(2015) 06 KL CK 0185

In the High Court Of Kerala

Case No : Writ Petition (C) No. 2547 of 2014 (P)

C. Mammootty APPELLANT

Vs

The Assistant Provident Fund Commissioner, Employees Provident Fund Organistion and Others RESPONDENT

Date of Decision : 29-06-2015

Acts Referred:

Citation : (2015) 147 FLR 469 : (2015) 3 LLJ 550

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

Bench : Single Bench

Advocate : R. Ramadas, for the Appellant; Thomas Mathew Nellimoottil, S.C., Advocates for the Respondent

Final Decision : Disposed off

Judgement

P.V. Asha, J—The petitioner has filed this writ petition, aggrieved by Exts. P1 and P2 proceedings, initiated for recovery of Provident Fund dues outstanding in respect of M/s. Poonchola Plantations Pvt. Ltd.

2. The petitioner is a partner of M/s. Poonchola Plantations. The plantation was purchased by the petitioner along with other partners from M/s. Nedumattom Plantations Pvt. Ltd., during the period 1998-1999.

3. While so Ext. P1 notice was issued by the Assistant Provident Fund Commissioner, Calicut, on 24.4.2009 under Section 14B of the Employees Provident Fund and Miscellaneous Provision Act 1952 (hereinafter referred to as ''the Act 52''). The contribution towards the Employees Provident Fund due from the Nedumattom Plantations Pvt. Ltd. for the period from 6/88 to 3/90 and the damages for the same was levied against the Poonchola Plantations, under Section 14B of the Act 52 read with Section 17B of the Act. A total amount of Rs. 21,852/- was found due towards contribution and equal amount of Rs. 21,852/- was ordered as the damages for the said period. The contributions were found defaulted, with arrears due for the period from 5.1.1981 to 1989. Thereafter by

Ext. P2 dated 22.12.2013 the petitioner was requested to ensure remittance of a sum of Rs. 57,799/- towards contribution for the period from 5/81 to 1/89, damages for the - period 12/83 to 5/88 and damages for the period from 6/88 to 3/90.

4. The petitioner submits that he purchased the property in the year 1998-1999 and immediately after the purchase the said establishment was taken over by the Government in the year 2000. According to him he did not default any payment and it was the original/previous owner of Nedumattom Plantations, who was in arrears. Moreover as far as the damages are concerned, the petitioner says that he has neither done anything in defiance of law deliberately nor was guilty of conduct contumacious or dishonest nor did he act in gross disregard to its obligations. According to him he is not liable to be penalised for the default committed by the previous owner.

5. Respondents have filed a counter affidavit justifying the proceedings for recovery of the amount from the petitioner. It is stated that the proceedings initiated under Section 14B of the Employees Provident Fund Act is in accordance with the Rules and petitioner being the successor of the defaulter is liable to pay the amount, by virtue of Section 17B of the Act. The employer of the establishment had defaulted payment of Provident Fund contribution for the period from 6/88 to 3/90 and belatedly remitted the Provident Fund dues for the period 6/88 to 3/90 and damages. It is stated that the employer of the establishment was served with a notice to as to why the damages should not be levied on him for the non remittance of Provident Fund dues for the period from 6/88 23/90 as provided under 14B of the Act. In Ext. P1 it was stated that the present employer is liable for payment of the contribution dues under Section 17B of the Act. As, it is stated that it was on the basis of Ext. P1 order which was passed after hearing the petitioner with due notice that damages of Rs. 21,850/- was levied for the period of 6/88 3/90 and a sum of Rs. 21,302 towards contribution for the period from 5/81 to 1/89 and Rs. 14,645/- towards damages for the period from 12/83 to 5/88. It is the said amount of Rs. 57,790/- i.e., sought to be recovered under Ext. P2 issued by the Enforcement Officer.

6. I heard the learned counsel appearing for the petitioner and learned Standing counsel for the respondents. The learned counsel for the petitioner pointed out that there is no willful or deliberate action on the part of the petitioner who purchased the establishment in the year 1998. Therefore the damages levied on him is excessive and the same could have been awarded. Section 14B provides for recovery of damages by way of penalty "such damages not exceeding the amount of arrears". It does not prescribe any where that an amount equal to the arrears of contribution should be levied as damages.

7. Learned Standing Counsel pointed out the judgment of the Apex court in Mcleod Russel India Limited Vs. Reg. Provident Fund Commissioner, AIR 2014 SC 2573 : (2014) AIRSCW 3820 : (2014) 7 JT 518 : (2014) 8 SCALE 272 wherein Apex Court upheld the proceedings initiated for recovery of contribution as well

as the recovery of damages after elaborately considering the provision Section 14B as well as Section 17B of Employees Provident Fund Act. It is also pointed out that the petitioner did not invoke his appellate remedy as against Ext. P1 order.

8. In this case the petitioner has already remitted the amount demanded. His grievance is against quantum of damages levied. In view of the fact that the petitioner was not responsible for the payment at the relevant time and default was committed by the previous owner and in view of the fact that the petitioner''s establishment is already taken over by Government within a period of 2 years of its purchase, I feel it necessary to remit the matter to the 1st respondent to consider the question of quantum of damages, after affording an opportunity of hearing to the petitioner.

Therefore the writ petition is disposed of by directing the 1st respondent to reconsider the matter and take a decision on the question of quantum of damages levied as per Ext. P1, after affording an opportunity of hearing to the petitioner and to pass orders within a period of 3 months.