

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2017

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.22624 of 2006 and
M.P.No.2 of 2006

1.Tmt.Rani
2.Selvi.Angammal ... Petitioners

Vs.

1.The Collector,
Thiruvallur District,
Thiruvallur.

2.The Tahsildar,
Ponneri Taluk,
Thiruvallur District.

3.The Sub-Inspector of Police,
E-4, Kattur Police Station,
Thiruvallur District.
(Cr.No.107/2005)

4.Tmt.Mohana

R4 impleaded as per order dated 26.02.2007
in M.P.No.1 of 2007 in W.P.No.22624 of 2006

... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Mandamus, to direct the respondents 1 and 2 to sanction a solatium of Rs.50,000/- to the petitioners herein on account of the unforeseen death of (late) Angusamy on 13.11.2005 due to a wall collapse through flooding.

For Petitioners : Mr.M.Santhanamari for
M/s. E.J.Ayyappan

For Respondents : Mr.S.Gunasekaran
Addl. Government Pleader for RR1-3

: No appearance for R4

O R D E R

Heard Mr.M.Santhanamari, learned counsel for the petitioners and Mr.S.Gunasekaran, learned Additional Government Pleader appearing for the respondents 1 to 3.

2.The petitioners have approached this Court for seeking the following relief,

"To issue a Writ of Mandamus, to direct the respondents 1 and 2 to sanction a solatium of Rs.50,000/- to the petitioners herein on account of the unforeseen death of (late) Angusamy on 13.11.2005 due to a wall collapse through flooding."

3. The case of the petitioners is as follows:

The first petitioner is the second wife of one Late.Angusamy and the second petitioner is the minor daughter, born out of the wedlock between the first petitioner and the Late.Angusamy. According to the first petitioner, on 13.11.2005, when her husband was sleeping in the house, the wall of the house collapsed on him due to severe flooding of the area because of the unprecedented rainfall and her husband died on the spot due to suffocation. A compliant was also lodged before the third respondent Police on the very next day regarding the incident. The Post-Mortem was also conducted and in the Post-Mortem, it was confirmed that the first petitioner's husband died on account of wall collapse.

4. According to the first petitioner, during that time, the Government had announced Rs.50,000/- solatium for persons who died due to unforeseen circumstances, due to heavy rain. In the said circumstances, a written representation was submitted by the first petitioner on 01.12.2005, claiming that she and the second petitioner were the legal representatives of Late.Angusamy.

5. An enquiry was conducted into the claim of the first petitioner, it was found that the said Angusamy was also married to one Mohana who was included as fourth respondent in the writ petition. She deserted her husband twenty five years ago without any issues and she had subsequently married another person. However, the fact remain that no valid dissolution of the marriage taken place between the Late. Angusamy and the fourth respondent.

6. Since the fourth respondent had deserted the first petitioner's husband long ago, the said Angusamy has contracted the second marriage with the first petitioner and a girl child was born from the wedlock who is the second petitioner herein. In view of the said position, the legal representative certificate was not issued to her. In view of the questionable status of the first petitioner, the solatium amount of Rs.50,000/- which was otherwise payable to the family of the deceased Angusamy, could not be paid.

7. This Court has ascertained the fact whether the fourth respondent was interested in the claim and issued notice. Inspite of the notice being served on the fourth respondent, she has not chosen to represent in the proceedings. This will conclusively prove that the fourth respondent is not

interested in claiming the solatium which was payable to the said Late. Angusamy.

8. Although this Court is conscious of the fact that the marriage between the first petitioner and the Late.Angusamy cannot be a valid marriage in the eye of law, yet this Court cannot lose sight of the fact that the second petitioner, she was minor at the time of filing the writ petition, was born from the wedlock of the said Angusamy and the first petitioner and her claim cannot be brushed aside as the same stands independent from the claim of the first petitioner.

9. The scheme of granting solatium is only to alleviate the burden of the family of the deceased during the time of the crisis and if the spirit of the scheme is to be advanced, then it is needless to mention that the Solatium goes to the family of the said Angusamy which comprised the first petitioner and the second petitioner. Since there is no resistance as such from the first wife of the deceased Angusamy, it is deemed that she has no objection for the petitioners to claim solatium payable to the family of the deceased Angusamy. It is seen that the authorities are unable to disburse the solatium only because of the aforesaid reasons, as there was a dispute in regard to the entitlement of solatium.

10. Upon notice, the learned Additional Government Pleader entered appearance, and submitted that the first petitioner was not a legally wedded wife and therefore, the solatium cannot be paid to her, in any event.

11. Since no claim has been preferred by the fourth respondent and no representation on behalf of the fourth respondent in the present proceedings, it can be safely presumed that she is not interested in the matter. In the said circumstances, the respondents 1 and 2 are directed to disburse the solatium of Rs.50,000/- payable to the family of Late.Angusamy, who are the petitioners herein, after obtaining the undertaking from them in case as there is any claim from the fourth respondent, the Government would be indemnified from such claim. The amount of Rs.50,000/- of solatium shall be paid to the petitioners within a period of four weeks from the date of receipt of a copy of this order.

12. With the above direction, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1.The Collector,
Thiruvallur District,
Thiruvallur.

2.The Tahsildar,
Ponneri Taluk,
Thiruvallur District.

3.The Sub-Inspector of Police,
E-4, Kattur Police Station,
Thiruvallur District.

+1cc to Government Pleader SR.No.77488

W.P.No.22624 of 2006

GN(06/12/2017)



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