

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.30862 of 2017
W.M.P.No.33792/17

A.Ravichandran @ Ravi

... Petitioner

vs.

The Zonal Officer,
Zone 14,
Greater Chennai Corporation,
6/64, Puzhithivakkam,
Ullagaram,
Chennai 600 091.

... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari, calling for the records of the impugned order of the respondent, dated 21.08.2017 in Z14ZHOCNOH1/1840/17 and quash the same.

For Petitioner : Mr.J.Sudhakaran

For Respondent : Mr.T.C.Gopalakrishnan

O R D E R

The petitioner has come up with this Writ Petition seeking to quash the order, dated 21.08.2017 passed by the respondent vide proceedings No.Z14ZHOCNOH1/1840/17.

2. According to the petitioner, his father G.Arumugam purchased a vacant land bearing Plot No.19, comprised in Survey No.254/2 situated in Kottivakkam Village, Saidapet Taluk, Madras and settled the property to an extent of 2190 sq.ft. in favour of the petitioner, vide settlement deed, dated 31.08.2015, registered as Doc.No.1846 of 2005.

3. The case of the petitioner is that the respondent, vide communication dated 21.08.2017, asked the petitioner to pay a sum of Rs.10,00,000/- as liability to one Adhilakshmi, who is

the legal heir of Late Narasimhan, who died on 26.08.2001, while cleaning the drainage in the house, where his father lived. According to the petitioner, the compensation had already been paid by his father immediately to the family of the deceased Narasimhan. The said Adhilakshmi had kept quiet for more than 15 years and only in the year 2016, the respondent is claiming the said compensation amount on her behalf and it is only an afterthought. Hence, the petitioner has come forward with this petition with the aforesaid prayer.

4. Learned counsel for the petitioner contended that the petitioner was a small boy when Narasimhan died and that he is not aware as to what had happened at that time and that the said Adhilakshmi has not assigned any reason as to why she made the claim belatedly. Relying upon the decision of the Supreme Court in the case of *Safai Kramachari Andolan & Others vs. Union of India & Others* in W.P.(Civil) No.583 of 2003, learned counsel submitted that the petitioner is not liable to pay compensation, as she has come up with the above relief after a period of 15 years, without any prima facie case.

5. In reply, learned Standing Counsel appearing for the respondent/Corporation submitted scavengers were employed by the petitioner's father through Kottivakkam Panchayat, for the work of cleaning the septic tank, which is situated inside their house and while cleaning the Septic Tank, two of the scavengers died and the claimant, Adhilakshmi's husband, Narasimhan died on 26.08.2001. The survivor of the said accident has given a complaint, which was registered at Neelankarai Police Station in FIR No.642/2001.

6. Learned counsel further submitted that Panchayat has merged with the Corporation and pursuant to the direction of the Supreme Court of India, incidents of death, which occurred on account of engagement of manual scavengers in various places of Tamil Nadu, have been identified. The deceased Narasimhan is one such person, who died while he was engaged as a manual scavenger to clean the septic tank and the pipeline of the house belonging to the petitioner's father. It is his contention that since the entire incident had taken place inside the premises of the petitioner, the entire compensation has to be paid only by the petitioner. According to the learned counsel, the petitioner has inherited his father's property and hence liability, has to be set on him and the amount due to the deceased must be paid immediately by the petitioner.

7. It is further stated by the learned counsel appearing for the respondent/Corporation that pursuant to the

identification of families of all persons, who died doing sewerage work (manholes, septic tanks) since 1993, as ordered by the Apex Court, there is a delay, which stands in the way for paying entire compensation of Rs.10,00,000/- to the family of the deceased herein.

8. In reply, learned counsel for the petitioner submitted that it is seen from the Death Report and FIR that the deceased died while doing sewerage work and one of the employees had given complaint stating that on account of emanation of poisonous gas at the time of cleaning, two persons died. He further stated that there is a delay on the part of the legal heirs of the deceased in claiming compensation.

