(2008) 09 MAD CK 0077

In the Madras High Court

Case No : Writ Petition No''s. 1476 of 2005, 584 of 2006, 4511 to 4513, 6660, 9089 of 2007 and 2603 of 2008 and M.P. No. 647 of 2006 in 584 of 2006, M.P. (MD) No''s. 1, 1, 1 of 2007 in Writ Petition No''s. 4511, 4512 of 2007, M.P. (MD) No''s. 2 and 2 of 2007 in Wri

A.L. Periyanan Shanmugam and Others APPELLANT

Vs

The Regional Provident Fund Commissioner and Others RESPONDENT

Date of Decision : 08-09-2008

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 11(2), 18(1), 7A

Citation : (2008) 09 MAD CK 0077

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S. Subbiah, in W.P. No. 2603 of 2008, M. Kumar, in W.P. No. 1476 of 2005, G.R. Swaminathan, in W.P. Nos. 4511 to 4513 of 07, S. Suresh, in W.P. Nos. 9089 and 6660 of 2007 and A.P. Srinivas, in W.P. Nos. 584 and 585 of 2006, for the Appellant; V. Rajasekaran, Spl. G.P. for R. 1 to R. 2 in W.P. Nos. 5841 of 2006, 4511 of 2007 and 2603 of 08, D. Sasikumar, Government Advocate for R. 1 to 4 in WP. 6660 of 2007, V.S.V. Venkateshvaran, for R. 1 and R. 2 in W.P. No. 1476 of 2005, V.S.V. Venkateshvaran, for R. 1 in W.P. No. 9089 of 2007 and P. Sermakani, for R. 2 in W.P. No. 9089 of 2007, for the Respondent

Judgement

K. Chandru, J.—When W.P. No. 2603 of 2008 came up in the adjourned admission list on 05.08.2008, it was informed that there are

other connected writ petitions in respect of the assets and liabilities of M/s. Mahalakshmi Textile Mills Ltd at Madurai. Accordingly, all these

matters were directed to be listed on 06.08.2008. With the consent of all the parties, the Writ Petitions were taken up together for final hearing

and a common order is being passed.

2. Heard the learned Counsel for the petitioners in all the writ petitions as well as

the respondents in the respective writ petitions and perused the

records.

3. It is seen from the records that the said M/s. Mahalakshmi Textile Mills Ltd (for short ''MTML'') went into bad days and the liability of the said

mills in different areas such as labour, P.F., ESI., and Commercial Tax had gone beyond manageable limits. It was at this stage one person by

name S. Subramanian claiming to be the proprietor of Shree. Maruthi Textiles, Tharapuram entered the scene.

4. He claims to have entered into a Memorandum of Understanding with the Managing Director of MTML for the purpose of selling the company

as a going concern with the assurance that he will discharge all the loans and liabilities of the company. The Managing Director by name A.L.

Periyanan Shanmugam had agreed to hand over all the original documents relating to the assets of the said mills. Even when the memorandum was

stated to have been signed on 13.10.2004, the company''s liability towards the Tamil Nadu General Sales Tax and Central Sales Tax alone had

crossed beyond Rupees Four Crores without calculating the interest and penalty.

5. In the mean while, the trade unions functioning in the mill had entered into a settlement u/s 18(1) on 05.01.2005. The Unions have also filed a

writ petition before this Court in W.P. No. 4686 of 2004 seeking for the direction to the District Collector, Deputy Commissioner of Labour and

Assistant Commissioner of Labour (Madurai) to take steps to recover Salaries, Gratuity and Bonus of the workmen in terms of the said settlement.

During the course of the writ petition, they had filed a joint memo of compromise between the unions and the said subramanian along with the

settlement before this Court. The writ petition was disposed of by recording the compromise memo in W.P.4686 of 2004 on 05.01.2005.

6. As against the demand made by the Commercial Tax Department dated 02.09.2005, W.P. No. 9602 of 2005 was filed by one so called

purchaser and power agent (S. Subramanian). This Court admitted the writ petition and granted stay on 29.05.2005.

7. The Commercial tax Department had filed a Writ Appeal against the compromise reached between the trade unions and power agent and

recorded by this Court in W.P. No.4686 of 2004 being Writ Appeal No. 28 of 2006. Along with the Writ Appeal, W.P. No. 9602 of 2005 was also tagged along. A Division Bench of this Court, passed a common order, vide order dated 01.03.2006. The operative portion reads as follows:

10.We have considered the argument of the counsel on either side and also perused the records. Taking into consideration of the facts and

circumstances of the case that the appellant has passed best judgments without giving opportunity to the mill, which was said to have been

communicated only by impugned communication dated 02.09.2005, we are inclined to set aside the same and quashed accordingly and the matter

is remanded back to the appellant for fresh consideration subject to the below mentioned conditions:

i) The power agent/ purchaser is directed to pay a sum of Rs. 40,00,000/- (Rupees Forty Lakhs Only) to the appellant, in which Rs. 20,00,000/-

is payable within eight weeks from today and the remaining balance within four weeks thereafter without prejudice to their rights.

