

(2009) 08 MAD CK 0006

In the Madras High Court

Case No : Writ Petition No. 4636 of 2006 and M.P. (MD) No. 1 of 2006

P. Mahamani

APPELLANT

Vs

The Tahsildar, M. Chinnathambi and P. Rajapandi

RESPONDENT

Date of Decision : 25-08-2009

Acts Referred:

Madras Revenue Recovery Act, 1864 — Section 5
Revenue Recovery (Amendment) Act, 1890 — Section 5
Workmens Compensation Act, 1923 — Section 30, 31

Citation : (2009) 08 MAD CK 0006

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : S. Subbiah, for the Appellant; D. Gandhiraj, Government Advocate for 1st Respondent and C. Venkateshkumar, for M. Ajmal Khan, for 2nd Respondent, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Sivagnanam, J.—The matter arises under the Workmen's Compensation Act, 1923 (hereinafter referred to as the WC Act). The

petitioner herein has filed the above writ petition challenging the Gazette notification dated 15.05.2006 bringing for auction the immovable

properties for recover of the compensation amount of Rs. 67,200/- awarded in W.C. No. 26 of 1992 by the Deputy Commissioner Labour

(Commissioner for Workmen's Compensation), Madurai dated 03.11.1993.

2. The facts of the case being that the second respondent was employed as a workman for putting paddy bundles in the third respondent's

(brother of the writ petitioner) paddy crushing thresher as a permanent employee and was getting Rs. 40/- per day and on 05.03.1991 at about

2.00 p.m. when the second respondent was putting paddy bundle into the paddy

thresher at Government Kalam, his right hand got into the paddy
thresher accidentally and thereafter, he was taken to Meenakshi Mission Hospital,
Madurai and was admitted as inpatient and discharged on
12.03.1991. It is stated that the third respondent paid the entire medical
expenses incurred in the hospital. Thereafter, the second respondent was
admitted as in-patient at Government Rajaji Hospital on 13.03.1991 and
discharged on 16.03.1991 and thereafter readmitted in the Meenakshi
Mission Hospital, on 17.03.1991 and discharged on 01.06.1991. The second
respondent sustained permanent disability of loss of three right
carpel bone, loss of exterior tendon, loss of nerve supply, loss of dosal skin and
thereby total loss of finger movement and that he cannot do
anything with right hand and the Doctor assessed the disability upto 44% and
insofar as professional disability is concerned, it was claimed at
100% as he could not carry on his employment of putting paddy bundle into the
paddy crusher. The second respondent at the time of accident was
aged 21 years and he claimed compensation of Rs. 1,11,355/-. The third
respondent appeared before the Commissioner of Workmen's
Compensation and denied the claim and also stated that there is no employer
and employee relationship between the second and third
respondents. The claimant examined himself as A.W.1, the Doctor was examined
as A.W.2, a co-worker was examined as A.W.3 and the owner
of the paddy was examined as A.W.4 to prove the employment and that the
crusher equipment was owned by the 3rd respondent herein. The
third respondent examined himself as R.W.1 and did not examine any other
witness on his side. Exhibits A-1 to A-10 were marked on the side of
the claimant, the third respondent did not produce any documentary evidence.
The authority after considering the oral and documentary evidence
passed an award dated 03.11.1993 and computed the compensation at Rs.
67,200/- payable by demand draft to the second respondent within
30 days from the date of receipt of a copy of the order, failing which the interest
at 6% will be charged from the date of accident till the date of
deposit. It is not in dispute that the said award dated 03.11.1993 has become
final as no appeal was preferred u/s 30 of the WC Act by the third
respondent.

