

(2000) 07 MAD CK 0036

In the Madras High Court

Case No : Writ Petition No. 16084 of 1993 and W.M.P. No. 24949 of 1993

D. Matsa Gandhi

APPELLANT

Vs

Tamil Nadu Slum Clearance Board

RESPONDENT

Date of Decision : 07-07-2000

Acts Referred:

Constitution of India, 1950 — Article 21, 226
Criminal Procedure Code, 1973 (CrPC) — Section 174

Citation : (2000) 2 ACC 771 : AIR 2000 Mad 443 : (2000) 3 CTC 24 : (2000) 2 MLJ 830 : (2000) WritLR 859

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : R. P. Rathinam, for the Appellant; Mr. Haza Nazrudeen, for the Respondent

Judgement

1. The petitioner has approached this Court to issue a writ of mandamus directing the respondent- Tamil Nadu Slum Clearance Board to pay a

just and fair amount of compensation for the death of her daughter Meena.

2. The case of the petitioner is briefly stated as hereunder:

According to her she married one G.Mani and they have three sons and three daughters. Her first daughter Meena was bom in November, 1976.

She was working in an Export Garment Factory on 22.7.1992 she went to her grant parents" house in Rani Anna Nagar after days work at the

factory. She went to draw water from the well number 8, opposite to Block No. 16 as usual, as there was no water available in the taps in the

house. Water from the well is usually drawn from the holes left on the concrete slab covers over the well. On-that fateful day, the concrete slab

was wet and slippery due to rain. Her daughter Meena while trying to draw water

slipped and fell into the well through the draw hole and consequently she died. Her husband G. Mani made a complaint to the Sub-Inspector of Police, K.K. Nagar and F.I.R. was registered in Crime No.2086 of 1992 u/s 174, Cr.P.C. Her daughter was working in an Export Garment Factory and earning Rs.450.00 per month. She was a diligent worker. It is further stated that the residents of the Colony through their Welfare Association made several representations to the respondent and to his subordinates demanding them to pump water from the wells to the overhead tanks in the Colony explaining the physical hardships and mental agony undergone by the women residents of the Colony. The women need not undertake the risky routine of drawing water from the unprotected draw holes, if the respondent had properly carried out their duty of providing water and ensuring the safety of wells in the Colony. The pumps are almost always in a state of disrepair. Hence, the women residents are forced to draw water from the wells over the concrete slab on the wells. The respondent and his subordinates were well aware of this fact; but they did not care to provide pulleys and parapet walls to wells to ensure the safety of persons using the well. In such circumstance, having no other remedy, she filed the present Writ petition claiming appropriate compensation.

3. The respondent filed a counter- affidavit disputing various averments made by the petitioner. The writ petition is not maintainable. It is stated that the pump rooms in K.K.Nagar Slum Clearance Board Colony are well maintained by the Board and a pump operator is also appointed for the operation of pump set and jet motors, thereby the water is being supplied to the people through overhead tanks to the blocks. Further more, each and every well is protected with 3 to 4 feet height of parapet walls, as safety measures. Prior warning instruction is also written on either side of the walls as preventive measure restraining the dwellers to climb on the wall to draw water. The petitioner could have avoided fateful day if her daughter had been warned in compliance of instructions. Further, the petitioner is not residing in the above area, viz., Rani Anna Nagar. The Slum Clearance Board is supplying water to the tenements through six water tankers. Each water tanker consists, of 12,000 liters of water. Since there is no water during summer in the wells, the residents are unable to take water,

from the well. The event on fateful day was purely on account of negligence, and carelessness of the deceased. On the contrary no negligence would be attributed on the part of the Board because the wells are fully covered. Furthermore, the manholes provided in the wells are meant for cleaning and repairing suction pipes and the residents are not permitted to draw water from the wells through manholes and a clear notice of warning instruction is painted on the walls, to the public restraining them to climb on the walls. With these averments they prayed for dismissal of the writ petition.

4. In the light of the above pleadings, I have heard the learned counsel for petitioner as well as respondent.

5. The only point for consideration is whether the respondent Slum Clearance Board was responsible for the death of 17 year old daughter of the petitioner in a well belonging to the Board and if so, what is the reasonable compensation payable to her?

6. I have already stated that in respect of death of one Meena, aged about 17 years the petitioner - mother of the deceased has prayed for a compensation from the respondent - Slum Clearance Board on the ground that her daughter died only due to the negligence of the Officers of the respondent Board. It is seen from the particulars furnished that though the deceased is not a resident of Rani Anna Nagar, however she visited her grant parents' house in Rani Anna Nagar after completing her work at the factory. It is the case of the petitioner that at the time of incident, her daughter was working in an Export Garment Factory. On 22nd July, 1992 she went to draw water from the well number 8, opposite to Block 16, since there was no water available in the taps in the house. It is also the definite case of the petitioner that the concrete slab was wet and slippery due to rain. While the deceased Meena try to draw water slipped and her feet got tangled in her petticoat and fell into the well through the draw hole, consequently died. With regard to the said incident her father and husband of the petitioner one G. Mani made a complaint to the Sub-Inspector of Police, K. K. Nagar Police Station and F.I.R. was registered under Crime No.2086 of 1992 u/s 174 of Cr.P.C. It is not brought to my notice by any one regarding the outcome of the police investigation.

