IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

TUESDAY, THE 31ST DAY OF MARCH 2015/10TH CHAITHRA, 1937

WP(C).No. 20940 of 2005 (P)

PETITIONER(S):

THOMAS J.VAYALAT,
VAYALAT HOUSE, KUNDANOOR,
MARADU, (H.NO.VI/419 B).

BY ADVS.SRI.MATHEW JOHN,
SRI.SUJESH MENON V.B.

RESPONDENT(S):

THE ASSISTANT PROVIDENT FUND COMMISSIONER,
EMPLOYEES PROVIDENT FUND ORGANISATION,
SUB REGIONAL OFFICE, KOTTAYAM.

BY ADVS. SRI.N.N. SUGUNAPALAN, SC.
SRI.S. SUJIN, SC.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31-03-2015, ALONG WITH WP(C).NO.20941 OF 2005 AND CONNECTED CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

rs.

WP(C).No. 20940 of 2005 (P)

APPENDIX

PETITIONER'S EXHIBITS:-

EXT.P1	COPY OF THE SALE DEED DATED 09/08/1989.
EXT.P2	COPY OF THE BASIC TAX RECEIPT DATED 25/06/2004.
EXT.P3	COPY OF THE PROCEEDINGS OF THE RESPONDENT.
EXT.P4	COPY OF THE REVIEW PETITION FILED BY THE PETITIONER.
EXT.P5	COPY OF THE MUSTER ROLL OF THE PETITIONER'S ESTATE.
EXT.P6	COPY OF THE WAGES REGISTER.
EXT.P7	COPY OF THE JUDGMENT DATED 27/09/2004 IN WP(C).NO.28237/2004.
EXT.P8	COPY OF THE NOTICE DATED 15/09/2004.
EXT.P9	COPY OF THE ORDER OF THE RESPONDENT.
EXT.P10	COPY OF THE RESIDENTIAL CERTIFICATE.

RESPONDENT'S EXHIBITS:- NIL.

//TRUE COPY//

P.A. TO JUDGE

rs.

K. VINOD CHANDRAN, J.
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W.P.(C) Nos.20940 of 2005 - P,
20941 of 2005 - R, 20946 of 2005 - R
and 20947 of 2005 - R
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Dated this the 31st day of March, 2015

J U D G M E N T

The petitioners are brothers, who are aggrieved by the order passed under Section 7A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for brevity, 'EPF & MP Act'), which was confirmed in a review filed under Section 7B of the EPF & MP Act. The facts are identical, but for the fact that, different extent of the property of an Estate was purchased by different petitioners herein. Hence, reference is made to W.P.(C) No.20946 of 2005.

2. Petitioners purchased different extent of property, which was an Estate, run under the name of M/S Meenakshi V.T.J Estate, Kallar, Vattiar P.O, Idukki. The said establishment is said to have been covered under

the EPF & MP Act. The petitioners purchased different extents, by different sale deeds produced in the respective writ petitions, which are all dated 09.08.1989. The petitioners contend that, after the individual purchases made, the individual owners had been operating the Estate by themselves without any functional integrality. The employees of the earlier establishment were also said to have been severed from their employment. The new owners employed their workers in their respective Estates, which never went beyond four, in each of the cases, is the contention. The employee strength being below 20, there could be no coverage under the EPF & MP Act, is the plea.

3. The orders under Section 7A of the EPF & MP Act was purportedly passed for the period 07/2003 to 01/2004, assessing contributions on the individual owners of the different extents of property. The petitioners then filed a review under Section 7B of the EPF & MP Act, which was rejected by Ext.P9. The learned Counsel appearing for the

petitioners specifically contends that, in the review, the officer has found that, the partition effected between the brothers is a bona fide one and then the issue would be covered by the dictum laid down in **T.A Zainulabdeen** v. **Regional Provident Fund Commissioner [1974 KLT 708]**.

