

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

Date of decision: 02nd SEPTEMBER, 2022

IN THE MATTER OF:

+ **LPA 48/2021 and C.M. No. 4157/2021**

LEELA MATHUR

..... Appellant

Through: Mr. Akhil Sibal, Senior Advocate
(Amicus Curiae) with Appellant in
person.

versus

MUNICIPAL CORPORATION OF DELHI & ANR..... Respondents

Through: Mr. Tushar Sannu, Standing Counsel
with Ms. Pooja Gupta, Advocate for
Respondent/MCD.

Mr. Ajay Arora & Mr. Anuj
Bhargava, Advocates for Delhi Jal
Board.

+ **LPA 161/2021 and C.M. Nos.15709/2021 & 26516/2021**

MUNICIPAL CORPORATION OF DELHI (ERSTWHILE) (EAST
DELHI MUNICIPAL CORPORATION/ EDMC) (ERSTWHILE
MUNICIPAL CORPORATION OF DELHI/ MCD) & ANR.

..... Appellants

Through: Mr. Tushar Sannu, Standing Counsel
with Ms. Pooja Gupta, Advocate for
Appellants/MCD.

versus

LEELA MATHUR

..... Respondent

Through: Mr. Akhil Sibal, Senior Advocate
(Amicus Curiae) with Respondent in
person.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

J U D G M E N T

SUBRAMONIUM PRASAD, J

1. This Court has before it two cross Letters Patents Appeals emanating from the Impugned Judgment dated 12.02.2020 (“Impugned Judgment”), passed by the Ld. Single Judge of this Court in W.P.(C) 8098/2010. The first of these appeals i.e. LPA No. 48/2021 has been filed by Smt. Leela Mathur seeking, *inter alia*, an enhancement of the cost of Rs.3 lakhs imposed upon the Municipal Corporation of Delhi (“MCD”) *vide* the Impugned Judgment. The other appeal i.e. LPA No. 161/2021, has been preferred by the MCD seeking setting aside of the compensation/costs of Rs. 3 lakhs imposed upon it.

2. The facts of the appeals before us are that Smt. Leela Mathur presently resides at House No.98, West Azad Nagar, Shahdara, South Delhi, Delhi. This property was purchased by her parents in 1952 and in 1976, Smt. Leela Mathur’s father applied for completion certificate *vide* Receipt No. 222034 by depositing a certain fee. Smt. Leela Mathur contends that she has been residing in the said property since 1970.

3. In W.P.(C) 8098/2010, it was the case of the Appellant i.e. Smt. Leela Mathur that when the property was constructed, it was placed at the road level. However, subsequently, the Municipal Corporation has re-laid the adjoining road. Each time the road was repaired/re-constructed, the level of the road rose by about 2 ½ feet. Due to this, the Petitioner/Appellant’s house has gone below the road level.

4. The Appellant states that she had requested the authorities at various instances to dig the road, and then construct it to ensure that her house is not placed below the road level, however, to no avail. The effect of this is that

since the house is below the road level, the rain water gets collected in the house which has caused damage to the house of the Petitioner. It is stated that during the monsoons it is impossible to live in the house as rain water enters the house. This constrained Smt. Leela Mathur to file W.P.(C) 8098/2010 against MCD, seeking a direction to the MCD to reconstruct the road, and compensation for the harm caused to her belongings. The Ld. Single Judge *vide* Order dated 03.12.2010 was pleased to issue notice and direct the filing of a status report.

5. On 23.03.2011, the MCD filed its first Status Report in WP(C) 8098/2010 stating that since the property of Smt. Leela Mathur is an old construction, it was below the level of the road. Further, it was submitted by the MCD that Smt. Leela Mathur's property was the only one below road level. In her reply to the first Status Report, Smt. Leela Mathur stated that she had personally visited the houses of her neighbours, and that several of them were facing the same issue. Due to this, several individuals of her locality had also been compelled to sell their houses to builders who possessed the financial wherewithal to reconstruct houses.

