IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2677 OF 2009

The Bombay Diocesan Trust Association
Pvt. Ltd. .. Petitioner

V/s

1. Employees Provident Fund Organization
2. The Society of All Saints School
3. Mr. S.N. Gaikwad
4. Vijaya Bank
5. Indian Bank .. Respondents

Mrs. V.V. Thorat for the petitioner.
Mr. Suresh Kumar with Ms. Sangita Yadav for respondent nos.1 and 2.
Mr. Pramod J. Pawar for respondent no.3.

CORAM: D.H. WAGHELA, CJ.

DATE : 20th JULY 2016

ORAL JUDGMENT:

The petitioner is a private limited company registered under the Companies Act, 1913 and also deemed to be registered under the Companies Act, 1956 and is also a public charitable trust registered under the provisions of the Bombay Public Trust Act, 1950. The land on which All Saints High School run by the Society of All Saints School was situate, was originally leased to the petitioner for 30 years and that period has expired in the year 2006.

2. It is the case of the petitioner that it is not engaged in the management and administration of the All Saints High School which is run by respondent no.2, the Society of All Saints School, Khadki, Pune. That respondent society is registered under the Bombay Public Trust Act and also under the Societies Registration Act and having its independent rules and regulations. According to the petition, the principal of the said school, respondent no.3 herein, is ex-officio secretary of respondent no.2 society which failed to settle the provident fund claims and pension claims of the employees of the school since July 1998 to March 2008. On 21st August 2008, the authorised officer of the regional office of the Employees' Provident Fund Organisation issued a revenue recovery certificate for recovery of provident fund dues, but the aforesaid school and the society failed to remit the statutory dues and hence the Assistant Provident Fund Commissioner and Recovery Officer, Pune issued orders under section 8F(3)(i) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (for short "the Act"). That order dated 6th February 2009 ordering to pay Rs.1,08,04,505/- addressed to the Manager, Vijaya Bank and the petitioner is under challenge in the petition. Since that order had the effect of attachment of the account and order of payment from that account, the petitioner made a representation dated 14th February 2009 to the P.F. Commissioner and clarified that it was made behind their back and without any opportunity of being heard. It was contended that the

petitioner association was in no manner concerned with the management of the school. Thereafter the petitioner received a summons on 17th February 2009 from the Recovery Officer for appearing for the recovery proceedings under sections 8-B to 8-G of the Act. Pursuant thereto, the petitioner appeard and filed its submission before the Recovery Officer stating that the petitioner was not concerned with the administration of the school, even as respondent no.3, the principal of the school, was responsible for payment of P.F. dues and he had given an undertaking to the Court that he shall pay the P.F. dues. However, by the second impugned order dated 20th February 2009, it was held that though the school was managed by the Society of All Saints School, the ultimate control for running the school was with the petitioner association. Such conclusion was drawn on the basis of the documents indicating that the property in which the school was run was leased to the petitioner; that the petitioner had got three members in the society running the school; that the petitioner held the properties of the school; and that the petitioner owned the properties of the school. Thus, the finding was recorded in the impugned order that the petitioner had ultimate control on the land and other properties including the management of the school. Relying upon the definition of "employer" in section 2(e)(ii) of the Act, it was held that as a person or the authority, who had ultimate control over the affairs of the establishment, the petitioner was liable and directed to pay the amount of Rs.1,03,49,492/- immediately to the Regional

Provident Fund Commissioner. Being aggrieved by these impugned orders, the petitioner has approached this Court. The petition was once heard and disposed as dismissed by order dated 10th August 2010, but that order was set aside by the Apex Court in Civil Appeal No. 6298 of 2013 @ SLP (C) No. 26065 of 2010 by order dated 5th August 2013 and the matter was remanded back to the High Court for consideration afresh.

3. After filing of the affidavit in reply on behalf of respondent no.1, the Hon. Secretary of the petitioner has filed his rejoinder to, inter alia, state that the petitioner was not an employer in terms of section 2(e)(ii) of the Act and it was only the land on which the school was being run was originally leased to the petitioner for 30 years which lease period had also expired in the year 2006. It is further stated by the Hon. Secretary of the petitioner by a separate affidavit that the land under the super structure of the school-building belonged to the petitioner and the school-building was constructed by the Society of All Saints School, who managed the affiaris and administration of the school.

4. By placing on record as Exhibit “B” and Exhibit “C” to the petition, it is submitted that respondent no.3 had already undertaken to pay the employees' share of provident fund amounting to Rs.35,55,507/-; and by an indemnity bond dated 18th May 2006 Shri David K. Pillai, Chief Executive Officer of St. Andrew's Education

Foundation and Director of Transworld Education Academy Private Limited had declared that he, along with Mr. Jayasing Devapriyam and Mrs. Jecintha Lydia, had taken over the responsibilities of the Society of All Saints School as members of the Society of All Saints School as per Memorandum of Understanding dated 8th March 2005 and Development Agreement dated 7th October 2005. They had clearly acknowledged that All Saints School was defaulter in case of provident fund in respect of the period from 1998-99 to 2005-06 for the amount of Rs.67,18,954/- and also taken the responsibility for the amounts due. He had also declared that the bank guarantee will be given by him for the payment of provident fund dues amounting to Rs.67,18,954/-.

5. After the learned counsel appearing for the petitioner and respondent nos.1, 2 and 3 having discussed the facts and contentions as aforesaid, there was a limited consensus to the effect that respondent no.1, Employees' Provident Fund Organisation, was required to initiate the necessary proceedings for recovery of P.F. dues from respondent no.2, even as the petitioner was, since 2006, not claiming any right or interest even in the land on which the building of respondent no.2 was constructed and the school was run. Therefore, the impugned order issued against the petitioner and its bankers, i.e. respondent nos.4 and 5, were required to be quashed with liberty and direction to respondent no.1 to recover in accordance with law the dues on account of contributions to the

profivdent fund from respondent no.2 and its governing body. Accordingly the petition is allowed, the impugned orders dated 6th February 2009 and 20th February 2009 of the Assistant Commissioner and Recovery Officer, Regional Office, Pune in the matter of provident fund in respect of All Saints High School, Khadki, Pune, are set aside.

6. Learned counsel appearing for respondent no.1 has stated on instructions of the Assitant Provident Fund Commissioner Mr. Neeraj Singh, who was personally present in the Court, that the necessary proceedings shall be intiated afresh against respondent no.2 and if necessary against its governing body to recover the provident fund dues, as far as may be, within a period of 3 months by taking energetic action in accordance with law. Recording that submission, the petiion is disposed as allowed with no order as to costs.

(CHIEF JUSTICE)