(2022) 10 KL CK 0159

In the High Court Of Kerala

Case No : Writ Petition (C) No. 7479 Of 2011

Alex Mathew Regional Provident Fund Commissioner II, Employees Provident Fund Organisation, Sub - Regional Office, Chalakuzhy Building, C.M.S.College Road, Kottayam 686001

Date of Decision : 19-10-2022

Acts Referred:

Citation : (2022) 10 KL CK 0159

Hon'ble Judges : P.V.Kunhikrishnan, J

Bench : Single Bench

Advocate : Jimmy George, M.Jose Antony, Joy Thattil Ittoop

Final Decision : Allowed

Judgement

P.V.Kunhikrishnan, J.

1. Petitioners are the son and wife of late A.T.Mathew who purchased a portion of "Mettukuzhy Estate" by virtue of Ext.P1 sale deed dated 04.03.1980. Mettukuzhy Estate originally was having an extent of 100 acres with cardamom and was belonged to Vadivelu Gounder, his wife Padmavathy and his niece Sakunthala. The 100 acres was sold on 18.03.1967 by separate teer deed to 6 persons namely Paul Raj, Peter, Prabhakar, their sisters Mary Kulantha Swamy, Stella Salieth and Emelda Mary. Prior to the sale of the original Estate, a code number was allotted by the P.F. Authority to Mettukuzhy Estate as KR/2378. After the sale of the Estate, the P.F.Authority allotted code No.KR/2378 to Mary Kulanthu Swamy and separate code numbers for other 5 Estates as KR/2893, KR/2894, KR/2895, KR/2896 and KR/2897. Subsequently, P.F. Department informed by letter dated 06.08.1971 stating that Mettukuzhy Estate was covered under the provisions of the Provident Fund Act from 21.03.1967. When the coverage was disputed, the 1st respondent conducted Section 7A enquiry and passed order dated 10.11.1982 holding that amounts are due from the above 6 persons for the period up to 5/75 and from the 1st petitioner's father for the period from 6/75 to 31-10-80. Late A.T.Mathew challenged the said order before the 2nd respondent which was rejected by order dated 07.06.1983 against which an O.P.

No. 7166/83 was filed before this Court. This Court disposed the above original petition by Ext.P2 judgment and quashed the orders passed by the respondents and made an observation that if there had been a disruption of the original establishment, the petitioner therein could not be made liable on the ground that he was having interest over a portion of it and also directed the respondent to examine the liability in the light of the observation made in the judgment. Ext.P2 judgment was delivered in the light of a decision of the Full Bench of this Court in T.A.Zainulabdeen v. Regional Provident Fund Commissioner [1974 KLT 708].

2. In the light of the above decision which relies on the Full Bench decision, the only question to be decided is whether there had been a real and bonafide division which disrupted the original estate having an extent of 100 acres and gave birth to a new, separate and distinct Estate. It is the case of the petitioners that Late A.T.Mathew produced his teer deed, Ext.P1 and 6 separate sale/teer deed of others before the 1st respondent. But the 1st respondent passed an order on 30.06.1988 finding that the Estate is covered under the Provident Fund Act. Late A.T.Mathew again filed an appeal before the 2nd respondent challenging the order of the 1st respondent. The 2nd respondent again dismissed the appeal by order dated 28.07.1997. The 1st petitioner's father challenged the order of the 2nd respondent dated 28.07.1997 before this Court by filing O.P. No. 19909/97 which was disposed of by judgment dated 09.07.2006 directing the 1st respondent to reconsider the matter afresh. Again the 1st respondent passed an order on 20.02.2007 holding that the dues up to 5/75 are to be remitted by 6 persons of the 6 Estates and the amount shown in KR/2378 from 6/75 to 31.10.1980 is to be paid by the legal heirs of Sri.A.T.Mathew. Aggrieved by the order dated 20.02.2007 of the 1st respondent, the petitioners filed Appeal No. ATA No. 312 (7) 2007 before the 2nd respondent. In order to substantiate the case that the 6 Estates and the Estate of late A.T.Mathew are separate entity, the petitioners produced Exts.P3 to P8(f) before the 2nd respondent, which were issued separately to all the 6 persons by different authorities like Deputy Labour Officer, Kerala Plantation Department, Agricultural Income Tax Department and the Village Officer, Kattapana treating the Estate as separate. It is the case of the petitioners that, the 2nd respondent, without adverting to the observation made by this Court in Ext.P2 judgment and the Full Bench decision of this Court in T.A.Zainulabdeen’s case (supra), dismissed the appeal by Ext.P8 order dated 17.01.2011. It is the contention of the petitioners that the integrity of Mettukuzhy Estate has been disrupted by the sale of the said Estate to different persons by separate sale deeds and as the petitioners have not been engaged 20 or more workers, they are not liable to pay any amount as contributions under the provisions of Provident Fund Act. Aggrieved by Ext.P8 order, this writ petition is filed.

3. Heard the learned counsel for the petitioners and the learned Standing Counsel for the respondents.

4. The counsel for the petitioners reiterated his contentions in the writ petition.

The counsel relied on the judgment of the Division Bench of this Court in Assistant Provident Fund Commissioner, Kottayam v. K.M.Eapen and Others [2017 (5) KHC 892]. The Standing Counsel for the respondents on the other hand takes me through the statement filed by the 1st respondent and submitted that after the sale of the Estate in 1967 to six persons, the Estate continued to be managed by Sri. John Baby. It is also the case of the respondents that the petitioners' predecessor became the Manager of the entire Estate when John Baby left the service with effect from 06.09.1975. It is also submitted that, before the Deputy Labour Officer, only a single agreement was made by so called six separate Estates, indicating common employees and management, and functional integrity of the portions of the Estate owned by six persons. It is also stated that the entire Estate was represented by one person before the Deputy Labour Officer, Sri.Peer Muhammed.

