

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.8474 OF 2020

Baban s/o Vithhal Bhope,
Age : 63 years,
Occupation : Pensioner,
R/o Suraj Keshari Colony
(Talathi Colony), Korit Road,
Nandurbar.

...PETITIONER

-VERSUS-

1. The State of Maharashtra.
Through the Secretary,
Revenue Department,
Mantralaya, Mumbai-32.
2. The Collector, Dhule.
3. The Tahasildar,
Shindkheda,
District Dhule.

...RESPONDENTS

AND

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District Dhule.
4. The Deputy Collector
(Revenue Administration),
Nandurbar.
5. The District Superintendent of
Land Record, Nandurbar.

...RESPONDENTS

...
Shri B.R. Warma a/w Shri M.G. Kochar, Advocates for the
petitioner.
Shri S.B. Pulkundwar, AGP for the respondents/ State.
...

**CORAM : RAVINDRA V. GHUGE
&
S.G. MEHARE, JJ.**

DATE :- 24th September, 2021

ORAL JUDGMENT (Per Ravindra V. Ghuge, J.) :-

1. Rule. Rule made returnable forthwith and heard
finally by the consent of the parties.

WRIT PETITION NO.8474 OF 2020

2. By the first Writ Petition No.8474/2020, the petitioner has put forth prayer clause A, which reads thus:-

“A) *By issuing writ of certiorari or appropriate writ or directions of orders in like nature the impugned notice dated 10.11.2020 issued by Tahsildar, Shindkheda, Dist. Dhule may please be quash and set aside.*”

3. In the second Writ Petition No.8447/2021, the petitioner has put forth prayer clause A as under :-

“A) *By issuing writ of certiorari or appropriate writ or directions of orders in like nature the impugned communications/ orders dt. 30.04.2021 and 03.05.2021 by R-2 (The Collector, Dhule) and R-4 (The Dy. Collector, Nandurbar) respectively may please be quash and set aside.*”

4. The learned advocate for the petitioner points out that the petitioner was posted as the Tahasildar at Shindkheda in the year 2014. A riot broke out on 10.01.2014 at Dondaiche in Shindkheda taluka of District Dhule. Being a Tahasildar, the District Collector informed the petitioner to visit the place and tender his report. As the official driver, Mr.Pardeshi was absent and was not responding to consistent phone calls, Mr.Vishal Ananda Marathe, who was present in the office premises of the

petitioner, showed his willingness to drive the official vehicle bearing registration No.MH-18-F-105, Tata Sumo. En-route Dondaiche, the vehicle met with an accident in which, the petitioner and the driver Vishal suffered serious injuries and were admitted in the hospital. Vishal succumbed to his injuries. The official vehicle stood in the name of the District Collector, Dhule.

5. The dependents of Vishal i.e. his father Ananda and his mother Ushabai, approached the Commissioner, Workmen's Compensation and Judge, Labour Court, Dhule by preferring Application (WCA) No.5200059/2015 on 02.03.2015 seeking compensation under Section 4 of the Workmen's Compensation Act (presently the Employees' Compensation Act). It was pleaded before the Labour Court that the deceased Vishal was a driver employed by the opponent (the present petitioner Baban Vitthal Bhope) on his Government vehicle Tata Sumo bearing Registration No.MH-18-F-105. The petitioner was arrayed as the sole respondent by designation. However, it is pleaded in the claim application that the opponent is Baban Vitthal Bhope. The petitioner claims to have superannuated from employment on 31.10.2015, which is around eight months after the filing of the

claim for compensation.

6. By the judgment and order dated 18.07.2018, the Labour Court directed the petitioner to pay compensation of Rs.6,59,850/- along with interest at the rate of 12% per annum from the date of the death of Vishal. The petitioner contends that he was not the respondent/ opponent in the claim application. He is, therefore, not liable to pay the compensation.

7. The dependents of the deceased Vishal, who succeeded before the Labour Court in the compensation case, moved an Application WCA (Recovery) bearing No.01/2019 under Section 31 of the Employees' Compensation Act (earlier Workmen's Compensation Act). Section 31 reads as under:-

“31. Recovery – The Commissioner may recover as an arrear of land-revenue any amount payable 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 Revenue Recovery Act, 1890 (1 of 1890).”

8. The Labour Court exercised his powers under Section 31 and directed the District Collector, Dhule to recover the compensation amount as arrears of land revenue since the Commissioner, Employees' Compensation and Judge, Labour

Court is deemed to be a public officer under Section 5 of the Revenue Recovery Act, 1890.

9. Section 5 of the Revenue Recovery Act, 1890 reads thus:-

- “5. *Recovery by Collector 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 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.”

10. Section 3 of the Revenue Recovery Act, 1890 reads as under:-

- “3. *Recovery of public demands by enforcement of processes in other districts than those in which they become payable.—*
(1) *Where an arrear of land-revenue, or a sum recoverable as an arrear of land-revenue, is payable to a Collector by a defaulter being or having property in a district other than that in which the arrear accrued or the sum is payable, the Collector may send to the Collector of that other district a certificate in the form as nearly as may be of the Schedule, stating—*
(a) *the name of the defaulter and such other particulars as may be necessary for his identification, and*
(b) *the amount payable by him and the account on*

which it is due.