6. In light of the competing facts brought on record, the Ld. Single Judge *vide* Order dated 06.05.2011 directed certain officials of the MCD to inspect the premises again. Further, he sought solutions from the officials of the MCD.

7. Thereafter, the MCD filed its second Status Report, whereby it confirmed that there were in fact 11 properties in the area which faced the same issue as Smt. Leela Mathur. The MCD suggested that the Smt. Leela Mathur should apply for a fresh building plan, and re-construct her house in

accordance with it. A reply was filed by Smt. Leela Mathur on 12.04.2012 wherein she reiterated her previous position.

8. On 24.05.2012, the Ld. Single Judge of this Court again directed an inspection of Smt. Leela Mathur's premises. The Ld. Single Judge stated that an arrangement needs to be made for proper drainage facility to ensure that neither the premises of Smt. Leela Mathur's nor the adjoining road is flooded.

9. In light of the above direction, a third Status Report dated 04.07.2012 was filed by the MCD, with the suggestions and observations which read as under:

“During inspection on 15.5.2012 it has been noticed that the level of the said premises is about 2' -6" down from the road level. It is also noticed that no sewerage connection has been obtained by the owner of premises and resulting in accumulation of sewerage water /waste water /rainy water.

3. After technical inspection of the site and total assessment of the situation it was decided as under:

i) The owner of the premises has to apply for a sewerage connection to DJB for proper disposal of sewerage as well as overflow of waste /rainy water.

ii) To avoid over flow of rainy water from road during rain in the premises it was suggested by technical staff to construct a toe wall about 8 inches height in the opening of the gate. It was also suggested that if owner of the premises does not construct the toe wall the department can construct the said toe wall after having due consent from the owner of the premises.”

10. On 07.02.2013, the Ld. Single Judge of this Court again directed an inspection of the area outside Smt. Leela Mathur's house. The MCD was also directed to file a status report, and suggest means of avoiding water logging. Pursuant thereto, another status report dated 19.07.2013 was filed by the MCD reiterating its position in the third status report dated 04.07.2012.

11. Thereafter, on 10.07.2013, the Ld. Single Judge passed an order directing the MCD to explore the possibility of making a drain to avoid water logging. However, MCD stated that it was not feasible in the following terms:

“8. It is submitted that the matter was listed on 10.03.2017 and Hon'ble Court was pleased to direct the Respondent to explore the feasibility of making a drain from an appropriate place inside the front boundary of the Petitioner's connecting the open courtyard to the covered drain outside which should not be more than three to four feet away. It is humbly submitted in compliance of the above directions that the above is technically not possible unless and until the petitioner raises his floor level upto the level of the drain which is about 2 feet's from the existing level of the house. Lowering of the road level would further be not practical in view of the fact that there are about 101 number of houses in the vicinity of this house and lowering of the road level would only compound the miseries of other occupants.”

12. Around 2015, Smt. Leela Mathur had found a letter addressed by her father to the Zonal Engineer of MCD, Shahdara Zone, Delhi *vide* which her father intimated the said Zonal Engineer that he had submitted the original

Building Plan of property, along with payment of Rs.3/- vide Receipt No. 222034 dated 15.03.1976 and had sought completion certificate of same, which was still not issued. After promptly providing this file to the Deputy Commissioner, Municipal Corporation of Delhi, she sought a copy of the Sanction Plan submitted by her father, along with the original file. Thereafter, *vide* letter dated 07.12.2015, the Executive Engineer, Shahdara Zone, Delhi supplied a copy of the relevant office file indicating that Smt. Leela Mathur's father had in fact deposited money for sanction of building plan.

13. Thereafter, *vide* Order dated 09.01.2015, the Single Judge of this Court ordered that the cost of re-construction of Smt. Leela Mathur's house be placed before the Court. Upon consulting an architectural firm namely, *Aarkitek Combine*, Smt. Leela Mathur stated that the total cost of re-construction is Rs. 12.20 Lakhs.

