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Court : Delhi

Decided On : Sep-01-2016

Judge : The Honourable Ms. Justice Indermeet Kaur

Appeal No. : W.P.(C) No. 5598 of 2008

Appellant : Rameshwari

Respondent : M.C.D. and Others

Judgement :

Indermeet Kaur, J.

1. There are three petitioners before this Court. Petitioner No. 1 Rameshwari is the widow of Pratap Chand. Petitioner No. 2 Shashi is the widow of Surinder Kumar. Petitioner No. 3 Archana is the widow of Mahinder Kumar. The petitioners had suffered an unfortunate fate on 11.02.2007 when (as per the version of the petitioners), the employees of the Municipal Corporation of Delhi were digging up a drain in front of their house i.e. F-225, J.J. Colony, Madipur as a result of which the foundation of their house (which had been built upto the second floor) had collapsed as a result of which eight persons had died. Nine people had suffered injuries. The whole building had collapsed and petitioners No. 2 and 3 were also victims in this incident; they had suffered multiple fractures having been buried in the debris of the building in the said mishap. FIR No. 100/2007 under Sections 337/304-A of the IPC was registered on 12.02.2007. The postmortem of the

deceased persons was conducted at the Sanjay Gandhi Memorial Hospital which revealed that the aforenoted persons had died due to injuries suffered by them because of the collapse of the building. Further averments in the writ petition disclose that the Investigating Officer of FIR No.100/2007 (SI Gagan Bhaskar) had recorded the statement of other eyewitnesses to the incident which confirmed the fact that the said building had collapsed because of negligence on the part of the MCD officials who had failed to adopt safety measures and because of their poor planning while digging up a drain in front of their house, the house of the petitioners had resultantly collapsed; petitioner No. 1 along with her husband late Pratap Chand were living on the ground floor; he was running a shop in front of his house; the husband of petitioner No. 3 Mahinder Kumar was living on the first floor; petitioner No. 3 Archana had also suffered multiple injuries over her leg and she was being treated at the hospital and till the date of filing of this petition, she has spent Rs.50,000/- over her medicines and doctor fee. She is still not in a position to do normal chores. The family of petitioner No.2 was residing on the second floor. The deceased husband of petitioner No. 2 namely Surinder Kumar was engaged in the business of wooden farmas for ladies sandals and he was earning handsomely. There is noother person to look after his family. Petitioner No. 2 Shashi had also suffered injuries and she was also being treated at the hospital. Till date she is not able to carry out her normal duties. Besides the mental and physical trauma suffered by the petitioners, there has been an earning loss as the petitioners have not been able to look after their families as all their male members have died. All this is attributable to the negligent acts of the respondent Corporation as they had not taken the necessary measures to watch their safety. A sum of Rs.10 lacs has been claimed qua the death of Pratap Chand; Rs.22 lacs for the death of Surinder Kumar and Rs.10 lacs for the death of Neha, daughter of petitioner No.2. Rs.15 lacs for the death of Sahil, the son of petitioner No.2. An additional sum of Rs.10 lacs has been claimed for the injuries suffered by petitioner No. 2 herself. Rs. 22 lacs has been claimed for the death of Mahinder Kumar, the deceased husband of petitioner No. 3. Rs.12 lacs has been claimed for the death of Manthan, son of petitioner No.3. Another sum of Rs.5 lacs has been claimed for the injuries suffered as also the consequential damages suffered by petitioner No.3. Cost and interest on the aforenoted amounts has also been

claimed.

2. Counter affidavit has been filed by the respondent Corporation. In the counter affidavit, a preliminary objection has been taken that the allegations in the writ petition are false; there are wrongs which have been committed by the petitioners themselves; they have encroached upon the Municipal/Government land and raised infrastructure in the form of pucca structure over the municipal land over which they have no right. This incident has occurred due to their own illegal activities which are attributed to the petitioners themselves. They had not taken requisite care at the time of removal of unauthorized and illegal construction. There is no negligence attributable to the MCD. It is further stated that no work of digging of a drain adjoining the spot of incident was ever conducted by the respondents and this is as per the available record of the Department. The question of the involvement of the officials of the MCD does not arise. The averments in the writ petition are false. Since the petitioners themselves have encroached upon the public land, no relief can be granted to them. They even otherwise have an efficacious remedy by way of filing a suit as disputed questions of facts have arisen.

