

W.P(MD)No.9068 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.08.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.9068 of 2015

Athipathi

... Petitioner

Vs.

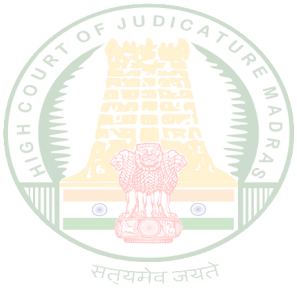
1.The Principal Secretary,
Health and Family Welfare Department,
State of Tamil Nadu, Secretariat,
Fort St.George, Chennai.

2.The Commissioner,
Commissioner of Refugees Rehabilitation,
Chepakkam, Chennai.

3.The District Collector,
Office of the District Collector,
Madurai District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the respondents to pay Rs.10,00,000/- compensation to petitioner's family members for the death of her daughter by name Saranya aged 11 years, she died due to demolition of Thiruvadavur refugees camp house on 12.05.2014, within the time stipulated by this Court.



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For Petitioner : Mr.AV.Saha for Mr.R.Alagumani
For Respondents : Mr.N.GA.Nataraj
Government Advocate

ORDER

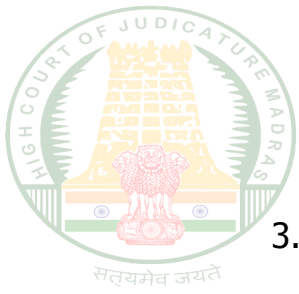
அகதி முகாம்

மழையில் வருகிறது

மண் மணம்!

Dinamani-editor Thiru.K.Vaidyanathan quoted the above lines of Arivumathi in his weekly column dated 09.10.2016 (Indha varam, Volume-5 by Kalarasigan). I am no Arundhathi Subramaniam to provide a lyrical translation. The poem captures the emotions of a refugee confined in a camp.

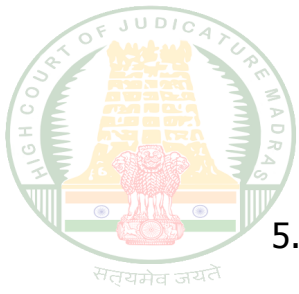
2.The petitioner is a Srilankan refugee. He has been housed in a camp along with his family members at Thiruvathavur in Melur Taluk, Madurai District. On 12.05.2014, there was a downpour. The side-wall collapsed. Saranya/the petitioner's daughter got caught under the debris. She was rushed to the Government Hospital, Melur. She died enroute.



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3.The question is whether the Government is liable to pay compensation. The stand of the respondents was that the asbestos-roofing put up by the petitioner had fallen on Saranya and that led to her death. The learned counsel appearing for the petitioner disputed the said assertion. On my instructions, the learned Government Advocate furnished a copy of the First Information Report in Crime No.311 of 2014 registered on the file of Melur Police Station in the wake of the death of the child. The information lodged by the jurisdictional Village Administrative Officer clearly states that the child died due to injuries caused by the collapse of the side-wall.

4.It is not in dispute that the wall in question was put up only by the Government. The District Collector, Madurai submitted proposal way back in March 2012 seeking allotment of funds for enhancing the infrastructural facilities in the refugee camp. Unfortunately, the funds came to be allotted only in the year 2015-16. During the intervening period, the tragedy had occurred. It appears that the construction was put up in the year 1995. The officials obviously had doubts regarding the structural stability of the wall and that is why, proposal was mooted for reconstruction. Having housed the petitioner's family along with others in the camp, the government was obliged to assume responsibility for their safety and well-being.



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5.The core issue is whether a refugee like the petitioner has any fundamental right. In **Harina v. Regional Passport Officer, Trichirappalli** (WP(MD)No.27893 of 2022 dated 30.01.2023) and **Neyatitus v. the Regional Passport Officer, Madurai** (WP(MD)No.2421 of 2023 dated 05.04.2023), I had catalogued quite a few rights of the Srilankan refugees. Article 21 of the Constitution of India is applicable to all persons, citizens and non-citizens alike. The Hon'ble Apex Court had held that the "Right to life" enshrined in Article 21 of the Constitution of India indicates something more than mere animal existence. Even non-citizens who had come here merely as tourists or in any other capacity will be entitled to protection of their lives in accordance with the Constitutional provisions. They also have a right to "Life" in this country. They have the right to Live so long as they are here with human dignity. The State is under an obligation to protect the lives of both citizens and non-citizens [(**2000**) **2 SCC 465 (Chairman, Railway Board v. Chandrima Das)**]. Earlier, a similar declaration was made in the case of Chakma refugees (vide **AIR 1996 SC 1234 (NHRC v. State of Arunachal Pradesh)**).