14. On 01.04.2015, Smt. Leela Mathur filed a RTI application asking if the MCD can lay new roads on top of old roads, thereby increasing the surface of the road. The East Delhi Municipal Corporation responded to this RTI on 21.04.2015 stating that the MCD is supposed to maintain the level of roads as per the height of the previous road. Thereafter, between 2015 and 2020, the Petitioner therein and MCD filed other affidavits and status reports. However, no new submissions were made during this period.

15. The Ld. Single Judge by passing the Impugned Judgment dated 12.02.2020 imposed a costs of Rs.3. Lakhs as compensation, and directed the MCD to hand over a pump to Smt. Leela Mathur to avoid water logging.

16. Thereafter, Smt. Leela Mathur sought a revised cost of construction, which has been calculated as amounting to about Rs. 21 Lakhs.

17. This matter was listed before this Bench on 28.07.2022 when Smt. Leela Mathur appeared in - person to represent her case. Having regard to the advanced age and frail health of the Appellant, this Court deemed it appropriate to appoint Mr. Akhil Sibal, Sr. Advocate as *Amicus Curiae*, in order to assist Smt. Leela Mathur.

18. Mr. Akhil Sibal, learned Senior Counsel appearing for the Appellant/Smt. Leela Mathur, submitted that he had personally visited the property. He substantiated the claim of Smt. Leela Mathur that water logging had destroyed the woodwork of her house, has ruined other material possessions, and has rendered her house inhabitable. Mr. Sibal has relied upon the various Status Reports, as cited above to argue that the MCD has *prima facie* been negligent. It has also been pointed out that the Ld. Single Judge has noticed the uncontested estimate of reconstruction of Rs. 12 Lakhs, however, without recording any reason has granted a compensation of only 3 Lakhs to Smt. Leela Mathur.

19. *Per contra*, the Ld. Standing Counsel for MCD has argued that the issue of water-logging was caused as the property in question was not regularised and illegal. It was also averred that the MCD had time and again sought to provide solutions but Smt. Leela Mathur has been adamant on receiving compensation. The Ld. Standing Counsel for MCD has also repeatedly suggested that a toe wall could be constructed which would make it easy to leave the premises, in case water logging occurs.

20. In his rejoinder, Mr. Akhil Sibal, learned Senior Counsel appearing for the Appellant/Smt. Leela Mathur, has brought to the attention of this Court the fact that the MCD has in fact lost the original documents pertaining to the property in question, and that predecessor benches of the

Ld. Single Judge had raised serious concern regarding this. It is further argued that the suggestion of installing a toe wall is entirely unfounded considering the Appellant is in her 80s, and cannot possibly be expected to use a toe-wall. He has further argued that the issue of water-logging is exacerbated as garbage gets accumulated in the drain during monsoons adding to the woes of the Appellant.

21. Heard the learned counsels for the parties and perused the material on record.

22. The issue is under consideration before this Court since 2011. Several Status Reports have been filed. Despite the fact that the roads have been constructed one over the other because of which the house of the Petitioner has gone about 2 ½ feet below the road level, the Municipal Corporation has been adamant in not bringing down the road level on the ground that if it is done then it will create problem to other house owners. It is admitted fact that other house owners in the area have sold their properties to various other persons who have made fresh constructions which is on the road level. The Petitioner, who is 80 years old, has not been able to re-construct her house.