3. Counter affidavit of respondent No.3 i.e. SHO of Police Station Punjabi Bagh Inspector Gurmeet Singh at the relevant time is also a part of record. In this affidavit, it was stated that on 11.02.2007, a building NO. F- 225, JJ Colony, Madipur had collapsed in which 7 persons died and nine persons were injured. FIR No.100/2007 was registered under Sections 337/304-A of the IPC on 12.02.2007 at PS Punjabi Bagh. Senior MCD officials had reached the spot and inspection was carried out. Some persons had been buried under the collapsed building debris. During investigation, it was found that JJ Colony, F Block Madipur was constructed by the DDA about 25-30 years and with the expansion of the family members, the petitioners had done unauthorized encroachments and constructions in their houses. Encroachment removal program had in fact been carried out by the MCD in all the blocks of JJ Colony, Madipur in which encroachments were removed. The MCD contractor had started digging a drain in the F block.This was outside the boundary of the house of F block. This affidavitfurther states that the original plot measuring 22.5 square meters had been

awarded for the purpose of re-settlement in the Madipur area and constructions upto single storey was allowed. However, with the passage of time, 2-3 floors were added illegally and the municipal land/road was also encroached upon by almost everybody in front of their houses. In the course of an encroachment removal programs, the house owners themselves had punctured the front portion of their houses after consultation with MCD officials. Supporting walls of the houses had been removed without any technical knowledge as a result of which by the soaking of the rain water, the building at F-225, JJ Colony, Madipur collapsed leading to this unfortunate incident.

4. A rejoinder has been filed by the petitioners to the aforenoted affidavits both of Municipal Corporation as also of the Police. It is denied that the petitioners are guilty of any illegal encroachment. It is however admitted that earlier the plot was raised up to the ground floor level but due to expansion of their family, two more floors in this plot had been built up. It is also admitted that there might have been encroachment by some other families in the Madipur area but there was no encroachment by the families of the petitioners. It is pointed out that civil authorities had no right for digging up the foundation of the house which had led to the collapse of the whole building. The MCD is responsible for this act for which they are liable to compensate the petitioners.

5. In the course of the arguments, learned counsel for the petitioners has placed reliance upon two primary documents. The first document is the report of the crime team which had been prepared on the day of the incident i.e. on 11.02.2007. Column 9 states that the injured were taken to the hospital and a nala was found dug in front of House No. F-225, JJ Colony. Attention has also been drawn to a report regarding the collapse of the building in Madipur prepared by the Deputy Commissioner, MCD dated 12.02.2007 in which it had been noted that on inspection the entire building i.e. property No. F-225, which was about 20 years old had collapsed vertically; rescue operations were launched. Eight persons had died. These two documents have been relied upon by the petitioners to submit that there is no disputed question of facts. Admittedly, the family members of the petitioners had died in the aforenoted incident which was the result of the building collapse and this was for the reason that a nala was being dug in front of their

house; the respondents are wholly responsible for this incident; they cannot shy away from their liability; they are liable to compensate the victims. Learned counsel for the petitioners additionally places reliance upon a charge-sheet which has since then been filed in the aforenoted FIR; attention has been drawn to the statements of PW-4 and PW-5 recorded in those proceedings; submission being that both PW-4 and PW-5 were eye- witnesses and they both have categorically stated that it was pursuant to the digging up of drain on the fateful rainy day, building No. F-225, JJ Colony, Madipur collapsed. Learned counsel for the petitioners has also placed reliance upon various judgments to support her arguments. Reliance has been placed upon 2012 ACJ 48 Municipal Corporation of Delhi Vs. Association of Victims of Uphaar Tragedy and others. Submission is that in this case where a fire incident had taken place in a cinema in which several persons had died, the Apex Court had granted Rs.7,50,000/- as compensation to the victims and Rs.10 lacs was paid to the families of the deceased. On this count submission being that the same rule should be made applicable in the instant case also but the level of inflation should be kept in mind as the judgment in Association of Victims of Uphaar Tragedy (supra) was delivered in 2012. Reliance has been placed 190 (2012) DLT 293 Varinder Prasad Vs. B.S.E.S Rajdhani Power Limited and Others where also a two tier compensation mechanism had been laid down dealing with both standard compensation and compensation for pecuniary loss of dependency . It isstated that the application of the aforenoted formula would involve the earning capacity of the deceased to which the multiplier should be added. Reliance has also been placed upon 2007 VII AD (Delhi 441 Ram Kishore and Others Vs. Municipal Corporation of Delhi. Submission being that the doctrine of res ipsa loquitur is clearly involved in the instant case as the respondents have acted negligently, the petitioners are liable to be compensated; the compensation formula adopted in this case should also be followed for the petitioners. On the submission made by the learned counsel for the respondents that disputed questions of facts have arisen, learned counsel for the petitioner has relied upon a judgment of a Bench of this Court in 2014 ACJ 1908 Subramanium and Another Vs. Delhi Metro Rail Corporation and others who had an occasion to deal with a case of a child who had died by slipping in a storm water drain; the counter affidavit of the respondent MCD had raised frivolous defences but this was not

