(2011) 01 MAD CK 0259

In the Madras High Court

Case No : Writ Petition (MD) No. 11938 of 2010 and M.P. (MD) No''s. 1 and 2 of 2010

State of Tamil Nadu APPELLANT

Vs

The Employees Provident Fund Organization RESPONDENT

Date of Decision : 22-01-2011

Acts Referred:

Companies Act, 1956 — Section 2(1)
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 11, 11(2), 8B, 8G
Estate Duty Act, 1953 — Section 25(2)
Mines and Minerals (Development and Regulation) Act, 1957 — Section 30
Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI) — Section 3
Tamil Nadu General Sales Tax Act, 1959 — Section 24
Workmens Compensation Act, 1923 — Section 14A

Citation : (2011) 01 MAD CK 0259

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S.C. Herold Singh, GA, for the Appellant; G.R. Swaminathan, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The writ petition is filed by the State of Tamil Nadu represented by the Assistant Commissioner, Commercial Tax

Department, Madurai Rural South Assistant Circle, Madurai challenging an auction notice, dated 11.6.2010 issued by the Respondent Employees

Provident Fund Organization represented by its Commissioner, Madurai.

2. When the matter came up on 21.9.2010, this Court directed notice to be issued to the Standing Counsel for the Respondent Department.

Accordingly, Mr. G.R. Swaminathan, learned Counsel for the Respondent took notice for the same.

3. The impugned notice, dated 11.6.2010 as published in the Daily Thanthi newspaper showed that the Recovery Officer of the Respondent

wanted to bring the sale by auction the property relating to Mahalakshmi Textile Mills Ltd., Madurai which is a Bungalow and the land measuring

125.46 cents located in S. No. 25/6/4 and 25/6/5 at kodaikanal Taluk in present Ward-C, Block 15 and T.S. No. 21. The auction was

necessitated for the balance payment of subscription to an extent of Rs. 1,88,03,061/-in terms of Section 8B and 8G of the Employees'' Provident

Funds and Miscellaneous Provisions Act, 1952.

4. The Petitioner Commercial Tax Department had also announced by newspaper advertisement that the property mentioned therein has been

attached by the department. Therefore, the public were requested not to participate in the said auction. They have priority in claiming dues to the

department. The Petitioner also sent a letter to the Recovery Officer of the Respondent on 1.7.2010 bringing to their notice that u/s 24 of the Tamil

Nadu General Sales Tax Act, the department is entitled to recover the amount due to the department. In the earlier proceedings, this Court had

permitted the department to deal with the property, but however subject to any order of attachment passed by any other forum. Thereafter, this

Court by another order, dated 8.9.2008 directed a meeting of all the statutory authorities and creditors to be held. As against the said order, the

PF department filed writ appeals. A division bench gave liberty to work out their remedy for recovering the PF amount from the defaulter, but that

will be subject to orders of attachment made by the other parties. The earlier division bench order giving pre eminent right to sales tax department

will still hold good. It is on this premise, they wanted to stall the auction.

5. As against the claim made by a creditor based upon a contractual claim, the department will have the first charge on the property as held by the

Supreme Court in Central Bank of India Vs. State of Kerala and Others, . The following passages found in paragraphs 127 to 129 may be usefully

extracted below:

127. The definition of ""secured creditor"" includes securitisation/reconstruction company and any other trustee holding securities on behalf of

bank/financial institution. The definition of ""securitisation company"" and ""reconstruction company"" in Sections 2(1)(za) and (v) shows that these

companies may be private companies registered under the Companies Act, 1956 and having a certificate of registration from Reserve Bank u/s 3

of the Securitisation Act. Evidently, Parliament did not intend to give priority to the dues of private creditors over sovereign debt of the State.

128. If the provisions of the DRT Act and the Securitisation Act are interpreted keeping in view the background and context in which these

legislations were enacted and the purpose sought to be achieved by their enactment, it becomes clear that the two legislations, are intended to

create a new dispensation for expeditious recovery of dues of banks, financial institutions and secured creditors and adjudication of the grievance

made by any aggrieved person qua the procedure adopted by the banks, financial institutions and other secured creditors, but the provisions

contained therein cannot be read as creating first charge in favour of banks, etc.

129. If Parliament intended to give priority to the dues of banks, financial institutions and other secured creditors over the first charge created

under State legislations then provisions similar to those contained in Section 14-A of the Workmen''s Compensation Act, 1923, Section 11(2) of

the EPF Act, Section 74(1) of the Estate Duty Act, 1953, Section 25(2) of the Mines and Minerals (Regulation and Development) Act, 1957,

Section 30 of the Gift Tax Act, and Section 529-A of the Companies Act, 1956 would have been incorporation in the DRT Act and the

Securitisation Act.

6. It must be noted that the claim of the PF Department will stand on a higher footing as held by the Supreme Court in Maharashtra State Co-

operative Bank Ltd. Vs. The Assistant Provident Fund Commissioner, . The Supreme Court while analysing Section 11(2) of the Employees''

Provident Funds and Miscellaneous Provisions Act, 1952, held in paragraphs 31 and 32 as follows:

31. We shall now consider the question whether the provision contained in Section 11(2) of the Act operates against other debts like mortgage,

pledge, etc. Answer to this question is clearly discernible from the plain language of Section 11. The priority given to the dues of provident fund,

etc. in Section 11 is not hedged with any limitation or condition. Rather, a bare reading of the section makes it clear that the amount due is required to be paid in priority to all other debts. Any doubt on the width and scope of Section 11 qua other debts is removed by the use of expression ""all

other debts"" in both the Sub-sections. This would mean that the priority clause enshrined in Section 11 will operate against statutory as well as

non-statutory and secured as well as unsecured debts including a mortgage or pledge. Sub-section (2) was designedly inserted in the Act for

ensuring that the provident fund dues of the workers are not defeated by prior claims of secured or unsecured creditors. This is the reason why the

legislature took care to declare that irrespective of time when a debt is created in respect of the assets of the establishment, the dues payable under

the Act would always remain first charge and shall be paid first out of the assets of the establishment notwithstanding anything contained in any

other law for the time being in force. It is, therefore, reasonable to take the view that the statutory first charge created on the assets of the

establishment by Sub-section (2) of Section 11 and priority given to the payment of any amount due from an employer will operate against all types

of debts.

32. The view we have taken on the interpretation of Section 11(2) is in tune with a series of decisions of this Court in which the provisions

contained in different statutes giving priority to the dues of the State and workers have been interpreted. In the first place, we may refer to some

decisions relating to dues of the State.

7. In view of the above, the writ petition filed by the Petitioner Commercial Tax Department is misconceived. Accordingly, the writ petition will

stand dismissed. As and when the properties are brought to sale, the Petitioner department can also stand in the queue and after appropriation of

the amount by the PF department, they can claim the balance towards due. However, there will be no order as to costs. Consequently, connected

miscellaneous petitions stand closed.