23. A Status Report had been filed on 24.05.2011 where it has been stated that out of 101 properties in the area, 82 properties are at the road level, meaning thereby that the residents have actually demolished and reconstructed the properties by bringing it to the road level and 11 properties, which are not demolished and re-constructed, are below the road level. The said Status Report categorically admits that since 1997, roads were repaired many times and because of which the roads have come up. Relevant portion of the said Status Report reads as under:

"2. That the deponent had inspected total 101 properties, 55 properties in gali No. 3, 21 properties in gali No. 5 and 25 properties in gali No. 6, including property number mentioned in para no. 4 and 5 of the reply of the status report filed by petitioner. It is submitted that there are 82 properties out of 101 properties which are above the road level and 11 properties were found below the road level. It is further submitted that these 11 properties are very old and since 1987 the roads were repaired many times and that was the reason the level of the road became slightly raised. It is also submitted that the properties mention in the list of petitioner in para 4 -5, there are two properties are at same level of the road, two properties are not traceable and four properties are partly above and partly below the road level"

24. In its second Status Report, the MCD admitted that 11 houses were facing the same issue. However, in an unsuccessful attempt to divert the blame on the Petitioner and the Delhi Jal Board, the MCD argued that the problem has been caused as Azad Nagar was an illegal/unregularized society. After admitting that it had time and again reconstructed the road in an indiscriminate manner, the MCD callously suggested that the Appellant should re-construct her house in terms of a fresh sanction plan.

25. *Vide* its third Status Report dated 04.07.2012, the MCD further admitted that Smt. Leela Mathur's house was 2-6 inches below the road level and proceeded to suggest that she gets a sewerage connection. Pertinently, in a response to a RTI preferred by Smt. Leela Mathur, the East Delhi Municipal Corporation admitted that the MCD is supposed to maintain the level of roads as per the height of the previous road. In the

subsequent Status Reports filed by the MCD, the same submissions have been reiterated.

26. In Status Report dated 10.07.2013, the Municipal Corporation has stated that the level of the premises is about 2.5 ft. down and that the entire problem is arising only because of the lack of sewage connection. The said Status Report also categorically states that due to dumping of garbage the drains gets choked resulting in collections of drain water. Relevant portion of the said Status Report reads as under:

"4. That in compliance of the directions/ order dated 06.05.11 passed by Hon'ble High Court, deponent has inspected 101 properties, 55 properties in Gali No. 3, 21 properties in Gali No. 5 and 25 properties in Gali No. 6. It is submitted that there are 82 properties out of 101 properties which are above road level and 11 properties were found below road level. It is further submitted that these 11 properties are very old and since 1987 the roads were repaired many times and that was the reason, the level of road become slightly raised. That as per the technical survey carried on by the Department it has been revealed that both, the level of the drains and the roads are higher than the floor level of the petitioner. In view of the fact that the drain level is higher by about 2.5 ft. it would not matter what the level of the road is because the drain would flow back to the house irrespective of the road level. Especially so when the petitioner herself has failed to take a sewer connection till date."

27. At the outset, this Court finds no force in the MCD's argument that the issue at hand was caused as Azad Nagar is an unauthorised colony. A sizeable population of Delhi lives in areas designated by the Government as "unauthorised colonies", which did not feature in the original development

plan/area of Delhi or were areas which were not zoned for residential use. Thereafter, the Government of NCT Delhi initiated the regularisation process which first took place in the 1970s, then the early 1980s. Admittedly, the colony of the Appellant was regularised *vide* Resolution No. 1634, Item No. 35 dated 15.11.1987. It also appears from the record that the plot of Smt. Leela Mathur has been built as per the sanction plan, which is borne out from the MCD's receipt for deposit of money.

28. The MCD has sought to argue that since this colony was unplanned and was subsequently regularised, they have been repairing the roads on a "as is where is basis". A Municipal Corporation constituted for the precise purpose of providing basic amenities to the citizens cannot shirk off responsibility on the ground that the society was once unauthorised. It is evident that since then, the Government of NCT Delhi has regularised these societies with an aim to include them within the development plans of the city.

29. The suggestion given by the learned Counsel for the MCD to make a toe wall of about 8 inches cannot be accepted as a solution to the problem faced by Smt. Leela Mathur. Smt. Leela Mathur is about 80 years of age and she cannot be expected to climb over a toe wall of 8-10 inches every time she intends to enter her house. Further, the learned Counsel for the MCD has submitted that since they have already installed a pump the problem does not exist anymore. This also cannot be accepted because during heavy rains, the house gets water logged thereby causing damage to the house of Smt. Leela Mathur.

