

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 3rd August, 2015.**

+ **W.P.(C) No.7744/2011**

SURENDRA PANDEY **..... Petitioner**

Through: Mr. Akhilesh Arora, Adv.

Versus

COMMISSIONER, MCD AND ANR **..... Respondents**

Through: Ms. Biji Rajesh for Mr. Gaurang
Kanth, Adv. for R-1.
Mr. Peeyoosh Kalra, Addl. Standing
Counsel for GNCTD.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition seeks a mandamus to the respondent no.1 Municipal Corporation of Delhi now succeeded by North Delhi Municipal Corporation (NrDMC) to pay compensation of Rs.10,00,000/- to the petitioner for negligence causing the death of the son aged nine years of the petitioner.

2. It is the case of the petitioner:-

(a) that he has been residing in New Ranjit Nagar with his family and his deceased child was a student of Class III in K.D. Junior Public School located in the same area;

(b) that the area in which the petitioner was residing is surrounded

by a park, where children usually play; swings and slides had also been provided in the park for the children to play;

- (c) there is a drain / *nallah* about 18-20 feet deep at a distance of less than 8 feet from the said park and for long had been left uncovered, without any fencing or barricading;
- (d) that on 25th February, 2011, his son, while playing, slipped and rolled over into the said drain and drowned; and,
- (e) that the Delhi Commission for Protection of Child Rights took *suo motu* cognizance of the incident and after independent investigation came to the conclusion that the respondent no.1 NrDMC is *prima facie* negligent in not providing adequate safety measures around the open drain and recommended interim relief of Rs.50,000/- to the petitioner's family.

3. The writ petition was entertained.

4. The respondent no.1 NrDMC in its counter affidavit has pleaded:-

- (i) that an open sullage / storm water drain of 1.00 k.m. length and a width of 3.50 mtrs. is running from Ranjit Nagar to DTC drain (at Dr. Girdharilal Goswami Marg);

- (ii) that on one side of the drain there is a 10 feet high boundary wall of Indian Agricultural Research Institute (IARI) at Pusa, running parallel to the drain;
- (iii) that on the other side of the drain, residential structures have come up by way of encroachment on otherwise vacant government land;
- (iv) that the drain is not accessible to general public and it is out of reach of a person in the areas adjoining the drain unless someone makes an extra effort to approach it;
- (v) that the New Ranjit Nagar, of which the petitioner claims to be the resident, touches the one end of the drain;
- (vi) that on enquiries made it was learnt that the deceased child along with other children used to cross the boundary wall aforesaid to play football in the parks of IARI Pusa;
- (vii) that the depth of the drain varies from 3 to 4 feet only and most of the time it remains dry;
- (viii) that only during monsoon or heavy rainfall, the water level in the drain is of 2 to 3 feet;

(ix) that in accordance with the report of Delhi Commission for Protection of Child Rights, a payment of Rs.50,000/- was made to the petitioner; and,

(x) that there is no park in the vicinity of the drain and the residential structures which have come up on the said land are encroachments over public land.

5. In view of the aforesaid state of pleadings, it has been enquired from the counsel for the petitioner whether any FIR of the death was lodged and an investigation had been commenced

6. The answer is in the negative.

7. On further enquiry it is informed that the petitioner, besides the deceased, has three other children.

8. Though the Courts in some cases, and copies of judgments in some of which have been filed by the petitioner himself, has undoubtedly held that the remedy of compensation for negligence resulting in loss caused by the public authority can be granted in writ jurisdiction but the present does not fall in that category of cases. Here, there is nothing to show that the death of the child of the petitioner was attributable to the respondent no.1 NrDMC from whom compensation is claimed. Though it is stated that play equipment

was installed at the site which is called 'park', and the same is evident in one photograph filed by the petitioner also, but the petitioner has shied from stating that the said play equipment was installed by the Municipality. The petitioner again, though has pleaded that the land is a public park, but has not filed any layout plan or anything else to show that the respondent no.1 NrDMC identifies it as a park meant for children to play in and in which case it could certainly have been stated that the Municipality ought to have taken care that there was nothing hazardous in the vicinity of the park. The Municipality otherwise cannot be said to be negligent in not fencing or barricading a drain in the vicinity whereof there are no residences and in the vicinity whereof ordinarily children would not go or have possibility of going.

9. Division Bench of this Court in ***Kamla Devi Vs. Union of India*** MANU/DE/0300/2015, on a conspectus of case law, held that in the face of such disputed questions of facts, writ petition cannot be entertained. Reference in addition may be made to ***Chairman, Grid Corporation of Orissa Ltd. Vs. Sukamini Das*** (1999) 7 SCC 298.

10. In the aforesaid circumstance it appears that the petitioner, if at all desires to press his claim, ought to take the appropriate remedy of a civil suit

for recovery of compensation.

11. Accordingly, the petition is dismissed with liberty to the petitioner to institute a suit for recovery of compensation. If the said suit is filed on or before 7th September, 2015, the respondents shall not be entitled to take the plea of the claim therein being barred by time and the said suit shall be adjudicated on merits of the claim.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 03, 2015

‘pp’..

(corrected & released on 22nd August, 2015)