
(1964) 08 MP CK 0010

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 304 of 1963

State Bank of Indore

APPELLANT

Vs

Regional Provident Fund Commissioner and Others

RESPONDENT

Date of Decision : 21-08-1964

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 8

Citation : AIR 1965 MP 40 : (1966) ILR (MP) 559 : (1964) JLJ 563 : (1965) 2 LLJ 662 : (1965) 10 MPLJ 62 : (1965) MPLJ 62

Hon'ble Judges : P.V. Dixit, C.J.;K.L. Pandey, J

Bench : Division Bench

Advocate : K.A. Chitale and V.S. Dabir, for the Appellant; H.L. Khaskalam, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Dixit, C. J.

The circumstances in which tills application under Article 226 of the Constitution has been filed are that by a mortgage deed executed on 5th December 1959 the respondent No. 5, namely, Bhandari Iron and Steel Company Private Limited of Indore (hereinafter referred to as the Company), mortgaged its entire Immovable property with the petitioner, the State Bank of Indore (hereinafter referred to as the Bank). The said Company failed and neglected to pay the employer's contribution due from if under the Employees' Provident Funds Act, 1952 (hereinafter referred to as the Act) in respect of the periods from September, 1957, to July, 1958, and from August to September, 1958, and consequently proceedings for the recovery of the employer's contribution from the Company as an arrear of land revenue were started u/s 3 of the Act read with Section 155 of the Madhya Pradesh Land Revenue Code, 1959, (hereinafter referred to as the Code). In those proceedings, the Naib-Tahsildar of Indore attached a Chawl belonging to the Company which, along with other property belonging to the Company, had been mortgaged with the Bank. The Bank

objected to the proposed sale of the Chawl on the ground that the property sought to be sold stood mortgaged to it on the date of the attachment and that the demand of the employer's contribution under the Act had no priority over its claim under the mortgage against the Company. The Naib-Tahsildar rejected this objection taking the view that by virtue of Sections 137 and 152 of the Code the property attached could be sold free of all encumbrances.

The petitioner Bank then preferred an appeal before the Sub-Divisional Officer, Indore, which was rejected. While rejecting the appeal the Sub-Divisional Officer expressed the view that as the arrear of employer's contribution under the Act was recoverable as an arrear of land revenue u/s 8 of the Act, Section 155 of the Code and all other provisions of the Code contained in Chapter XI of the Code were applicable; and that, therefore the property attached could be sold free of all encumbrances. He also added that since the demand in respect of the employer's contribution under the Act accrued before the mortgage was executed by the respondent-Company in favour of the Bank, the Bank could not claim priority "over Government dues simply by effecting a mortgage on a later date." The petitioner-Bank then preferred a second appeal before the Commissioner, Indore, and applied for stay of the sale of the property attached for the recovery of the employer's contribution due from the Company. The Commissioner rejected the petitioner's prayer for stay. Thereupon, the Bank filed this petition for quashing by a writ of certiorari the orders of the Naib-Tahsildar, Indore, and the Sub-Divisional Officer, Indore, rejecting its objections and for the issue of a direction prohibiting the respondents Nos. 1 to 4 from selling the property attached free from the mortgage encumbrance in favour of the Bank.

It was argued by Shri Chitaley, learned counsel appearing for the petitioner, that there was no provision in the Employees' Provident Funds Act, 1952, giving to the demand in respect of the employer's contribution priority of payment over other debts owed by the employer to a private person or the Government; and that Sec. 8 of the Act merely laid down that any arrear of employer's contribution would be recoverable by the appropriate Government in the same manner as an arrear of land revenue, and did not create any charge on the employer's property for the payment of the contribution. Learned counsel proceeded to say that u/s 155(c) of the Code the provisions contained in Chapter XI of the code in so far as they were applicable would apply to the recovery of the amount of employer's contribution as an arrear of land revenue, but from this it did not follow that all the provisions contained in that Chapter become applicable in the proceeding; that Section 137 of the Code made only the land revenue assessed on any land the first charge on the land and on the rents and profits thereof; that u/s 152 of the Code it is only when land is sold for arrears of land revenue due in respect thereof that the purchaser acquires it free of all encumbrances; and that Sections 137 and 152 of the Code have no applicability whatsoever to recovery of any amount which is not an arrear of land revenue but which is only recoverable in the same manner as an arrear of land revenue.

It was further submitted that the property attached by the Naib-Tahsildar could no doubt be sold subject to the burden of the entire mortgage held by the petitioner; but that in the absence of any Statutory provision creating a first charge on the employer's property for the payment of contribution due from him under the Act, no priority could be given to the demand on account of the employer's contribution over the secured debt of the Bank. In support of his argument learned counsel relied on AIR 1952 341 (Nagpur) , and Ragho Prossd v. Mewa Lal, ILR 34 All 223 (PC), and referred us to the statement in paragraph 1311 at page 661 of Halsbury's Laws of England, Volume 6, 3rd Edition.

