

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 18th March, 2016

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W.P.(C) No.5769/2008

PADMA VERMA

..... Petitioners

Through: Ms. Anusuya Salwan & Mr. Kunal Kohli, Advs.

Versus

MUNICIPAL CORPORATION OF DELHI

..... Respondent

Through: Ms. Mini Pushkarna, Adv.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. The petition seeks mandamus to the respondent Municipal Corporation of Delhi (MCD) to compensate the petitioner in the tune of Rs.10,00,000/- for the injury suffered on being attacked by a bull while walking on a street.

2. It is the case of the petitioner i) that she is a resident of New Friends Colony (NFC), New Delhi and while walking in the local colony market doing her routine chores on 13th May, 2008, a rampaging bull gored her chest and threw her on the footpath; ii) that she sustained serious external and internal injuries in the head resulting in loss of consciousness and

multiple epileptic fits on the road; iii) that she was taken to Sujan Mohindra Hospital (SMH) at NFC, New Delhi in a semi conscious and profusely bleeding state and was recommended to be immediately shifted to Vidyasagar Institute of Mental Health & Neurosciences (VIMHANS); iv) that she was found to have hemorrhage contusions in the right frontal and left parietal regions besides fractures of the skull bone and multiple sites of internal hemorrhage; v) that she remained admitted in VIMHANS from 13th May, 2008 to 18th May, 2008 and thereafter shifted to her son's hospital Prime Heart Vascular Institute at Mohali; vi) that she was teaching students of Class XI and XII and retired as a Principal of a school but owing to her injuries suffered loss of memory and finds it difficult to give tuitions to students of Class XI and XII from which she was earlier earning Rs.15,000/- per month; vii) that the aforesaid incident occurred on account of gross negligence on the part of the respondent MCD in discharging its statutory duties and for which the respondent MCD is liable to compensate her in the sum of Rs.10,00,000/-; viii) that the Division Bench of this Court in W.P.(C) No.3791/2000 and in W.P.(C) No.842/1997 had directed the MCD to take effective steps for removing menace of stray cattle; ix) that the said directions were reiterated in *Common Cause Vs. Union of India* (2007) 141

DLT 164 (DB); x) that had the respondent MCD complied with the directions issued by this Court or with its obligation under Section 323 of the Delhi Municipal Corporation Act, 1957 (MCD Act) to remove the cows and buffalos and other animals from the streets, the petitioner would not have suffered; xi) that this Court in *Common Cause Vs. Union of India* 102 (2003) DLT 259 (DB) has held that by not taking effective steps to prevent cattle from taking to the streets, affects the fundamental rights of the citizens; and xii) that the petitioner has been rendered incapable of earning her livelihood.

3. Notice of the petition was issued. The respondent MCD in its counter affidavit pleaded i) that the prayer in the writ petition for compensation is a case of action in tort where negligence is first required to be established and which can be done only by leading evidence which cannot be done in writ jurisdiction; where disputed questions of fact are involved, a petition under Article 226 is not the proper remedy; ii) that the factum of negligence and its consequent effects are matter of proof which cannot be effectively adjudicated in writ proceedings; iii) denying all pleas of negligence on the part of the respondent MCD; iv) that the respondent MCD has complied with the directions of this Court in the judgments cited by the petitioner and

routinely makes inspection and takes action to round up stray cattle; particulars in that regard are filed as Annexure R-2 and Annexure R-3 to the counter affidavit; v) denying that the petitioner was injured by bull injury or from the negligence of the respondent MCD; vi) that on learning on 14th May, 2008 of the incident from newspaper, an urgent letter was issued directing the Milch Tax Inspectors to intensify the stray cattle raid in the area of Bharat Nagar, Tamoor Pur, Khizrabad and Zakir Nagar from where the stray cattle come to the area of NFC; vii) no complaint had been received from any of the residents of the area prior to 13th May, 2008 of stray bull roaming the NFC market; log book of the different complaints received from time to time is filed as Annexure R-5 to the counter affidavit; viii) had any such complaint been received by the respondent MCD, it would have taken appropriate action; ix) that the respondent MCD faces heavy resistance in performing its duties and taking action against illegal dairies and rounding up of stray cattle; x) several FIRs have been lodged by the staff of respondent MCD in this regard; rounding up of cattle being a low priority for the police has to be conducted without police protection or with inadequate police protection; xi) that it requires determination by recording of evidence, what injuries were suffered by the petitioner and which of those

were attributable to bull attack and what is the extent of the petitioner's own negligence; and, xii) denying that the writ petition is maintainable.

