (1924) 1 KB 260 cases, the local authority had themselves constructed a drainage system which was quite sufficient at the time, but it later became inadequate through increased building which the local authority could not control.

It is very different, however, when the local authority themselves do the increased building, or permit it to be done, because they are then themselves guilty of the nuisance. They know (or ought to know) that the increase in building will cause the existing sewers to overflow, and yet they allow it to go on without enlarging the capacity of the sewerage system. By so doing, they themselves are helping to fill the system beyond its capacity, and are guilty of the nuisance .....

A moment's reflection will show that the four 'non-feasance' cases have little or no application at the present day. In the nineteenth century, local authorities had no authority over increased building; they did not build dwelling-houses themselves, and they could not control building by others; and anyone who built a house had a statutory right to connect it to the sewer. But in the last few years the position has

radically changed. Local authorities have built more houses than anyone else, and under the Planning Acts they have full control over the building in their district. They cannot now disclaim responsibility for increased building. By building houses themselves, or permitting others to build them, they become responsible for any nuisance that results in the sewerage system....."

I think, the ratio decidendi of this case fully applies to the instant case. This case, like the one above, is founded on nuisance. As pointed out by Evershed M. R., a distinction has to be made for two distinct causes of action, nuisance and negligence. In the case of nuisance, distinction between mis-feasance and non-feasance has no real significance. The important question in such cases, as pointed out by Denning L. J., is: have the plaintiffs a prima facie cause of action at common law? If so, the second question is: have the defendants a defense by reason of statutory authority? The answer to the first question is undoubtedly in the affirmative.

Under the general law, the plaintiffs are entitled to damage from a person who causes and creates nuisance. It is a well-recognized principle of law that where a person is guilty of a breach of duty to the public, an action on the case can be maintained by any person who suffers special damage thereby. This principle was stated as far back as 1834 by the Judges in Lyme Regis v. Henley, (1834) 8 Bligh (N. S.) 690 at p. 714, in these words:

"When the King for the benefit of the public, has made a certain grant, imposing certain public duties, and that grant has been accepted, we are of opinion that the public may enforce the performance of those duties by indictment, and individuals peculiarly injured by action."

Quoted in the Note written by Denning L. J., in 1939 in the Law Quarterly Review, Volume 55, page 343, which has been referred to by him in his judgment in the aforesaid case. As pointed out by him in the same Note, that principle applies not only to grants made by the King but also to grants made by a statute. This principle of law applies here in India too. Therefore, the plaintiffs have undoubtedly a cause of action under the general law of the land.

As regards the second question, the Bihar and Orissa Municipal Act does not give permission, express or by necessary implication, for the operation of the drain and the canal so as to cause any other person a nuisance, nor can I conceive of any enactment which will confer express power on a person or a Corporation to commit a nuisance so as to injure the health of the public. The plaintiffs' claim, as stated earlier, is founded upon nuisance for which there is no statutory justification.

I think, it is plain that the Corporation is under a statutory obligation to prevent its drainage system becoming a nuisance. Much water has flown since the time when the Corporation or any local authority was relieved of responsibility for nonrepair, and the Corporation cannot escape liability on the exploded proposition of law based upon the distinction between non-feasance and misfeasance.

It will appear from the above that the Corporation of Lyme Regis who was under a public duty to repair the seal wall were held liable by all the Courts including the House of Lords for their failure to do the same. There is no valid reason why the same principle should not apply to the present action. In the case of the Derby Corporation,

above stated, the sewerage system at the time of construction was sufficient to drain out the district and did not cause pollution. The plaintiffs did not allege that the pollution was caused by the Corporation's negligence.

The plaintiffs' real ground of complaint there was that the sewerage weeks were insufficient to cope with the sewage of Derby which had increased in size greatly since the works were constructed. It is plain that it is not negligence not to construct a new system to deal with the increased sewage. The Corporation fully carried out the duties laid upon them under the statute, and any improvement in the sewerage to cope with the increased population was due to circumstances be-yond their control. They could not themselves find funds to provide bigger sewerage work to serve the increasing population of Derby.