30. Furthermore, the issue at hand is not remotely related to the status of the property. The locality of Azad Nagar faces the issue of waterlogging

because the MCD has indiscriminately repaired the roads, without following basic care and caution. It also appears that the actions of the MCD have compelled individuals, who did not have the financial wherewithal to raise the level of their house, to sell their houses to builders. Considering this, this Court finds no force in the argument of the Ld. Counsel for the MCD that the issue of water-logging has occurred due to the status of the colony. If anything, the MCD needs to ensure that other societies which were “unauthorised” and have subsequently been regularised are provided with the requisite sanitation facilities, functional drainage system, roads, and other similar infrastructural amenities.

31. Further, the MCD has time and again suggested that Smt. Leela should apply for a fresh sanction plan, and re-build her house. This Court has taken strong objection to the nature of this submission considering that the MCD is a public body duly enacted for the benefit of the public at large. The MCD being such a body, cannot reasonably expect individuals to re-apply for sanction plans, and further build their houses from scratch. It should not be the prerogative of a few, with the requisite financial wherewithal, to enjoy amenities as basic as sanitation, functional drainage systems, and mindfully constructed roads.

32. During the course of the proceedings, this Court also had the occasion of inquiring from the Counsel for the Delhi Jal Board, if the issue could be resolved by the installation of a sewerage connection. The Ld. Counsel for the Delhi Jal Board submitted that obtaining a sewerage connection alone will not remedy the issue of water-logging. The Delhi Jal Board has rebutted the submission of the MCD that the sewerage lines are below the house of the Appellant. Further, it was brought to the attention of this Court that

although there exists a drain near the relevant house, the same gets clogged during monsoons. Ensuring that the public drainage system is fully functional, and avoiding the blockage of sediments causing chocking of drain is the prerogative of the MCD. It is unfortunate that not only has the MCD created the issue of water-logging but also exacerbated the situation by not taking appropriate measures to avoid chocking of drains during monsoon.

33. It is well settled that it is the duty of the Municipal Corporation to ensure that there is no water logging and proper storm water drains are constructed. The MCD cannot pass the buck to the residents to contend that since the storm water drains are clogged nothing can be done by the MCD. The MCD has, therefore, woefully failed in discharging its duties inasmuch as it has admittedly laid down roads one over the other thereby increasing the height of the roads which ought not to have been done. The MCD has also not ensured that there are proper storm water drains in the area so that the rain water can be drained away.

34. This Apex Court in Municipal Council, Ratlam vs. Vardhichand and Ors., AIR 1980 SC 1622, noted that decency and dignity being facets of human rights need to underscore in every action undertaken by the Municipal Council. The Apex Court further proceeded to observe as under:

“15. Public nuisance, because of pollutants being discharged by big factories to the detriment of the poorer sections, is a challenge to the social justice component of the rule of law. Likewise, the grievous failure of local authorities to provide the basic amenity of public conveniences drives the miserable slum-dwellers to ease in the streets, on the sly for a time, and openly thereafter, because under Nature's pressure

bashfulness becomes a luxury and dignity a difficult art. A responsible municipal council constituted for the precise purpose of preserving public health and providing better finances cannot run away from its principal duty by pleading financial inability. Decency and dignity are non-negotiable facets of human rights and are a first charge on local self-governing bodies. Similarly, providing drainage systems — not pompous and attractive, but in working condition and sufficient to meet the needs of the people — cannot be evaded if the municipality is to justify its existence. A bare study of the statutory provisions make this position clear.