4. The petitioner has filed a rejoinder *inter alia* stating, that stray cattle are a normal feature in NFC as they come from four villages surrounding the said colony; that had the respondent MCD been doing its duty, there would be no stray cattle; the threats to respondent MCD employees in taking action for removal of stray cattle and the FIRs if any lodged by them have no relevance and citing judgment dated 1st July, 2009 of this Court in W.P.(C) No.13771/2006 titled *Shakuntla Vs. Vs. Government of NCT of Delhi* in which compensation for injury from bull attack was awarded.

5. Though the petition was ordered to be heard in the category of "After Notice Miscellaneous Matters" but was adjourned from time to time. On 16th March, 2010, the counsel for the petitioner sought time to file an additional affidavit and which was allowed. The petitioner in the additional affidavit has stated that she spent an amount to the tune of Rs.60,000/- for treatment, both at SMH and later on at VIMHANS; an amount of Rs.25,000/- on account of consultation charges of the Neurologist and General Physician; however she is unable to produce the receipts of the

consultation charges and the bills for the medicines prescribed by the doctors; that she retired as a Principal of a premier school (name of which is not disclosed) and was earning Rs.15,000/- per month.

6. The counsel for the petitioner was heard on 1st July, 2015 when on my observing that considering the facts of the case, writ remedy did not appear to be the appropriate remedy and that the petitioner should file a suit and for which this Court would extend the limitation by excluding the time spent in pursuing this petition, the counsel for the petitioner sought adjournment to take instructions; however on 6th July, 2015, the counsel for the petitioner stated that the petitioner wants to sail or sink with this petition only; accordingly, further arguments were heard and judgment reserved.

7. The counsel for the petitioner has relied upon:

- (i) Judgment dated 30th August, 2013 in W.P.(C) No.6396/2010 titled ***Parmeshwar Vs. Government of NCT of Delhi;***
- (ii) Order dated 25th August, 2009 in LPA No.348/2009 titled ***Municipal Corporation of Delhi Vs. Shakuntala;***

- (iii) ***Ram Kishore Vs. Municipal Corporation of Delhi*** 2007 VII AD (Delhi) 441;
- (iv) ***Varinder Prasad Vs. BSES Rajdhani Power Ltd.*** 2012 II AD (Delhi) 959;
- (v) ***Gopalpur Victim Association Vs. Delhi Jal Board*** 2011 (122) DRJ 428 (DB);
- (vi) ***Suni Manoj Mathew Vs. BSES Rajdhani*** 126 (2006) DLT 570;
- (vii) ***Municipal Corporation of Delhi Vs. Sushila Devi*** (1999) 4 SCC 317;
- (viii) ***Master Dheeru Vs. Government of NCT of Delhi*** 160 (2009) DLT 759;
- (ix) Judgment dated 2nd July, 2013 in W.P.(C) No.5024/2007 titled ***Subramaniam Vs. Delhi Metro Rail Corporation;***
- (x) ***Sushil Ansal Vs. State*** (2014) 6 SCC 173;
- (xi) ***M.S. Grewal Vs. Deep Chand Sood*** (2001) 8 SCC 151.

on the aspect of maintainability of a writ petition claiming compensation and on:

- (a) ***General Manager Kerala State Road Transport Corporation, Trivandrum Vs. Susamma Thomas*** (1994) 2 SCC 176; and,
- (b) ***Kamla Devi Vs. Govt. of NCT of Delhi*** 2004 (76) DRJ 739.

on the aspect of computation of compensation in writ jurisdiction.