ii) On receipt of the first instalment of Rs. 20,00,000/- from the power agent/ purchaser, the appellant is directed to issue notice to the power

agent/purchaser, give opportunity and pass re-assessment order for the assessment years covered under the case on merits and in accordance with

law within four months from the date of receipt of this order.

iii) Pending re-assessment, the power agent/purchaser is restrained from selling the properties of the mill.

iv) After passing the assessment order for all the said periods, it is needless to say that it is open to the power agent/ purchaser to seek his remedy,

if any, open to him.

v) The power agent/purchaser is also further directed to pay the amount payable to the workers of the mills, who are represented by the trade

unions, in terms of the settlement u/s 18(1) of the Act within eight weeks from the date of re-assessment order passed by the appellant for the said

assessment years.

vi) If there is any difficulty in implementing this order, it is open to both the parties to approach this Court.

vii) It is made clear that this order is passed taking into consideration the strange circumstance involved and this need not be cited as a precedent''

8. Subsequent to this order, S. Subramanian did not comply with the conditions of deposit of Rs. 40,00,000/- as ordered by this Court. On the

contrary, he filed an application for modifying the final order passed by this Court dated 01.03.2006 by filing a miscellaneous petition W.A.

MP(MD)180 of 2006 seeking a modification of a final order and for permission of this Court to sell one landed property of the company to the

extent of 10.7 acres at Pasumali Village to clear the debts. Thus, it was clear that he was not a genuine investor but a corporate buster.

9. Apart from the Pasumalai lands, MTML owned two other properties namely, 1.9 hectres of land at Kodaikonnal and an House property at

Chinnachokkikullam (Madurai). It is significant that the power agent Subramanian was earlier restrained from this Court from selling the properties

of MTML. When the matter came up on 24.05.2006, this Court held that Kodaikonnal property and House Property at Madurai will be sufficient

to meet the sales tax demand and if the lands at Pasumalai is sold, other dues can be settled. Therefore, this Court allowed Pasumalai property to

be sold by sale or otherwise. But however it was made clear that the said alienation will be subject to any order of attachment passed by any other

forum and in force. But, however when the permission was sought for by Shree. Maruthi Textiles of which the said Subrmanian was a proprietor to

sell the property, he was informed by the Commissioner for Commercial Tax that as he had not complied with the conditions made in W.A. No.

28 of 2006, he cannot sell the property.

10. In the meanwhile, A.L. Periyanan Shanmugam, the Managing Director of MTML filed a W.P. No. 2394 of 2007 to set aside the order of

Tahsildar, Madurai South for bringing the property under the Revenue Recovery Act and directed the said Subramanian to render accounts.

However, this Court by an order dated 03.12.2007, dismissed the writ petition by quoting the order passed by the Division Bench made in the

modification application. The Writ Appeal filed by the said A.L.Periyanan Shanmugam being W.A.(MD)725 of 2007 was also rejected by another

Division Bench on 14.12.2007.

11. Subsequently, the Commercial Tax Department which attached the Madurai and Kodaikonnal properties brought it for sale under public

auction. Opposing the same three writ petitions were filed namely W.P.(MD). Nos. 4511 to 4513 of 2007 filed by M/s.K.Sriram, Subbulakshmi

and Madras Madras Gauge Room Eqpt.(Pvt).Ltd, Chennai from taking any action against the selling of the Kodaikonnal properties. Notice of

motion was ordered by this Court on 09.05.2007.

12. Pending the notice, this Court directed the three petitioners jointly to deposit Rupees two crores. Instead of depositing the said amount, they

filed a miscellaneous petition to modify the said condition and the same was also dismissed by this Court on 31.08.2007. The case projected by

the three petitioners was that they were purchasers of the property in a public auction held on 15.05.2007 and therefore, they were bona fide

purchasers and the Commercial Tax Department should not be allowed to sell that property.

13. When the commercial Tax Department found that the power agent Subramanian was not a bona fide person and he has no right to deal with

the properties of MTML and since he has not complied with the conditions made by the Division Bench of this Court, the order passed by the

Division Bench does not survive any more. Hence, they attempted to bring Kodaikonnal property once again for sale by notice dated 18.01.2008

issued by the Deputy commercial Tax Officer, Kodaikonnal. The said Subramanian challenged the said notice by filing a writ petition being W.P.

No. 2603 of 2008. By now, the dues due to the Commercial Tax Department became Rs. 13.65 crores calculated upto 31.03.2008. Even the

valuation done for the two properties at Kodaikonnal and Chinnachokkikullam as per the guide line value came to approximately Rupees Seven

crores only and they cannot satisfy the total dues to the department as was projected by the power agent before the Division Bench.

