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

+ **W.P.(C) 3224/2015**

MAHESH

..... Petitioner

Through: Mr Sanjay Dubey, Advocate.

versus

GOVT. OF NCT OF DELHI

..... Respondent

Through: Mr Satyakam, Additional Standing
Counsel, GNCTD with Insp. Sarita,
PS New Ashok Nagar.

WITH

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+ **W.P.(C) 3261/2015**

MEWA LAL

..... Petitioner

Through: Mr Sanjay Dubey, Advocate.

versus

GOVT. OF NCT DELHI

..... Respondent

Through: Mr Satyakam, Additional Standing
Counsel, GNCTD with Insp. Sarita,
PS New Ashok Nagar.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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30.07.2019

1. The petitioners have filed the present petitions, *inter alia*, praying that directions be issued to the respondent to pay compensation to them on account of bereavement of their respective children – Vineet, aged 14 years and Ashok, aged 16 years. It is the petitioners' case that the two boys had

died owing to the negligence of the officials of the respondent. It is claimed that a deep tunnel had been dug by the sand mafia on the bank of the Hindon canal, opposite Trilok Puri for unauthorizedly extracting sand. It is also alleged that the concerned officials had turned a blind eye to illegal sand mining. It is stated that when the boys were at the bank of the said canal, the pit dug by the sand mafia collapsed.

2. It is also claimed that no FIR was registered and a copy of the same was not provided.

3. The respondents have countered the aforesaid contentions. According to the respondents, the accident happened because the victims had gone to collect sand from the drain. It is stated that the wall of the said drain is over three metres deep from the level of the footpath. It is stated that the victims had gone there for the purpose of extracting sand for making idols ahead of the Janmashtami festival. It is also claimed that the drain in question is a well protected drain with concrete walls on both sides maintained by the Irrigation and Flood Control Department, GNCTD. The respondents assert that the victims had not fallen into the open tunnel; they claim that the boys ventured inside the drain for extracting sand and the same had caved in on them while the victims were extracting sand.

4. Paragraphs 6, 7, 8 and 9 of the counter affidavit filed on behalf of the respondents are relevant and are set out below:-

“6. It is submitted that the petitioner is not entitled to any compensation as the unfortunate incident happened as a result of negligence & illegal act of the petitioner himself as he had sent the victim to collect sand from Ghazipur drain. It is pertinent to mention here that the place of mishap is about 03 m deep from the footpath of main Ghazipur road. A normal person would never

climb concrete wall and venture inside the drain but with ulterior motive of extracting sand illegally.

7. It is absolutely wrong and denied and which is clear from the above statement that the petitioner's son & others venture inside the Ghazipur drain for playing on the contrary they entered with the sole motive of extracting sand for making idols ahead of Janmashtmi festival on 18/8/2014. It is further submitted that Ghazipur drain is one of the biggest drain well protected with concrete walls on both sides which is being maintained by Irrigation and Flood Control Deptt. GNCTD.
 8. It is absolutely wrong and denied and which is clear from the above statement that the victim did not fall into the said open deep tunnel whereas he alongwith other persons ventured inside the drain with the sole motive of extracting sand and during the course of such illegal extradiation, loose sand caved-in resulting in the unfortunate mishap
 9. It is, thus submitted that there was no negligence on the part of SDM (Mayur Vihar) or any other Delhi government agency in view of the facts and circumstances of the case. It is submitted that the death of the victim has occurred due to sheer negligence of his parents who had directed him to collect sand from Ghazipur drain for preparing idols of deities ahead of Janmashtmi festival on 18/8/2014. It is submitted that no dereliction of duty of any Govt. agencies in providing desired information has been brought to the notice of the deponent. This Hon'ble court may call for report from SHO, New Ashok Nagar police station or Medical Superintendent, Lal Bahadur Shastri Hospital, if necessary."
5. It is clear from the above that this is not a case of *res ipsa loquitur*, where negligence can be attributed to the concerned officials without

evaluating the evidence in a full-fledged trial.

6. In view of the above, it is not apposite to entertain the claim of compensation in these proceedings. The above petitions are, accordingly, dismissed. However, it is clarified that is open for the petitioners to file appropriate proceedings for seeking such relief as sought for in the present petitions. It is also noticed that a considerable time has been spent by the petitioners in pursuing the present petitions. If the petitioners institute an appropriate action within a period of one month from today, the time spent by the petitioners in pursuing the present petitions may be excluded for the purposes of the limitation.

7. The petitions are disposed of with the aforesaid observations.

VIBHU BAKHRU, J

JULY 30, 2019

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