7. The pith and substance of the case of the petitioner is that, since the Officers

of the respondent Board failed to maintain the wells, over head tanks and not properly closed the holes in the wells, the deceased fell into the well while drawing water and died. Though in the counter affidavit filed by the Secretary and Personal Officer, of the Slum Clearance Board a general statement has been made with regard to the condition of the pump rooms in K.K. Nagar and other areas, there is no specific denial regarding the allegations made by the petitioner with regard to pathetic condition of the wells and scarcity of water in Rani Anna Nagar. In this regard it is relevant to refer the representation of Rani Anna Nagar Residents' Welfare Association dated 3.9.1991 made to the Tamil Nadu Slum Clearance Board. In the said representation the Residents Welfare Association highlighted their grievance, particularly scarcity of water and improper supply of water through wells and water tanks provided therein. After highlighting their grievance they warned the Board that if necessary remedial measure is not taken within 15 days, the women in that Colony would complain the same to the Hon'ble Chief Minister. Again, on 22.2.1992 the very same Association made another representation to the Chairman, Chief Engineer and Executive Engineer, Tamil Nadu Slum Clearance Board highlighting the same problems, particularly non supply of water for their tenements. Both those representations dated 3.9.1991 and 22.2.1992 find place at page 1 to 4 of the typed set of papers filed by the petitioner. Further, after the unfortunate incident i.e. on 22.7.1992 the evening daily ""Malai Mursasu"" had carried a news item on 24.7.1992 highlighting the cause of death of Meena and the plight of tenements in K.K.Nagar Slum Clearance Board particularly with regard to scarcity of water. The contents published in that daily support the claim of the petitioner as well as the Association. Though the Slum Clearance Board has constructed several wells, at: the initial point of time they failed to provide sufficient safety parapet walls or rafters.

8. During the course of argument learned counsel appearing for the petitioner has brought to my notice several photographs showing the pillars on both side of the manhole connecting the pillars facilitating the residents to lift water from the well. Along with the said photographs the petitioner has also filed an affidavit stating that: the photos presented by her were taken on 29.6.2000 and after the death of her daughter the respondent had

taken some remedial measures by providing pillars with iron pipe on both the sides of the manhole for lifting water by using small wheels. It is further stated that even this is not properly arranged since the women are adopting the old practise of lifting water by using rope without utilizing the present facilities. It is clear from the photographs as well as the affidavit filed by the petitioner that even now there is an apparent risk and the negligence continues on the part of the respondent. It is not the case of the respondent that after allotment, it is for the allottees alone to get water for their use and maintain the wells or overhead tanks.

9. On the other hand the counter affidavit filed by the respondent shows that it is only the Slum Clearance Board maintaining the pump rooms, pump sheds and jet motors. Though it is stated that the manholes provided in the wells are meant for cleaning and repairing of suction pipes, the photographs show that it is not uncommon that the manholes in the wells are not properly covered by cement slab or any other material. Though the respondent has explained various steps taken by them in the counter affidavit dated 7.10.1997, in the light of the complaint representation dated 3.9.1991 and 22.2.1992 made by Rani Anna Nagar Residents' Welfare Association even prior to the unfortunate incident and in the absence of any reply and effective steps by the Slum Clearance Board, I hold that the daughter of the petitioner viz., Meena who died on 22.7.1992 in the well was due to the negligence of the Officers of the respondent Board.

10. In the course of argument it is brought to my notice the recent decision of the Hon''ble Supreme Court reported in *Nath Bros. Exim International Ltd. Vs. Best Roadways Ltd.*, and power of this Court under Article 226. Nodoubt, the Hon''ble Supreme Court has not accepted the action of the High Court in granting compensation to the family of the victim who died by electrocution in a writ petition filed under Article 226.

It is equally true that when disputed questions of fact arises and if there is clear denial of tortious liability remedy under Article 226 of the Constitution may not be proper. However, in the very same judgment their Lordships after saying so, in paragraph 10 have observed.

.... However it cannot be understood as laying a law that in every case of tortious liability recourse must be had to a suit. When there is negligence

on the face of it and infringement of Article 21 is there it cannot be said that there will be any bar to proceed under Article 226 of the Constitution.

(Italics Supplied)

In such circumstance and in view of the factual conclusion as referred to above, I am of the view that the petitioner is entitled reasonable

compensation from the respondent for the death of her daughter and in the interest of justice this Court would be justified in considering the relief

prayed by the petitioner.

11. In *Parvati Devi v. Commissioner of Police, Delhi*, 2000 (3) SCC 754 the Hon"ble Supreme Court awarded compensation of Rs.1 lakh to the

legal heirs in respect of death which was on account of electrocution while walking on the road. In that decision their Lordships have held,

: . "... Once it is established that the death occurred on account of electrocution while walking on the road, necessarily the authorities concerned

must be held to be negligent, and therefore, in the case on hand, it would be NDMC who would be responsible for the death in question.

After noting that the deceased was aged about 54 years on the date of death and his retirement is 60 years, the Hon"ble Supreme Court awarded

a compensation of Rs.1 lakh in favour of the legal heirs of the deceased and directed NDMC to pay the same within three months from the date of

order, failing which it will carry interest at the rate of 12 per cent.

12. Now, I shall consider the quantum of compensation payable to the petitioner. It is the case of the petitioner that at the time of the accident her

daughter was aged about 17 years and she was working in an Export Garment Factory. It is also seen from the information furnished "that apart

from the deceased daughter the petitioner is having 3 sons and three daughters. Considering all the above aspects, I hereby direct the respondent -

Slum Clearance Board to pay a sum of Rs.75,000.00 (Rupees seventy- five thousand only) as compensation within a period of four weeks from

the date of receipt of a copy - of this order, failing which the petitioner is entitled interest at the rate of 12 per cent from today. The writ petition is

allowed to the extent mentioned above. No costs. Consequently, connected WMP., is closed.