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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 12.07.2018

W.P.(C) 11326/2016

SHALEN BHARDWAJ

..... Petitioner

versus

THE NORTH DELHI MUNICIPAL CORPORATION & ORS

.... Respondents

Advocates who appeared in this case:

For the Petitioner : Petitioner in person.

For the Respondents : Mr.Mukesh Gupta, Standing counsel
with Mr. Sanjeev George, Adv. for NDMC.
Mr. Sanjay Dewan, Adv. for R- 2 & 4.
Mr.Sumeeti Pushkarna, Adv. for DJB.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

J U D G M E N T

SIDDHARTH MRIDUL, J (ORAL)

1. The present petition under Article 226 of the Constitution of India instituted by the Petitioner prays for the following reliefs:-

“A Direct the respondents to take strict action against the concerned officials of respondents as they are fail to perform their duty and negligence behaviour towards society and make others life in danger and lifelong bad impact on families.

B Directing the respondents to provide the

smooth and potholes free road to the passerby and localities of the Rani Jhansi Road Delhi;

C Direct the respondent to give monetary compensation to the petitioner which petitioner spent upon the treatment and travelling of his wife and both the babies.

D Direct the petitioner to pay the cost of this petition.

E. In case any of the above decease (Paragraph 19) occurred into the petitioners both the babies, respondent will pay the treatment and travelling expenses to the plaintiff and in case nothing happened with babies by the grace of god petitioner will not ask for single rupees.

F. Pass any other or further order(s)/relief(s) which this Hon'ble Court may deems fit and proper in favour of the petitioner and against the respondents, in the interest of justice."

2. This court vide order dated 16th October, 2017, observed as follows:-

"1. Mr. Mukesh Gupta, learned Standing Counsel for respondent No.1 submits that disputed questions of facts are involved with respect to the petitioner's claim for compensation and without prejudice to the other contentions, the petitioner's claim for compensation is not maintainable in this writ petition.

2. The petitioner is not represented by a counsel and, therefore, Mr. Bipin Kalappa, Advocate, present in Court, is appointed as amicus curiae to assist this Court in this matter.

3. After some hearing, the petitioner, present in person, seeks permission to withdraw prayers 'C' and 'E' of the writ petition with liberty to file a civil suit to recover the compensation.

4. The oral prayer of the petitioner is allowed and the petitioner is permitted to withdraw prayers 'C' and 'E' of the writ petition with liberty to file a civil suit for recovery of compensation. This writ petition shall continue to the petitioner's prayers 'A', 'B', 'D' and 'F'.

5. The petitioner submits that the Civil Court be directed to expedite the hearing of the civil suit considering that the petition is pending before this Court since 2016 and the petitioner was pursuing the relief of compensation before this Court.

6. In case of petitioner filing the civil suit in terms of the liberty granted, the concerned Court shall expedite the hearing of the suit. Mr. Mukesh Gupta, learned Standing Counsel for respondent No.1, submits that respondent No.1 shall not seek any unnecessary adjournment in the suit as and when filed by the petitioner.

7. Mr. Mukesh Gupta, learned Standing Counsel for respondent No.1, submits that the Construction of Grade Separator at Rani Jhansi Road Project is being monitored by this Court in W.P.(C) Nos.1285/2013 & 414/2013 which are listed for hearing on 17th November, 2017. Reference is made to para 7 of the counter affidavit dated 07th February, 2017 where the reference is given to the aforesaid two writ petitions bearing W.P.(C) 1285/2013 & 414/2013.

8. This case is released from part heard.

9. *Subject to orders of Hon'ble the Acting Chief Justice, list before regular Bench along with W.P.(C) Nos.1285/2013 & 414/2013 on 17th November, 2017.*

10. *Copy of this order be given dasti to parties under signatures of the Court Master."*

3. A plain reading of the above order reflects that insofar as the prayers (C) and (E) of the petition are concerned, the petitioner has sought permission to withdraw the same with liberty to file a civil suit to recover due compensation.

4. In view of the forgoing, the writ petition has been posted for determination only in relation to prayer clauses (A), (B), (D) and (F).

5. Insofar as, the prayer clause (A) is concerned, the petitioner has expressed helplessness in providing cogent material predicated on which, this court can arrive at a conclusion that the concerned officials of the North Delhi Municipal Corporation ('NDMC') failed to perform their duty, as required by law and were negligent in the discharge of their duties thereby, endangering lives of others.

6. Needless to state that, in the absence of evidence, the court cannot presume the negligence of a public servant and visit him with the

consequences thereof.

7. In this view of the matter, the present prayer clause cannot be granted in the present writ petition in the absence of cogent material on record, which would inevitably lead to but one conclusion, that of the negligence of public officials in the discharge of the statutory duties.

8. Insofar as, prayer clause (B) is concerned, it is the statutory duty of the Municipal Corporation to ensure that, public roads are constructed and maintained in a manner so as to obviate the occurrence of any untoward incidents which may cause injury to the public at large. In that view of the matter, the NDMC is directed to ensure that, roads not only in the subject area, but in all parts of the city within their jurisdiction are kept in a smooth and safe condition, free of potholes, so as to eliminate the possibility of causing accidents and injury to the road users, who are taxed in this behalf.

9. Insofar as, the prayer clause (D) is concerned, the civil court before whom the petitioner has been granted liberty to institute appropriate proceedings, is directed to consider grant of costs of the proceedings to the petitioner, at the appropriate stage.

10. Insofar as, the prayer clause (F) is concerned, the same is allowed directing the statutory authorities to discharge their duties with promptitude

and concern for the citizens of the country.

11. With the above directions, the writ petition is disposed of.

JULY 12, 2018

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SIDDHARTH MRIDUL, J