2024:DHC:8773

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

% **Judgment reserved on : 03 September 2024**
Judgment pronounced on: 13 November 2024

\+ W.P.(C) 241/2001 & CM APPL. 23863/2024

SMT. PROMILA RASTOGI & ORS. ..... Petitioner
Through: Mr. D.K. Rustagi, Mr. Karan Malhotra and Mr. Jagesh Singh, Advocates.

versus

DELHI DEVELOPMENT AUTHORITY THROUGH ITS CHAIRMAN ..... Respondent
Through: Mr. Ashish Dhingra, Advocate.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

J U D G M E N T

1. The petitioner is invoking the extra-ordinary jurisdiction of this Court by instituting the present writ petition under Article 226 of the Constitution of India, 1950, seeking the following reliefs:

> "(a) to issue writ of mandamus/direction to institute comprehensive enquiry by appropriate agency preferably by C.B.I, for fixation of responsibility on those officials and contractors involved in the construction of multistoried complex of 816 flats at Jhilmil Colony, Phase - II in the year 1986-88.
> (bi) the respondent to pay sum of Rs. 12,10,000/- to the petitioners as a compensation on account of loss of dependency, reimbursement of medical expenses, repair of balcony, loss of love & affection, mental agony and harassment suffered due to sudden demise of Shri Suresh Rustagi on 20.07.2000, as a result of collapse of balcony, of the flat no. 121-C, IInd Floor, Pocket A-1, Jhilmil, Phase-II, Delhi - 110095.
> (c) the respondent to give appropriate employment to one amongst the petitioners on compensation ground.

(d) Cost of the Writ Petition throughout be awarded to the petitioners.

(e) any other or further relief which this Hon'ble Court deem fit and proper under the facts and circumstance in favour of the petitioners and against the respondent in order to meet the ends of justice."

BRIEF FACTS:

2. Shorn of unnecessary details, the petitioner No. 1 is the mother of petitioners No. 2 and 3, and wife of late Shri Suresh Rastogi, who passed away due to the sudden collapse of their apartment's balcony on 20.07.2000. Petitioners No. 2 and 3, being minor sons, are represented by petitioner No. 1 as their natural guardian.

3. The respondent/Delhi Development Authority[1] constructed 816 flats in Jhilmil Colony, Phase-II, for low and medium-income groups, with construction in the year 1983 and completed in 1987. The flats, each consisting of two living rooms and a bathroom, were priced at Rs. 86,700/- in the year 1985-86.

4. One such flat was allotted by the DDA to the registered applicants, namely Shri G.P. Bajaj son of Shri M.R. Bajaj *vide* allotment letter dated 17.11.1988. The petitioner claims that the applicants were coerced into signing the terms under threat from the DDA. Anyhow, the DDA in due course of time handed over the possession of Flat No. 121-C, located on the second floor, in Pocket A-1, under the Jhilmil Colony, Phase-II scheme, to Shri G.P Bajaj.

5. Upon taking possession, Shri Bajaj and other allottees found the flats to be of substandard quality. In response, they formed the Jhilmil

[1] DDA

DDA Flat Resident Association[2] (registered in 1989) to address these concerns. On. 28.12.1993, the Association passed a resolution to address the construction quality issues, including problems with the boundary wall, and submitted a representation dated 01.02.1994 to the DDA. In response, the DDA, *vide* letter dated 01.06.1994, denied its responsibility for substandard construction without providing a valid reason. The Association then filed Complaint No. 145 of 1994 on 06.06.1994 before the State Consumer Disputes Redressal Commission, highlighting the deteriorating condition of the said flats. The petitioners allege negligence by the DDA for failing to address the deterioration of the building's structure, including plaster peeling within 5-6 years, when it should last 40-50 years.