If the principle of misfeasance and non-feasance were to govern the suit, evidently the damage to the plaintiffs in that case was the result of non-feasance, not mis-feasance, and the case must have been decided differently. Still, the Corporation was held liable for polluting the River Derwent, and the plaintiffs were granted a decree for injunction. The instant case stands on a higher footing. There is a drainage system which is sufficient to carry the sewage and drain out the Mahallas in question. But since the canal and the drain have silted up and have gone out of repairs there is not an effective discharge of the sewage and other materials in the canal through the existing drain, resulting in nuisance in the shape of accumulation of filth and sewage and stagnation of water.

On the parity of reasoning of the case of the Derby Corporation, the Patna Municipal Corporation cannot claim privilege from the Court on the ground of being a local authority greater than the one accorded by the Court to any person or body of persons. I am quite unable to accept the contention that on account of non-feasance the Corporation was relieved of its liability to pay damages to the plaintiffs. As pointed out above, in regard to nuisance the question of non-feasance, as distinct from misfeasance, has no real relevance.

Apart from this, it is not a case where the Corporation has in all sincerity done all that is reasonably within its power to remedy the grievous injury which it is inflicting on the plaintiffs by causing nuisance. It cannot successfully plead that notwithstanding its efforts it has been unable to carry out fully the necessary repairs which in fact is responsible for accumulation, of filth and rubbis (sic) and consequential nuisance. In my consider (sic) judgment, the question whether it is a case of (sic) feasance or misfeasance is wholly beside the (sic) and the Corporation is clearly liable in damages for nuisance resulting from non-performance of its duly to keep the drainage system in perfect order.

The ratio of the decision in the case of Pride of Derby, (1953) 1 Ch 149, aforesaid establishes clearly that if a public authority so exercises any of its functions as to cause a private nuisance to any person, the authority is liable in consequence to be sued in any Court of law for damages or injunction, as any other subject is liable, unless it can rely upon some statute as providing, by express I language or necessary or proper inference, a defence to such an action as observed above, the Bihar and Orissa Municipal Act does not permit the commission of such nuisance. Mr. Samaiyar referred to Section 384 of this Act and urged that the proper court for the plaintiffs

was to approach the State Government for execution of the repairs. This section provides:

"(1) If at any time it appears to the State Government that the Commissioners of any municipality have made default in performing any duty imposed on them by or under this or any other Act, the State Government may, by an order in writing fix, a time for the performance of that duty,

(2) If such duty is not performed within the period so fixed, the State Government may appoint the District Magistrate to perform it, and may direct that the expense of performing it shall be paid, within such time as it may fix, to the Magistrate from the municipal fund.

(3) If the expense is not so paid, the District Magistrate, with the previous sanction of the State Government, may make an order directing the person having the custody of the balance of the municipal fund to pay the expense, or so much thereof as is from time to time possible, from the balance, in priority to any or all other charges against the same. "

This section no doubt empowers the State Government to compel the performance of certain duty by the municipal commissioners failing which to appoint the District Magistrate to perform the same. This, however, does not imply that the rate-payers who have suffered damage at the hands of the Corporation should have no remedy in a Court of law. Section 68 of the said Act imposes a duty upon the municipal commissioners to maintain and repair, inter alia, channels, drains, latrines and urinals.

If it fails to perform its duties and if nuisance arises therefrom, the municipality will certainly be liable in a Court of law for damages. Nuisance is certainly not something done under the powers of the said Act. The drainage system was introduced by the Corporation, or more precisely its predecessor municipality, and it has been itself at fault in not keeping the drainage works in proper repairs.

