
(2002) 09 AHC CK 0159
In the Allahabad High Court
Case No : Writ Petition No. 5510 (M/B) of 2002

Kishan Sewa Sahkari Samiti Ltd.

APPELLANT

Vs

District Magistrate/Licensing Officer, Cold Storages and
Others

RESPONDENT

Date of Decision : 11-09-2002

Acts Referred:

Uttar Pradesh Regulation of Cold Storages Act, 1976 — Section 24, 25(2), 36

Citation : (2002) 5 AWC 4342

Hon'ble Judges : S.K. Sen, C.J.;U.K. Dhaon, J

Bench : Division Bench

Advocate : Vinod K. Singh and Ashutosh Singh, for the Appellant; C.S.C., for the Respondent

Final Decision : Allowed

Judgement

S.K. Sen, C.J.—Heard Sri Vinod Kumar Singh, the learned Counsel for the Petitioner and the learned chief standing counsel who accepted notice on behalf of the opposite party Nos. 1 to 3.

2. The contention of the writ Petitioner is that the appeal before the Tribunal is fixed for 13.9.2002 which is not disputed by the learned Chief standing counsel. The contention of the writ Petitioner is that until 30 days time has expired from the date of the original order or decision of the appeal from the original order, no auction could take place. In the instant case, the auction is fixed on 17.9.2002 although the appeal pending before the Tribunal which is fixed for hearing on 13.9.2002. The provisions of Sections 24 and 25 of the U.P. Regulation of Cold Storage Act are as under :

"24. Compensation for loss, destruction, etc.-Except as otherwise provided in this Act the licensee shall be liable to pay to the hirer compensation for every loss, destruction, damage, deterioration or non-delivery of the goods stored in his cold storage caused by negligence, misconduct or default on the part of such licensee.

25. Dispute regarding compensation to be referred to the Licensing Officer.-

(1) Every dispute regarding compensation payable by the licensee u/s 24 shall be referred to the Licensing Officer, and subject to the result of appeal, if any, u/s 36, the order of the Licensing Officer shall be final.

(2) When the Licensing Officer is satisfied that any compensation payable by a licensee under Sub-section (1) has not been paid within thirty days from the date of the order under Sub-section (1) or, as the case may be, from the date of the decision of the Tribunal u/s 36, he shall issue a certificate of recovery to the Collector, and the Collector shall recover the amount of such compensation together with costs of recovery as arrears of land revenue and pay the amount realized, after deduction of costs, to the hirer."

3. The perusal of Sub-section (2) of Section 25 of the Act reveals that in the event, the compensation is not paid after thirty days from the expiry of the notice, the Collector is empowered to issue recovery certificate and the Collector shall recover the amount together with costs. In our view, therefore, the time available to the writ Petitioner who is cold storage owner is thirty days from the date of the order of the Tribunal in the event the decision of the case is against him to pay the amount. By fixing the date of auction on 17.9.2002, the writ Petitioner has been deprived of the opportunity of time, which is available to him under the statute. In our view, the Collector has acted beyond the provisions of the statute in fixing the date of the auction and as such, auction fixed for 17.9.2002, is clearly without jurisdiction.

4. The writ petition is allowed and the order dated 9.8.2002, passed by the opposite party No. 3 and the order dated 17.8.2002, are quashed. It is, however, observed that the writ Petitioner has given an undertaking before this Court that he will cooperate in the hearing and shall not seek any adjournment. It is made clear that we have not touched the merit of appeal which is pending before the Tribunal.