6. On the fateful day i.e., 20.07.2000, the balcony of the petitioner's second-floor apartment collapsed, causing the petitioner's husband to fall and suffer multiple injuries. Despite receiving the medical aid and timely treatment, the petitioner's husband succumbed to his injuries on 24.07.2000. At the time of his death, he was employed with the Municipal Corporation of Delhi[3] as a 'mate' in the Bridge Division-I, earning ₹6,192/- per month. The petitioner No. 1 asserts that her husband would have worked for another 14 years until retirement, and based on his salary, promotion prospects, and other entitlements, calculates the loss of dependency as his potential income. She further seeks reimbursement for Rs. 1,00,000/- for medical expenses. The petitioner filed CM 11060/2013 on 23.07.2013

[2] Association
[3] MCD

for the amendment in the prayer clause of the present writ petition for enhancement of compensation from Rs. 12,10,000/- to Rs. 35,00,000/- which was allowed *vide* order dated 01.07.2015.

LEGAL SUBMISSIONS ADVANCED AT THE BAR:

7. The learned Counsel appearing for the petitioner has argued that despite a letter dated 24.07.2000 to the Chairman of the DDA, no Official of the DDA visited the site or even met with the petitioner; and no investigation was conducted into the sudden collapse of the balcony.

8. The learned counsel for the petitioner further contended that DDA officials, in collusion with contractors, committed fraud by using substandard construction materials to misappropriate funds. An inspection team reportedly found that the complex's structure was not built according to the prescribed norms, yet the DDA Proceeded with the flat allotments.

9. For the issue regarding the computation of compensation, the petitioners have provided a tabular reference:

S. No.	Reference	Head	Amount
A.	Pg.114	Monthly Dependency inclusive future prospects as per **K.R. Madhusudan & Ors. vs. Administrative Officer & Anr.**[4] (as referred in the amendment application i.e. CM No. 11060/2013)	32,672
B.	Pg. 92	1/4th Deductions towards Personal Expenses as 4 members in family on the date of death i.e. 3 Petitioners and deceased. Reliance	8,168

[4] (2011) 4 SCC 689

		be made to para 16 of Madhusudhan (supra).	
C.		Total Dependency (A-B)	24,504
D.	Para 40, Pg. 68	Age Multiplier-**Sarla Verma & Ors. Vs Delhi Transport Corporation & Anr.**[5]	14 (Multiplier)
E.	Para 16	Total Compensation (Cx12x14) As per Madhusudhan (supra)	41,16,672
F.	Pg. 101 of compilation of judgments	Loss of Estate Para 54 of National Insurance Company Ltd. vs. Pranay Sethi & Ors.	15,000
G.	Pg. 101 of compilation of judgments	Funeral Expenses	15,000
H.	Pg. 101 of compilation of judgments	Consortium @ 40,000/- each for three dependents. Para 54 of above judgment	1,20,000
		Total (E+F+G+H)	**42,66,672**

10. *Per contra*, the learned counsel for DDA, argued that responsibility for poor or no-maintenance lies with the owner/resident of the said property. The flats were constructed in the year 1986-87, and the DDA is not responsible for maintaining them after such a long period of time. The area was de-notified in 1993, and all building activities, including maintenance were transferred to the MCD.

11. The DDA further denied any rejection of the flats by its Quality Control Cell. The collapse was attributed to corrosion of the balcony's reinforcement, likely caused by water seepage through floor cracks. While other balconies remained intact, poor maintenance led to the

[5] (2009) 6 SCC 121

corrosion and weakening of the RCC[6], resulting in the collapse. The flat was handed over on 19.11.1988, and maintenance responsibility rested with the owner. The DDA's liability for defects such as leakage or seepage was limited to one monsoon or six months from possession. The DDA relied on the judgment of **DDA vs Rajbir Singh**[7]**.**

12. *Per contra*, the petitioners in their rejoinder filed on 26.04.2002 controverted the respondents' arguments by stating that the notification dated 02.06.1994 and the captioned provision, 1968 cannot be attributed to the defect in superstructure as such which provides the basis of ancillary construction thereon. The residents/owners of the building in no circumstance can be held responsible for the seepage as they are not a result of non-maintenance but defective workmanship. Moreover, they argued that the respondent/DDA cannot shy away from its statutory obligation to conform to the requirement of providing construction having a minimum life span of 99 years.

