

GAHC010015862023



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/396/2023

RAJIB BAROOAH
S/O- LATE RAMENDRA PRASAD BAROOAH, R/O- HAROOACHARI TEA
ESTATE, PULIBOR, JORHAT, ASSAM, PIN- 785006

VERSUS

SECRETARY CUM P.F. COMMISSIONER, AND 3 ORS.
BOARD OF TRUSTEE, ASSAM TEA EMPLOYEES PROVIDENT FUND
ORGANISATION, NIDHI BHAWAN, BASISTHA, LALMATI, NH-37, GHY- 29

2:THE RECOVERY OFFICER
ASSAM TEA EMPLOYEES PROVIDENT FUND ORGANISATION
JORHAT ZONE
JORHAT
ASSAM
PIN- 785001

3:M/S PURONIMATI PLANTATION PVT LTD
HAVING OFFICE AT PURONIMATI TEA ESTATE
TILIKAM
JORHAT
ASSAM
PIN- 785006

4:M/S NIZARA TEA PLANTATION
OPP OPP JANAMBHUMI PRESS NEHURU PARK
JORHAT
ASSAM
PIN- 78500

Advocate for the Petitioner : MR. B J GHOSH

Advocate for the Respondent : SC, ATEPFO

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 01-02-2023

Heard Mr. B.J. Ghosh, learned counsel for the petitioners; Mr. N.C. Das, learned Senior Counsel assisted by Mr. A. Das, learned counsel for the respondent nos. 1 & 2 in the Assam Tea Employees Provident Fund Organisation [ATEPFO].

2. The petitioner has approached this Court by instituting the instant writ petition under Article 226 of the Constitution of India assailing issuance of a Notice for settling a Sale Proclamation vide reference no. PF/20-Jor/Recovery/2022/S-383/2164 dated 09.01.2023 [‘the Notice’, for short] by the respondent no. 2 i.e. the Recovery Officer, Assam Tea Employees Provident Fund Organisation [ATEPFO]. By the Notice dated 09.01.2023, addressed to the Manager, M/s Puranimati Tea Estate, it has been informed that the Authorized Officer, ATEPFO had forwarded a Certificate no. PF/Recovery/[L]/2016/S-383/6016-18 dated 11.11.2016 for execution to the said respondent authority and accordingly, the said respondent authority has ordered the sale of the properties, mentioned in the Schedule thereto, belonging to M/s Puranimati Tea Estate, ATEPFO Code no. 383. By the said Notice dated 09.01.2023, the respondent no. 2 has informed that 25.01.2013 had been fixed for drawing up the proclamation of Sale and settling the terms thereof. The Manager, M/s Puranimati Tea Estate had been requested thereby to bring to the notice of the respondent no. 2 any encumbrances, charges, claims or liabilities attached to

the property or any portion thereof. A copy of the Notice has also been forwarded to the petitioner by a letter bearing reference no. PF/20-JOR/Recovery/2023/S-383/2175 dated 10.01.2023.

3. The case projected by the petitioner, in brief, is that the petitioner is the proprietor/owner of M/s Puranimati Tea Estate, which is situated under Mouza – Parbatia, District – Jorhat. A registered Deed of Lease was executed on 12.04.2004 between the petitioner on one part as 'the Lessor' and the respondent no. 3 viz. M/s Puranimati Plantation Pvt. Ltd. on the other part as 'the Lessee'. By the Deed of Lease, a lease was affected for a period of 99 years w.e.f. 02.12.2003 at an agreed Annual Rate payable by the respondent no. 3. One of the terms of the Deed of Lease i.e. Clause 2[VI] had mentioned that the Lessee shall not be liable for previous and/or existing liability of the Lessor but shall be liable for all liabilities from the date of commencement of Lease. Subsequent to the Deed of Lease, the respondent no. 3 started to operate M/s Puranimati Tea Estate and during the subsistence of the Lease, the respondent no. 3 availed financial assistance from M/s Axis Bank Ltd., Guwahati Branch by creating suitable mortgage. Alleging violation of the terms and conditions of the Deed of Lease including non-payment of lease/rent, statutory dues, etc., the petitioner as the plaintiff instituted a title suit, Title Suit no. 76/2019 in the Court of Munsiff no. I, Jorhat praying *inter alia* for eviction of the respondent no. 3 from the lease property. The said title suit is pending as on date. As the respondent no. 3 had failed to repay the loan availed from M/s Axis Bank Ltd., Guwahati Branch, the said Bank had also filed an application under Section 19 of the Recovery of Debts due to Banks and Financial Institutions Act, 1993 ['the DRT Act', for short] before the Debt Recovery Tribunal, Guwahati for recovery of Rs. 1,20,40,120/- together with interest, etc. The said original application was