taken into account and the compensation was duly awarded to the legal heirs of the victim child. Reliance has also been placed upon another judgment of a Bench of this Court reported as 2011 (122) DRJ 428 (DB) Gopalpur Victim Association Vs. Delhi Jal Board and Others to support a submission that sham defence raised by the Department cannot be looked into and they cannot be raised by the Department merely for the sake of raising or picking up a disputed question of facts. In this case, there is no disputed question of facts. Learned counsel for the petitioners has also placed reliance upon 1969 (3) SCC 775 State of U.P. Vs. Om Prakash Gupta to support his submission that the Writ court has jurisdiction to try both the question of facts as also law and this discretion which is vested in the Writ Court has to be exercised on sound judicial principal. Learned counsel for the petitioners has also placed reliance upon 1992 (1) Scale 1282 Sham Kant Vs. State of Maharashtra, 2001 AIR (SC) 2637 T.T. Antony Vs. State of Kerala and 1958 AIR 538 Shri Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar to support an argument that even where the officials of the MCD have been exonerated in the course of their inquiry, it would not be a bar for the Writ Court to entertain the claim of the petitioner. Learned counsel for the petitioners additionally submits that the argument raised by the respondents that the petitioners has an alternate remedy by way of filing of a suit is also no ground to reject the present petition and for this proposition, reliance has been placed upon 1973 3 SCR 854 Century Spinning and Manufacturing Company Ltd. And Another Vs. The Ulhasnagar Municipal Council and Another.

6. Per contra, learned counsel for the respondents submits that the evidence which is being recorded in the trial Court in the aforenoted FIR is yet to stand its test of veracity and whether proceedings in that charge-sheet will culminate into an acquittal or a conviction is yet awaited. Submission is that PW-4 is an interested witness; he is a family member of the petitioner; PW-5 had also turned hostile; he had not supported the case of the prosecution. The report of the crime team and the report of the DCP do not favour the petitioners. Attention has been drawn to the report regarding the collapse of the building at Madipur (relied upon by the petitioners) dated 12.02.2007; submission is that this report has to be read in entirety and no particular paragraph can be picked up. It is pointed out that this report also states that the owner of the building had made encroachments on

Government land which he was removing on his land and the removal of the encroachment from the ground floor leaving the cantilever projections for the remaining floors and the probable cause of the collapse of the building was because of this weak, improper and inadequate foundation upon which a four storey structure was standing; this was an unplanned removal of encroachment on the public land by the owner himself. Learned counsel for the respondents submits that all this has to be read in the context of the submissions made by the petitioners and since the case of the respondents all along has been that the petitioners themselves had encroached on public land and have made a four storey structure for which there was no legal sanction, they themselves are responsible for the weakness in the foundation of the said building which has led to the collapse. Even presuming but without admitting that there was digging of a drain in front of this house, it was caused because of the weakness in the foundation of the building which had been created by the owner. These are questions of facts which can only be decided by evidence and cannot be decided by the Writ Court. Learned counsel for the respondents in support of his submission has placed reliance upon AIR 2005 SC 3971 S.D.O. Grid Corporation of Orissa Ltd. And Others Vs. Tamudu Oram where in a case of death by electrocution, the Court had held that these are disputed questions of facts which cannot be gone into by a Writ Court. Reliance has been placed upon AIR 2000 SC 1603 Tamil Nadu Electricity Board Vs. Sumathi and Others to support the same proposition where also the death had occurred by electrocution. Learned counsel for the respondents additionally places reliance upon 105 (2003) DLT 224 Himachal Kumari Vs. Union of India and Others where in a case of medical negligence, the Court had noted that whether the precautions were taken in time by giving treatment to the petitioner and resultant negligence were questions of facts which could not be gone into by the Writ Court. Reliance has also been placed upon 2009 (163) DLT 297 Anju Vs. State as also 2015 (2) RLR 19 Kamla Devi Vs. Union of India and Others to support the same proposition; submission being reiterated that whether questions of facts arise which are admitted by one and disputed by other, the Writ Court cannot go into these facts. Learned counsel for the respondents also points out that in the inquiry proceedings which had been initiated against the MCD officials, admittedly the officials of the MCD stand

exonerated. This also supports the stand of the respondents that the respondents are not guilty for this unfortunate incident. Another submission made by the learned counsel for the respondents is that the compensation in the instant case cannot arise in a mechanical manner for which evidence is required.