Having constructed the drain, the Corporation is bound to keep it in a state of repairs which would prevent its causing the nuisance arising from accumulation of filth and sewage. It is obvious that the Corporation has no statutory defense to a suit for damages founded upon nuisance and, therefore, it cannot escape liability for causing nuisance by its act or omission. This contention of Mr. Samaiyar, therefore, must be overruled.

7. The principle I have enunciated above has been recognized here in India also in some earlier eases. In the case of Rajendralal Maneklal v. Surat City Municipality, 3 Ind Cas 511 (Bom), the plaintiff had brought the action to recover damages from the Surat Municipality on account of injury done by storm water to certain garden land of his known as the Gopitalao, alleging that it was owing to the negligence of the Municipality that the water first broke into his garden and that having broken in, it did not drain off.

It was found in that case that the carrying capacity of a Municipal ditch was greatly reduced by the gradual accumulation of silt and rubbish in its bed and the Municipality did nothing to maintain it in proper order or to clean it. The water, therefore, collected in a channel of reduced capacity, and, unable to discharge itself, burst into the plaintiff's garden and caused damage. In these circumstances it was held

by a Division Bench of the Bombay High Court that there was a clear act of misfeasance on the part of the Municipality for which it was liable in damages to the plaintiff.

Although this case was decided on the ground of misfeasance the Municipality were liable, on the strength of the principles I have discussed above, because failure to carry out due repairs of the municipal ditch has resulted in damage to the plaintiff. Any way, this case supports the view I have expressed above. In a later case: Dholka Town Municipality v. Desaibhai Kalidas Patel, AIR 1914 Bom 198 (2), also the Bombay High Court has held that the exemption from liability of local bodies on the ground of non-feasance is confined to neglect of highways, and does not apply to drainage works carried out by the local bodies for their convenience, which they are bound to maintain in a proper state of repair so that they shall not be a nuisance to the neighboring owners.

In that case also the Municipality attempted to escape liability on the ground that it was a matter arising from non-feasance and not from misfeasance. But, this principle was not extended to cover cases relating to neglect of drainage system by the local authority. In that case the drainage water passing along a certain drainage cut owing to some default instead of flowing along the assigned channel flowed across the road into the plaintiff's field and caused damage to the plaintiff.

The Bombay High Court held that the Municipality was liable in respect of the damage caused to the plaintiff. Mr. Samaiyar in support of his contention referred to two decisions, one of the Bombay High Court in Achratlal Harilal v. Ahmeda-bad Municipality, ILR 28 Bom 340, and the other in Jogendra Nath v. Tollyganj Municipality, AIR 1939 Cal 178. In the Bombay case decided in 1904 the Bombay High Court had prima facie taken a contrary view; but that case is clearly distinguishable, as it related to public highways.

The facts of that case are these. The plaintiff, an inhabitant of Ahmedabad, had brought a suit against the Ahmedabad Municipality to re-cover damages sustained by him in respect of an injury caused to his horse and carriage in consequence of the neglect of the Municipality to repair a road. In these circumstances, the Bombay High Court held that as the default leading to the damage was a mere non-feasance, the suit must fail, for the statute does not impose upon the Municipality a duty towards the plaintiff which they negligently failed to perform. The facts of this case are thus entirely different.

At any rate, in view of the later English decision quoted above the correctness of this decision is open to serious doubt. I do not think it can be accepted as a correct law. In the Calcutta case the plaintiff's case was that the Tollyganj Municipality had failed to provide and maintain a sufficient system of drainage of a large area within its control, with the result that there was great inconvenience and damage to the plaintiff, in that during the rainy season there was a large accumulation of water over a large area and this state of things had been going on for many years, and the Municipal Commissioners in spite of complaints had taken no steps to improve the drainage of the area.