3. The petitioner in the writ petition is the brother of the third respondent, the

employer, claims that the patta has been issued jointly in the names of the petitioner and his brothers including the third respondent herein. After the demise of the petitioner's father in 1984, the petitioner, mother, five sons, and three daughters succeeded to his estate. According to the writ petitioner, the third respondent was the youngest son and was carrying separate business in paddy crushing and none of the legal heirs of the petitioner's father had anything to do with the said business. The petitioner would contend that the impugned order is illegal since the first respondent has no power to bring the properties for sale in respect of the award amount though treated as arrears of land revenue under the provisions of the Tamil Nadu Revenue Recovery Act, 1864 (hereinafter referred to as the RR Act). The petitioner would further contend that in terms of Section 31 of the WC Act, it is only the Commissioner of Workmen Compensation who may recover the amount as arrears of land revenue and the Commissioner is deemed to be a public officer within the meaning of Section 5 of the RR Act and any arrears can be recovered only in terms of Section 5 of the RR Act (Central Act) and the first respondent has no power under the Central Act. Therefore, the petitioner further alleged that the first respondent has no jurisdiction to issue the impugned notification. The petitioner further alleged that the representation submitted by them in this regard has not been considered by the first respondent. It was further stated that the third respondent has already sold the property to one Muthupandi under a sale deed dated 28.09.1995 in respect of the lands in S. No. 357/4 to an extent of 0.61.5 acres included in Patta No. 809 and as such, the third respondent had no saleable interest, as he had already parted with his rights in respect to that property.

4. The learned Counsel for the petitioner placed reliance on the following decisions of the Hon'ble Supreme Court for the proposition that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all, the State and other authorities while acting under a particular enactment are only creature of statute and must act within the four corners thereof. That an order passed by an Officer having no authority of law has no effect, it neither creates any right in favour of a party for whom such order is made nor imposes any obligation on the opposite party against whom it is passed.

5. In Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, , the Hon"ble Supreme Court has held as follows:

The statutory interdict of use and enjoyment of the property must be strictly construed. It is well settled that when a statutory authority is required

to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under the said

Act are only creature of statute. They must act within the four corners thereof.

6. In another case reported in State of Jharkhand and Others Vs. Ambay Cements and Another, wherein the Hon"ble Supreme Court has held at

Para-27 as follows:

27. Whenever the statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said

requirement leads to severe consequences, such requirement would be mandatory. It is the cardinal rule of the interpretation that where a statute

provides that a particular thing should be done, it should be done in the manner prescribed and not in any other way. It is also settled rule of

interpretation that where a statute is penal in character, it must be strictly construed and followed. Since the requirement, in the instant case, of

obtaining prior permission is mandatory, therefore, non-compliance of the same must be in cancelling the concession made in favour of the grantee-

the respondent herein.

7. In another decision reported in Shiv Kumar Sharma Vs. Santosh Kumari, , the Hon"ble Supreme Court has held as follows:

A civil Court does not grant leave to file another suit. If the law permits, the plaintiff may file another suit but not on the basis of observations made

by a superior Court.

8. In yet another decision reported in M.V. Janardhan Reddy Vs. Vijaya Bank and Others, , the Hon"ble Supreme Court has held as follows:

An order passed by an officer having no authority of law has no effect. It neither creates any right in favour of a party for whom such order is made

nor imposes any obligation on the opposite party against whom it was passed.

The learned Counsel would thus submit that the impugned notification is totally illegal and suffers from the vice of total lack of jurisdiction.