7. Arguments have been heard. Record has been perused.

8. The submission of the petitioners is bordered largely upon the contents of the FIR which had culminated into charge-sheet under Sections 337/304- A of the IPC. Under Section 337/304-A of the IPC the accused which includes the MCD officials were being tried for having caused grievous/simple hurt to the injured as also having caused death of seven persons by negligence. This incident was dated 11.02.2007. The statements of PW-4 and PW-5 have been recorded apart from other witnesses. These statements have been highlighted by the learned counsel for the petitioners. This Court has perused the statements. PW-4 is admittedly a family member of the petitioners. PW-5 also purported to be an eye-witness had stated that on the fateful date while digging work was going on, he fell down; it was raining heavily; the foundation of the building had collapsed. He did not know whether this was due to the negligence of the MCD officials. This witness had been declared hostile by the prosecution. The submission of the learned counsel for the respondents is that the testimony of these witnesses has yet to be decided on the anvil of credibility as the charge-sheet is still pending before the concerned Court and thus it would not be safe to rely upon their versions. This Court notes this submission and additionally notes that their versions only speak about the incident having occurred on the fateful day i.e. on 11.02.2007.

9. It is not in dispute that this incident of 11.02.2007 had occurred and the building No. F-225, JJ Colony, Madipur where the petitioners and their families were residing had collapsed. The question that arises for decision is whether the respondent Corporation was responsible for this collapse and whether it was because of the digging of the nala in front of this house or whether there was a contributory negligence on the part of the petitioners and since they had built up an illegal and unsanctioned structure of four storeyes on a weak foundation and which had led to the collapse of the building. At the cost of repetition, PW-4 and

PW-5 have only related the incident meaning thereby that the incident had occurred on this rainy day. The counter affidavit of the respondents which has stated that the petitioners themselves are responsible for this incident as they had raised an illegal structure upon it has not answered the versions of PW-4 and PW-5. Crime team report dated 11.02.2007 is also a fact finding which is to the effect that a nala was being dug in front of F-225, JJ Colony, Madipur. The report of the DCP read in its entirety which was after inspection (on the following day i.e. on 12.02.2007) states that the building was 20 years old. It had collapsed vertically. It was a re-settlement colony. Local inquiries had revealed that the owner of the building had made encroachment on Government land. He had encroached on the ground floor leaving cantilever projections. This report also stated that the Monitoring Committee constituted by the High Court in the matter of Kalyan Sanstha Social Welfare Organization Vs. Union of India and Others had directed the Corporation to remove encroachment from public land and as a result on their own started removing encroachment without expert advice and these removals had been carried out privately. The probable cause of the collapse has also been detailed by the DCP in his report which would be relevant to extract. It reads herein as under:-

The probable cause of the collapse of the building may be due to the following reasons:

1 A four storey old structure resting on a weak, improper and inadequate foundation.

2 Unplanned removal of encroachment on public land by the owner himself results in weakening/de-stabilizing the entire building as a whole.

3 Due to un-interrupted rains during the last two days, some seepage might also have taken place in the foundation of the building which otherwise also would have become unstable due to exposure of foundation for construction of drain along the building line.

4 However, the failure on the part of the contractor as well as the field staff comprising of AE and JE of Works Department of Division-XX in ensuring the

safety/precautionary measure during the construction of the drain cannot be ruled out which has undertaken the excavation of the proposed drain.

10. This report thus supports the stand of the Department that there was probably some kind of an unplanned removal of encroachment on the public land by the owner himself. In the rejoinder filed by the petitioners, it has been admitted that the building was first raised up to the ground floor but thereafter because of expansion of the family members in the family of the petitioners, they had raised the building up to two floors. Admittedly, there is no sanctioned plan for this structure.