8. Per contra, the counsel for the respondent MCD has relied on:

- (i) ***Dharampal Vs. Delhi Transport Corporation*** 2008 (101) DRJ 197;
- (ii) ***Rajkot Municipal Corporation Vs. Manjulben Jayantilal Nakum*** (1997) 9 SCC 552;
- (iii) ***Union of India Vs. Sunil Kumar Ghosh*** (1984) 4 SCC 246;
- (iv) ***Syad Akbar Vs. State of Karnataka*** (1980) 1 SCC 30;

- (v) ***Chairman, Grid Corporation of Orissa Ltd. Vs. Smt. Sukamani Das*** (1997) 7 SCC 298;
- (vi) ***Orissa Agro Industries Corporation Ltd. Vs. Bharati Industries*** (2005) 12 SCC 725; and,
- (vii) ***D.L.F. Housing Construction (P) Ltd. Vs. Delhi Municipal Corporation*** (1976) 3 SCC 160.

to contend that the claim as in the present petition cannot be adjudicated in writ jurisdiction.

9. Peculiarly, not only there is no complaint by the petitioner or anyone else on behalf of the petitioner to the respondent MCD with respect to the said incident but also there is no FIR to the police of the said incident. Resultantly, there has been no verification by any agency of the incident.

10. The petitioner, along with the petition has filed photocopy of discharge summary dated 18th May, 2008 drawn up by VIMHANS bearing name of the petitioner, her age as 77 years and date of admission as 13th May, 2008 and diagnosis of head injury, SAH with Multiple Heamorrhagic Contusions in right frontal and left parietal regions and Hypertension. The

same records that the petitioner is a known case of hypertension, on medication for the past 10 years and came to Casualty with alleged history of fall on the ground after being hit by a bull near her residence; that she was managed first in ICU and then shifted to a ward and that her condition improved. It does not show of any fractures and does not record that the petitioner was unconscious at any time; it merely states that the petitioner had two episodes of vomiting with no history of loss of consciousness. The petitioner also filed prescription of Dr. S.K. Poddar of SMH recording that at the time of reaching that hospital, the petitioner was bleeding from nose and responding to command. The only other document filed with the petition is the extract of Times of India newspaper of 14th May, 2008 reporting the incident as told by the husband of the petitioner. Not only so, while the petitioner in the petition claimed to have suffered injury on her chest and the newspaper reports also are of the bull having inserted “its horns into her flesh”, the medical reports do not show any injury to the chest.

11. The petitioner along with her additional affidavit has only filed photocopies of purchase bills of medicine such as Lasix and Cineraria which are generally prescribed for hypertension of which the petitioner as per the

documents filed by her has been a patient and are not supportive of the case of the petitioner in this petition.

12. Though none of the medical papers referred to show the petitioner having been a patient of epilepsy but the petitioner in her petition in para 2 has stated “The petitioner was walking through the market when a rampaging bull gored of her chest and threw her on the footpath and walked over her. The petitioner sustained serious external and internal injuries in the head resulting in loss of consciousness and multiple epileptic fits on the road” indicating that the petitioner is a patient of epilepsy also. Ordinarily the medical papers filed by the petitioner as the discharge summary ought to have, while recording the history of the patient, mentioned epilepsy. However it cannot be forgotten that the son of the petitioner is a doctor himself running his own nursing home at Mohali and to which the petitioner claims to have been taken to straight upon discharge from VIMHANS. It can safely be assumed that the son of the petitioner was present when the discharge summary was prepared on 18th May, 2008. This petition is dated 1st August, 2008 and it can also be reasonably assumed that the decision for filing the petition would have been taken by the time the petitioner was got discharged from VIMHANS and taken to her son’s nursing home at Mohali.

It is quite possible that knowing of the adverse impact it may have on the claim, the medical history of petitioner of epilepsy, from which the petitioner in the petition has admitted to be suffering from, was not got recorded in the said discharge summary.

