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IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****PUBLIC INTEREST LITIGATION NO. 107 OF 2013**

Dhankawadi Parisar Vikas Samiti/SansthaPetitioners
and others

V/s.

Commissioner, Pune Municipal CorporationRespondents
and others

Mr. V. S. Kapse i/b Mr. S. D. Chavan for the petitioners
Mr. A. P. Kulkarni for respondent Nos. 1& 2
Mr. R. S. Khadapkar for respondent Nos. 4 to 6
Mr. P. P. Kakade AGP for respondent Nos. 8 & 9

**CORAM : PRADEEP NANDRAJOG, CJ. &
N. M. JAMDAR, J.**

DATE : APRIL 26, 2019.

P.C.

Heard learned counsel for the parties.

2 On 24/09/2012 a three story building at Survey No.
7/1/1/1/2, Saidatta Nagar, Talajai Pathar, Dhankwadi, Pune

collapsed. 11 persons lost their lives and equal number were grievously injured. It is pleaded in the petition that Pune Municipal Corporation is the juristic entity responsible to ensure that no building is constructed within the Municipal limits of the Pune Municipal Corporation without obtaining necessary sanctions as per Chapter XV of the Bombay Provincial Municipal Corporation Act, 1949. It is pleaded that Municipal areas in Pune are divided into zones and wards. Two deputy engineers are in-charge of the zones. Junior engineers assist the said deputy engineers. It is pleaded that the building was in zone 4 under the charge of 4th respondent as deputy engineer and the 5th respondent was the junior engineer. It is pleaded that 6th respondent had noted the dangerous condition of the building and had issued notice but before he could take it to the logical conclusion, he was replaced by respondent No. 5. It is pleaded that F.I.R. was registered pertaining to the incident but the same was not taken to its logical conclusion. Referring to Section 34 of the Indian Penal Code, which casts vicarious liability, it is pleaded that directions be issued to the police authorities to make vicariously liable the officers of the Municipal Corporations while

prosecuting the persons.

3 On the issue of Section 34 of the Penal Code, suffice it to state that a civil wrong is different than a criminal wrong. A person can be made vicariously liable under Section 34 of the Indian Penal Code if there is material to hold that a person accused of shared a common intention with respect to a criminal act. Negligence in discharge of duties howsoever culpable they may be would not attract Section 34 of the Indian Penal Code.

4 Regretfully respondents have not responded to the petition and have not disclosed whether any departmental action was initiated against the officers who were charged with the duty to ensure that unauthorised constructions of buildings without sanctions are not undertaken.

5 However, Shri. A. P. Kulkarni, counsel for the Pune Municipal Corporation states that departmental action was initiated against the Municipal Engineers found *prima facie* guilty of negligence in the

performance of their duties.

6 We terminate proceedings directing that departmental proceedings be completed within six months from today.

7 Regretfully we are handicapped to pass orders regarding compensation to the injured victims or the family members of the deceased in the absence of owner of the property being impleaded as parties and names of the persons who died and the ones who were injured not being disclosed.

N. M. JAMDAR, J.

CHIEF JUSTICE