- (2) *The certificate shall be signed by the Collector making it [or by any officer to whom such Collector may, by order in writing, delegate this duty], and, save as otherwise provided by this Act, shall be conclusive proof of the matters therein stated.*
- (3) *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.”*

11. A defaulter is defined under Section 2(3) of the Revenue Recovery Act, 1890, which reads thus:-

“2(3) “defaulter” means a person from whom an arrear of land revenue, or a sum recoverable as an arrear of land-revenue, is due, and includes a person who is responsible as surety for the payment of any such arrear or sum.”

12. The petitioner contends that he did not receive any notice, in the proceedings filed by the dependents of Vishal, from the Labour Court and therefore, the Labour Court has delivered an ex-parte award. Though his name may have been recorded in the pleadings and the evidence of the dependents, he was not arrayed as a respondent in his personal capacity. In this backdrop, he has challenged the communication issued by the Tahasildar on 10.11.2020.

13. We find from the impugned communication dated

10.11.2020 that it does not have the semblance of an order issued to the petitioner. An official of equal rank would not issue an order to the petitioner directing him to deposit the compensation amount granted by the Labour Court. The said communication is in Marathi and which is clearly a personal letter, though shown to be an official communication, calling upon the petitioner to deposit the compensation amount along with interest before the Labour Court at Dhule, on his personal level. As such, we do not find any legal sanctity to the said letter as it is not an order to the petitioner. The first Writ Petition No.8474/2020 is, therefore, **disposed off**. Rule is discharged.

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14. Insofar as the second Writ Petition No.8447/2021 is concerned, the petitioner concedes that he has not preferred a First Appeal before the High Court under Section 30 of the Employees' Compensation Act, for challenging the judgment and order of the Labour Court. To this extent, the judgment of the Labour Court dated 18.07.2018 is intact, though it is open to an aggrieved party to challenge it. Similar is the case of the order passed by the Labour Court under Section 31 dated 15.02.2021.

Since the said order arises out of the judgment of the Labour Court granting compensation, the aggrieved party will have to challenge the judgment granting compensation. Until then, the order is enforceable.

15. The petitioner has challenged the communication by the District Collector, Dhule dated 30.04.2021 addressed to the District Collector, Nandurbar, under Section 3 of the Revenue Recovery Act, 1890. The petitioner, post retirement, resides in Nandurbar district and his immovable properties fall in the said district. In view of Section 3, we do not find any fault with the communication dated 30.04.2021 since it is pursuant to the judgment of the Labour Court and the order under Section 31 of the Employees' Compensation Act.

16. The petitioner has then challenged the notice dated 03.05.2021 issued by the Deputy Collector (Revenue Administration), Nandurbar for conducting an enquiry as regards the immovable properties of the petitioner for carrying out the recovery of the compensation amount as ordered by the Labour Court under Section 31. In our view, as long as the judgment of the Labour Court is intact, the order under Section 31 issued by the same Court would be unquestionable. The action permitted

under the Revenue Recovery Act, 1890 is, therefore, sound and justified.

17. The learned advocate for the petitioner, without any pleadings in the entire petition, has canvassed that the recovery of the amount is impermissible as he has not indulged in any act of unjustful enrichment during his service tenure and the Maharashtra Civil Services Rules (MCSR) would not permit such recovery. In ground 7, he has referred to the MCSR contending that the procedure for imposing liability and recovery of dues has not been followed.

18. The petitioner supports his case in the light of the judgments delivered by the Honourable Supreme Court in the matters of *Syed Abdul Qadir vs. State of Bihar, 2009 (3) SCC 475* and *the State of Punjab and others vs. Rafiq Masih (White Washer) and others, 2015 (4) SCC 334*. We are of the view that, such contentions are unsustainable for the reason that however hard the petitioner may contend that he is not a party to the compensation claim case before the Labour Court, his name is set out in the pleadings and in the evidence and there is no denial even by the petitioner in this petition that he had taken the assistance of Vishal, who was in the office of the Collector, to

drive the official vehicle MH-18-F-105 Tata Sumo to perform his duty of visiting Dondaiche because of riot. The petitioner was the Tahsildar when notice of the Labour Court was served.

19. As such, the petitioner should have resorted to the remedy as is provided under Section 30 of the Employees' Compensation Act for assailing the judgment of the Labour Court. Unless the said judgment is quashed and set aside by the learned Single Judge Bench of this Court in a First Appeal, the said judgment and the directions of the Labour Court under Section 31 would be legally enforceable.

20. In view of the above, the second Writ Petition No.8447/2021 is dismissed. Rule is discharged.

21. We make it clear that the dismissal of the second petition would not be a legal impediment to the petitioner if he chooses to assail the judgment of the Labour Court and it's subsequent order passed under Section 31 of the Employees' Compensation Act, under Section 30 of the said Act.

kps

(S.G. MEHARE, J.)

(RAVINDRA V. GHUGE, J.)