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24. We are sure that the State Government will make available by way of loans or grants sufficient financial aid to the Ratlam Municipality to enable it to fulfil its obligations under this Order. The State will realise that Article 47 makes it a paramount principle of governance that steps are taken for the improvement of public health as amongst its primary duties”. The Municipality also will slim its budget on low priority items and elitist projects to use the savings on sanitation and public health. It is not our intention that the ward which has woken up to its rights alone need be afforded these elementary facilities. We expect all the wards to be benefited without litigation. The pressure of the judicial process, expensive and dilatory, is neither necessary nor desirable if responsible bodies are responsive to duties. Cappilletti holds good for India when he observes: [Access to Justice—A World Survey, Vol. 1, ed. by M. Cappilletti and B. Garth, pp. 123-24]

35. The question of award of compensation under the constitutional jurisdiction of this Court under Article 226 of the Constitution has been considered in a large number of cases. Although the position in law is fairly

well-settled, a brief reference will be made to some of the decisions of the Hon'ble Supreme Court and this Court. This Court while exercising its jurisdiction under Article 226 of the Constitution of India has granted compensation in a number of cases [refer: Raj Kumar v. Union of India (2005), 125 DLT 653; Delhi Jal Board v. Raj Kumar, (2005) 8 AD (Delhi) 533; Chitra Chary v. DDA, (2005) 1 AD (Del) 29; Shri Chand v. Chief Secretary, 2004 (112) DLT 37; Shobha v. GNCTD, (2003) IV AD (Delhi) 492; Shyama Devi v. GNCTD, (1999) 1 AD (Cr) Delhi 549; All India Lawyers' Union (Delhi Unit) v. Union of India and B.L. Wali v. Union of India, (2004) VIII AD (Delhi) 341]

36. In D.K. Basu v. State of W.B., (1997) 1 SCC 416, the Apex Court, while granting compensation in a Writ Petition, has observed as under:

“43. Till about two decades ago the liability of the Government for tortious acts of its public servants was generally limited and the person affected could enforce his right in tort by filing a civil suit and there again the defence of sovereign immunity was allowed to have its play. For the violation of the fundamental right to life or the basic human rights, however, this Court has taken the view that the defence of sovereign immunity is not available to the State for the tortious acts of the public servants and for the established violation of the rights guaranteed by Article 21 of the Constitution of India.....

44. The claim in public law for compensation for unconstitutional deprivation of fundamental right to life and liberty, the protection of which is guaranteed under the Constitution, is a claim based on strict liability and is in addition to the claim available in private law for damages for tortious acts of the public servants. Public law proceedings serve a different

purpose than the private law proceedings. Award of compensation for established infringement of the indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law since the purpose of public law is not only to civilise public power but also to assure the citizens that they live under a legal system wherein their rights and interests shall be protected and preserved. Grant of compensation in proceedings under Article 32 or Article 226 of the Constitution of India for the established violation of the fundamental rights guaranteed under Article 21, is an exercise of the courts under the public law jurisdiction for penalising the wrongdoer and fixing the liability for the public wrong on the State which failed in the discharge of its public duty to protect the fundamental rights of the citizen.

45. The old doctrine of only relegating the aggrieved to the remedies available in civil law limits the role of the courts too much, as the protector and custodian of the indefeasible rights of the citizens. The courts have the obligation to satisfy the social aspirations of the citizens because the courts and the law are for the people and expected to respond to their aspirations. A court of law cannot close its consciousness and aliveness to stark realities. Mere punishment of the offender cannot give much solace to the family of the victim — civil action for damages is a long drawn and a cumbersome judicial process. Monetary compensation for redressal by the court finding the infringement of the indefeasible right to life of the citizen is, therefore, useful and at time perhaps the only effective remedy to apply balm to the wounds of the family members of the deceased victim, who may have been the breadwinner of the family.”