13. It thus follows that not only is the case as made out by the petitioner in the petition, of having suffered fractures of the skull, and chest injury not borne out from the documents filed along with the petition but the possibility of the fall of the petitioner being attributable to epilepsy also cannot be ruled out.

14. I find the petitioner to have not come to the Court making clean breast of state of affairs from another factum also. The petitioner in the petition claimed to have retired as the Principal of a school and that “she had been teaching students of class XI and XII and was leading a very active life”. However as aforesaid she did not disclose the school from which she had retired as the Principal. In the additional affidavit also it was merely stated that the school from which the petitioner has retired was a “premier school” of Delhi. However as per the newspaper report filed by the petitioner she retired as a Principal of “Salwan Montessori School”. A teacher and

Principal of a Salwan Montessori School could not have been teaching students of Class XI and XII.

15. It is for the aforesaid reasons/doubts/inconsistencies and air around which can be cleared only in cross-examination of petitioner that I felt that the facts of the case are not such in which relief can be granted to petitioner in writ jurisdiction. The cases of negligence on the part of civic agencies causing injury, in which the courts have generally been granting compensation in writ jurisdiction are generally those in which the negligence has been found in the investigation pursuant to FIR of the incident and injury is not disputed. Here there is nothing of the sort.

16. The counsel for the petitioner, in answer to the queries as to how the claim as in the present petition could be subject matter of writ proceedings, also invoked the principle of *res ipsa loquitur*. Attention was invited to the note dated 14th May, 2008 of the Veterinary Services Department of the respondent MCD on the basis of the report in the newspapers directing the intensification of stray cattle raids in the area. It was argued that it is thus borne out that the respondent MCD was satisfied of the correctness of the news report. It was further argued that else the liability of the respondent

MCD to remove stray cattle from the street is borne out from the earlier judgments of this Court. It was contended that there is thus a duty on the part of the respondent MCD to care and which it has failed to provide. It was further contended that the injury to the petitioner from such failure or negligence of the respondent MCD is borne out from the discharge summary; there is thus nothing further to prove.

17. I am however, for the reasons recorded above, unable to agree. The only version before the Court is of the petitioner and which is denied by the respondent MCD. The only thing undisputed is the newspaper report but which as aforesaid is based on the version of the husband of the petitioner and once the respondent MCD is disputing that version, I cannot accept what is reported as gospel truth. As far as the internal note of respondent MCD is concerned, the same merely proves the respondent MCD's reaction to the newspaper report, as a good and responsive civic agency should have. There is however nothing therein to show the respondent MCD to have independently satisfied itself of the correctness of newspaper report. The respondent MCD therefrom cannot be estopped from challenging the correctness of newspaper report. Similarly, the prescription of SMH and discharge summary of VIMHANS are also based on the version given by

petitioner/her family to the doctors and at best show injury as mentioned therein having been suffered by the petitioner. However how much of that injury is attributable to negligence and duty to care of respondent MCD, can be proved only in evidence.

18. Section 42 of the MCD Act lists the obligatory functions of the Corporation; removal of stray cattle from the public streets does not find mention therein. No specific mention thereof is found in Section 43 listing the discretionary functions of the Corporation also but the same would be covered by the residuary Clause (za) thereof providing that “subject to any general or special order of the government, from time to time, the Corporation may provide either wholly or in part for all or any of the following matters viz. (za) any measure not hereinbefore specifically mentioned, likely to promote public safety, health, convenience or general welfare.” Section 323, of which mention is made in the petition, prohibits tethering i.e. tying with a rope or chain to restrict movement of any animal in public street and empowers the Corporation to impound and deal therewith under the provisions of Cattle-Trespass Act, 1871. Section 418 empowers a Corporation to impound and remove any horses, cattle or other quadruped animals or birds kept in any premises in contravention of the

provisions of Section 417 or have been abandoned and roaming or tethered on any street or public place by seizing them and removing them to a place as may be appointed by the government.