4. The learned Standing Counsel for the respondent however, contends that, though different individuals purchased different extents of property, the Estate would have been managed as one unit and the total extent would indicate that, the employees engaged were above the limit of 20. Specific notice is brought to the statement in Ext.P9 that all the brothers are residing in the same address, which is disputed by the learned Counsel for the petitioners.

5. The mere fact that, all the brothers had in their possession, different extents of property, cannot lead to a conclusion that the establishment was continued as one

single unit. The issue to be looked into is as to whether the management was carried on jointly or separately and whether the employees engaged were common to all the extents of property. The dictum in the Full Bench decision cited above would indicate that, an establishment covered under the EPF & MP Act, if closed down or partitioned and then, employee strength is less than that required under the EPF & MP Act, then there could necessarily be no coverage. If there has been a real and bona fide division which resulted in dissolution of the original establishment, giving birth to a new, separate and distinguishable establishment coverage would have to be found on each such establishment. Having laid down the law, the Full Bench found that, the impugned orders therein did not indicate a proper enquiry and directed re-consideration of the issue afresh. Hence there could be no presumption drawn only on the ground that brothers obtained possession of separate extents of properties owned by an establishment covered under the EPF & MP Act.

6. In the present case, it is to be noticed that much time has elapsed from the date of the order passed. The change in circumstances submitted by the learned Counsel for the petitioners would indicate that one of the brothers has subsequently purchased the shares of all the others. Hence, the situation as of now and the manner in which the establishment is carried on at present, may not be relevant for consideration. However, during the period, if the different extents were managed separately, definitely the owners would have sufficient material to evidence that there was no functional integrality between the separate extents of property purchased by them and that the management was conducted individually.

7. Definitely, the petitioners would have maintained the muster roll and wage register; one extract of the former, are produced along with the respective writ petitions. In such circumstance, a re-look into the aforesaid

facts is highly essential and if there is no functional integrality and the estates were not managed as one unit, definitely no coverage could be made under the EPF & MP Act.

8. Merely for the reason that the brothers were residing together or that they had purchased different extents of the very same property; belonging to an establishment, covered under the EPF & MP Act cannot lead to a coverage after such division has been effected. The aforecited decision of the Full Bench of this Court is a departure from sub-Section 5 of Section 1 of the EPF & MP Act, which postulates coverage of an establishment, which is once covered, despite the employee strength falling below the required minimum. The Full Bench took note of situations where there is a dissolution of the earlier establishment and where there is a partition. Herein the earlier establishment is dissolved by reason of the sale of its Estates. Such sale having been effected to different

individuals there cannot be any continued coverage under Section 1(5) and if at all there is a functional or financial integrality; then there should be a clubbing effected under Section 2A of the EPF & MP Act.

9. The contention of the respondent organisation as to the applicability of Section 17 B of the EPF & MP Act also cannot be countenanced. Section 17 B of the EPF & MP Act creates a liability to pay contributions under the EPF & MP Act, on the transferee also, for a period prior to the date of transfer. In the present case though the respective orders speak of the liabilities from 12/81; what is sought to be assessed is only the liability from 7/2003 to 01/2004. Admittedly, the subject transfers were effected in 1989 and hence for the dues herein; Section 17B of the EPF & MP Act cannot be applied.

10. In such circumstance, the petitioners or their authorised representatives shall appear before the respondent authority on 24.04.2015 and the petitioners

shall be permitted to produce the records for the aforesaid period and the issue shall be considered afresh, specifically following the declaration of law in the aforecited Full Bench decision. A decision shall be taken at any rate within a period of four months from the date of appearance of the petitioners and the petitioners shall be afforded sufficient opportunity to produce evidence and also a personal hearing. The impugned orders at Ext.P3 and P9, in all the writ petitions are hereby set aside.

The writ petitions are disposed of. No costs.

Sd/-
K. VINOD CHANDRAN,
JUDGE

SB

// true copy //

P.A to Judge