9. Heard the learned counsel on either side and perused the materials available on record.

10. It is not in dispute that the petitioner is now the owner of the property by means of settlement by his father Arumugam. It is seen from the FIR and the documents produced by the parties that three persons were employed for cleaning the septic tank in the residence of the petitioner's father in 2001. Unfortunately, two persons died. At the time of cleaning the septic tank, death occurred to the said Narasimhan on 26.08.2001, which is not in dispute. Whether the rejection of compensation on ground of delay giving a go-by to the order of the Apex Court and whether the impugned order directing the petitioner to pay compensation is correct and justified, need to be considered.

11. From the facts narrated supra, it is very clear that three employees have gone from the office of Kottivakkam Panchayat to the residence of the petitioner's father without obtaining any permission from the Office of the Panchayat. There is no reason as to why no Memo was given to the person, who gave the First Information Report that the employee had gone to the petitioner's residence without permission. The contention of the petitioner that the septic tank is outside the premises is not correct, as the pipelines and the septic tank are inside the house.

12. In the decision rendered in Safai Karamchari Andolan vs. Union Of India in Writ Petition (Civil) No.583 of 2003, the Apex Court, while taking note of the various provisions of the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993, has categorically observed that there should be a rehabilitation for manual scavengers and had discussed the powers of the Inspector and function of the

Central Monitory Committee in tune with the provisions of the said Act. Relevant portion of the said decision reads thus:

"14. We have already noted various provisions of the 2013 Act and also in the light of various orders of this Court, we issue the following directions:-

(i) The persons included in the final list of manual scavengers under Sections 11 and 12 of the 2013 Act, shall be rehabilitated as per the provisions of Part IV of the 2013 Act, in the following manner, namely:-

(a) such initial, one time, cash assistance, as may be prescribed;

(b) their children shall be entitled to scholarship as per the relevant scheme of the Central Government or the State Government or the local authorities, as the case may be;

(c) they shall be allotted a residential plot and financial assistance for house construction, or a ready-built house with financial assistance, subject to eligibility and willingness of the manual scavenger as per the provisions of the relevant scheme;

(d) at least one member of their family, shall be given, subject to eligibility and willingness, training in livelihood skill and shall be paid a monthly stipend during such period;

(e) at least one adult member of their family, shall be given, subject to eligibility and willingness, subsidy and concessional loan for taking up an alternative occupation on sustainable basis, as per the provisions of the relevant scheme;

(f) shall be provided such other legal and programmatic assistance, as the Central Government or State Government may notify in this behalf.

(ii) If the practice of manual scavenging has to be brought to a close and also to prevent future generations from the inhuman

practice of manual scavenging, rehabilitation of manual scavengers will need to include:-

(a) Sewer deaths - entering sewer lines without safety gears should be made a crime even in emergency situations. For each such death, compensation of Rs. 10 lakhs should be given to the family of the deceased.

(b) Railways - should take time bound strategy to end manual scavenging on the tracks.

(c) Persons released from manual scavenging should not have to cross hurdles to receive what is their legitimate due under the law.

(d) Provide support for dignified livelihood to safai karamchari women in accordance with their choice of livelihood schemes.

(iii) Identify the families of all persons who have died in sewerage work (manholes, septic tanks) since 1993 and award compensation of Rs.10 lakhs for each such death to the family members depending on them.

(iv) Rehabilitation must be based on the principles of justice and transformation.

15. In the light of various provisions of the Act referred to above and the Rules in addition to various directions issued by this Court, we hereby direct all the State Governments and the Union Territories to fully implement the same and take appropriate action for non-implementation as well as violation of the provisions contained in the 2013 Act. Inasmuch as the Act 2013 occupies the entire field, we are of the view that no further monitoring is required by this Court. However, we once again reiterate that the duty is cast on all the States and the Union Territories to fully implement and to take action against the violators. Henceforth, persons aggrieved are permitted to approach the authorities concerned at the first instance and thereafter the High Court having jurisdiction."

13. In view of the above Apex Court decision, it is clear that the dependents of persons, who died on account of doing sewerage work, since 1993 are entitled for compensation of a sum of Rs.10,00,000/- for each such death.

