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WP No.43935 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17-03-2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.43935 of 2016

And

WPMP No.37761 of 2016

1.Thilagam

2.Palanivel

..

Petitioners

VS.

1.State of Tamil Nadu,
Represented by Secretary,
Finance Department,
Fort St. George,
Chennai-600 009.

2.Government of Tamil Nadu,
Represented by Secretary,
Department of Local Administration,
Fort St. George,
Chennai-600 009.

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3. Additional Chief Secretary/Commissioner,
Revenue Administration,
Ezhilagam,
Chepauk,
Chennai-600 028.

4. The District Collector,
Cuddalore District,
Collectorate,
Cuddalore.

5. The Executive Officer,
Annamalai Nagar,
Special Grade Town Panchayat,
Annamalai Nagar,
Chidambaram Taluk,
Cuddalore District.

.. Respondents

Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of Writ of Mandamus directing the respondents to pay the petitioners an adequate compensation of not less than Rs.20 lakhs for the loss of their two sons at the rate of Rs.10 lakhs for each son, who drowned in the tank which situate within the fifth respondent jurisdiction.

For Petitioner : Mr.A.Muthukumar

For Respondents-1 to 4 : Mr.Abishekmurthy,
Government Advocate.



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For Respondent-5 : Mr.A.Rajaperumal

ORDER

The Writ of Mandamus has been filed to direct the respondents to pay the petitioners an adequate compensation of not less than Rs.20 lakhs for the loss of his two sons.

2. The petitioners are the wife and husband and they are residing at Sivan Koil East Street, Thiruvetkulam Village, Annamalai Nagar Post, Chidambaram Taluk, where an ancient temple Pasupatheeswarar Temple situates nearby and the temple's tank is on its Eastern side.

3. On 11.01.2015, the petitioners allowed their two children to play in the street. The other children were also playing along with the children of the petitioners in the very same street. Since it was a holiday, the two children of the petitioners did not return for lunch even after 01.00 P.M.



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4. They made an intensive search in that area and thereafter lodged a complaint before the Annamalai Nagar Police Station on the same day. On 12.01.2015 i.e., on the next day, the people of that locality informed the petitioners that the body of their second son viz., Pradeesh was floating in the temple tank. The elder son viz., Nitish Kannan was also not found.

5. The Fire Servicemen came to the spot and searched for him in the tank. The body of the elder son was also removed from the tank of the temple and post-mortem was conducted.

6. The learned counsel for the petitioners states that the Competent Authorities have not taken adequate measures to protect the public from falling into the temple's tank during the relevant point of time. The parapet wall constructed on the three sides of the Well. A Warning Board was commissioned to the general public. However, the children being aged 7 years and 11 years respectively, such Warning Boards would not



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have any impact in respect of their falling into the temple's tank.

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7. The learned Government Advocate appearing on behalf of the respondents 1 to 4, made a submission that there was no negligence on the part of the officials, since the parapet wall was constructed on the three sides of the Well and the Warning Boards were commissioned and it is for the parents of the children to take adequate care by not allowing their children to go nearby the temple's tank. Thus the petitioners also have committed negligence by allowing their children to go nearby the temple's tank. Therefore, the State is not responsible.

8. However, it is contended that the Tahsildar conducted an enquiry and awarded a sum of Rs.30,000/- towards compensation for the death of two children of the petitioners. The said amount has already been received by the petitioners. While-so, the present writ petition is to be rejected.



9. No doubt, the parents are duty bound to protect their children from such untoward incidents. The parents are expected to take adequate care to ensure that their children are playing in a safe area and in the event of any such sign boards by the Authorities, they should not allow their children to go nearby such places.

10. Therefore, in the present case, the duty of the parents is also to be reminded off by this Court. Equally the State has to take adequate measures to ensure that protections are provided in such construction sites or tanks situate in public places.

11. The said tanks in public areas are to be closed properly, so as to ensure that the children or any person mistakenly or otherwise fall down. Thus to some extent, the Authorities also had failed in their duty to provide adequate protection from happening any such untoward incidents in public places.



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12. Everyone concerned are also duty bound to protect the children from such untoward incidents in public places. All such mitigating factors are to be adjudicated with reference to the documents and evidences and by conducting an elaborate enquiry for the purpose of determining the quantum of compensation to be awarded.

13. The Tahsildar, in the present case, awarded a sum of Rs.30,000/- towards compensation, which is inadequate. Government recently passed an order in G.O.Ms.No.306, Revenue and Disaster Management Department, dated 05.07.2022, wherein an ex-gratia payment of compensation of Rs.1 lakh each shall be sanctioned to the legal heirs of the deceased children, when died due to accident in public places (except motor vehicle accidents).

14. It is an ex-gratia payment granted by the Government from the public funds. In order to compensate the victims, the learned Government Advocate, appearing on behalf of the respondents 1 to 4 raised an objection



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that the Government Order was passed on 09.07.2012 and therefore, the said order is not applicable to the case of the petitioner.

15. But it is not in dispute that the grant of compensation to the victims was in force. Even before passing of the order, the Government was granting compensation to the victims, who lost their lives on account of public negligence or in public places or otherwise. Therefore, irrespective of the Government Order recently passed, the claim of granting compensation by the Government was in force and thus this Court is of an opinion that the said contentions deserve no merit consideration.

16. The quantum of compensation to be awarded cannot be determined by the Writ Court, since several factors are to be considered by conducting an enquiry, the Tahsildar has already conducted an enquiry and granted a sum of Rs.30,000/- towards compensation. Since this Court is of an opinion that the compensation granted is inadequate and with reference to the Government Order of the year 2022, thought fit to grant Rs.2 lakhs on



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account of the death of two children of the petitioners. If at all the petitioners have to prove the negligence on the part of the Public Authorities and for claiming more compensation, then they have to approach the Competent Civil Court of Law in the manner known to law.

17. This Court has not enhanced the compensation solely based on the Government Order issued in the year 2022. The said Government Order has been taken as a reference to grant reasonable compensation to the petitioners. Thus the compensation awarded to the petitioners with reference to the Government Order of the year 2022, shall not be a precedent for claiming compensation in respect of the accidents/deaths occurred prior to the issuance of the said Government Order, since the Government Order will have only prospective effect.

18. Accordingly, the respondents are directed to pay Rs.1,70,000/- to the petitioners as compensation for the death of their two children, within a period of eight weeks from the date of receipt of a copy of



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this order.

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19. With the abovesaid directions, the writ petition stands allowed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

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Speaking Order/Non-Speaking Order.

Neutral Citation : Yes/No.

Internet : Yes/No.

Index: Yes/No.

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To

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S.M.SUBRAMANIAM, J.

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