

**IN THE HIGH COURT OF DELHI AT NEW DELHI
(EXTRAORDINARY CIVIL WRIT JURISDICTION)**

WRIT PETITION (C) No. OF 2024

IN THE MATTER OF:

Smt. Janki

...Petitioner

Versus

Govt. of NCT Delhi & Ors.

...Respondents

MEMO OF PARTIES

IN THE MATTER OF:

Smt. Janki

W/o Sh. Suresh

R/o Juggi no. A142/1,

Udham Singh Park, WPIA,

New Delhi- 110052

...Petitioner

Versus

1. Govt. of NCT Delhi
Through Standing Counsel
Off. Chamber no. 423, Lawyer Chamber Block,
Delhi High Court, New Delhi 110001 Ph. 9868250806
Email: standingcounselgnctd@gmail.com
2. Municipal Corporation of Delhi
Through Commissioner
E Block, 4th floor, SPM civic center
JLN Marg, New Delhi 110002
Ph.: 23225901
Email: commr-northdmc@mcd.nic.in
3. Delhi State Industrial & Infrastructure Development Corporation Ltd.
(DSIIDC)
Through Managing Director
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Connaught Circle, New Delhi 110001
Ph. 23351026
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...Respondents

Petitioner

Through

Anshul Kumar, Bhanu Pratap

(Counsels for the Petitioner)

Ch. No. 301, Lawyers Chamber Block-III,

Delhi High Court,

Mob. No. 08447202022

Email: anshulkumaradv@gmail.com

Place: New Delhi

Date:

SYNOPSIS

This is an unfortunate incidence happened on 18.08.2024, the 7 year old boy named “Prince” son of the petitioner, left his house at around 8:00 AM to play and never came back. The body the child of the petitioner was found at around 9:30 PM in the sewer/drain situated opposite to the Petitioner’s house. That due to drowning in a 10 ft. deep, open and unclean sewer/drain the 7 year old boy lost his life. That the Respondents miserably failed to perform their duties and responsibilities because of which an innocent boy lost his life. That despite of the numerous request made by the residential persons to cover the sewer/drain the respondents were ignorant and negligent all the time. That the sewer/drain never drawn regular attention of the Respondents.

The main issue involved in the present petition is *Firstly*, whether the Respondents have failed to perform their duties and responsibilities. *Secondly*, whether the Respondents are negligent, ignorant and irresponsible in discharging their duty of care cast upon them. *Thirdly*, whether the Respondents be held in contempt of court, for not complying the directions of this Hon’ble Court in W.P. (C) no. 12326 of 2015 vide **Order dated 01.08.2018 in Court On Its Own Motion vs Govt. of NCT Delhi & Ors.** *Fourthly*, whether the Petitioner is entitled for compensation from the Respondents.

That the boy fallen into an open sewer/drain and died of drowning an FIR no. 326 of 2024 dated 19.08.2024 under Section 106 (1) of BNS,2023 has been registered by police. Therefore, present case is squarely covered by the principle of *Res Ipsa Loquitur*.

That the sewer/drain was constructed at WPIA (Wazirpur Industrial Area) by the Respondent no. 3 and maintained by the Respondent no. 2 and is 20-30 meters away from the house (Jhuggi) of the Petitioner. The Petitioner is a housewife and had a family of 4 people. The husband of the petitioner is a daily wage labor. That after unfortunate death of her first 7 year old child, she is left with her 3 year old daughter. That the entire family is absolutely shattered after the above incidence.

The petitioner seeks an immediate investigation and demands strict action against the Respondents due to which she lost her son and also seeks compensation of Rs. 30,00,000/- from the Respondents for being negligent to perform their duty infringing the indefeasible right of the Petitioner guaranteed under Article 21 of the Constitution of India. Therefore, the petitioner has made the present Writ Petition under Article 226 of the Constitution of India before this Hon'ble Court seeking issuance of a writ in the nature of mandamus or any other appropriate writ/order/direction.

Hence, this present Petition

LIST OF DATES AND EVENTS

25.07.2017	The son of the Petitioner was born.
18.08.2024	At around 8 AM the son of the Petitioner went outside to play.
18.08.2024	when the petitioner was unable to find her son in the morning and was missing. The Petitioner logged an FIR no. 323 of 2024.
18.08.2024	The body of the son of the Petitioner was found at around 9:30 PM in sewar/drain. It is pertinent to mention here that the body of the child was taken out by the locals thereafter police PCR was called and took him to Deep Chand Bandhu Hospital where he was declared dead.
19.08.2024	That an FIR no. 326 of 2024 was registered under Section 106(1) BNS, 2023.
.09.2024	Hence, Present Petition

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IN THE MATTER OF:

Smt. Janki

...Petitioner

Versus

Govt. of NCT Delhi & Ors.