9. Though the respondent 3 has been served, he has not entered appearance through counsel nor appeared in person.

10. The first respondent has filed a detailed counter affidavit in which it has been stated that since the third respondent failed to deposit the award amount, the Deputy Commissioner of Labour, Madurai (Commissioner of Labour under the Workmen's Compensation Act) requested the Collector of Madurai to collect the award amount from the third respondent as an arrears of Land Revenue under the RR Act. Therefore, action had been taken by publishing impugned notification bringing for sale by public auction, the joint family properties of the third respondent in which the petitioner also had a share is perfectly legal. That the properties in question are being enjoyed by them as joint family properties and no partition has been effected. Further the petitioner has himself admitted in paragraph 17 of the affidavit that he is a co-owner. The petitioner, his brother and sisters are aware about the accident on 05.03.1991. The award has not been challenged and they are precluded from challenging the auction. Notices in Form 5,6,7 and 7-A have been published in Madurai District Gazette No. 16, dated 16.05.2006 to sell the properties and the notification was also published in the local village. The auction was fixed on 24.05.2006 and adjourned to 31.05.2006 and subsequently to 16.06.2006, nobody turned up to participate in the auction. In the mean while, the petitioner herein filed the above writ petition before this Court challenging the notification. The first respondent would further state that the Principal Bench of this Court in W.P. No. 2167 of 1999, by an order dated 15.12.2005 has ordered the District Collector, Madurai to collect the arrears payable under the award as arrears of land revenue together with interest within a period of four weeks from the date of receipt of a copy of the order i.e., on 13.01.2006. It is further stated that the third respondent is said to have transferred the property to one Muthupandi who is none other than the sister's son of the third respondent and the said transaction is only to defeat the provisions of the Act and thwart the recovery of compensation awarded to a poor villager. The Commissioner of Workmen Compensation had made a request for collection of the award amount and based on such request the District Collector, Madurai by proceedings K.Dis.333/3/94, dated 18.07.1994 has directed the first respondent to collect the arrears of Rs. 67,200/- as arrears of land revenue. That earlier there has been a direction issued in W.P. No. 2167/99 to collect the arrears under RR Act. Therefore, the first respondent would

further contend that the impugned notification is perfectly legal and it is only pursuant to the direction given by the Commissioner of Workmen's

Compensation, such action has been taken and therefore, the same calls for no interference.

11. Heard Mr. S. Subbiah, learned Counsel for the petitioner and Mr. D. Gandhiraj, learned Government Advocate for the first respondent.

12. The learned Counsel for the petitioner by reiterating the contention raised in the affidavit filed in support of the writ petition would contend that

the impugned action is totally without jurisdiction. Learned Counsel would rely upon Section 31 of the WC Act and submit that it is the

Commissioner alone who may recover as arrears of land revenue any amount payable by any person under the Act and the Commissioner shall be

deemed to be public officer within the meaning of Section 5 of the RR Act. By relying upon the said provisions and the judgments of the Hon"ble

Supreme Court referred to above, the learned Counsel for the petitioner would submit that the impugned notification is without jurisdiction and

further the third respondent having already transferred the property, the notification bringing for sale, the other properties is not tenable.

13. Learned Government Advocate, reiterated the submissions made in the counter affidavit as noted above and prayed for dismissal of the writ

petition.

14. Thus, from the above submissions, it is to be noted that the only substantial objection raised by the petitioner is that the first respondent does

not have jurisdiction to issue the impugned notification.

15. As stated above, Section 31 of the WC Act provides power for the Commissioner to recover as arrears of land revenue by any person under

this Act, whether under an agreement for the payment of compensation or otherwise, and the Commissioner shall be deemed to be a public Officer

within the meaning of Section 5 of the RR Act (Central Act).

16. Section 5 provides that where any sum is recoverable as an arrears 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 request of the Officer or authority, proceed

to recover the sum as if it were arrears 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 the Act, as if the sum were payable to himself. In terms of Section

31 of the WC Act, the Commissioner of Workmen Compensation shall be deemed to be a public officer within meaning of Section 5 of the RR

Act. By virtue of the power u/s 5 of the RR Act, the Commissioner could request the Collector of a District to proceed to recover the sum due

and payable as compensation under the WC Act, (either under an agreement for the payment of Compensation or otherwise) as arrears of land

revenue. Section 5 of the RR Act, deals with contingencies where the sum so recoverable is not payable to the Collector, but is recoverable as an

arrears of land revenue. For initiation of this process of recovery, a request has to be made by the Commissioner. Before resorting to the

provisions of the RR Act, there should be a determination or adjudication as to the liability of the person, concerned or the extent of his/their

liability. In the instant case, it is not in dispute that there has been adjudication on the claim and the liability has been determined by an Award dated

03.11.1993 in W.C. No. 26/1992. The petitioner has not disputed this factual position. The award remains unassailed and the liability has attained

its finality. In such circumstances, the Commissioner is perfectly justified in placing a request before the Collector of the District, within whose

jurisdiction the properties of the defaulter is situated, to proceed to recover the award amount as arrears of land revenue. The first respondent has

stated in the counter affidavit that based on such request made by the Commissioner of Workmen Compensation, the District Collector by

proceedings dated 18.07.1994 has directed the first respondent to recover the amount payable under the Award as arrears of land revenue.

