IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.09.2016

Date of verdict:7.10.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.320 of 2015
and M.P.Nos.1 and 2 of 2015

R.Anbalagan ... Petitioner

vs.

1.The Principal Secretary and Commissioner,
Department of Economics and Statistics,
Chennai-6.

2.The Deputy Director of Statistics,
District Statistical Office,
No.121, Bazaar Street,
Dharmapuri-636 702.

3.The Secretary,
Dharmapuri NGGO's and Self Employees,
K.K.345, No.4/560, Railway Station Road,
Dharmapuri. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus to call for the records pertaining to the proceedings of the first respondent in No.63045/B2(2)/2014 dated 31.12.2014 and quash the same to the extent of directing to deduct Rs.8,15,660/- (Eight Lakh Fifteen thousand six hundred and sixty only) from the retirement benefit of petitioner herein and to pay the third respondent and also consequently, direct the first respondent to pay back the said sum of Rs.8,15,660/- (Eight Lakh Fifteen thousand six hundred and sixty only) to the petitioner.

For Petitioner : Ms.Deepa Hari Govind

For Respondents : Mrs.T.Girija,
Govt. Advocate,
for R.1 and R.2
Mr.R.Bala Ramesh,
for R.3

ORDER

The present writ petition has been filed by the petitioner, challenging the proceedings of the first respondent dated 31.12.2014 to the extent of directing to deduct Rs.8,15,660/- (Eight Lakh Fifteen thousand six hundred and sixty only) from the retirement benefit of petitioner herein and to pay the third respondent and also consequently, direct the first respondent to pay back the said sum of Rs.8,15,660/- to him.

2. It is the case of the petitioner that he was a Government employee and he retired from service as Statistical Officer (Gazetted Officer) in the office of the Additional Chief Educational Officer, Bazaar Street, Dharmapuri. During the course of employment, on 6.9.2000, he availed housing loan from the third respondent society for putting up a house at No.246-2, Third Street, Govindasamy Nagar, Harur, Dharmapuri District, in the site given by his father. To secure the loan, the site and the house put up thereon have been mortgaged in favour of the third respondent society. The said loan is a secured one and has no nexus with any Government service as Statistical Inspector. The loan is for a period of 15 years and he has been repaying the same as monthly instalments as per the conditions of the loan, excepting a few omissions due to financial constraints. The second respondent is in no way connected with the loan availed by the petitioner. While so, the respondents 1 and 2, without any authority or any right, deducted a sum of Rs.8,15,660/- from his retirement benefits towards the loan amount availed by him from the third respondent society. Hence, challenging the same, the petitioner has come forward with the present writ petition.

3. Learned counsel appearing for the petitioner submitted that the first respondent has passed an order to deduct a sum of Rs.8,15,660/- from the retirement benefits of the petitioner towards the loan amount, which was availed by the petitioner from the third respondent society. The second respondent has no connection with the loan amount availed by the petitioner from the third respondent society. Further, it is settled legal position that the pension and gratuity amount cannot be attached. Therefore, the impugned order passed by the first respondent is liable to be quashed. In this connection, the learned counsel appearing for the petitioner has also relied upon the order of the learned Single Judge of this Court dated 27.11.2015 made in W.P(MD) No.17838 of 2015 - A.Muthuiruvakkal v. The State Bank of India, Stressed Assets Recovery Branch (SARB) & others, and submitted that it is well settled legal principle that pension and gratuity amount should not be attached under the provisions of Civil Procedure Code. In fact, in the said order, the learned Single Judge of this Court

has relied upon the judgment of the Hon'ble Supreme Court reported in (2009) 1 SCC 379 - Radhey Shyam Gupta v. Punjab National Bank and another, to quash the order passed by the respondent in that case with regard to the deduction of pension. The relevant portion from the said judgment is usefully extracted:-

> " 33. However, we are also of the view that having regard to proviso (g) to Section 60(1) of the Code, the High Court committed a jurisdictional error in directing that a portion of the decretal amount be satisfied from the fixed deposit receipts of the appellant held by the Bank. The High Court also erred in placing the onus on the appellant to produce the Matador in question for being auctioned for recovery of the decretal dues. In order words, the High Court erred in altering the decree of the trial Court in it revisional jurisdiction, particularly, when the pension and gratuity of the appellant, which had been converted into fixed deposits, could not be attached under the provisions of the Code of Civil Procedure. The decision in Jhothi Chit Fund case has been considerably watered down by later decision which have been indicated in para 22 hereinbefore and it has been held that gratuity payable would not be liable to attachment for satisfaction of a court decree in view of proviso (g) to Section 69(1) of the code."

