

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.03.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.24265 of 2009

1.Thirumalaisamy
S/o.Ramasamy Chettirar

2.Vasantha
W/o.Thirumalaisamy .. Petitioners

vs.

1.The District Collector,
Coimbatore District,
Coimbatore.

2.Tahsildar,
Mettupalayam,
Coimbatore.

3.The Revenue Inspector,
Mettupalayam,
Coimbatore.

4.The Manager,
Block Thunder Theme Park,
Ootti Main Road,
Mettupalayam,
Coimbatore District.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus directing the third respondent to implement the order in W.C.No.373 of 2005 on the file of the Deputy Commissioner of Labour, Dindigul, dated 28.12.2007.

For Petitioners : Mr.P.Tamilavel

For Respondents : Mr.R.Rajeswaran,
Special Government Pleader
[R1 to R3]
Mr.G.Vasudevan
for Mr.S.Kadarkarai [R4]

O R D E R

Heard Mr.P.Tamilavel, the learned counsel for the petitioners, Mr.R.Rajeswaran, the learned Special Government Pleader for respondents 1 to 3 and Mr.G.Vasudevan, the learned counsel for the fourth respondent.

2. The petitioners have filed this writ petition seeking a direction to the respondents 1 to 3 to implement the order passed by the Deputy Commissioner of Labour, Dindigul, exercising powers under the Workmen Compensation Act, in W.C.No.373 of 2005 dated 28.12.2007.

3. The revenue officials have initiated action for recovery on the ground that the order passed in W.C.No.373 of 2005 has not been stayed, modified or reversed by any appellate forum. Since there was a stalemate in the matter, the writ petition was filed in which notice was ordered on 26.11.2009. Subsequently, the matter has been heard by this Court and adjourned for the respondents to file counter and thereafter, the matter has not been appeared in the list and it was listed only on 09.03.2016.

4. The learned counsel for the petitioners attributes other reasons for the matter not being listed earlier. However, this Court is not inclined to go into those issues and it is suffice to take note of the facts of the case.

5. In the counter affidavit filed by the fourth respondent, it has been stated that as against the order in W.C.No.373 of 2005 dated 28.12.2007, the fourth respondent has filed an appeal in C.M.A.SR.No.18517 of 2008 before the Madurai Bench of this Court along with a petition to condone the delay in filing the appeal. It is the admitted case that the delay has not been condoned and the appeal is yet to be numbered. The reason stated by the fourth respondent is that the petitioners have not accepted the notice in the condone delay petition. If that is the case, nothing prevents the fourth respondent to resort to the other mode of services as contemplated under the Code of Civil Procedure. The further case of the fourth respondent is that two suits were filed by the petitioners in O.S.Nos.346 and 347 of 2005 on the file of District Munsif Court, Mettupalayam, for damages towards the death of their son and in both suits, a compromise was arrived at and a sum of Rs.75,000/- was paid to each of the petitioners and the suits were dismissed as settled out of Court by judgment and decree dated 29.11.2005. Therefore, it is the contention of the learned counsel for the fourth respondent that the petitioners have already been paid substantial amount as full and final settlement and they are not entitled to press for nothing more and the petition filed under the Workmen Compensation Act is not maintainable. Further, it is

submitted that the revenue officials has adopted some tactics and recovered sums from the fourth respondent two weeks back.

6. The learned counsel for the petitioners rightly pointed out that unless and until, the fourth respondent effects pre-deposit in terms of Section 30(1) of the Workmen Compensation Act, 1923, the appeal itself cannot be taken on file. Admittedly, no such deposit has been made by the fourth respondent.

