



W.P.(MD)No.9161 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 17.11.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)No.9161 of 2021

T.Nethra

... Petitioner

Vs.

1.The District Collector,
Virudhunagar, Virudhunagar District.

2.The Thasildar,
Virudhunagar,
Virudhunagar District.

3.The Commissioner,
Virudhunagar Panchayat Union,
Virudhunagar District.

4.B.Selvam

...Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, directing the 1st respondent to pay Rs.25 Lakhs as compensation to the petitioner for the death of the petitioners child namely, Ruthran aged about 3 years by the negligence act of the Respondents No.2 to 4 and consequently direct the 1st respondent to take appropriate action against the officials who were responsible for the death of petitioners son.

For Petitioner : Mr.J.Jeyakumaran
For R1 to R3 : Mr.A.K.Manikkam
Special Government Pleader



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For R4

: Mr.S.Anand Chandrasekaran
for M/s.S.Sarvabhauman Associates

ORDER

This writ petition has been filed for the issue of writ of mandamus directing the first respondent to pay the compensation of a sum of Rs.25 lakhs to the petitioner for the death of the petitioner's son aged about 3 years due the negligence on the part of the respondents 2 to 4.

2.The case of the petitioner is that she is married to one Thirumoorthy and they had two children through their wedlock. They are residing in the petition mentioned address at Virudhuangar District. The Virudhunagar District Panchayat Union took a decision to install rain water harvesting sump in the village of the petitioner. It was planned to have the sump installed in front of 120 houses. The work order was handed over to the fourth respondent, who was the contractor. The work was started in the month of September, 2019 and it was stopped in the midway.

3.During October 2019, there were heavy rains in the village of the petitioner and as a result, the pits that were dug in front of 120 houses were



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filled with rain water. On 13.10.2019 at about 07.00 a.m., the younger child of the petitioner aged about three years fell into the pit and he was rescued and taken to the Government Hospital, Virudhuangar. But the child was declared 'brought dead'. The complaint was given before the Amathur Police Station, Virudhunagar and FIR came to be registered in Crime No.202 of 2019 under Section 174 of the Criminal Procedure Code.

4.Further, the petitioner made a representation to the respondents and sought for compensation for the death of her child due to the negligence on the part of the respondents. The first respondent through communication dated 09.11.2019 informed that the compensation of Rs.4 lakhs has been granted in line with G.O.(Ms)No.246, dated 03.08.2017. Thereafter, a sum of Rs.1 lakh was also paid to the petitioner.

5.The specific case of the petitioner is that the compensation was paid on the ground that the death had taken place due to natural disaster, whereas the death had taken place only due to the negligence and carelessness on the part of the respondents. Hence, the present writ petition has been filed before this Court seeking for compensation.



6.The third respondent has filed counter affidavit and the relevant portions in the counter are extracted hereunder:

(5) It is not disputed that the petitioner is a mother of the deceased child Ruthran. It is false that the 4th respondent is a contractor who has been allocated to implement the project namely Rain Water Harvesting Sump in Ondipulinaickanur at the instance of 3rd respondent. In fact, the 1st respondent has issued an administrative sanction for installing 4266 individual soak pit and 537 community soak pit in Virudhunagar District by his proceedings dated 01.10.2019 in Na.Ka.C11/3165/2019 under the Mahatma Gandhi National Rural Employment Guarantee Scheme 2019 2020. As such, one Ramakkal, W/o.Mani in Ondipulinaickanur who is the mother of the petitioner has been selected as a beneficiary under the said scheme and the mother of the petitioner herself dug up a pit in front of her house for implementation of the said scheme. The soak pit in front of the petitioner mother's house was dig on 29.10.2019 and the incident was happened on 30.10.2019. It is false to state that the 3rd respondent has dug up 120 pits in Ondipulinaickanur in the month of September 2019 and stopped works thereafter.

(6) It is false to state that the entire villagers have approached the Rural Development Officer to complete the said work in a swift manner and it is also false to state that the authorities have restrained the villagers to close the pits which were dug by them.

(7) It is also admitted that a criminal case in Crime No.202 of 2019 on the file of the Aamathur Police Station has been registered



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under section 174 of Cr.P.C., on account of demise of the petitioner's child namely Ruthran who drowned in a newly formed septic tank which was situated adjoining to the mother of the petitioner's house where he found dead. But, the averments of the FIR do not reiterated the same, whereas, it has been alleged that the petitioner's son was died in a pit which was dug by the authorities for installing individual soak pit. It is also false to state that authorities have closed all the 120 pits in Ondipulinaickanur with the aid of JCB. The petitioner is liable to be strict proof of those facts with solid material evidences

(8)It is submitted that the Government sanctioned Rs. 4,00,000/- as compensation by the proceedings of the 1st respondent dated 09.11.2019 vide G.O.Ms.No.246 Revenue (I to III) (2) Department dated 03.08.2017 on the ground that the petitioner's son died by drowning in a pit. The said act was considered as Natural Calamities due to heavy rainfall recorded in Virudhunagar District from 27.10.2019 to 30.10.2019. It is not disputed that the petitioner has received a sum of Rs.1,00,000/- subsequently.”

