(2012) 10 MAD CK 0037

In the Madras High Court

Case No : Writ Petition (MD) . No. 8829 of 2006

Ganesan APPELLANT

Vs

District Collector, Coimbatore and Others RESPONDENT

Date of Decision : 04-10-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(17)
Penal Code, 1860 (IPC) — Section 21
Revenue Recovery Act, 1890 — Section 3, 3(2), 5
Workmens Compensation Act, 1923 — Section 31

Citation : (2013) 1 LW 381 : (2012) 8 MLJ 413

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : M. Subashbabu, for the Appellant; T.S. Md. Mohideen, Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

S. Manikumar, J.—The petitioner, who sustained injuries in an accident during the employment with the 3rd respondent, had filed W.C. No.

134 of 2004 for compensation. After considering the evidence let in, the Deputy Commissioner of Labour, Trichy (2nd respondent herein) vide

award dated 9.1.2006 granted compensation of Rs. 2,33,816.16 to be paid by the 3rd respondent. It is the grievance of the petitioner that inspite

of the communication of the copy of the said award, the 3rd respondent has failed to deposit the award amount into the credit of W.C. No. 134 of

2004 on the file of the Deputy Commissioner of Labour, Trichy. The 3rd respondent has not preferred any appeal. Thus, the award in W.C. No.

134 of 2004, dated 9.1.2006, has reached finality.

2. Since the 3rd respondent failed to deposit the award amount, the petitioner

was constrained to file an application, dated 3.3.2006, for

enforcement of the award and for recovery of award amount, with interest to the tune of Rs. 3,02,711.98. Thereafter, the Deputy Commissioner

of Labour, Trichy, vide proceedings No. B4/2853/2006, dated 10.3.2006, has issued a notice to the 3rd respondent calling upon him to deposit

the award amount of Rs. 2,33,816/- with interest at the rate of 12% from the date of accident, within 15 days from the date of receipt of the said

notice. The Deputy Commissioner of Labour has further informed the 3rd respondent that if the award amount is not paid within the stipulated

time, appropriate proceedings would be taken against him, under the Revenue Recovery Act. As the amount had not been deposited with the

Deputy Commissioner of Labour, Trichy, within the stipulated time, the said Authority vide proceedings B4/2853/2006, dated 28.5.2006 has

requested the District Collector, Coimbatore, to take action against the 3rd respondent under the Revenue Recovery Act.

3. It is the grievance of the petitioner that in spite of the statutory obligation on the part of the District Collector, Coimbatore, to recover the

amount stated supra, no action has been taken under the Revenue Recovery Act, 1890 and hence, left with no other option, the petitioner has

approached this Court for a mandamus.

4. No counter affidavit has been filed by the 1st respondent. The 3rd respondent has not been served.

5. According to the learned counsel for the petitioner, the award passed in W.C. No. 134 of 2004, dated 9.1.2006, has reached finality as no

appeal had been filed. He has also submitted that as per Section 31 of the Workmen''s Compensation Act, 1923, the Commissioner may recover

as an arrear of land-revenue any amount payable by any person under the said Act, whether under the agreement for the payment of compensation

or otherwise, and that the Commissioner shall be deemed to be a public officer within the meaning of Section 5 of the Revenue Recovery Act,

1890 (1 of 1890).

6. Section 5 of the Revenue Recovery Act, (Central Act) 1890, reads as follows:

5. Recovery by Collectors of sums recoverable as arrears of revenue by other public officer or by local authorities

Where any sum is recoverable as an arrear of land revenue by any public officer other than a Collector or by any local authority, the Collector of

the district in which the office of that officer or authority is situated shall, on the request of the officer or authority, proceed to recover the sum as if

it were an arrear of land revenue which had accrued in his own district, and may send a certificate of the amount to be recovered to the Collector

of another district under the fore-going provisions of this Act, as if the sum were payable to himself.

From a reading of the Section 5 of the said Act, it is clear that the Commissioner for Workmen''s Compensation is a public officer within the

meaning of Section 5 of the said Act and when a request is made by the said authority, to recover any sum, as an arrear of land revenue, it is

obligatory on the part of the District Collector to initiate proceedings under the Revenue Recovery Act, 1890.

7. In this aspect it is also worthwhile to extract few decisions. In Mahalaxmi Fibres and Industries Ltd. Vs. The State of Bihar and Others, , it has

been observed as follows:

Section 5 of the Revenue Recovery Act, however, is as follows:

5. Recovery by Collectors of sums recoverable as arrears of revenue by other public officers or by local authorities: Where any sum is recoverable

as an arrear of land revenue by any public officer other than a Collector or by any local authority, the Collector of the district in which the office of

that officer or authority is situate shall, on the request of the officer of authority, proceed to recover the sum as if it were an arrear of land revenue

which had accrued in his own district, and may send a certificate of the amount to be recovered to the Collector of another district under the

foregoing provisions of this Act, as if the sum were payable to himself.

This Section covers such cases where the sum is not payable to a Collector but is recoverable as an arrear of land revenue by any public officer

other than a Collector or by any local authority and once such public officer or local authority makes a request to the Collector of the district in

which the office of that officer or authority is situate, the Collector shall proceed to recover the sum as if it were an arrear of land revenue which

had accrued in his own district....