(emphasis supplied)

37. While dealing with the issue as to whether a Municipal Corporation can be held liable to pay compensation in a Writ Petition, the Apex Court in Municipal Corpn. of Delhi vs. Subhagwanti, (1966) 3 SCR 649, has observed the following with regards to the principle of negligence:

“4. The main question presented for determination in these appeals is whether the appellant was negligent in looking after and maintaining the Clock Tower and was liable to pay damages for the death of the persons resulting from its fall. It was contended, in the first place, by Mr Bishen Narain on behalf of the appellant that the High Court was wrong in applying the doctrine of res ipsa loquitur to this case. It was argued that the fall of the Clock Tower was due to an inevitable accident which could not have been prevented by the exercise of reasonable care or caution. It was also submitted that there was nothing in the appearance of the Clock Tower which should have put the appellant on notice with regard to the probability of danger. We are unable to accept the argument of the appellant as correct. It is true that the normal rule is that it is for the plaintiff to prove negligence and not for the defendant to disprove it. But there is an exception to this rule which applies where the circumstances surrounding the thing which causes the damage are at the material time exclusively under the control or management of the defendant or his servant and the happening is such as does not occur in the ordinary course of things without negligence on the defendant's part.”

(emphasis supplied)

38. The Apex Court in Sube Singh vs. State of Haryana, 2006 (3) SCC 178, has reiterated the power of this Court to provide compensation as an appropriate remedy, in the following manner:

“It is now well-settled that award of compensation against the State is an appropriate and effective remedy for redressal of an established infringement of a fundamental right under Article 21, by a public servant. The quantum of compensation will, however, depend upon the facts and circumstances of each case. Award of such compensation (by way of public law remedy) will not come in the way of the aggrieved person claiming additional compensation in a civil court, in the enforcement of the private law remedy in tort, nor come in the way of the criminal court ordering compensation under Section 357 of Cr. PC. Award of compensation as a public law remedy for violation of the fundamental rights enshrined in Article 21 of the Constitution, in addition to the private law remedy under the law of torts, was evolved in the last two-and-a-half decades.”

39. In the celebrated judgment of Nilabati Behera vs. State of Orissa, (1993) 2 SCC 746, the Apex Court has observed as under:

22. The above discussion indicates the principle on which the court's power under Articles 32 and 226 of the Constitution is exercised to award monetary compensation for contravention of a fundamental right. This was indicated in Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] and certain further observations therein adverted to earlier, which may tend to minimise the effect of the principle indicated therein, do not really detract from that principle. This is how the decisions of this Court in Rudul Sah [(1983) 4 SCC 141 : 1983 SCC (Cri) 798 : (1983) 3 SCR 508] and others in that line have to be understood and Kasturilal [(1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 Cri LJ 144] distinguished therefrom. We have considered this question at some length in view of the doubt raised, at times, about the propriety of awarding compensation in such

proceedings, instead of directing the claimant to resort to the ordinary process of recovery of damages by recourse to an action in tort. In the present case, on the finding reached, it is a clear case for award of compensation to the petitioner for the custodial death of her son.

40. Furthermore, the Apex Court in Municipal Corpn. of Delhi vs. Sushila Devi, (1999) 4 SCC 317 has held as under:

“2. The deceased was survived by a widow, three minor sons and a minor daughter and his mother. All the six brought a suit for damages claiming Rs 3 lakhs. A learned Single Judge sitting on the original side of the High Court held the Municipal Corporation of Delhi liable for damages in torts and granted a decree of Rs 90,000 by way of compensation payable to the widow and the children of the deceased. Two letters patent appeals were preferred. The Municipal Corporation sought for the suit being dismissed while the claimants sought for enhancement in the amount of compensation. The Division Bench dismissed the appeal filed by the Corporation but at the same time partly allowed the appeal preferred by the claimants enhancing the amount of compensation to Rs 1,44,000 payable with interest calculated at the rate of 6 per cent per annum from the date of suit, i.e., 5-8-1966 till 17-9-1970 when the amount was deposited by the Corporation in the court for payment to the successful claimants. The Division Bench also allowed interest at the rate of 3 per cent per annum on Rs 90,000 from the date of deposit in the court till the date of actual withdrawal of the amount by the claimants and interest at the rate of 6 per cent per annum on Rs 54,000 from 17-9-1970 till payment. The reasons for the award of additional interest calculated at the rate of 3 per cent per annum on Rs 90,000 and the legality thereof we shall deal with separately.