7.The fourth respondent has filed counter affidavit and the relevant portions are extracted hereunder:

4. I submit that, as stated in the paragraph 2 of the affidavit filed by the petitioner, there was no scheme for installing rain water harvesting sump for houses at Ondipulinaikanur Village, by Virudhunagar Panchayat union. The scheme was for formation of soak pits for houses at the said village. Individual work orders were issued



with respect to the respective owners of the said houses with financial outlay of 8,500/- each. No contract was awarded with respect to the said work to any person including me. As alleged in the affidavit I was not awarded with contract for the said work and I did not perform any part of the said work.

5. I submit that, as far as I am aware of, the soak pit in front of parents house of petitioner was only partially dug as admitted in paragraph 3 of the writ petition. The same was dug only on 29.10.2019. As alleged in the affidavit the soak pit was not dug and kept uncovered by authorities for nearly 40 days.

6. I submit that, I have been roped in as party to the writ petition on the basis of political rivalry and motive of petitioner's husband against me. Though being aware about the fact that I had no role in digging of soak pits and the help rendered by me in getting compensation awarded from government, the petitioner instigated by her husband has falsely raised allegations against me. The writ petition as against me is liable to be dismissed with exemplary cost as there is no cause of action against me. The petitioner is also guilty of filing an affidavit with false averments”

8.The learned counsel for the petitioner submitted that the petitioner had lost her son, who had drowned in the water that had accumulated in the pit that was dug in front of the house of the petitioner and that the death was caused only due to the negligence on the part of the respondents. Therefore, it



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was contended that the payment of compensation of Rs.4 lakhs will not in any way take away the negligence on the part of the respondents and it was contended that the respondents must be made to pay the compensation as determined by this Court.

9.The learned Special Government Pleader appearing on behalf of the respondents 1 to 3 submitted that the first respondent had issued administrative sanction for installing 4,266 individual soak pits and 537 community soak pits through proceedings dated 01.10.2019. He further contended that this work was carried out under the Mahatma Gandhi National Rural Employment Guarantee Scheme 2019-2020 and the work was allotted in the name of the mother of the petitioner, who was selected as a beneficiary under the scheme. Pursuant to the same, the mother of the petitioner had dug the pit in front of the house for the implementation of the scheme. In this soak pit, the rain water had accumulated due to heavy rain on 29.10.2018. Unfortunately, the petitioner's son fell into the pit and died.

10.It was further contended that the work was not handed over to the fourth respondent and that the soak pit was dug only by the mother of the petitioner in front of the house. After the incident, decision was taken to close



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down all the pits, which were dug by then. In view of the same, the learned Special Government Pleader submitted that there was no negligence on the part of the respondents and hence, they are not liable to pay any compensation to the petitioner.

11.The learned counsel for the fourth respondent submitted that the fourth respondent had absolutely no role to play in this case and no work was awarded to him by the official respondents and that he did not indulged in digging any pit in front of the house of the petitioner.

12.This Court has carefully considered the submissions made on either side and the materials available on record. It is the specific case of the petitioner that the soak pit was dug in front of the house by the fourth respondent and as a result the incident had taken place on 30.10.2019, wherein the petitioner had lost her child. Whereas, the official respondents have come up with a specific plea that the fourth respondent was never engaged in digging the pit and that the digging of soak pit was brought under the Mahatma Gandhi National Rural Employment Guarantee Scheme 2019-2020 and the work was allotted to each beneficiary. One such beneficiary was the mother of the petitioner and she dug the pit in front of her house and unfortunately, due to



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heavy rain, the pit was filled with water and the son of the petitioner fell into it and died on 30.10.2019. The fourth respondent has also taken a stand that he was never awarded with any contract and that he was not indulged in digging any soak pit.

13.In light of the above disputed facts, this Court cannot come to a clear conclusion as to who had really dug the soak pit in front of the house of the petitioner. The proceedings of the first respondent dated 01.10.2019 shows that the administrative sanction was given for installing individual soak pits and the mother of the petitioner namely, Ramakkal w/o.Mani is found at Serial No. 94. Therefore, there is a material before this Court to show that individual soak pit was permitted to be dug by the concerned persons and one such person was the mother of the petitioner.

14.This Court cannot disregard the stand taken by the fourth respondent in the counter and also the proceedings of the first respondent dated 01.10.2019. This is more so since the third and fourth respondents had taken a very specific stand that the fourth respondent was never engaged as contractor in this case and he did not dig the soak pit.



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15.This Court is not in any way undermining the loss of the son of the petitioner and it is an unfortunate incident. However, the issue to be decided in this case is as to who had dug the soak pit in front of the house of the petitioner. This issue involves disputed questions of fact and therefore, the same cannot be gone into in this writ petition. The Hon'ble Supreme Court has repeatedly held that while granting compensation towards negligence by exercising writ jurisdiction, the Court should not go into the disputed questions of fact and that the parties must be relegated only before the competent civil Court in this regard.

16.In the light of the above discussions, the relief sought for by the petitioner in this writ petition cannot be granted by this Court and liberty is granted to the petitioner to work out her remedy before the competent civil Court by establishing the negligence on the part of the respondents. The civil Court shall independently deal with the case on its own merits and in accordance with law without being influenced by the order passed in this writ petition.



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17.This writ petition is disposed of accordingly. No costs.

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NCC : Yes / No
Index : Yes/No
Internet : Yes/No
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N.ANAND VENKATESH, J.

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