(2016) 04 MAD CK 0194

In the Madras High Court

Case No : Writ Petition Nos. 10048 of 2011, 19886 & 19887 of 2008

C. Madanraj APPELLANT

Vs

Regional Provident Fund Commissioner RESPONDENT

Date of Decision : 25-04-2016

Acts Referred:

Citation : (2016) 150 FLR 649 : (2016) LabLR 738

Hon'ble Judges : Mr. V. Ramasubramanian, J.

Bench : Single Bench

Advocate : Mr. R. Shanmugam, Advocate, for the Appellant; Mr. P. Chinnadurai, Govt. Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

V.Ramasubramanian, J.—The petitioner, who purchased a property in an auction sale conducted by the Debts Recovery Tribunal - I, Chennai, has come up with the above three writ petitions, challenging (i) a sale proclamation issued by the Recovery Officer of the Employees Provident Fund Organisation, (ii) another sale proclamation issued by the Recovery Officer of the Employees Provident Fund Organisation, and (iii) a demand notice issued by the Tahsildar, Ambur for recovery of the dues payable to the workman.

2. Heard Mr.R. Shanmugam, learned counsel for the petitioner, Mr.P. Chinnadurai, learned Government Advocate appearing for the State, Mr.T.K. Ram Kumar, learned counsel appearing for the City Union Bank at whose instance the property was brought to sale by the Debt Recovery Tribunal, Mr.N.G.R. Prasad, learned counsel appearing for the Trade Union of Employees and Mr.T.R. Sundaram, learned counsel appearing for the Employees Provident Fund Organisation.

3. There is no dispute about the fact that the City Union Bank, Kumbakonam, filed an application against a company by name Tejoomal Industries Limited for recovery of money and obtained a certificate of recovery in DRC No.231 of 2003

on the file of the Debts Recovery Tribunal-I, Chennai. Pursuant to the certificate of recovery, the Recovery Officer-I of Debts Recovery Tribunal-I conducted an auction of the immovable properties belonging to the debtor company on 15.6.2006. The petitioner participated in the auction and became the successful bidder. Thereafter, he also wrote to the Recovery Officer, a letter dated 30.6.2006, as to whether there are any statutory dues. The petitioner did not receive any response from the Recovery Officer.

4. Therefore, the petitioner paid the balance of consideration after which a certificate of sale was issued by a Recovery Officer on 27.7.2006.

5. Thereafter, the Government appears to have passed an order in G.O.(D)No.829, Labour and Employment dated 30.11.2007, directing the property to be brought to sale for the recovery of the dues payable to 79 workers as per the orders passed by the Labour Court, Vellore, in certain claim petitions dated 21.11.2006. Pursuant to the said Government Order, the Tahsildar issued a demand notice and hence, the auction purchaser has come up with the third writ petition.

6. The first and second writ petitions are filed challenging orders of attachment issued by the Recovery Officer of the Employees Provident Fund Organisation, after two years of the purchase by the auction purchaser. Therefore, all of them were taken together for disposal.

7. Insofar as the third writ petition is concerned, the judgment of the Labour Court in the claim petitions filed by the workers under Section 33C(2) of the Industrial Disputes Act, 1947, was dated 21.11.2006. The sale certificate itself was dated 27.7.2006. As rightly contended by Mr.T.K. Ram Kumar, learned counsel for the Bank, the sale was not in the course of winding up proceedings so as to attract Section 529A of the Companies Act, 1956.

8. In any event, one property on which there could be several charges and attachments, could be brought to sale only once. If at all people claim priority of payment or ratable distribution, it could be only on the sale proceeds and not on the property after a pucca Court auction sale. The property which was an immovable property has now got converted into liquid cash. Therefore, the auction purchaser cannot be penalised.

9. In view of the above, the third writ petition is allowed and the notice of demand is quashed.

10. Insofar as the claim of the Employees Provident Fund Organisation is concerned, the larger question is now pending consideration before the Full Bench. But, be that as it may, the Employees Provident Fund Organisation cannot proceed against the auction purchaser. The logic that we have indicated earlier would equally apply to their claim in view of the fact that what was available in the form of land and building is now available in the form of cash. Therefore, leaving open all other claims with regard to the priority of claims etc., the other

two writ petitions are also allowed, so that the auction purchaser is relieved. It will be open to others to work out their remedies in the manner known to law. No costs. Consequently, connected MPs are closed.