registered and numbered as Original Application no. 89/2013 wherein the petitioner was arraigned as defendant no. 5 without seeking any relief against him. By an Order dated 27.09.2019, the Original Application, O.A. no. 89/2013 was allowed with the issuance of Recovery Certificate for an amount of Rs. 1,20,40,129/- against the respondent no. 3 and its Directors and no order was passed against the petitioner.

3.1. During the interregnum, the respondent no. 2 had issued a Notice of Demand to the Manager, M/s Puranimati Tea Estate on 13.06.2017 for recovery of an amount of Rs. 28,56,545.26/- as outstanding Provident Fund dues under the Assam Tea Plantation Provident Fund Scheme Act, 1955 [‘the ATPPFS Act’, for short]. The said Notice of Demand was stated to be issued pursuant to a Certificate no. P.F./Recovery/[L]/2016/S-383/6016-18 dated 11.11.2016, forwarded by the Authorised Officer, Board of Trustees, ATEPFO.

3.2. According to the petitioner, the dues mentioned in the Notice dated 13.06.2017 pertained to the period subsequent to the commencement of the lease period w.e.f. 02.12.2003 for which the respondent no. 3 was solely liable, and accordingly, the petitioner had submitted a Reply to that effect on 17.07.2017 to the respondent no. 2 and a Reply dated 27.07.2017 to the respondent no. 1. The petitioner also expressed the willingness to pay the same provided the possession of the M/s Puranimati Tea Estate was taken over by the respondent no. 1 to hand it over to the petitioner. In response, the respondent no. 1 wrote to the petitioner on 09.08.2017 directing the petitioner to appear before the respondent no. 1 and accordingly, the petitioner appeared before the respondent no. 1 and submitted all the relevant documents in support of his claim. Subsequent thereto, the respondent no. 2 passed an Order on 12.09.2017 ordering attachment of immovable property of M/s Puranimati Tea

Estate under Section 15B of the ATPPFS Act. Pursuant thereto, the respondent no. 2 appointed one Sri Dipak Gogoi, Partner of respondent no. 4, as the Receiver to take custody and manage the said business/property as an interim measure and the property of M/s Puranimati Tea Estate in the course of execution of the Certificate dated 11.11.2016. According to the petitioner, the fact of appointment of the said Receiver came to his knowledge only on 02.11.2020 on receipt of a Reply under the RTI Act, 2005.

3.3. Highlighting the relevant facts that the petitioner that M/s Puranimati Tea Estate was leased out w.e.f. 02.12.2003, the petitioner submitted a Representation before the respondent no. 1 on 22.06.2020 requesting the said authority to inform him about the latest status of recovery proceedings. Not receiving any reply, the petitioner also filed an application under the RTI Act, 2005. In response to the application under the RTI Act, 2005, the State Public Information Officer, O/o the respondent no. 1 had furnished a Reply on 02.11.2020. The petitioner has referred to the Reply given therein to Question no. 2 whereby it was reported that the property of M/s Puranimati Tea Estate was attached on 12.09.2017 and the entire Recovery Certificate dues had so far been deposited by the Receiver. According to the petitioner, the Receiver was appointed by the respondent no. 2 on 29.11.2017 *inter alia* with a condition that the Receiver was to make the security deposit equal to the Certificate amount within the stipulated time period from the date of his appointment as Receiver.

