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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order : 12th January, 2024.**

+ **W.P.(C) 464/2024**

ASHARFI MEHTO & ANR. Petitioners

Through: **Mr. Shashank Datta Vashista,**
Advocate (through VC)

versus

**COMMISSIONER UNDER EMPLOYEES COMPANSATION ACT
1923 & ANR.** Respondents

Through: *Nemo*

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The petitioner vide the present petition under Article 226 of the Constitution of India, seeks the following reliefs:

“a) Against the respondent no. 1 to expedite the proceedings before the respondent no. 2 so that the decretal amount in terms of case no. cec/sd/d/19/2020 titled as Asharfi Mehto and ors. Versus Mahesh Kumar Jheria and ors. be recovered;

b) issue directions to the respondent no. 1 to execute the award sent by respondent no. 1 at the earliest;

And/or

Pass any such further order which this court may deem fit in the facts and circumstances of the present case.”



2. The relevant facts arising out of the instant petition are as follows:
- The petitioners are the parents of Sh. Ajay Kumar who was working as a labour at a construction site and expired on duty due to electrocution in the year 2015. Thereafter, the petitioners filed an application before the Commissioner Employees Compensation, on 13th October, 2020 under Section 22 of the Employees Compensation Act, 1923 claiming compensation on account of death of Late Sh. Ajay Kumar. The said application was registered bearing no. CEC/SD/D/19/2020/35-40.
 - The Commissioner Employee's Compensation (South & South-East) passed an order dated 29th December, 2022, thereby, holding the concerned persons (including the contractor/employer of the deceased) jointly and severally liable and directed them to deposit Rs. 8,47,160/- towards compensation along with 12 % interest w.e.f. 2nd September, 2015, till the realization of awarded amount, along with Rs. 5,000/- towards funeral expenses as provided under Section 4 (4) and Rs. 2,11,790/- towards penalty, i.e., 25% of the awarded amount. It further passed the direction to deposit the abovementioned amount in favour of the Commissioner Employees Compensation VIII within 30 days from the date of the above said order.
 - Due to the non-deposition of the above said amount, the



petitioners filed an execution petition dated 27th April, 2023 which was registered vide diary no. 1040/2023. Further, since no developments took place in the said execution petition, the petitioners visited the office of the respondent no. 1, where they were informed that the said petition has gotten misplaced, therefore another copy of the same was submitted by the petitioners on 29th August, 2023.

- d. Thereafter, the Commissioner, Employee's Compensation (S) issued a recovery certificate on 15th September, 2023, initiating recovery proceedings the deceased's employers/contractors.
- e. Being aggrieved by the alleged inaction on the part of the respondents, the petitioners have approached this Court seeking directions against the respondents to expedite the execution proceedings and for execution of the order dated 29th December, 2022.

3. Learned counsel appearing on behalf of the petitioners submitted that the petitioners' rights are being infringed upon due to the inaction on behalf of the respondents in executing the order dated 29th December, 2022.

4. It is submitted that the petitioners are tasked with the responsibility to provide for their deceased's children and their livelihood is suffering since the petitioners are senior citizen and have no source of income.

5. It is submitted that non-action of the respondents and non-execution of the order within a period of six months from the date of passing of the



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same is a violation of law. It is submitted that the said act of the respondents is arbitrary, unjustified and against the settled law.

6. It is submitted that the petitioners are in dire need of money and due to the unjustified delay on the part of the respondents, grave injury is being caused to the petitioners.

7. It is submitted that after repeated visits by the petitioners, the respondent no. 1 issued a recovery certificate dated 15th September, 2023 which was stated to be sent through internal correspondence to the respondent no. 2, however, no response has been provided by either of the respondents till date with regard to the reimbursement of the amount and they are merely shifting the burden on each other on one pretext or the other.

8. It is submitted that as per respondent no. 1, they have already sent the recovery certificate to the respondent no. 2 and the officials of the respondent no. 2 have given a vague response stating that the amount shall be paid to the respondent no. 1 only when they would receive and as of now they have no other information in this regard.

9. It is, therefore, submitted that in view of the foregoing submissions, the instant petition may be allowed and the reliefs be granted as prayed for.

10. Heard the parties and perused the record.

11. It is the case of the petitioners that an order dated 29th December, 2022 was passed in favour of the petitioners by the Commissioner Employees Compensation, whereby, some persons (contractors/employers of the petitioners' deceased son) were directed to deposit a certain amount of money with the respondent no. 1. The persons, against whom the said order



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was passed failed to deposit the amount of money as directed by the Commissioner Employee's Compensation (South & South-East) and accordingly, the petitioner filed an execution petition, thereby, seeking execution of the above said order. Thereafter, the respondent no. 1 issued a recovery certificate dated 15th September, 2023.

12. The petitioner vide the present petition has submitted that the respondents have failed to adhere to the law since it has not taken any material action in the execution proceedings filed by the petitioners and due to the said inaction at the respondents' behest, the petitioners are suffering irreparably. It has been submitted that the respondent no. 1 and 2 are evading their responsibilities by shifting the burden on each other on one pretext or another which is causing unjustified delay and in light of the same the petitioner has prayed for directions against the respondents to expedite the execution proceedings.

13. In order to ascertain as to the powers of this Court conferred under the writ jurisdiction under Article 226 of the Constitution of India, this Court finds it prudent to delve into the scope of law with respect to the issue at hand where the petitioners are seeking issuance of writ in the nature of mandamus.