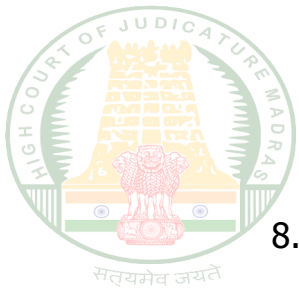
6.Sri Lankan refugees are living in camps at various places in Tamil Nadu for quite a few decades. They have been issued with identity cards. They have been allowed to pursue their avocations and earn their living. The



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doles handed out by the government can hardly be sufficient to keep one's body and soul together. However, there are serious restrictions in place. Even as the hearing was going on, one counsel stood up and informed that a person who came to paint his house told him that he had to leave by 05.30 P.M as he must report to the camp before the closing hours. Such restrictions will have an adverse bearing on their right to work. The Hon'ble Apex Court in ***Olga Tellis v. Bombay Municipal Corporation (AIR 1986 SC 180)*** held that the right to live and the right to work are integrated and independent and therefore, if a person is deprived of his right to work, his very right to life is put in jeopardy. Time has come to recognise the refugees' right to work without restrictions.

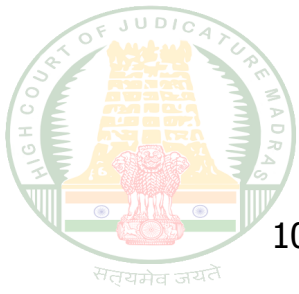
7.A refugee has to be housed in reasonably decent accommodation. The basic infrastructural facilities must be available. He or she must also have access to the fundamental amenities such as sanitation, health care, clean drinking water etc., When the right to shelter and housing has been recognised internationally as a human right, it cannot be denied to the refugees living in a camp. A camp houses a few hundred families. There are women and young girls. Their privacy has to be ensured. Otherwise, there is no meaning in declaring privacy as a fundamental right.



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8.The legal maxim "res ipsa loquitur" clearly applies to the case on hand. The victim had not in any way contributed to the occurrence. The wall collapse affected a few other families also. Fortunately, others escaped with injuries. The petitioner's child was not lucky. The respondents cannot escape from their liability by attributing the occurrence to "act of god". It is true that only on account of the heavy rains and wind, the untoward incident took place. But then, the construction must have been such as to withstand such eventualities. It is not the case of the respondents that what happened was an extraordinary or unforeseeable event. It was a normal heavy rainfall. Only because the wall was poorly constructed, it collapsed. The State has to assume absolute liability.

9.Next comes the question of compensation. The deceased was aged 11 years. She was studying in 6th Std. The loss of child is irreplaceable and no amount of money can compensate the parents. The Hon'ble Supreme Court in **Latha Wadhwa (2001) 8 SCC 197** had laid down the parameters for determining the quantum of compensation in cases involving deaths of children aged 10 to 15 years. Applying the ratio laid down in the aforesaid case, I hold that the State government is liable to pay a sum of Rs.5.00 lakhs as compensation.



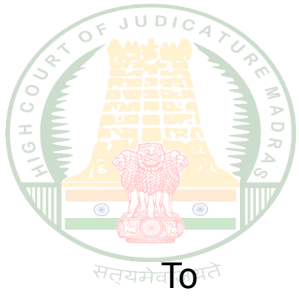
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10.I consciously refrain from directing the payment to be made to the petitioner. It is quite possible that he is a teetotaler. I would rather err on the side of caution. I am afraid that the compensation money will find its way back to the State government's coffers via TASMAL. I therefore direct the government to create a fixed deposit in favour of the wife of the petitioner for a period of three years. The petitioner's wife shall be entitled to draw interest every two months. At the end of the three year period, the fixed deposit can be withdrawn by her. The first respondent is given twelve weeks from the date of receipt of copy of this order to comply with this direction. In default, the State will have to pay interest at the rate of 6% p.a from the date of filing of this writ petition.

11.This writ petition is allowed on these terms. There shall be no order as to costs.

21.08.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
skm



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State of Tamil Nadu, Secretariat, Fort St. George,
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2. The Commissioner, Commissioner of Refugees Rehabilitation,
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G.R.SWAMINATHAN, J.

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