17. Therefore, on a combined reading of Section 31 of the WC Act and Section 5 of the RR Act makes it abundantly clear that the amount

determined by the Commissioner for Workmen's Compensation, shall be recovered as an arrears of public revenue due on land and the

Commissioner himself is an officer within the meaning of Section 5 of the Act. Thus, it is to be noted that there is no legal infirmity in the notification

issued by the first respondent and the contention raised by the petitioner that the first respondent lacks jurisdiction is liable to be rejected. In view

of the above, the procedure adopted by the first respondent is based on the power conferred under the statute and cannot be held to be without

jurisdiction. Hence, the decisions relied on by the petitioner does not render any assistance to the case of the petitioner.

18. It is to be noted that the third respondent has not filed an appeal against the award and the petitioner is now attempting to canvass the case of

the third respondent, on the ground that a certain extent of property has been sold by the third respondent, after the award. The learned Counsel

for the petitioner by relying on such sale would state that the impugned notification is liable to be struck down. At this stage, it is necessary to

reiterate the factual averment in the counter affidavit filed by the first respondent, which states that the petitioner himself has admitted that he is co-

owner of the properties. The first respondent has further stated that the properties have not been partitioned and they are joint family properties.

The alleged sale made by the third respondent is dated 28.09.2005 and it is stated to have been made in favour of his sister's son. The alleged sale

is nearly 2 years after passing of the award. Whether such sale could prevent the first respondent from proceeding further is a subsidiary question

arising in this case.

19. On facts, it is to be noted that the accident in the instant case occurred on 05.03.1991 at 2.00 p.m. and the award in W.C. No. 26 of 1992

was passed on 03.11.1993 and the award amount was payable within 30 days from the date of receipt of a copy of the order. The alleged sale

was made by the third respondent on 28.09.1995. Thus on the date of issue of award, the properties stood in the name of the third respondent.

That being the case, it is to be taken that the alleged sale effected by the third respondent is solely intended to defeat the claim of the second

respondent.

20. The Hon"ble Supreme Court in State of Kerala and Another Vs. Radhamany, was considering the scope of Section 44(3) of the Kerala

Revenue Recovery Act, 1968 which deals with the effect of engagements and transfer by defaulters. While construing the said provision, the

Hon"ble Supreme Court held as follows:

5. The effect of engagements and transfers by the transferee has been enumerated in Sub-sections (1) to (3) of the Act. Each sub-section is

independent of the transaction dealt with by Section 44. As regards Sub-section (2), any transfer of immovable property made by a defaulter, after

public revenue due on any land from him has fallen in arrears, sale was made with intent to defeat or delay the recovery of such arrears, the sale

shall not be binding upon the Government. The crucial question of application of Sub-section (2) is as to the date when the arrears have fallen due

and when sale has been effected of the land over which the recovery could be fastened. In view of the admitted fact that arrears had become due

as on 1-4-1969 and the lands came to be sold subsequent to the said date, Sub-section (2) stands attracted and, therefore, transfer of immovable

property was made by the defaulter with an intention to delay or defer the recovery of such arrears. Therefore, such a sale does not bind the

Government.