5. This Court considered the contentions of the petitioners and the respondents. In order to substantiate the case that the six Estates and the Estate of Late A.T.Mathew are separate entity, the parties produced and marked six documents before the 2nd respondent. Ext.P3 is the copy of memorandum of settlement signed by by the Trade Union of the workers of the 6 Estates and the Deputy Labour Officer. Exts.P4(a) to P4(f) are the proceedings of the Tahsildar under the Kerala Plantation Tax which was issued separately to the proprietor of 6 Estates. Exts.P5(a) to P5(e) are the copy of assessment orders relating to the Agricultural Income Tax issued to the 5 proprietors among the 6 Estate owners to show that the Agricultural Income Tax Department also treated the 6 Estates as separate units. Exts.P6(a) to P6(c) are the copy of receipts of tax remitted separately for different years by Stella Salieth, M.S.Peter and Mary Kulantha Swamy. Exts.P7(a) to P7(f) are the copy of the certificate issued by the Village Officer, Kattappana to show that no land tax dues have been made by any proprietors of the 6 Estates till the year 1979-80. From the above documents it is clear that the petitioners discharged their initial burden showing that the Mettukuzhy Estate has been disrupted by the sale of the said estate to different persons by separate sale deeds. When the initial burden is discharged by the petitioners, it was certainly incumbent on the part of the respondents while making the enquiry to obtain sufficient materials and evidence on record so as to establish and hold otherwise. A perusal of the impugned order will not show that any such enquiry is conducted by the respondents.

6. In Assistant Provident Fund Commissioner's case (supra), a Division Bench of this Court observed like this:

"15. The asseverations in Ext.P2 affidavit are definitive that the partition of the erstwhile Kanjirappally estate has been completed; that each of the parties to the said deed are holding separate parcels of land independently and that each of them are engaged in independent agricultural operations separate from each other. It is also ineluctable from the statements in the affidavit that the management of each of the parcels of land are now in separate hands and that there is absolutely no integrity, functional or otherwise, between the managements of the separate parcels with that of the erstwhile Kanjirappally Estate which was under a common management until the partition was effected. Of course, if the partition deed had not been executed, the appellant Commissioner would be justified in holding that there is functional and character integrity in the estate, because the first respondent in his affidavit concedes that until the partition, he was managing and supervising the estate on behalf of all the other joint owners, because he was residing therein. However, once the partition deed was executed and each of the sharers allotted separate parcels of land, its functional integrity would cease and the ratio in Zainulabdeen (supra) would squarely apply. This is more so because it is stated in the writ petition that each of the petitioners, who are now independent owners of their respective parcels of land has separate coffee and cardamom registrations, agricultural income tax assessment, etc., leading to an inference, at least prima facie, that the thirteen separate parcels are now being managed and run as separate establishments.

16. Once the respondents had thus discharged their initial burden of showing that the thirteen parcels of land had become independent establishments, it was certainly incumbent on the appellant, while making an enquiry, to obtain sufficient materials and evidence on record, so as to establish and hold otherwise, which unfortunately is deficient in this case. (underline supplied)

7. Similarly in the judgment dated 31.03.2015 in W.P. (C). No.20940/2005, a similar question was considered by this Court. This Court observed that the mere fact that, all the brothers had in their possession, different extents of property, cannot lead to a conclusion that the establishment was continued as one single unit. The issue to be looked into is as to whether the management was carried on jointly or separately and whether the employees engaged were common to all the extent of property. In the Full Bench decision of this Court in T.A.Zainulabdeen’s case (supra), this Court observed like this:

“The only question therefore is whether there has been a real and bonafide division which disrupted the original establishment and gave birth to new and separate and distinct establishments. This question had not been adverted to or considered in the order Ext.P5. The only reasoning contained in the order in paragraph 2 thereof which we have read proceeded on the basis that even if the partition was real it only involved a change of ownership and the integrity of the original establishment was not affected. This is a wrong approach. In the counter affidavit there are elaborate averments and reference is made to statements said to have been taken from persons who were allegedly in management of parts of the estate. These were not referred to at all in the order Ext.P5 and there is no averment that these statements have been made available to the petitioner. The order Ext.P5 cannot be sought to be sustained by statements made before this court in an affidavit. We must be satisfied that the respondent had considered those aspects and had those aspects in mind before he passed the order Ext.P5.

There is nothing in the order to indicate that this has been done. Moreover if information had been collected by the 1st respondent he should have made it available to the petitioner before relying on it and the petitioner should have been given an opportunity to rebut what is contained in those statements.”

8. After going through the above judgments, I am of the considered opinion that the impugned order is passed without considering the dictum laid down by this Court and also without considering the documents produced by the petitioners. Therefore, according to me, Ext.P8 is to be set aside and the matter is to be reconsidered by the respondents in the light of the dictum laid down by this Court.

Therefore, this writ petition is allowed in the following manner:

1. Ext.P8 order is set aside.

2. The respondents are directed to reconsider the matter afresh, following the observations made by this Court in Ext.P2 judgment and the decision of the Full Bench in T.A.Zainulabdeen v. Regional Provident Fund Commissioner [1974 KLT 708] and also the decision of the Division Bench in Assistant Provident Fund Commissioner, Kottayam v. K.M.Eapen and Others [2017 (5) KHC 892].