13. The petitioners further filed a rejoinder on 23.09.2024 to the report submitted on behalf of the DDA dated 14.09.2024, wherein it was contended that the document is undated, no photographs placed in confirmation of the inspection and no report to show that there were cracks in the floor. The structure of the complex was founded on pillars, as such seepage in any part of the structure cannot affect any other pillar supporting the balcony.

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[6] Reinforced Cement Concrete
[7] 150 (2008) DLT 725,

14. Finally, the petitioners also contend that it is a case of strict liability. The reliance was placed on the doctrine of *res ipsa loquitur* as explained in **Klaus Mittelbachert v. The East India Hotels Ltd. & Ors**.[8]

ANALYSIS AND DECISION:

15. I have bestowed my thoughtful consideration to the submissions advanced by the learned counsels for the rival parties at the Bar. I have also perused the relevant record of the present case.

16. **First things first,** it must be pointed out that insofar as the issue of maintainability of the present writ petition is concerned, that was decided by the learned Predecessor Judge long time back *vide* detailed order dated 23.07.2014, which goes as under:-

> "1. The question regarding the maintainability has been raised by the learned counsel for the respondent. However, keeping in view the catena of judgments starting from *Rudul Sah vs. State of Bihar*; 1983 AIR 1086, *Bhim Singh vs. Union of India &Ors*.; 2010 (5) SCC 538 and *Bandhua Mukti Morcha vs. Union of India &Ors*.-, *1992 AIR 38* right upto *MCD vs. Association of Victims o fUphaar Tragedy; (2011) 14 SCC 481* it is settled by now that the courts in exercise of their writ powers are entitled to grant compensation keeping in view the facts and circumstances of each case and, therefore, it cannot be said that the writ petition is not maintainable. However, before passing any further orders, the respondent shall obtain instructions as to whether they would like to settle the matter with the petitioners.
> 2. List for directions on 24th November, 2014."

17. Thus, this Court having answered the issue of the maintainability of the writ petition, adverting to the merits it is an admitted fact that the flat in question was allotted by the DDA to the deceased on 17.11.1988 and the possession thereof was delivered to

[8] 65 (1997) DLT 428

the petitioners on 19.11.1988. It is also an admitted fact that the deceased/allottee suffered life threatening injuries due to the collapse of the balcony of the subject property on 20.07.2000, and eventually succumbed to the injuries on 24.07.2000. It is pertinent to mention here that admittedly inspection of the site was conducted immediately after the accident by the then Chief Engineer in July, 2000 and it was observed as under:

> "The site was inspected by me immediately after the incident and found that the reinforcement of the balcony had corroded which may have occurred due to seepage of water through the cracks of the floor of the balcony. The balcony of other houses was however found intact. If proper maintenance is not done then with the passage of time and continuous seepage of water, the reinforcement gets corroded, resulting in increase in volume and thus causing spalling of the concrete. In such a situation, the RCC [Reinforced Cement Concrete] losses its strength in tension and as such structure fails, which is the case with this accident. In such a situation, the onus of the maintenance of flat lies with the owner for proper maintenance of the flat and DDA is not responsible for any mishap"

18. Unhesitatingly, the said report is clearly self-serving, one sided and a complete eye-wash. Merely because other balconies of the flats were found intact, does not imply that all was well with the superstructure of the balcony that had collapsed. By all means, the DDA was accountable for the quality, strength, and lifespan of the balcony's superstructure. However, the excuse that seepage or leakage caused the damage remains unsubstantiated, as no expert body has validated this finding."

