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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.1292 OF 2002

Shri Satish Narayan Sawant

... Petitioner

Versus

Municipal Commissioner for Greater Mumbai and Ors. ... Respondents

Mr. Ashok G. Toraskar, for the Petitioner.

Mr. Vinod Mahadik, for the Respondent Nos.1 - BMC.

**CORAM : A.S. OKA &
V.L. ACHLIYA, JJ.**

DATE : 29th OCTOBER, 2015

PC.

. Heard the learned counsel appearing for the Petitioner and
the learned counsel appearing for the Mumbai Municipal Corporation.

Paragraphs 1 to 3 of the order dated 11th August, 2015 read thus :-

“ . File of the Petition has been reconstructed. We have perused the Petition. The Petitioner's son was a student of the municipal school run by the Mumbai Municipal Corporation. In the afternoon of 16th October, 2000, a pillar to which iron gate of the school was fixed collapsed. As a result of the collapse, the Petitioner's nine year old son and other students sustained injuries. By the time the Petitioner's son was taken to Bhagwati Hospital, he was declared as dead. By this Petition under Article 226 of the Constitution of India, the Petitioner has prayed for a writ of mandamus for directing the first Respondent (Municipal Corporation), the second Respondent (Headmaster of the Municipal School) and the third Respondent (Contractor who carried out the

work) to pay to the Petitioner compensation in the sum of Rs.3 lakhs.

2. In the reply filed by Mrs. Deepa D. Khanvikar on behalf of the Municipal Corporation, it is contended that the Executive Engineer (Special), Zone-IV conducted Enquiry into the mishap and he found that neither the pillar nor the gate was in a damaged condition. The contention is that it was a case of an accidental collapse. It is further contended in the affidavit that the possibility of slum dwellers of tampering with the pillar or gate could not be ruled out. The conclusion recorded by the Enquiry Officer was that neither the teachers nor the municipal engineers were responsible.
3. At this stage, we are not going into merits of the case. The fact that due to collapse of the pillar and gate, the Petitioner's nine years old son, who was a bonafide student of the municipal school, lost his life is not disputed. It will be appropriate if the Municipal Corporation considers the case of the Petitioner for grant of ex-gratia compensation. We direct the Municipal Corporation to take appropriate decision on the issue of grant of ex-gratia compensation to the Petitioner. Appropriate decision shall be taken by the Municipal Corporation within a period of one month from today. The concerned Officer of the Municipal Corporation will immediately invite attention of the Municipal Commissioner to this order who is expected to personally look into the matter.”

2. An affidavit has been filed by Shri Ranjit Dhakane, the Deputy Municipal Commissioner (Education) which is dated 9th October, 2015. In the affidavit, it is stated that on 4th September, 2015 the Additional Municipal Commissioner City and on 6th October, 2015 the Municipal Commissioner recommended payment of compensation of Rs.3 Lakhs to the Petitioner.

3. The learned counsel appearing for the Petitioner submits that as the Petition was filed in April, 2002, the Municipal Corporation be directed to pay interest on the said amount as claim of the Petitioner has been belatedly accepted. The learned counsel appearing for the Municipal Corporation submits that the recommendation of the Municipal Commissioner is to pay ex-gracia compensation of Rs.3 Lakhs. The learned counsel appearing for the Municipal Corporation submits that though the incident is of 16th October 2000, the Petition was filed after the lapse of two years.

4. We have perused the prayer in the Petition. The prayer is for grant of a sum of Rs.3 Lakhs as compensation to the Petitioner for loss of life of his son. There is no specific prayer for grant of interest.

5. Considering what is observed in the order dated 11th August, 2015, we are of the view that the Petitioner should not have been driven to file this Writ Petition. Moreover, the decision which is taken in September, 2015 ought to have been taken earlier in this petition filed in the year 2002.

6. Therefore, the Municipal Corporation will have to pay costs of the Petition to the Petitioner in the sum of Rs.25,000/-. Hence, we dispose of the Petition by passing the following order :-

ORDER

- (i) In terms of the affidavit of Shri Ranjit Dhakane, the Deputy Commissioner (Education), Mumbai Municipal Corporation shall pay a sum of Rs.3 Lakhs to the Petitioner within a period of two months from today. In addition, the Mumbai Municipal Corporation shall pay a sum of Rs.25,000/- to the Petitioner by way of costs of this Petition within a period of two months from today;
- (ii) Rule is made absolute on above terms;
- (iii) For reporting compliance, the Petition shall be listed on 15th January, 2016 under the caption for directions. We make it clear that on failure of the Municipal Corporation to pay the requisite amounts within the specified time, the question of grant of interest will have to be considered.

(VL. ACHLIYA, J)**(A.S. OKA, J)**