...The word ''public officer'' is not defined in the Revenue Recovery Act, but is defined in Section 2(17) of the Code of Civil Procedure. Section

2(17) of that Code is as follows:

(17) ''Public Officer'' means a person falling under any of the following description, namely:

(a) every Judge;

(b) every member of the Indian Civil Service;

(c) every commissioned or gazetted officer in the military, naval or air forces of the Union while serving under the Government.

(d) every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make,

authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or

to interpret, or to preserve order, in the Curt, and every person especially authorized by a Court of Justice to perform any of such duties;

(e) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

(f) every officer of the Government whose duty it is, as such officer, to prevent offences, to give information of offences, to bring offender to

justice, or to protect the public health, safety or convenience.

(g) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any

survey, assessment or contract on behalf of the Government or to execute any revenue process, or to investigate or to report on, any matter

affecting the Government, or to make, authenticate or keep any document relating to the pecuniary interest of the Government, or to prevent the

infraction of any law for the protect of the pecuniary interest of the Government; and

(h) every officer in the service or pay of the Government, or remunerated by fees or commission for the performance of any public duty.

...

The definition of ''public officer'', as quoted above, from the CPC shows that ''public officer'' means a ''person'' falling under any of the eight

descriptions as mentioned in that sub-section. Therefore, if the term ''person'' is used equivalent to an ''officer'', then clause (g) of the definition of

the Code can be read as

every person whose duty it is, as such person, to take, receive, keep or expend any property on behalf of the Government....

Undoubtedly, it can be said that the Corporation being a corporate body, strictly speaking, is not taking, receiving or keeping any property on

behalf of the Government. But the definition is only for the purposes of the CPC and it is not necessary that while constructing the term ''public

officer'' in other enactment that definition should be strictly adhered to. It may merely provide a guideline for the purpose of finding out who is a

''public officer''. The Revenue Recovery Act does not define the expression ''public officer''. It also does not say that such terms which are not

defined in that Act will have the same meaning as given to them under the Code of Civil Procedure. The General Clauses Act also does not define

the term ''public officer''. Therefore, as held in Jaimal Singh''s case ILR (1958)8 Raj 899 by the Rajasthan High Court, if the activities of a

Corporation amount to a public duty, it may be held to be a ''public officer''. Section 21 of the Indian Penal Code defines the express ''public

servant'' and a comparison of the definition with that of the term ''public officer'' in the CPC will show that the two terms have been more or less

assigned a similar meaning. Section 93 of the Act provides that all officers and servants of the Corporation shall be deemed to be public servants

within the meaning of Section 21 of the Indian Penal Code. If the officers and servants of the Corporation are ''public servants'' within the meaning

of Section 21 of the Indian Penal Code, there appears no reason why the Corporation itself be not held to be a ''public officer'' for the purpose of

Section 5 of the Revenue Recovery Act. I am, therefore, of the opinion, that the Corporation is a public officer for :he purposes of Section 5 of the

Revenue Recovery Act and can make a request to the Collector for recovery of the sums payable to it or, in other works, recoverable by it as

arrears of revenue....

... In this Connection sub-section (3) of Section 3 of the Revenue Recovery Act is also relevant. This sub-section lays down that the Collector of

the other district shall, on receiving the certificate, proceed to recover the amount stated therein as if it were an arrear of land revenue which had

accrued in his own district. As has already been pointed out earlier, on receipt of a requisition u/s 5 the Collector has to proceed in accordance with Section 3 of the Act.

In Onward Trading Co. Vs. Tahsildar, Fort Tondiarpet, Madras and Another, while dismissing the writ petition, this Court held as follows:

(ii) on the language of Sections 3 and 5 of the Act, the distinction raised on behalf of the petitioner that the Collector can delegate only in respect of

arrears of land revenue and not in respect of other dues which are recoverable as an arrear of land revenue was not valid, having regard to the last

set of expressions occurring in Section 5, viz., ""under the foregoing provisions of this Act, as if the sum was payable to himself. Accordingly the

Collector had the necessary powers of delegation even in respect of sums recoverable as an arrear of land revenue by any public officer other than

the Collector or by any local authority; and

(iii) Section 3(2) of the Act, which empowered delegation and which by force of the language of Section 5 will be attracted to the proceedings u/s

5 speaks about the Collector signing the certificate made by him as well as about the delegation of his duty and this duty can only mean the

composite duty of making and signing the certificate and not the duty of bare signing the certificate already made by the Collector. To say that the

power of delegation must be confined only to the signing of the certificate to be made by the Collector, would be practically negating the very

intendment and purpose of the provision of delegation.

8. Considering the facts and circumstances of this case and having regard to the statutory provisions stated supra, this Court is of the view that the

petitioner has substantiated a statutory right in enforcement of the award passed against the 3rd respondent. Hence, the writ petition is allowed and

a mandamus is issued to the District Collector, Coimbatore, to initiate revenue recovery proceedings against the 3rd respondent herein to recover

the amount as per the award in W.C. No. 134 of 2004, dated 9.1.2006, on the file of the 2nd respondent herein, within a period of one week

from the date of receipt of a copy of this order. No costs.