The plaintiff claimed damages of Rs. 100. In these circumstances a Bench of the Calcutta High Court his held that it is not the scheme of the Bengal Municipal Act

that a rate-payer should come to the Court for non-feasance of Municipal Commissioners. This view is based upon the decision in the case of (1897) 1 QB 619. The case of Robinson has been considered in the aforesaid case of Pride of Durby (1953) 1 Ch 149 and distinguished.

In view of the later decision of the Court of Appeal the proposition of law laid down by the Calcutta High Court cannot be regarded as correct. Apart from this that case is clearly distinguishable. In that case the damage was claimed against the Municipality for not maintaining sufficient scheme of drainage. The instant case is rested upon nuisance arising out of failure to repair the drainage system, None of the cases referred to by Mr. Samaiyar supports his contention.

8. Even considered on the basis of the doctrine of misfeasance and non-feasance it is clearly a case of misfeasance, because having constructed the drainage system the Corporation had by deliberate omission to execute the necessary repairs caused damage to the public in the shape of nuisance, fudged from this point of view, this case is covered by the decision in 3 Ind Cas 511 (Bom), referred to above.

9. In the upshot I hold that the decision of the Court of appeal below is wrong, and the Corporation is liable in damage for causing nuisance.

10. Mr. Samaiyar also contended that the suit was not maintainable, because the service of notice under Section 377 of the Bihar and Orissa Act was invalid. Both the Courts have found that the notice under Section 377 had been duly served. What is now contended is that this notice is invalid as the disputed properties were not properly described. It was pointed out that the plot number of the drain was wrongly mentioned in the notice (exhibit A).

The argument put forward by Mr. Samaiyar is that this mis-description prejudiced the defendant and rendered the suit non-maintainable. I do not agree with his contention. It was not at all necessary to give a detailed description of the drain by reference to the survey plot number. The broad facts in this case were not disputed, namely, that the plaintiffs' houses abutted on a lane to the east and to the adjacent east of the lane there was a drain in Mahalla Mosalahpur Hat.

This was what the plaintiffs had in view, and it appears that the Patna Municipal Corporation also had no doubt about the nature of the relief claimed in respect of the drain question. This mis-description is of no materiality at all. As was pointed out in Sourendra Mohan Sinha v. Secretary of State, AIR 1934 Pat 701, the notice need not be practically a copy of the plaint. All that is required is that the notice should be such as to give substantial information to the Government (here the Municipal Corporation) of the basis of the claim and the relief which the plaintiffs seek.

This case of course is based upon the construction of Section 80 of the Code of Civil Procedure, but the principle laid down there applies, in my opinion, to a notice falling under Section 377 of the Municipal Act. Mr. Samaiyar referred to a decision of the Madras High Court in Konnoth Meenakshi Amma v. Province of Madras, AIR 1946 Mad 73.

In this case it has been held that an error in describing the subject-matter of the suit, namely, setting aside a revenue sale, as R. S. No. 722/4-b instead of R. S. 722/4-A is not a mere clerical error but a substantial error which vitiates the notice under Section

80 of the Code. That case is clearly distinguishable. There the revenue case was sought to be set aside and it was necessary that the number of the case should have been accurately stated, otherwise it would have been difficult for the Government to enter a proper defense.

The position here is entirely different. Even if there had been no plot number there would have been no misunderstanding about the nature of the claim and the reliefs sought in this suit. In my opinion, there was substantial compliance with the provisions of Section 377 of the Municipal Act, and the notice was proper and valid. I may point out that Mr. Samaiyar had also taken a point that non-service of notice under Section 80 of the Code was fatal to the suit. But on the authority of the decision in Dr. Mahendra Prasarl v. The Administrator, Patna Corporation, 1954 BLJR 499, this contention is not valid, and Mr. Samaiyar did not further pursue this point. I think, service of notice under Section 80 of the Code was not necessary.

11. In the result, the appeal is allowed with costs throughout, the judgment and decree of the Court of anneal below is set aside and the decree of the learned Munsif is restored,

**V. Ramaswami, C.J.**

12. I agree.