As against this, Shri Khaskalam, learned Government Advocate, contended that as the amount of the employer's contribution was recoverable in the same manner as an arrear of land revenue u/s 8 of the Act and Section 155 of the Code, the sale of the Company's property attached by the Naib-Tahsildar would be governed by Section 152 of the Code.

In our judgment, the contentions advanced on behalf of the petitioner must be given effect to. Section 8 of the Act provides, inter alia, that any amount due from the employer in relation to an establishment to which a Scheme under the Act applies, may, if the amount is in arrear, be recovered by the appropriate Government in the same manner as an arrear of land revenue. It does not say that the amount may be recovered as an arrear of land revenue. It merely provides the manner of the recovery of the amount mentioned in Section 8. The manner prescribed for the recovery of the amount as an arrear, of land revenue does not convert the amount into an arrear of land revenue; nor does it create any charge on any property of the employer for the payment of the amount or give a priority in the manner of payment of the amount. There is no provision in the Act in regard to the creation of any such charge or priority for the payment of the employer's contribution.

It is significant that Section 11 of the Act, which deals with priority of payment of contributions over other debts, is restricted only to those cases where any employer is adjudicated insolvent or, being a Company, has been ordered to be wound up. In those cases the amounts mentioned in Section 11 have been deemed to be included among the debts under the Insolvency Act and the Companies Act and are required to be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company. The omission of a provision in the Act creating a charge on the employer's property or giving a priority in cases not falling u/s 11 in the matter of the payment of the amount only shows that a demand for the payment of the employer's contribution can have no priority over other secured or unsecured debts.

It has been stated in paragraph 1311 at page 661 of Halsbury's Laws of England, Volume 6, 3rd Edition, that

"subject to the statutory provisions with regard to assessed taxes, the Crown has no priority over other unsecured creditors in respect of debts due to the Crown."

A fortiori, in the absence of a statutory provision creating a charge or giving a priority in the matter of the payment of the employer's contribution, the amount can have no priority over the debts of secured creditors due from the employer.

Section 155(c) of the Code only lays down that if under any enactment any sum is declared to be recoverable in the same manner as an arrear of land revenue, then it may be recovered, as far as may be, under the provision of Chapter XI of the Code in the same manner as an arrear of land revenue. Section 137 of the Code is not attracted in the present case as that only makes the land revenue assessed on any land the first charge on that land and on the rents and profits thereof. The amount due from an employer u/s 8 of the Act is clearly not any land revenue on any land and, therefore, Section 137 has no applicability whatsoever. Section 152 of the Code only gives effect to the provisions contained in Section 137 of the Code when it says that the purchaser of the land sold for arrears of land revenue due in respect thereof shall acquire it free of all encumbrances imposed on it. The words "the land sold for arrears of land revenue" and the qualifying words "due in respect thereof" unmistakably show that it is only when land is sold for arrears of land revenue assessed on that land that the purchaser of the land acquires it free of all encumbrances imposed on it.

This provision has also no applicability here for the simple reason that the property that is intended to be sold is not any land and the arrears of the employer's contribution is not any amount of arrears of land revenue. Both the Naib Tahsildar and the Sub-Divisional Officer, therefore, erred in holding that the Chawl mortgaged with the petitioner-Bank by the Company could be sold free of the mortgage encumbrance for the recovery of the amount due from the Company u/s 8 of the Act. The matter is really concluded by the Full Bench decision in ILR (1952) Nag 211 : (AIR 1952 Nag 341) (FB) (supra) where it has been held with reference to Section 138 of the C. P. Land Revenue Act, 1917--analogous to Section 152 of the Code--that the words "due in respect thereof" in Section 138 qualify the words "arrears of land revenue" in the section; that that section applies only to those cases in which land revenue due is itself recovered; and that it does not come into play if the land revenue is not being recovered.

The attached Chawl can only be sold subject to the entire mortgage burden. As there is no statutory provision creating a charge for the payment of the employer's contribution or giving any priority in the matter of the payment of that amount, it makes no difference whether the mortgage in favour of the Bank was created before or after the liability of the Company for the payment of the employer's contribution accrued. If the opponents desire to sell the attached Chawl for the recovery of the employer's contribution from the Company by following the procedure laid down in Chapter XI of the Code, they can no doubt do so, but the property can be sold only subject to the burden of the entire mortgage held by the petitioner on all the properties of the Company including the one attached by the Naib-Tahsildar. If they succeed in selling the property with this burden, they can also apply the proceeds of the sale in the manner laid

down in Section 151 of the Code, but the person who purchases the property will get it only subject to the mortgage burden and will not be able to redeem it without paying the entire mortgage amount due to the petitioner from the Company.

For these reasons, this petition is allowed. The decision of the Naib-Tahsildar and the Sub-Divisional Officer that the Chawl will be sold free of the mortgage encumbrance in favour of the Bank is quashed; and the respondents Nos. 1 to 4 are restrained from selling the attached property free of the mortgage encumbrance in favour of the Bank. The petitioner shall have costs of this application. Counsel's fee is fixed at Rs. 150/-. The outstanding amount of the security deposit shall be refunded in the petitioner.