9. The law is stated in Winfield and Jolowicz on Torts (13th Edn., 1989, p. 415) in these words:

“If damage is done owing to the collapse of the projection on the highway or by some other mischief traceable to it, the occupier of the premises on which it stood is liable if he knew of the defect or ought, on investigation, to have known of it. At any rate this is the rule with respect to a thing that is naturally on the premises e.g. a tree.”

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15. The deceased was aged 30. He was employed in a family business wherefrom he was drawing a salary of Rs 650 per month. The learned trial Judge deducted an amount of Rs 150 per month for expenses incurred on the self and assessed the dependency at Rs 500 per month. The Division Bench found that apart from salary the deceased was also getting commission on sales. The net income of the deceased was arrived at Rs 1000 per month wherefrom Rs 200 were deducted as expenses on the self. The dependency was assessed at Rs 800 per month. The learned trial Judge as well as the Division Bench have adopted a multiplier of 15. Thus, the Division Bench has assessed the quantum of compensation at Rs 1,44,000 in supersession of Rs 90,000 assessed by the learned trial Judge. Though, the learned counsel for the Municipal Corporation has assailed the assessment to be on the higher side and the learned counsel for the claimants has submitted that keeping in view the better further prospects of the deceased in the family business, coupled with the youth of the deceased, the monthly income should have been taken at Rs 1826 but we are of the opinion that the figure of compensation arrived at by the Division Bench is a very reasonable figure and calls for no interference. The multiplier has also been correctly

adopted. In the leading case of Susamma Thomas [G.M., Kerala SRTC v. Susamma Thomas, (1994) 2 SCC 176 : 1994 SCC (Cri) 335] this Court adopted a multiplier of 12 when the deceased was aged 39. We do not find any fault with the figure of compensation having been arrived at Rs 1,44,000. The same is upheld.”

41. The apathy of the Municipal Corporation is also writ large from the submission that the MCD lacks the funds to remedy the grievance of Smt. Leela Mathur. A responsible Municipal Corporation consisted for the precise purpose of providing these basic public goods cannot shirk off its responsibility by citing financial constraints. Considering that it is evident that the MCD has been grossly negligent in its conduct, it is incumbent upon this Court to craft tools in order to do complete justice for the Appellant. In the considered opinion of this Court, in the facts and circumstances of this particular case, providing monetary compensation to the Appellant i.e. Smt. Leela Mathur is the most viable mode of redress available.

42. Mr. Akhil Sibal, learned *Amicus Curie* appearing for Smt. Leela Mathur, suggests that the only solution at the moment seems to be that the house of Smt. Leela Mathur be demolished and re-constructed and the old lady cannot be burdened with the cost of demolition and re-construction for no fault of hers. The Ld. Single Judge has recognised that the MCD had been grossly negligent and has awarded a sum of Rs. 3 Lakhs as compensation to Smt. Leela Mathur. A fresh evaluation indicates that the Smt. Leela Mathur would have to spend close to a whopping Rs. 21.20 lakhs to carry out the necessary repairs.

43. Having due regard to the advanced age of the Appellant, the fact that she has been pursuing this litigation for over a decade, has suffered loss of her material possessions, and has undergone immense agony and anxiety for a prolonged period of time, this Court finds it appropriate to enhance the compensation awarded to Smt. Leela Mathur by a sum of Rs. 9,00,000/-, which would be roughly half the cost of reconstruction, and the challenge by the MCD to the Order dated 12.02.2020 awarding compensation of Rs.3,00,000/- to Smt. Leela Mathur is rejected. This Court expresses its gratitude to Mr. Akhil Sibbal, learned Senior Counsel, who has assisted this Court in every possible manner. He has taken the pain to visit the site and has placed the facts of the case dispassionately.

44. In light of the aforesaid, the petitions are disposed of, along with pending application(s), if any.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

SEPTEMBER 02, 2022

S. Zakir..