
(2000) 06 BOM CK 0116

In the Bombay High Court

Case No : Writ Petition No. 2471 of 1987

Gadhinglaj Taluka Shetkari Sahakari Kharedi Vikri Sangh
Limited

APPELLANT

Vs

The Regional Provident Fund Commissioner, Bombay and
another

RESPONDENT

Date of Decision : 17-06-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 14
Maharashtra Land Revenue Code, 1966 — Section 174

Citation : (2000) 4 BomCR 364 : (2001) 89 FLR 139 : (2001) 1 LLJ 683

Hon'ble Judges : A. M. Khanwilkar, J

Bench : Single Bench

Advocate : S. L. Kapse, for the Appellant; V. P. Malwankar, A.G.P., for the Respondent

Judgement

A. M. Khanwilkar, J.—By this petition under Article 226 of the Constitution of India the petitioner-society has challenged the orders dated 11-12-1986 and 22-12-1986, both passed by Regional Provident Fund Commissioner (II), Maharashtra & Goa, in exercise of powers u/s 14-B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952. By the said orders the petitioners were directed to pay a sum of Rs. 88,155.75 and Rs. 816.20 respectively within a period of 15 days from the receipt of the impugned orders. It is an admitted position that the petitioners did not deposit the amount as directed by the impugned orders. Consequently, the office of the Commissioner forwarded the papers to the Executive Magistrate, Tal. Gadhinglaj for recovery of the debts, as quantified in the impugned orders, as arrears of land revenue. The Executive Magistrate accordingly issued notice on 16-4-1987 directing the petitioner to pay the arrears of Rs. 88,971.95 within 7 days from the service of the said notice failing which the said amount was to be recovered from the petitioners as land revenue along with penalty being 1/4th of the said amount. After the said notice

was served on the petitioners the petitioners immediately approached this Court on 4-5-1987 by the present petition and inter alia challenged the two demand orders dated 11-12-1986 and 22-12-1986 as well as the impugned notice issued by the Executive Magistrate, Gadhinglaj dated 16-4-1987. This Court entertained the writ petition and granted interim relief on condition that the petitioners shall deposit Rs. 40,000/- with the Executive Magistrate, Gadhinglaj. It is stated that the said amount has been deposited by the petitioners long back. Now the Ld. Counsel for the petitioners state on instructions that even the balance amount demanded under the impugned orders dated 11-12-1986 and 22-12-1986 respectively has already been deposited in its entirety. Since the amounts demanded under the impugned orders have been deposited, the petition has become infructuous to that extent.

2. The only question which has now been urged on behalf of the petitioners is that the petitioners may not be fastened with the penalty as indicated in the impugned notice of the Executive Magistrate, Gadhinglaj dated 16-4-1987. It is seen that the penalty was to be imposed on the petitioners only on failure to pay the demanded amount within 7 days from the receipt of the said notice. It is not in dispute that the petitioners instead of paying the said amount approached this Court, and this Hon"ble Court while admitting the petition granted interim relief. It is true that the petitioners did not pay the amount as required under the impugned notice, nonetheless since the petitioners had challenged the impugned notice and this Court not only admitted the said petition but also granted interim relief of stay, by no stretch of imagination it can be said that the petitioners had failed to pay so as to visit with the consequences of paying penalty.

3. Since, in the present case, the petitioners challenged the impugned orders as well as the notice issued by the Executive Magistrate, it is not open to the respondents to contend that the petitioners are liable to pay penalty as provided for u/s 174 of the Maharashtra Land Revenue Code, 1966. In the circumstances, I have no hesitation in accepting the petitioners' contention that the petitioners cannot be saddled with the liability to pay the penalty on the amount demanded under the impugned orders, as observed in the impugned notice of the Executive Magistrate dated 16-4-1987. To that extent the petition would succeed.

4. It is however made clear that if the petitioners are still in arrears, it shall forthwith deposit the balance amount, if any, failing which it shall be open to the respondents to proceed against the petitioners for the recovery of the said balance amount as well as the penalty thereon by invoking the provisions u/s 174 of the Maharashtra Land Revenue Code, 1966. Petition is disposed off in the above terms with no orders as to costs.

Petition succeed.