...Respondents

**WRIT PETITION UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA SEEKING IMMEDIATE ACTION
AGAINST THE RESPONDENTS AND COMPENSATION OF
RS. 30,00,000/- OR ANY OTHER DIRECTIONS, AS PRAYED
FOR.**

**THE HON'BLE CHIEF JUSTICE
AND HIS COMPANION JUSTICES
OF THE HIGH COURT OF DELHI AT NEW DELHI**

**THE PETITIONER ABOVE NAMED MOST RESPECTFULLY
SHOWETH:**

1. That the Petitioner is invoking the extraordinary jurisdiction of this court under Article 226 of the Constitution of India, seeking immediate action against the Respondents and appropriate directions for the payment of ex-gratia compensation due to death of her 7 year old son, who drowned in an open sewer/drain maintained by the respondents on 18.08.2024. True Copy of the Adhaar Card of the Petitioner is annexed herewith as **ANNEXURE P1**.
2. The Petitioner is a housewife and had a family of 4 people. The husband of the petitioner is a daily wage labor. That after unfortunate death of her first

7 year old child, she is left with her 3 year old daughter. That the entire family is absolutely shattered after the above incidence. True Copy of the Adhaar Card of the Child of the Petitioner is annexed herewith as **ANNEXURE P2**. True Copy of the School Leaving Certificate is annexed herewith as **ANNEXURE P3**.

3. That the Respondent no 1 is the Govt. of NCT Delhi, is a controlling authority of DSIIDC. Respondent no. 2 is Municipal Corporation of Delhi (MCD), is maintaining the sewer/drain cleanliness and hygiene. Respondent no 3 is Delhi State Industrial & Infrastructure Development Corporation Ltd. (DSIIDC) who has constructed the sewer/drain which falls under WPIA (Wazirpur Industrial Area).

4. **Brief Facts:**

- 4.1 On 18.08.2024, the 7 year old boy named “Prince” son of the petitioner, left his house at around 8:00 AM to play and never came back. The body the child of the petitioner was found at around 9:30 PM in the sewer/drain situated opposite to the Petitioner’s house. That due to drowning in a 10 ft. deep, open and unclean sewer/drain the 7 year old boy lost his life. That the Respondents miserably failed to perform their duties and responsibilities because of which an innocent boy lost his life. True Copy of the Photographs of the sewer/drain is annexed herewith as **ANNEXURE P4**.

- 4.2 That on the basis of the statement and medical examination of the deceased an FIR no. 326 of 2024 was registered on 19.08.2024 under Section 106(1) BNS, 2023. Copy of the FIR no. 326 of 2024 dated

19.08.2024 under Section 106(1) BNS, 2023 is annexed herewith as **ANNEXURE P5.**

- 5 **Grounds:** That the Relief in the present Writ Petition is sought on the following grounds amongst others which are taken without prejudice to each other:

5.1 BECAUSE the respondents being negligent have failed to perform their duties and responsibilities due to which the son of the Petitioner lost his life after falling in an open sewer/drain.

5.2 BECAUSE as per Order dated 01.08.2018 in *Court On Its Own Motion vs Govt. of NCT Delhi & Ors.* in W.P. (C) no. 12326 of 2015 the Respondents have failed to comply the directions issued by the Hon'ble Court.

“(vi) All public authorities and land owning agencies, including the Chief Secretary, Government of NCT of Delhi; the CPWD; DDA;PWD; Municipal Corporations; Delhi Cantonment Board; New Delhi Municipal Council; Delhi Jal Board; Electricity Companies; Telephone Companies; Commissioner of Police etc. shall ensure strict compliance of the following directions:

a. The sites of all manholes, pits, holes, tanks or any other opening in the ground of any kinds shall be regularly inspected and maintained.

b. Schedule and protocols of inspections and maintenance shall be drawn up and notified by all departments,

c. These sites shall be cordoned off to render them inaccessible to the public.

d. The existence of these sites shall be clearly & visibly marked by the display of signboards/signages.

e. If they are required to be covered, the authorities shall ensure that the covers are in place.

f. Responsibility for compliance shall be fixed of the senior officers not below the rank of Executive Engineers concerned or equivalent thereto.

(vii) Let a copy of this order be sent to the heads of all of the concerned departments in Delhi by the Registrar General of this court; the SHO P.S. Sunlight Colony and the Secretary, District State Legal Services Authority (South-East District) to ensure immediate compliance."

5.3 BECAUSE the Hon'ble Supreme Court in Pushpabhai Purshottam Udeshi v. Ranjit Ginning & Pressing Co. (P) Ltd., (1977) 2 SCC 745 has explained the doctrine of Res Ipsa Loquitur in the following words:

*"20. The normal rule is that it is for the plaintiff to prove negligence but as in some cases considerable hardship is caused to the plaintiff as the true cause of the accident is not known to him but is solely within the knowledge of the defendant who caused it, the plaintiff can prove the accident but cannot prove how it happened to establish negligence on the part of the defendant. This hardship is sought to be avoided by applying the principle of res ipsa loquitur. The general purport of the words res ipsa loquitur is that the accident "speaks for itself" or tells its own story. There are cases in which the accident speaks for itself so that it is sufficient for the plaintiff to prove the accident and nothing more. It will then be for the defendant to establish that the accident happened due to some other cause than his own negligence. **Salmond on the Law of Torts** (15th Ed.) at p. 306 states: "**The maxim res ipsa loquitur applies whenever it is so improbable that such an accident would have happened without the negligence of the defendant that a reasonable jury could find without further evidence that it was so caused**".*