By relying upon the said decision, the learned counsel appearing for the petitioner sought for quashing the impugned order passed by the first respondent.

4. Learned Government Advocate appearing for the respondents 1 and 2, by filing a counter affidavit, submitted that after availing loan from the third respondent society, the petitioner was irresponsible in repaying the loan amount. In fact, the loan has been sanctioned to the petitioner only based on his capacity as a Government employee. Further, Rule 70(1) of the Tamil Nadu Pension Rules, 1978 provides that it is the duty of every retiring Government servant to clear all the Government dues before the date of his retirement. The petitioner being a Government servant did not clear the dues payable to the third respondent society. Therefore, the impugned order passed by the first respondent is legally sustainable. Thus, he sought for dismissal of the writ petition.

5. Learned counsel appearing for the third respondent society, by filing a detailed counter affidavit, submitted that the petitioner has been a member of the third respondent society and his membership number is 803. He had availed housing loan for a sum of Rs.2,25,000/- from the third respondent society, for which, he had executed a mortgage deed dated 15.3.2000 in

favour of the society vide document No.666 of 2000, wherein he had agreed to repay the said loan amount within a period of 180 months as equated monthly instalment of Rs.,3,380/-. However, the petitioner failed to make the instalments and he is a chronic defaulter. Hence, the third respondent society filed an arbitration petition under Section 90 of the Tamil Nadu Cooperative societies Act before the Deputy Registrar of Cooperative Society (Housing) in Thava No.408 of 2002/03. Even after receipt of the notice, the petitioner failed to participate in the arbitration proceedings and did not contest the same. Hence, on 28.7.2006, the Arbitrator had passed an exparte award by directing the petitioner to pay a sum of Rs.4,21,829.45 with interest at 12.5% per annum. Pursuant to the award, the third respondent society filed an execution petition in E.P.No.266 of 2007/08 before the Deputy Registrar of Cooperative Society (Housing), Vellore and the same is pending. In the meantime, the Government of Tamil Nadu has introduced a loan waiving scheme which extended to the petitioner. As per the said scheme, those who availed loan for the purpose of construction of house, if they settle their loan on or before 30.9.2013, can get a waiver of 25% of interest and 100% of penal interest. Hence, the third respondent society sent a notice dated 14.6.2013 to the petitioner asking him to utilize the said benefit, but, he has not utilized the same. Once again, the said scheme had been introduced in the year 2014, but, again, the petitioner has not utilized the same. Since the petitioner has not shown any interest to settle the loan, the third respondent society has requested the first respondent vide letter dated 24.12.2014 to deduct the loan dues from the retirement benefits of the petitioner. Without challenging the award proceedings, the petitioner has filed the present writ petition. Thus, he sought for dismissal of the writ petition.

6. Keeping the submissions made on either side, I have carefully gone through the entire materials available on record including the judgment of the Hon'ble Supreme Court relied on by the learned counsel appearing for the petitioner.

7. Though very many contentions have been raised by either side, the only question involved in this writ petition is, whether the retirement benefits of the petitioner can be deducted by the first respondent in respect of the loan availed by him from the third respondent society. From the perusal of the decision of the Hon'ble Supreme Court reported in (2009) 1 SCC 379 - Radhey Shyam Gupta v. Punjab National Bank and another, it is clear that the retirement benefits cannot be attached for the loan availed by the petitioner. Therefore, the impugned order of the first respondent is liable to be set aside.

8. Accordingly, the impugned order of the first respondent dated 31.12.2014 is quashed and the writ petition

is allowed. The first respondent is directed to pay back the said sum of Rs.8,15,660/- (Eight Lakh Fifteen thousand six hundred and sixty only) to the petitioner within a period of six weeks from the date of receipt of a copy of this order. However, the third respondent society is at liberty to recover the loan amount from the petitioner in the manner known to law before the appropriate legal forum. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sbi

To
1.The Principal Secretary and Commissioner,
Department of Economics and Statistics,
Chennai-6.

2.The Deputy Director of Statistics,
District Statistical Office,
No.121, Bazaar Street,
Dharmapuri-636 702.

3.The Secretary,
Dharmapuri NGGO's and Self Employees,
K.K.345, No.4/560, Railway Station Road, Dharmapuri.

+1 cc to M/s.Deepa hari Govind Advocate sr 57931

W.P.No.320 of 2015

ppa(co)

aa25/10/2016

DATED: 7.10.2016