14. The Managing Director of MTML filed W.P. No. 1476 of 2005 challenging the notice issued by Provident Fund Department dated

16.02.2005 claiming Rupees Five Lakhs u/s 7A of the EPF Act. The same was admitted on 07.03.2005. He also filed W.P. No. 6660 of 2007

seeking for a direction to provide police protection to him from any one coercing him to be part of any illegal activity. In that writ petition, he had

made the trade Unions as parties. He also filed W.P. No. 9089 of 2007 seeking for a direction to E.P.F. Organisation, ESI Corporation, Punjab

National Bank and ICICI Bank to sell the properties of MTML over which those four respondents had statutory claims and have also issued

attachment orders.

15. The said writ petition was directed to be posted along with the other writ petitions. It is seen from the counter affidavit filed by P.F.

Department that the amount due towards contribution and penal damages works out to Rs. 1.84 crores. Therefore, the department had invoked

the recovery mechanism in terms of Section 11(2) of the E.P.F Act. This Court earlier in W.P. No. 6616 of 2004 dated 11.02.2006 upheld the

charge created by the department over the properties.

16. The counter affidavit filed by E.S.I.C shows that the dues towards the Corporation works out to Rs. 2.12 crores and hence the properties

were attached on 04.02.2005 in terms Section 94 of the ESI Act. The ESI Corporation created a charge over those properties.

17. Likewise, the Punjab National Bank had also filed W.P. Nos. 584 and 585 of 2006 seeking to challenge the Commercial Tax Department in

selling the properties claiming that they had filed an application for a sum of Rs. 3.61 crores before the DRT payable by MTML in O.A. No. 286

of 1997. The said Original Application had been transferred to the DRT, Coimabatore and pending in T.A. No. 752 of 2002.

18. It is in this factual back ground, the claim of the parties will have to be determined. The MTML is a company and property owned by the

company cannot be dealt with other wise than resorting to legal provisions. As of now, there are statutory claims by ESI, PFO, Commercial Tax

Department, Punjab National Bank and ICICI Bank. This is apart from the dues payable to the workmen in terms of the labour enactments. The

respective creditors have attached the properties of the mills under various statutory enactments. The Nationalised Bank (PNB) had also moved

the DRT to recover the dues from MTML before the DRT. In this back ground, the right of the so called power agent S. Subramanian to enter

into any deal with the properties of the MTML and deal with the same on the basis of the so called MOU between him and then Managing

Director dated 13.10.2004 is doubtful. It has got no legal sanction. Also, it is not even a registered documents even for looking into it.

19. The power of the Managing Director to enter into such an MOU without involving the entire company is also questionable. Even otherwise, the

said Subramanian had not complied with the conditions made by this Court in W.A. No. 28 of 2006 dated 01.03.2006. Further, the modification application filed by him in W.A.180 of 2006 was not bona fide as he did not pay the dues agreed by him. He cannot enter into the company with a

so called MOU and try to sell the properties of the company especially when several statutory attachment orders are slapped over the properties

of MTML by various statutory authorities. Unless those attachment orders are raised in a manner known to law, the question of getting of any

direction from this Court to sell the properties by sale or otherwise is not permissible. Fortunately, the said Subramanian had not obeyed the orders

of the Division Bench dated 01.03.2006 and 24.05.2006 and therefore, he cannot be allowed to touch the properties of the MTML. Even

persons who claim to be bona fide purchasers of the properties cannot question the sale brought about by the Commercial Tax Department.

20. In the result, the writ petition filed by S. Subramanian namely W.P.2603 of 2008, Writ Petitions filed by A.L. Periyanan Shanmugam being

W.P. No. 1476 of 2005, W.P. Nos. 6660 of 2007 and W.P. No. 9089 of 2007 will stand dismissed. Likewise, W.P. Nos. 4511 to 4513 of

2007 filed by M/s. K.A. Sriram, Subbulakshmi and Madras Gauge Room Eqpt.Pvt.Ltd will also stand dismissed.

21. The other writ petitions namely W.P. Nos. 584 & 585 of 2006 filed by the Punjab National Bank against the Commercial Tax Department

ought not to have been filed before this Court. The controversy should have been resolved by mutual negotiations between the two statutory

authorities. Hence, no order passed in those two writ petitions in view of the direction to be issued by this Court.

22. As there are many claimants for the properties of MTML including statutory claims, the Secretary to Government, Commercial Tax &

Religious Endowment Department, Government of Tamil Nadu, Fort. St. George, Chennai is hereby directed to convene a meeting of the

representatives of ESI Corporation, Employees Provident Fund Organisation, Commissioner for Commercial Tax, Punjab National Bank and

ICICI Bank as well as the Commissioner of Labour to arrive at a consensus regarding selling the properties of MTML. Once the properties are

sold, they should apportion the realised amount to satisfy the various claims with due proportion to each of the claimants. This exercise shall be

carried out by the Secretary to Government CT&RE Department, Government of Tamil Nadu within a period of 12 weeks from the date of receipt of a copy of this order.

23. All these writ petitions are disposed of accordingly. Consequently, connected miscellaneous petitions are closed. No costs.