19. As far as the reliance by the petitioner on the judgments of this Court in *Common Cause* (supra) etc is concerned, the same was directed against the Union of India and Government of NCT of Delhi and found the inaction of the 'State' in preventing the cattle and bovine animals from taking to the roads to be impinging upon the fundamental rights of the citizens under Article 21 of the Constitution of India and invoked Article 48-A requiring the State to protect and improve and safeguard the forests and wildlife. The judgment itself notices that no effective law had been made to prevent the owners of bovine animals including cattle and cow from being let loose and directions were issued not only to the New Delhi Municipal Council (NDMC) or the MCD but also to the Government of NCT of Delhi.

20. The matter cannot be viewed divorced from reality. Traditionally, Indians have always kept cattle, specially cows in their houses. The same was considered sacred and religious. The city of Delhi developed as a capital of the country and in planning thereof several pockets of villages

interspersed the planned areas. The said villagers for long remained from being urbanized and the municipal laws did not extend to them. Thus cattle continued to be kept in houses in these villages in the midst of or abutting modern developed colonies of the city. The cattle, just like humans cannot be kept confined to four walls and for their wellbeing required movement and was thus required to be let loose and when let loose did not confine itself to the boundaries of the village but naturally strayed into the nearby modern colonies. It is only much later that decision for developing a dairy colony at Ghogha at the outskirts of Delhi was taken and the colony developed but which has taken several years and has met with severe resistance from the citizens who still desire to keep a cow in their house if possible. Instances of cows continued to be reared in Lutyens Bungalows are also not uncommon.

21. The petitioner is a resident of one of such posh colonies of NFC. The said colony also has in its neighbourhood such villages of Khizabad and Bharat Nagar etc. and where at least till the time of the incident, with which this petition is concerned, cows and bulls continued to be reared. Had the residents of the said colony including the petitioner been active and made complaints of stray cattle, and the respondent MCD had not taken any

action, certainly, the respondent MCD would have been at fault; but not only were no complaints made earlier but even after the incident no such complaint has been made. Had the petitioner lodged an FIR, the owner of the bull who is stated to have injured the petitioner would have been traced and action could have been taken against him. The petitioner, it appears did not want to annoy her neighbours whose bull is stated to have injured her. When we are concerned with not an obligatory but a discretionary function of the Corporation pitted against the duties performed by the petitioner as a citizen, it cannot be said that the principle of *res ipsa loquitur* can be invoked. The Constitution of India to which rights of the citizens were traced in *Common Cause* supra besides vesting such rights, in Article 51A also imposes certain duties in citizens and one of which duties is to protect and improve the natural environment and to have compassion for living creatures. The petitioner appears to have been guided more by compassion for the living creatures and in my opinion cannot be granted the relief claimed in writ jurisdiction.

22. There is another aspect of the matter.

23. Though undoubtedly this Court has in writ jurisdiction granted relief of damages for negligence against state agencies but the trend thereof started where the injured was belonged to a status of society which for economic or other reasons had no access to justice and relegating whom to the remedy of a suit would have resulted in denial of access of justice. Subsequently, reliefs were granted also in some cases where the injured was again found to be belonging to a strata of society the injury where to would have turned grave if immediate relief was not granted. The petitioner herein does not belong to such strata of society. She is a resident of a premier colony of Delhi and belongs to the educated class and who appears to be financially well off. She cannot claim to be one who would have been denied access to justice if had filed the suit. However, the petitioner here is found to be wanting to receive compensation by avoiding to appear in the witness box and answer some unpleasant questions including as to the nature of injuries suffered by her and about her epilepsy. The petitioner inspite of being given an opportunity to avail the remedy of suit has refused the same. Such a petitioner in my humble view cannot be held entitled to the relief. Merely by citing judgments *de hors* the facts, relief cannot be granted.

24. The petitioner is thus not found entitled to the relief.

25. The petition is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

MARCH 18, 2016

'gsr'..