19. It is pertinent to mention here that during the course of the present proceedings, the respondent *vide* order dated 24.02.2003 by this Court was directed to produce the inspection report carried out by

the respondent on the record. The said directions were reiterated on 02.09.2003 and later on 03.12.2003 by this Court but no inspection report was placed on the record. The non-filing of the inspection report, therefore, invites an adverse inference against the DDA.

20. Adding a new twist to the story, a feeble excuse is sought to be taken in the counter-affidavit of its Chief Engineer, East Zone, DDA dated 14.09.2001, that the area where the flats were constructed had been de-notified in the year 1993 and all building activities stood transferred to MCD. I do not see how any blemish could be attributed to the MCD, when it was the DDA that constructed the flats in question.

21. Another vain attempt has been made by the DDA to wriggle out of its liability by referring to the notification dated 02.06.1994 whereby Regulation 19 of the Delhi Development Authority (Management & Disposal of Housing Estates) Regulations, 1968, which was amended thereby, providing that the allottee/hirer shall be precluded from making complaint or raising objection or setting up claims regarding the property circumstances at any subsequent stage, provided that DDA shall set right at its own cost:

> (i) Such defects of seepage, dampness and leakage on account of rain as are brought to the notice of the DDA, in writing upto the period of passing of One monsoon season or six months, whichever is later, from the date of taking over possession of the property;
> (ii) Such defects of seepage, dampness and leakage from sanitary or water supply fitting, as well as the defective electrical fittings fitted by the DDA, as are brought to the notice of the DDA, in writing, within six months from the date of taking over possession of the property.

22. It is evident, without requiring expert insight, that this issue exceeds simple seepage or dampness. An ordinary person cannot be expected to detect structural defects in their balcony. Notably, the Jhilmil DDA Flats Residents Association had repeatedly alerted the DDA to poor construction quality and substandard materials, but their concerns were consistently ignored.

23. The plea raised by the learned counsel for the DDA that the incident occurred after almost 12 years of handing over of the possession cuts no ice. The present case is one where the principle of *res ipsa loquitur* should be applied, for which we can have reference to the decision in the case of **Klaus Mittelbachert v. The East India Hotels Ltd.**[9], in which a foreign guest suffered grievous head injuries on diving in a swimming pool of a five-star hotel, which had put a diving board suggesting a proper depth of water, which was incorrect. This Court invoked the doctrine of *res ipsa loquitur* holding as under:

> "52. Would the doctrine of *res ipsa loquitur* come into play? The phrase means the thing speaks for itself. Under the doctrine of *res ipsa loquitur* a plaintiff establishes a *prima facie* case of negligence where, (1) it is not possible for him to prove precisely what was the relevant act or omission which set in train the events leading to the accident, and (2) on the evidence as it stands at the relevant time it is more likely than not, that the effective cause of the accident was some act or omission of the defendant or of some one for whom the defendant is responsible, which act or omission constitutes a failure to take proper care for the plaintiff's safety. There must be reasonable evidence of negligence. However, where the thing which causes the accident is shown to be under the management of the defendant or his employees, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendant, that the accident arose from want of care. Three conditions must be

[9]1997 AIR (Del) 201

> satisfied to attract applicability *of res ipsa loquitur:* (i) the accident must be of a kind which does not ordinarily occur in the absence of some one's negligence; (ii) it must be caused by an agency or instrumentality within the exclusive control of the defendant;
> (iii) it must not have been due to any voluntary action or contribution on the part of the plaintiff. (see Ratanlal & Dhirajlal on Law of Torts edited by Justice G.P. Singh, 22nd Edition 1992, pp 499-501 and the Law of Negligence by Dr Chakraborti, 1996 Edition, pp. 191-192)."

