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28.04.2023
Ct.15

W.P.A. 28518 of 2014
(IA NO: CAN 1/2017 (Old No: CAN 11737/2017), CAN 2/2017 (Old
No: CAN 11738/2017))

Khurshida Khanam

-vs-

**The Hon'ble Mayor, Kolkata Municipal Corporation &
Ors.**

Mr. Tarique Quasimuddin,
Ms. Zainab Tahur

....for the petitioner.

Mr. Alak Kumar Ghosh,
Mr. Swapan Kumar Debnath

....for the KMC.

Pursuant to the order passed by this Court on 24th February, 2023 two applications along with the writ petition are taken up for consideration. Applications are taken out, one is for substitution and another is for condonation of delay in presenting substitution application due to death of the sole petitioner Khurshida Khanam. Since substitution application has not been filed within the prescribed time of limitation there is requirement to file application for setting aside of abatement of the writ proceedings. However, while considering the writ petition on merit as well as two applications such requirement is dispensed with since this Court has heard the learned advocates representing the parties on merit of the writ petition.

This Court has decided to consider the merit of the writ petition first before dealing with the applications seeking substitution and condonation of delay.

It has been submitted by the leaned advocate representing the petitioner that son of the petitioner has died on 12th July, 2014 since the private respondents were running a food stall in front of the residence of the petitioner (since deceased) and there was burn injury since private respondents were boiling milk for preparation of food stuff.

It has been contended that upon encroaching the street of Kolkata Municipal Corporation business of preparation of food stuff was being carried out by the private respondents as a result whereof such accident took place resulting in death of son of the petitioner (since deceased).

In this regard reliance has been placed on Section 371 of the Kolkata Municipal Corporation Act, 1980 which prohibits obstruction and encroachment by any person on the street of the Kolkata Municipal Corporation by setting up any wall, fence, rail, post, step, booth or other structure. Placing reliance on Section 371 it has been submitted that the Kolkata Municipal

Corporation being the statutory authority was obliged to keep vigil over the area where the accident took place causing death of the son of the petitioner (since deceased) and it was also the bounden duty of the Kolkata Municipal Corporation to remove such encroachment by the private respondents.

While considering the submissions made on behalf of the petitioner (since deceased), this Court is also required to find out whether any complaint was lodged by the petitioner (since deceased) before the concerned authority of the Kolkata Municipal Corporation complaining of encroachment on the street in front of the premises of the petitioner (since deceased) which violates Section 371. However, this Court does not find anything on record which goes to show that prior to occurring such accident any representation or complaint was lodged by the petitioner (since deceased).

The prayer made in the writ petition is payment of compensation which cannot be granted in this writ petition in view of absence of appropriate provisions in the Kolkata Municipal Corporation Act, 1980.

It is painful to hear that ten years son of the petitioner (since deceased) has died of accident

but in absence of any appropriate provisions in the Kolkata Municipal Corporation Act, 1980 relating to payment of compensation, no relief can be granted to the petitioner (since deceased).

This Court has expressed its view on the merit of the writ petition in the preceding paragraphs as such there is no need to consider the applications seeking condonation of delay and substitution of heirs of the deceased petitioner.

Accordingly, both the applications being CAN 1/2017 (Old No: CAN 11737 of 2017 and CAN 2/2017 (Old No: CAN 11738 of 2017) are dismissed.

However, this order shall not preclude the heirs of the petitioner to take steps in accordance with law for payment of compensation, if same is payable under other legal provisions.

(Saugata Bhattacharyya, J.)