6. Sub-section (3) contemplates another situation; whether a defaulter transfers immovable property to a near relation or for grossly inadequate

consideration, after public revenue due on any land from him has fallen in arrears, it shall be presumed that such transfer was made with intention to

defeat or delay the recovery of such arrears. The Collector or authorised officer may, subject to the orders of the competent authority, proceed to

recover such arrears by attachment and sale of the property, as if such transfer has not taken place. The sale must be in favour of a near relation or

for grossly inadequate consideration. This should be, if the public revenue is due on any land from the defaulter who is in arrears, prior to sale. In

such a case, it shall be presumed, unless contrary is proved, that such a transfer was made with intention to defeat and delay the recovery of such

arrears. The State is entitled to ignore the sale and would proceed to recover the arrears by sale of the said lands.

7. The question in this case is whether without a prior notice of demand, a notice of attachment having been issued under Sub-section (3) has any

application? In our view the High Court has committed grave error of law. Sub-section (3) does not contemplate of prior service of such a notice.

It contemplates that arrears should become due before such a sale was made and the sale must be in favour of a near relation or for grossly

inadequate consideration. If the consideration was grossly inadequate or the sale was to a near relation, the statutory presumption raised is that the

transfer was made with intention to defeat or delay recovery of arrears. Such a sale, therefore, does not bind the Government. The recovery

official is entitled to proceed against that property as if such transfer has not taken place. The burden to prove contrary is on the defaulter and the

transferee. What is a grossly inadequate consideration to a stranger would always be a question of fact in each case.

8. Therefore, prior service of notice of demand of arrears or attachment before sale is not a precondition to deny the statutory presumption

available under Sub-section (3) of Section 44. The High Court, therefore, was not right in its conclusion that prior notice of demand of arrears or

attachment before sale is a precondition.

21. The Kerala High Court in a decision reported 2005 II LLJ 719, (Mathew Joseph and Ors. v. Johny Sunny and Ors.), after relying upon the

above decision reported in State of Kerala and Another Vs. Radhamany, , the Kerala High Court has held as follows:

5. Section 31 of the Workmen's Compensation Act, 1923 provides that the Commissioner may recover as an arrear of land revenue any amount

payable by any person under the Act whether under an agreement for payment of compensation or otherwise and the Commissioner shall be

deemed to be a public officer within the meaning of Section 5 of the Revenue Recovery Act, 1890. Section 5 of the Revenue Recovery Act, 1890

provides that 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 foregoing provisions of this Act, as if the sum were payable to himself. Section 31 of the Workmen's

Compensation Act read with Section 5 of the Revenue Recovery Act, 1890 makes it abundantly clear that the amount determined by the

Commissioner for Workmen's Compensation shall be recovered as an arrear of public revenue due on land and the Commissioner himself is an

officer within the meaning of Section 5 of the Revenue Recovery Act, 1890.

6. ...

7. Though the learned Government Pleader submitted that the request from the Workmen's Compensation Commissioner itself was received only

on June 25, 1998 and as such Section 44(2) may not be attracted, I am unable to accept this argument for the reason that the amount becomes

public revenue due on land not by virtue of any act of serving the demand under the Revenue Recovery Act. By virtue of Section 31 of the

Workmen's Compensation Act read with Section 5 of the Revenue Recovery Act, 1890, there is a statutory declaration that it is deemed to be a

public revenue due on land and the amount has become fallen in arrears on the expiry of 30 days and the transfer having been effected much later,

the provisions of Section 44(2) will squarely apply and hence the District Collector is bound to ignore the transfer as contemplated u/s 44(2) of the

Act.

22. In view of the above legal position, it is abundantly clear that the plea raised by the writ petitioner is without any basis.

23. It has been clearly established that the first respondent has not been acting unilaterally and it is based upon the direction issued by the

workmen's compensation to initiate proceedings and as stated above, the Commissioner himself is an officer within the meaning of Section 5 of the

Act.

24. In view of the above, the writ petition fails and the same is dismissed. The first respondent is directed to proceed further pursuant to the

impugned notification dated 16.05.2006 and take steps to recover the award amount within a period of three months from the date of receipt of a

copy of this order considering the fact that though the award passed on 03.11.1993, the second respondent has not been able to realise the same.

No costs. Consequently, M.P. (MD) No. 1 of 2008 is closed.