14. In the present case, on a reading of the FIR and the pleadings of the parties, it is clear that, not only the respondent, but also the petitioner ought to pay compensation for those persons, who have gone to the residence of the petitioner, wherein their death has occurred. Even though, it has been stated that three workers have gone to the residence of the petitioner's father on their own, there is no documentary evidence to that effect. Though a complaint is said to have been made, the respondents have not produced the complaint Register nor its contents, to prove that a complaint was made in writing. Moreover, no action has been taken against the surviving employee, who is said to have entered into the petitioner's house without seeking proper permission from the authorities.

15. At this juncture, learned counsel for the petitioner also drew the attention of this Court to a Division Bench decision of this Court in the case of Management of Mettur Chemical and industrial Corporation, Ltd. (Mettur Dam), Vedaranyam Branch, Tanjore, and K.Govindarajan, 2003 (1) L.L.N. 1082. The Writ Appeal filed by the Management therein was allowed on the ground that the writ petition has been filed challenging the award of the Labour Court after 12 years.

16. The judgment quoted by the petitioner is not applicable to the facts of this case, as the employee therein was dismissed from service. In that case, the claimant must have been vigilant and should have approached the Court at the earlier point of time. However, this cannot be possible in cases of sudden and unfortunate death, where the family will have to take time to console themselves and then take necessary steps. In this case, even though the delay is exorbitant, that cannot be a ground to reject the claim of the family members of the deceased. The claimant's husband, Narasimhan died on 26.08.2001, while he was working in a septic tank, which is prior to the merger of Kottivakkam Panchayat with Chennai Corporation.

17. There appears to be delay. Whether the delay is wanton or not has to be decided, if the claimant approaches the Court after making demand from the petitioner and the official respondent. This Court is of the view that the impugned order asking the petitioner to pay the compensation to the dependent of the deceased, cannot be said to be illegal, more particularly, in the light of the decision of the Apex Court in

the case of Padma Sundara Rao Vs. State of Tamil Nadu, 2002 (3) SCC 533, wherein, it is held as under:

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington Vs. British Railways Board (1972 (2) WLR 537 = 1972 AC 877 (HL)). Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases."

18. The concept of pious obligation originated in Dharmasastras, according to which, non-payment of debt is a sin, which results in unbearable suffering in the next world. Just as Lord Rama was obligated to fulfil his deceased father's promise to his step-mother, similarly, the petitioner herein is obligated to pay compensation to the deceased worker's family, which is imposed on his father. When a father's asset is passed on to his son after his death, so is his liabilities.

19. As the petitioner has come forward challenging the impugned order and that the petitioner and the official respondent, are jointly, severally and vicariously responsible to pay compensation to the dependent of the deceased Narasimhan, and that there is a complaint given by one of the employees, who had been to the petitioner's house, when his father was the owner, this Court interferes with the impugned order and modifies the same to the extent that a sum of Rs.7,50,000/- (Rupees Seven Lakhs and Fifty Thousand only) will have to be paid to the victim's family, out of which, a sum of Rs.5,00,000/- (Rupees Five Lakhs only) shall be paid by the petitioner herein and the remaining sum of Rs.2,50,000/- (Rupees Two Lakhs and Fifty Thousand only) shall be paid by the respondent/Corporation. However, this will not preclude Adhilakshmi, wife of the deceased Narasimhan and other legal heirs to claim the balance amount of Rs.2.5 lakhs, if they are able to establish that there is no delay on their part in claiming the amount.

20. The petitioner is directed to remit a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as stated supra within a

period of two months from the date of receipt of a copy of this order, to the official respondent, who shall disburse the total sum of Rs.7,50,000/- (Rupees Seven Lakhs and Fifty Thousand only) to the legal heirs/dependents of the deceased Narasimhan, which shall be remitted in their respective account by means of RTGS/NEFT, to avoid payment of any commission that may be said to have been taken by the officials, on realization of the amount.

In fine, the Writ Petition is partly allowed to the extent indicated above. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/true copy/

Sub Assistant Registrar

pvs/aeb

To:

The Zonal Officer, Zone 14,
Greater Chennai Corporation,
6/64, Puzhithivakkam,
Ullagaram, Chennai 600 091.

1 cc to Mr.T.C. Gopalakishnan, Advocate, Sr. 4677

W.P.No.30862 of 2017

SKV (CO)
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