14. The literal meaning of the word mandamus is a command. This prerogative remedy of mandamus is used for enforcing the performance of public duties by public authorities of all kinds. Writ of mandamus demands some activity on part of the person or body to whom it is addressed.

15. It is a settled legal principle that the Courts have to be hyper vigilant



while issuing a writ of mandamus since the said writ is an extraordinary remedy which is to be invoked only upon special occasions and in exceptional circumstances.

16. The said extraordinary remedy is invoked to supplement the deficiency in law, if any, and cannot be invoked as an appellate mechanism against the decision of any Court, Tribunal, or Authority which is exercising a statutory power. The writ of mandamus is an invincible weapon in cases where there is a failure of justice or exercise of power in an illegal way or arbitrary manner. The same has been reiterated by the Hon'ble Supreme Court in a catena of judgments such as ***Bihar Eastern Gangetic Fishermen Coop. Society Ltd. v. Sipahi Singh***, (1977) 4 SCC 145; ***Lekhraj Sathramdas Lalvani v. N.M. Shah***, AIR 1966 SC 334; ***Rai Shivendra Bahadur (Dr.) v. Nalanda College***, AIR 1962 SC 1210 and ***Umakant Saran (Dr.) v. State of Bihar***, (1973) 1 SCC 485. The said judgments was followed by the Hon'ble Supreme Court in ***Oriental Bank of Commerce v. Sunder Lal Jain***, (2008) 2 SCC 280, relevant portions of which are as under:

“11. The principles on which a writ of mandamus can be issued have been stated as under in The Law of Extraordinary Legal Remedies by F.G. Ferris and F.G. Ferris, Jr.:

“Note 187.—Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the sovereignty, directed to any natural person, corporation or inferior court within the jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. Generally speaking, it may be said



that mandamus is a summary writ, issuing from the proper court, commanding the official or board to which it is addressed to perform some specific legal duty to which the party applying for the writ is entitled of legal right to have performed.

Note 192.—Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. The chief function of the writ is to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and tribunals exercising public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute; mandamus lies as well for the enforcement of a common law duty.

Note 196.—Mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the court, subject always to the well-settled principles which have been established by the courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are taken as true, and judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the court may, and should, look to the larger public interest which may be concerned—an interest which private litigants are apt to overlook when striving for private ends. The court should act in view of all the existing facts, and with due regard to the consequences



which will result. It is in every case a discretion dependent upon all the surrounding facts and circumstances.

Note 206.— ... The correct rule is that mandamus will not lie where the duty is clearly discretionary and the party upon whom the duty rests has exercised his discretion reasonably and within his jurisdiction, that is, upon facts sufficient to support his action...”

17. In order to issue a writ of mandamus, there must be a legal right with the party asking for the writ to compel the performance of some statutory duty cast upon the authority concerned. The law is settled in favour of the proposition that a writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation.

18. Now adverting to the facts of the instant petition.

19. Upon perusal of the recovery certificate dated 15th September, 2023, it can be inferred that the Commissioner, Employee's Compensation had requested the Deputy Commissioner/District Magistrate (South), Government of NCT of Delhi, to initiate recovery proceedings and to send the recovered amount in favour of the Commissioner Employees Compensation – VIII for further disbursement to the petitioners.

20. In light of the same, this Court is of the view that the reliefs of expedition of execution proceedings and the execution of order dated 29th December, 2022 is being sought at an early stage by the petitioners and for the purposes of execution of the above said order, necessary steps have been already adopted by the authority concerned.



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21. The Commissioner, Employee's Compensation has already intimated the Deputy Commissioner/District Magistrate (South), Government of NCT of Delhi that under Section 31 of the Employees Compensation Act, 1923, the ordered amount is to be recovered as arrears of land revenue against the persons, i.e., the contractors/employers of the petitioners' deceased son. It is certain that the execution proceeding has reached a considerable stage, wherein, the recovery proceedings have been initiated vide the above said recovery certificate and this Court does not find any cogent reasons to pass any directions in the said proceedings.

22. This Court under its extraordinary power under Article 226 may intervene only where there is a grave injustice caused to a party or if it is established that there is *mala fide* intention. The primary function of a writ is to compel performance of public duties prescribed by a statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction.

23. It is a settled law that under no circumstances, shall this Court intervene with the proceedings and functioning of a Court/Authority below until and unless the same is necessary to avoid any miscarriage of justice or to protect a party's rights and interests if it is being violated by way of non-performance of a public duty.

24. Moreover, a party does not have a vested right for expedited proceedings. In light of the same, this Court is of the considered view that given the restricted scope of writ of mandamus, the present case does not show any record which would imply that due to not expediting the execution



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proceedings; the rights of the petitioners are being hampered.

25. In the present case, the petitioners have been unable to show as to how the respondents are not adhering to the legal duties imposed upon them or how have they failed to perform the said duty and in case any *mala fide* at the behest of the respondents is involved, the petitioners have utterly failed to establish any propositions *qua* the same. Nothing has been placed on record which would make this Court inclined to issue a writ thereby expediting the execution proceedings. This Court is of the view that intervening with the process of execution proceedings is not required at this stage.

26. In light of the above discussions of facts and law, this Court finds no merit in the instant petition and is not inclined to intervene under the extraordinary writ jurisdiction of this Court.

27. Accordingly, the instant petition stands dismissed along with pending applications, if any.

28. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

JANUARY 12, 2024
SV/RYP/AV

Click here to check corrigendum, if any