



W.P(MD)No.8170 of 2014

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.8170 of 2014 and
WMP(MD) No.5504 of 2023

Melcia Mary

...Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep by its Secretary to Municipal Administration,
and Water Supply Department,
Fort St.George,
Chennai.

2.The Dindigul Municipal Corporation,
Rep by its Commissioner,
Dindigul – 1.

3.M/s. Vishwa Infrastructure and Services Pvt ltd.,
Chennai. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents to pay a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) as compensation for the death of the petitioner's husband A.James, who died on 23.01.2010 by falling into a pit in the road,



W.P(MD)No.8170 of 2014

which was dug for carrying out underground drainage work by the third respondent under the supervision of the second respondent, the statutory authority, I.e, the Commissioner of Dindigul Municipal Corporation.

For Petitioner	: Mr.S.Sarvagan Prabhu
For R1	: Mr.G.V.Vairam Santhosh Additional Government Pleader
For R2	: Mr.M.Thirunavukkarasu
For R3	: No appearance

ORDER

This writ petition was filed by the petitioner, for a Mandamus, directing the respondents to pay a sum of Rs.10,00,000/- as compensation for the death of her husband, namely, A.James, who died on 23.01.2010, by falling into a pit, which was dug by the respondents 2 & 3 for execution of underground drainage system in Dindigul Municipal Corporation Limits.

2.The petitioner has impleaded the Secretary to Municipal Administration as the first respondent and also filed this



W.P(MD)No.8170 of 2014

WEB COPY

writ petition as against the Commissioner, Dindigul Municipal Corporation and the Contractor, who has executed the underground drainage system. Since the petitioner has failed to pay batta for the third respondent, this writ petition was dismissed as against the third respondent. To restore the writ petition as against the third respondent, the petitioner has filed WMP(MD) No.5504 of 2023 with a delay of 1512 days. This Court has also ordered notice to the third respondent in CMP(MD) No.5504 of 2023. The petitioner claims that private notice sent to the third respondent is rejected with an endorsement that 'he has left with no instructions'. Therefore, the petitioner seeks short accommodation to file necessary application for substitute of service.

3.This Court considered the submissions made by the learned counsel for the petitioner and perused the materials placed on record.



W.P(MD)No.8170 of 2014

WEB COPY

4.The petitioner claims that the respondents 2 & 3, in the process of underground water drainage system dug a pit without any warning and hence the petitioner's husband fell down and succumbed to death. Therefore, the respondents 2 & 3 are vicariously liable to pay a compensation to the petitioner.

5.The petitioner failed to pay batta for the third respondent, who is the contractor appointed at the relevant point of time, for carrying out the underground drainage system. Hence, this writ petition was dismissed as against the third respondent. Now the petitioner has filed an application to condone the delay of 1512 days in filing the application for restoration. It is to be noted that the whereabouts of the third respondent is also not known.

6.Considering the relief sought for by the petitioner and considering the fact that the writ petition is pending from the year 2014 and also the fact that the whereabouts of the third respondent is not known, this Court is inclined to dispose of this writ petition,



W.P(MD)No.8170 of 2014

WEB COPY

with a liberty to the petitioner to file a suit as against the respondents 2 & 3 before the competent civil Court, within a period of three months from the date of receipt of a copy of this order. On such filing of the suit, the trial Court shall number the suit without insisting for limitation by considering that this writ petition is pending for more than nine years before this Court and proceed with the suit, in accordance with law.

7. At this juncture, the learned counsel for the petitioner claims that the petitioner is very poor and it will be very difficult for her to pay the court fee for the compensation of Rs.10,00,000/- before the competent civil Court.

8. Considering the petitioner's submission, the petitioner shall file a Pauper application, in the event, if she is really not having any sufficient means to pay the court fee and the trial Court shall consider the same.



W.P(MD)No.8170 of 2014

WEB COPY

9. With the above directions, this writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

18.04.2023

NCC : Yes / No.
Index : Yes / No.
Internet : Yes / No.
vrn

To

1. The Government of Tamil Nadu,
Rep by its Secretary to Municipal Administration,
and Water Supply Department,
Fort St. George,
Chennai.

2. The Dindigul Municipal Corporation,
Rep by its Commissioner,
Dindigul – 1.



WEB COPY



W.P(MD)No.8170 of 2014

B.PUGALENDHI, J.

vrn

Order made in
W.P(MD)No.8170 of 2014 and
WMP(MD) No.5504 of 2023

18.04.2023