24. In another decision in the case of **D Maakbul Basha vs State of Tamil Nadu[10],** the Madras High Court in a case of similar factual scenario held that –

> "8. … Therefore, in my considered view, the collapse of the balcony was due to the negligence on the part of the respondent / Board as they have not taken due care to see that the balcony is not used for any other purposes, except the purpose for which it was provided. When once it is found that balcony collapsed due to the failure on the part of the Board to maintain the same properly and allowed the balcony to be used for other purposes, there is no escape for the respondent / Board except to compensate the petitioner for the loss of life of his son."

25. In another the case of **Smt. Chitra Chary v. Delhi Development Authority**[11], the DDA awarded the work of construction of a peripheral storm water drain. The husband of the petitioner therein died by falling into the trench, which had been dug up in the construction site. This Court held as under:

> "There are various decisions evidencing grant of compensation in writ jurisdiction. I need not catalogue all. In the decision 1998 (III) AD (SC) 123, P.A. Narayanan v. UOI, noting that a passenger travelling by train was criminal by assaulted and holding that there was a common law duty of taking reasonable care attached to all carriers including the railways, Hon'ble Supreme Court granted damages inasmuch as breach of their duty was held to be writ large. This Court, in the decision **79 (1999) DLT 683, Col.**

[10] W.P. No. 2159 of 1999
[11] (2004) 114 DLT 693

> **Dharamveer Khataria v. UOI**, awarded compensation to the husband of the deceased who died in a lift in a building owned by the Government. It was held that claim in public law for compensation for deprivation of constitutionally guaranteed right to life and liberty was enforceable under Article 226 of the Constitution of India. A Division Bench of this Court in the judgment reported as **79 (1999) DLT 432, Smt. Darshan v. UOI** awarded compensation in writ jurisdiction where the deceased died by falling in an uncovered man hole. Principal of *res ipsa Iiquitor* was applied."

26. Thus, holding the DDA liable, *mandamus* was issued to the DDA to pay compensation of Rs. 10,00,000/- to the widow and her two children. Likewise, this Court in the case of **Ram Kishore v. Municipal Corporation of Delhi**[12], in writ proceedings held the agencies liable for the death of young children of petitioners who had fallen into the open manhole. Referring to an earlier decision of a Division Bench of this Court in **Darshan v. Union of India**[13], where a claim by the widow and minor children of one Skattar Singh, a bus driver, who had fallen into an open manhole and died of drowning was in question. A plea was taken in that case by the respondent that the writ petition was not maintainable since it involved disputed questions of fact, which was rejected by reference to both **Nilabati Behera**[14] **and D.K. Basu**[15]. On the facts of the said case, it was held that it was a case of *res ipsa loquitur*, and therefore compensation could be awarded under Article 226. The writ petition was held to be maintainable.

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[12] 2007 (97) DRJ 445
[13] 1999 (79) DLT 432
[14] Nilabati Behera v State of Orissa, AIR 1993 SC 1960
[15] DK Basu v State of West Bengal, 1997 (1) SCC 416

27. In a recent case decided by this Court in the case of **Shagufta Ali v. Government of NCT of Delhi**[16] claim for compensation on account of the unfortunate death of the petitioner's husband due to electrocution after coming in contact with a channel gate in New Lajpat Rai Market was allowed. It was held that:

> "The Constitutional Courts have invoked the powers under Article 226 in various instances, as demonstrated by the judicial precedents discussed above. In *Ram Nath case*, the Supreme Court addressed an incident where the deceased came into contact with a high-tension wire passing over her house. In ***Om Prakash case***, the court dealt with a situation where the deceased died after touching an iron grill gate that was electrified. Similarly, in ***Rajeev Singhal case*** and ***Munni Devi case***, the court adjudicated cases where the deceased came into contact with an electric cable under a high mast light pole and a live electric wire that fell on his bicycle, respectively. In all these cases, the court presumed negligence because the electrical apparatus causing electrocution was found to be under the direct and immediate control of the DISCOM and a result of its manifest negligence."