21. In Halsbury's Laws of England, 3rd Ed., Vol. 28, at page 77, the position is stated thus: "An exception to the general rule that the burden of proof of the alleged negligence is in the first instance on the plaintiff occurs wherever the facts already

established are such that the proper and natural inference arising from them is that the injury complained of was caused by the defendant's negligence, or where the event charged as negligence 'tells its own story' of negligence on the part of the defendant, the story so told being clear and unambiguous". Where the maxim is applied the burden is on the defendant to show either that in fact he was not negligent or that the accident might more probably have happened in a manner which did not connote negligence on his part.

22. The mere fact that the entry was allowed was sheer negligence on the part of the respondents. As aforesaid, the respondents owed a duty of care to the said children by not permitting their entry into the compound as the same was a prohibited area. The said area posed a high risk to any stranger - much more to small children, who may go into areas where poisonous gases were being produced and present.

*23. I, therefore, hold that the maxim Res Ipsa Loquitur is clearly attracted in the present case and the **incident** in question itself **establishes the negligence on the part of the respondents**. The **petitioners** are, therefore, **entitled to grant of compensation** in these proceedings for breach of the most basic fundamental right of Nand Kishore under Article 21 of the Constitution of India."*

- 5.4 BECAUSE under Article 21 of the Constitution of India the Petitioner has a right to decent environment Respondents being negligent, have failed to perform the duties cast upon them. That the Petitioner's son lost his life after falling into an open sewer/drain died of drowning.
- 5.5 BECAUSE this Hon'ble Court in *Sohan Lal vs Government of NCT Delhi in W.P. (C) 2584 of 2008* vide order dated 23.11.2017 awarded compensation of Rs. 10,00,000/- in respect of death of 6 year old child and Rs. 1,50,000/- to the 4 year old injured child playing in the street by electrocution.

5.6 BECAUSE an FIR no. 326 of 2024 has been registered on 19.08.2024 under Section 106(1) BNS, 2023. However, till date no action has been taken against anyone.

5.7 BECAUSE the Respondents being the public bodies/functionaries have failed to perform their public duties properly. Also, the Respondents acted unlawfully by not covering the sewer/drain and maintaining the proper hygiene thereof. Resultantly, a 7 year old boy lost his life after falling into it and died of drowning.

5.8 BECAUSE there is a violation of Article 21 of the Constitution of India, as the State and its instrumentality failed to discharge its duty of care cast upon it, resulting in deprivation of life of the child of the Petitioner.

5.9 BECAUSE in *Kamala Devi v. Govt. of NCT of Delhi 2004 (76) DRJ*. The Hon'ble Court has determined that a two-tier compensation, i.e. conventional sum and pecuniary compensation, ought to be awarded in such cases. After referring to the judgment of the Hon'ble Supreme Court in *Mrs. Sudha Rasheed v. Union of India 1995 (I) SCALE 77*, it was held in *Kamla Devi* as under:

5. The compensation to be awarded by the Courts, based on international norms and previous decisions of the Supreme Court, comprises of two parts:

- (a) "standard compensation" or the so-called "conventional amount" (or sum) for non-pecuniary losses such as loss of consortium, loss of parent, pain and suffering and loss of amenities; and*
- (b) Compensation for pecuniary loss of dependency*

- 6 That the Petitioner has not filed any other Petition (s) seeking same or similar relief either before this Hon'ble Court or before any other court.
- 7 Petitioner states that Respondents having their respective office in Delhi and cause of action for filing present petition has arisen in Delhi. Therefore, this Hon'ble Court has jurisdiction to entertain, try, and dispose of present Petition.
- 8 Petitioner submits that he has no alternative remedy, much less an equally efficacious remedy, in respect of the subject matter of the present Petition.

PRAYER

In the light of the submissions made and facts stated hereinabove, it is most humbly prayed that this Hon'ble Court may graciously be pleased to;

- a) Issue a writ of certiorari by taking strict actions against the Respondents because of which the Petitioner lost her child;
- b) Issue a writ of mandamus directing the Respondents to grant ex-gratia amount of Rs. 30,00,000/- to the Petitioner; and
- c) Order award of costs for the litigation to the petitioner ; and
- d) Pass any such orders as the Hon'ble Court may deem fit in the light of above mentioned facts and circumstances of the case.

**AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN
DUTY BOUND SHALL EVER PRAY**

Petitioner

Through

Anshul Kumar and Bhanu Pratap

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Ch. No. 301, Lawyers Chamber Block-III,

Delhi High Court,

Mob. No. 08447202022

Email: anshulkumaradv@gmail.com

Place: New Delhi

Date: