
(1999) 04 AHC CK 0186
In the Allahabad High Court
Case No : C.M.W.P. No. 16025 of 1988

Mahendra Singh

APPELLANT

Vs

Collector, Gorakhpur and another

RESPONDENT

Date of Decision : 20-04-1999

Acts Referred:

Revenue Recovery Act, 1890 — Section 5
Workmens Compensation Act, 1923 — Section 31

Citation : (1999) 3 AWC 1879 : (1999) 3 UPLBEC 135

Hon'ble Judges : Onkareshwar Bhatt, J; Binod Kumar Roy, J

Bench : Division Bench

Advocate : Shyam Narain, for the Appellant; H.R. Misra, S.C., for the Respondent

Final Decision : Allowed

Judgement

Binod Kumar Roy and Onkareshwar Bhatt, JJ.—The petitioner, a workman within the meaning of the Workmen's Compensation Act, 1923, has to knock the doors of this Court for recovery of the amount awarded to him pursuant to the order dated 25.9.1979 passed by the Workmen's Compensation Commissioner, Gorakhpur as contained in Annexure- 1 to the writ petition.

2. The facts in dispute are in a narrow compass. After the passing of the order aforementioned holding the petitioner to be entitled to have uompensation to the tune of Rs. 12,600 from respondent No. 2 with a further direction to respondent No. 2 to pay the said amount within one month alongwith cost of Rs. 45 which too was required to be paid within same time and despatch of that order for execution by the Collector, Gorakhpur/respondent No. 1 and reminder by the petitioner vide Annexure-3, no action has been taken by respondent No. 1 and hence this writ petition.

The submissions :

3. Sri Shyam Narain, the learned counsel appearing on behalf of the petitioner, contended that this is the grossest case in which respondent No. 1 a statutory

authority has refused to discharge his statutory functions which has resulted into manifest failure of justice and, therefore, it is a fit case which should be allowed.

4. Sri H. R. Mishra, learned standing counsel appearing on behalf of respondent No. 1, on the other hand, contended that since 11 years have expired from the date of filing of this writ petition, which was filed after 9 years of the order in question, and it is not the case of the petitioner that he has not been paid the amount in question, and that the operation of the order was not stayed or set aside on any appeal by Respondent No. 2. therefore, this writ petition is fit to be dismissed.

Our Findings :

5. Workmen's Compensation Act is a beneficial piece of Legislation enacted by the Parliament for the welfare of the workmen. On a conjoint reading of Section 5 of the Revenue Recovery Act. 1890 and Section 31 of the Workmen's Compensation Act. 1923. It is crystal clear that the amount awarded under the provisions of the Workmen's Compensation Act, 1923 is required to be recovered as arrears of land revenue in the Instant case, through the Collector of the District, It is somewhat unfortunate that the Collector of the District Gorakhpur has not realised his aforesaid statutory duties which has caused utter prejudice to the petitioner to move this Court.

6. Undoubtedly, an appeal is continuation of the lis but in our country, the law is that unless stay is granted, preference of an appeal cannot be a ground for holding that the order passed by the original authority ceases to operate. This is clear from the following dictum laid down by the Supreme Court in State of U. P. v. Mohammad Noon. AIR 1958 SC 86 :

"As pointed out by Sir Lawrence Jenkins in delivering the Judgment of the Privy Council in Juscum Boid v. Pirthichand Lal 46 Ind App 52 : ILR Cal 670 at pp. 678 and 679 : AIR 1918 PC 151 at pp. 151-153 (J). whatever be the theory under other systems of law, under the Indian Law and procedure an original decree is not suspended by the presentation of an appeal nor is its operation interrupted where the decree on appeal is merely one of dismissal. There is nothing in the Indian Law to warrant the suggestion that the decree or order of the Court or Tribunal of the first Instance becomes final only on the termination of all proceedings by way of appeal or revision. The filing of the appeal or revision may put the decree or order in jeopardy but until it is reversed or modified it remains effective."

7. It is Indeed surprising that even respondent No. 1 has not cared to file a counter-affidavit repudiating the correctness of the statements made in this writ petition though an opportunity was granted to the learned standing counsel to file a counter-affidavit vide order dated 17.8.1988. The Result :

8. We, accordingly, allow this writ petition and command respondent No. 1 to proceed at once for recovery of the amount awarded to the petitioner as

compensation under the Workmen's Compensation Act, 1923 and the cost both, provided it has not been paid so far to the petitioner and/or the order as contained in Annexure-1 has not been set aside on appeal or its operation, if stayed on appeal or otherwise preferred by respondent No. 2.

9. The office is directed to hand over a copy of this order by Monday dated 26.4.1999 to the learned standing counsel Sri H. R. Mishra for its intimation to respondent No. 1 and forthwith follow up action.