28. Applying the aforementioned principles to this case, it is clear that the DDA's negligence was the direct cause of the balcony collapse. There is no evidence to suggest that the deceased or his family members took any deliberate action that could have contributed to the seepage or dampness. On the contrary, it is probable that they used the balcony in the ordinary course of daily life.

29. In summary, the DDA had a continuing obligation to ensure the infrastructure's durability and longevity post-allotment. The facts of this case unequivocally demonstrate that latent construction defects, which should have been timely addressed,

[16] 2024 SCC OnLine Del 6250

were the root cause. The DDA was responsible for rectifying these defects, either directly or through its agencies.

30. Furthermore, despite this Court's orders on 24.02.2003, 02.09.2003, and 03.12.2003, the DDA's failure to file inspection reports gives rise to an adverse inference. Therefore, this Court has no hesitation in holding that the DDA is liable for latent structural defects consequent to the allotment of the residential flats, and therefore, it is liable to compensate the petitioners.

QUANTUM OF COMPENSATION:

31. As regards compensation, the record shows that initially the petitioners had sought a total compensation of Rs. 12,10,000/- with interest and subsequently the petitioners were allowed to amend the writ petition *vide* order dated 01.07.2015 whereby the compensation was sought to be enhanced to Rs. 35,00,000/-. The record shows that the deceased was 45 years and nine months of age at the time of his death and as per copy of the salary certificate placed on the record (**Annexure 'P-8'**) his net salary as on 27.07.2000 was Rs. 5682/-. The deceased is survived by his wife and two minor sons.

32. It is well settled that the compensation amount should be fair and reasonable, having regard to the facts and circumstances of the matter and it can never be in the nature of a windfall. There could be no fairer and better assessment method of computation of the compensation than the manner it is reckoned for assessment of compensation in case of death or injury in case of motor accidents. Since the deceased was earning Rs. 5,682/- per month at the age of 45 years. Therefore, loss of dependency would notionally be worked out

to be Rs. 5,682 x 12= Rs. 68,184/- + 25% [towards future prospects as per the decision of the Supreme Court in **Sarla Verma v. Delhi Transport Corporation**[17]] i.e. 17,046/- which shall be Rs. 85,230/- per annum, and on deduction of 1/4th towards personal use and consumption, the loss of financial dependency would come to Rs. 63,922/- per year, to which multiplier of "14" shall be required to be adopted as per decision in the case of ***Sarla Verma (supra)*** and the figure comes to Rs. 8,94,908/-.

33. Further, as per decision of the Supreme Court in the case of **National Insurance Co. Ltd. v. Pranay Sethi**[18], compensation towards loss of consortium shall be Rs. 40,000/- to each of the dependents @ Rs. 40,000/- per head and that would come out to Rs.1,20,000/-, to which we will be adding Rs. 15,000/- towards loss of estate and Rs. 15,000/- towards funeral expenses besides Rs.1,00,000/- towards medical expenses. Hence, total compensation would work out to be:

S. No.	Name of Heads	Amount
1.	Loss of financial dependency	Rs. 8,94,908/-
2.	Loss of consortium	Rs. 1,20,000/-
3.	Loss of Estate	Rs. 15,000/-
4.	Funeral Expenses	Rs. 15,000/-
5.	Medical Expenses	Rs. 1,00,000/-
Total		**Rs. 11,44,908/-**

[17] (2009) 6 SCC 121
[18] 2017 SCC OnLine SC 1270

34. In view of the foregoing discussion, a writ of mandamus is issued directed the respondent DDA to pay a total compensation of Rs. **11,44,908/- (Eleven Lacs Forty Four Thousand Nine Hundred and Eight Only)** to the petitioners, in the ratio of 2:1:1 to the widow and the two children respectively, with interest @ 6% per annum from the date of filing of the present writ petition i.e., 11.01.2001 till realization within a period of six weeks from today.

35. The present writ petition along with the pending application stands disposed of.

DHARMESH SHARMA, J.

NOVEMBER 13, 2024
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