11. The questions which thus have to be answered are twofold. The first question would be whether there was an unplanned removal of encroachment on the public land by the owner himself (as is mentioned in the report of the DCP dated 12.02.2007). If this unplanned removal of encroachment is by the owner himself without expert guidance, it may have resulted in the weakening/de-stabilizing of the entire building; this has also been noted in the report; this report also notes that pursuant to the judgment of the High Court in Kalyan Sanstha Social Welfare Organization (supra) persons had started removing encroachment intermittently on their own. The rejoinder filed by the petitioner has also admitted this position. It has been admitted by the petitioners that there have been encroachment in the aforenoted colony but not by the petitioners.

12. The second fold of the argument raised by the respondent would be as to whether the building could have been constructed up to the second floor when admittedly this was a re-settlement colony which had been built 20-25 years ago and initially it was only the ground floor which was permitted; who had given them permission to raise this building up to second floor when it is not the case of the petitioners that the foundation of the building had been strengthened to support these additional two floors is also a matter which requires evidence and may not be possible for the Writ Court to answer these submissions.

13. This Court is of the view that this submission and counter submissions of the parties can only be decided by evidence.

14. This Court is thus of the persuasive view that in the facts of the instant case, disputed questions have arisen for which evidence would be required. This Court also notes that relegating the parties to a suit would send them back in retrospect and delay the matter for a substantial period of time but in the absence of their being any material which could straightaway answer the prayers made in the present petition, this Court is not inclined to entertain this petition.

15. All the judgments relied upon by the learned counsel for the petitioners are distinct on their own facts. There is no doubt to the settled legal proposition that a Writ Court has ample authority to deal with the questions of facts as also question of law; it is a dual role but at the cost of repetition, where serious disputes arise and are not sham (as has been argued by the petitioners) the Writ Court may not be in a position to deal with these disputes. The judgments of Ram Kishore and Varinder Prasad (supra) were those cases where the respondent had admitted the incident and the manner in which it had occurred. The judgment of Varinder Prasad has clearely stated that the respondents in their counter affidavit have not denied the occurrence of the incident; they had not denied that the death of the child had occurred due to the falling of the shed; it was not their case that the death had occurred for any other reason; no dispute has arisen on this question. The judgment of Subramanium (supra) had also noted that the counter affidavit of the respondents had not denied the incident; the only question was as to who was liable whether it was the DDA or whether it was the MCD. It was on this question alone that a dispute had arisen. These judgments are distinct. The judgment of Association of Victims of Uphaar Tragedy (supra) on the aspect of negligence would not be applicable as this Court is not inclined to entertain the present petition and thus the question of computation is not relevant. The other judgments of Sham Kant, T.T. Antony and Shri Ram Krishna Dalmia (supra) were judgments where inquiry proceedings had been initiated and the role of the Inquiry Officer under the provisions of the Commissioner of Inquiry Act was examined; these judgments would have no application to the facts of the instant case. The petitioner has also not been able to explain to this Court as to how the ratio of the aforenoted judgments would be applicable to this case.

16. There is no doubt to the settled legal proposition that a Writ Court has a wide jurisdiction to entertain a claim of compensation and in deserving cases where pleadings of the parties and documents on record reveal that negligence has been caused at the hands of the Statutory Bodies, there is nothing which would prevent the Writ Court from ordering the Statutory Bodies to compensate the victim. No so in the instant case. At the cost of repetition, disputed questions of facts have arisen. The first is whether there has been encroachment on public land which has been removed by the petitioners themselves which had led to the de-stabilization of the building. The second would be as to whether there was any legal sanctity for the petitioners to raise a two storey building when admittedly the JJ Colony being 20-25 years old and being initially built up to the ground floor level but with the expansion of families of the petitioners, there was without any legal sanction gone up to the second floor when it is also not the case of the petitioners that the foundation of the building had been strengthened. These disputed questions of fact have arisen in view of the stand adopted by the respondents in their counter affidavit coupled with the documents relied upon by them; in fact, it would be relevant to note that the report of the DCP (also heavily relied upon by the petitioners) dated 12.02.2007 has enunciated this stand. This was after the site inspection which was carried out by the Deputy Commissioner on the following day i.e. on 12.02.2007 which had led him to initiate inquiry proceedings against the MCD officials.

17. The submission of the respondents that the MCD officials stand exonerated in the inquiry proceedings may not be a relevant fact to oust the jurisdiction of this Court but as noted supra, this Court is not inclined to deal with this petition not for this reason but for the reasons already discussed above.

18. The petitioners, if they chose, may seek the alternate remedy by filing a suit for which the respondents have already stated that they would not create any hurdle on the point of limitation and as and when an application under Section 14 of the Limitation Act is filed, they would not object to the same.

19. Petition is without any merit. Dismissed.

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