3.4. Aggrieved by non-disposal of his earlier Representations, the petitioner submitted another application under the RTI Act, 2005 seeking information with regard to the Provident Fund dues of M/s Puranimati Tea Estate on 16.11.2022 and in response, a Reply was given from the office of the respondent no. 2 on 12.12.2022 furnishing information to the petitioner whereby it has been

informed that the outstanding Provident Fund contribution is Rs. 2,51,318.14/- for the period from 29.05.2022 to 17.09.2022 and Provident Fund Administrative Charges for the 2020-2021, 2021-2022 and 2022-2023 is Rs. 23,049.45/-; Rs. 22,582.84/- and Rs. 30,326.22/- respectively. It has been further informed that Receiver company i.e. the respondent no. 4 was then running the garden as per "the Deed of Agreement" made on 31.03.2022. The Provident Fund dues had been paid upto 28.05.2022 and a further amount of Rs. 4,99,150/- had been deposited against the Certificate amount as per agreement between the respondent no. 4 and the Recovery Officer. It has been further informed that the Tea Estate was under receivership, but is in default of Provident Fund contributions for the period from 29.05.2022 onwards.

4. When the petitioner received the impugned Notice dated 09.01.2023 with the letter bearing no. PF/20-JOR/Recovery/2023/S-383/2175 dated 10.01.2023, addressed to him, the petitioner is aggrieved on the premise that on one hand, it has been the stand of the respondent authorities in the ATEPFO that the Certificate amount had been deposited by the Receiver and on the other hand, the same has been claimed from the petitioner.

5. Mr. N.C. Das, learned Senior Counsel appearing for the respondent authorities in the ATEPFO i.e. the respondent nos. 1 & 2 has submitted that highlighting all the above facts, the petitioner has already submitted a Representation before the respondent no. 1 on 19.01.2023 and the said Representation is in the process of being considered. In view of the fact that the said Representation is pending for consideration, the instant writ petition, according to him, is a premature one. He has further submitted that the Representation will be duly considered on the basis of all the relevant materials available in respect of the case in hand and, thereafter, a reasoned order would

be passed. The respondent authorities is open for affording opportunity of personal hearing to the petitioner, if he so desires, and if his such appearance facilitates an expeditious consideration of the Representation dated 19.01.2023.

6. In response, Mr. Ghosh, learned counsel for the petitioners has submitted that the petitioner is ready to render all assistance and co-operation to the respondent authorities in the ATEPFO to project his part of the case by submission of all the supporting documents, available at his disposal. There is an apprehension, however, that till consideration of the Representation, if the process indicated in the Notice dated 09.01.2023 is pursued by the respondent authorities in the ATEPFO in the meantime, by way of recovery proceedings, the petitioner is likely to suffer immense prejudice.

7. Mr. Das, learned Senior Counsel for the respondent authorities in the ATEPFO has fairly submitted that till final consideration is made on the Representation dated 19.01.2023, the respondent authorities will not proceed further with the recovery proceeding and the matter of recovery proceedings will abide by the final decision made on the Representation. For consideration of the Representation, according to Mr. Das, a reasonable time period of about 1 [one] month would be necessary.

8. It is noticed from the submissions made by the learned counsel for the parties that a broad consensus seems to have arrived between the parties. In such obtaining fact situation, this Court is of the considered view that instead of keeping this writ petition pending, the same can be disposed of at the motion stage itself, as agreed to by the learned counsel for the parties, with a direction to the respondent authorities in the ATEPFO to take the Representation dated 19.01.2023 submitted by the petitioner in response to the Notice dated 09.01.2023 on board for consideration and in the process of such consideration,

the respondent authorities in the ATEPFO shall afford an opportunity of personal hearing to the petitioner and all other stakeholders involved in the process by serving them notices. It is further observed that after consideration of the materials in its entirety and hearing the stakeholders, if they appear, the Representation shall be disposed of as expeditiously as possible, preferably within a period of 1 [one] month from today. It is further observed that till the Representation is disposed of by a reasoned order, the respondent authorities in the ATEPFO shall not proceed further with the recovery proceedings contemplated by the Notice dated 09.01.2023. The order passed on the Representation shall be communicated to the petitioner forthwith.

9. This order disposes of the writ petition. No cost.

JUDGE

Comparing Assistant