7. The contention of the fourth respondent is two fold. The first is that an appeal is pending as against the order in W.C.No.373 of 2005 dated 28.12.2007 before the Madurai Bench of this Court. The second contention is based on the compromise decree passed in O.S.Nos.346 and 347 of 2005 on the file of District Munsif Court, Mettupalayam. Both the contentions raised by the fourth respondent have to fail for the reason that unless and until pre-deposit in terms of the statutory provision is made, the appeal cannot be entertained. That apart, from 2008 onwards notice in the condone delay petition has not been served on the petitioners herein, who are said to be the respondents in the said appeal. Therefore, the pendency of the said proceedings before the Madurai Bench of this Court can have absolutely no bearing in the present writ petition since the appeal itself cannot be entertained without pre-deposit. Reliance placed on the compromise decree in O.S.Nos.346 and 347 of 2005 on the file of District Munsif Court, Mettupalayam, is absolutely misconceived since the order passed by the Deputy Commissioner of Labour, Dindigul, is under the provisions of the Workmen Compensation Act directing compensation to the victim who suffered death in the course of employment. Therefore, the compromise decree cannot be pressed into service to negate the claim made by the petitioners under the Workmen Compensation Act. Therefore, both the contentions raised by the fourth respondent are rejected. As rightly pointed out by the learned counsel for the petitioners that in the compromise memo filed before the civil Court there is absolutely no reference to the order passed in W.C.No.373 of 2005. This is one more ground to reject the contention of the fourth respondent placing reliance on the compromise decree.

8. In the light of the above, there shall be a direction to the respondents 1 to 3 to take immediate steps to recover the amount in full as per the order of the Deputy Commissioner of Labour, Dindigul, passed in W.C.No.373 of 2005 dated 28.12.2007. The above direction shall be complied with within a period of three weeks from the date of receipt of a copy of this order.

This Writ Petition is disposed of with the above direction.
No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gm

To

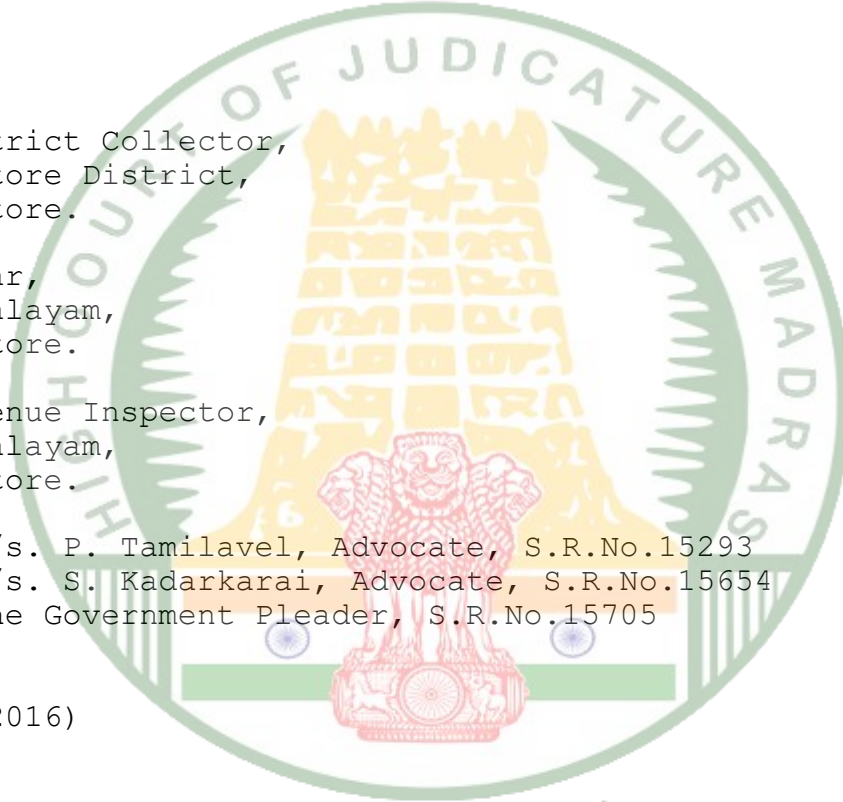
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Coimbatore District,
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Mettupalayam,
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3.The Revenue Inspector,
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Coimbatore.

+1cc to M/s. P. Tamilavel, Advocate, S.R.No.15293
+1cc to M/s. S. Kadarkarai, Advocate, S.R.No.15654
+1cc to the Government Pleader, S.R.No.15705

UG(CO)
EU(15/03/2016)



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