IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2017

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.2728 of 2017

D.Jayapal (Trustee)
M/s Archana Educational & Charitable Trust
DJP Farm House
Thimmapuram PO
Krishnagiri Dt.635 112 .. Petitioner

-vs-

1. The Employees Provident Fund Organisation
   rep by its Assistant Provident Fund Commissioner
   Sub Regional Office
   Sri Jayalakshmi Plaza
   Swarnapuri, Salem 636 004

2. The Recovery Officer
   The Employees Provident Fund Organisation
   Sri Jayalakshmi Plaza
   Swarnapuri, Salem 636 004 .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records of the second respondent in CB/SLM/90986/Recovery/CP17/2016 dated 05.01.2017 and quash the same and further direct the respondents to pass appropriate orders in the light of the documents produced by the petitioner's institution.

For Petitioner :: Mr.S.R.Raghunathan for Mr.P.Ravichandran

ORDER

The petitioner has brought this writ petition challenging the correctness of the notice for settling sale proclamation dated 5.1.2017 issued by the Recovery Officer, The Employees Provident Fund Organisation, Salem, the second respondent herein, on the ground that the order has been passed even without any show cause notice to the petitioner, therefore, it is a clear violation of the principles of natural justice.

Adding further, the learned counsel for the petitioner submitted that if an order passed by an authority has got an effect of civil consequences, the law mandates that an opportunity of being heard has to be given to the affected party before taking a final decision. Since the second respondent has failed to pass a detailed order, the same is liable to be set aside. He also submitted that the impugned notice for sale also clearly shows the non application of mind by the second respondent. The reason is that when the entire staff was included as workers of the institution and even though in the earlier writ petition, this point was raised by the petitioner that they could not produce the records at the relevant point of time, as the respondents have attached a sum of Rs.35,00,000/- at the hands of the AICTE, the question of bringing the property for sale clearly amounts to double enrichment, which is impermissible in law. As the petitioner is an educational charitable trust and is trying to re-start the educational institution, namely, M/s Archana Institute of Technology, the proclamation of sale fixed on 6.2.2017 should have been kept in abeyance by giving a last chance to the petitioner. Concluding his arguments, he submitted that when the two orders dated 5.2.2016 and 29.6.2016 are consistently showing that the petitioner has defaulted in the payment of the provident fund dues for the period from June, 2009 to June, 2013 amounting to Rs.41,92,301/- and costs of Rs.6,950/-, the respondents have wrongly attached a sum of Rs.60,00,000/-. In addition thereto, they have also issued the impugned notice for settling sale proclamation dated 5.1.2017 fixing the date for drawing up the proclamation of sale and settling the terms thereof on 6.2.2017. When the amount due and payable by the petitioner to the respondents is only Rs.2,18,930/-, if an opportunity of hearing is given to the petitioner, keeping the impugned notice in abeyance for a reasonable period, the petitioner would be in a position to explain that the amount payable by the petitioner will not come to Rs.41,92,301/-. Moreover, even if it is presumed that the respondents are right in proceeding against the petitioner for a sum of Rs.41,92,301/-, they are not justified in attaching the account of the petitioner for a sum of Rs.25,00,000/-. On these grounds, he sought for interference.

2. But this Court is not able to find any merit in any of the contentions. The reason is that the petitioner came to this Court with W.P.No.8778 of 2015 challenging the order dated 18.3.2015 issued by the Assistant Provident Fund Commissioner, Sub Regional Office, Salem. By order dated 3.11.2015, while disposing of the writ petition, this Court directed the petitioner to deposit a sum of Rs.10,00,000/- before the respondent within a period of eight weeks from the date of receipt of the copy of the order. The order further indicates that the respondent shall afford an opportunity of personal

hearing to the petitioner and then pass fresh orders on merits and in accordance with law. It was also made clear that if the petitioner failed to comply with the conditional order within the time stipulated, the writ petition would stand automatically dismissed without any further reference to this Court. In spite of the said order dated 3.11.2015, the petitioner did not deposit a sum of Rs.10,00,000/- as ordered by this Court. Therefore the attachment order dated 5.2.2016 in Ref.TN/SLM/90896/8F/ Recovery/2015-16 has been passed. Again aggrieved by the same, the petitioner preferred another W.P.No.9275 of 2016 challenging the attachment order. The said writ petition was also disposed of by this Court on 15.3.2016, taking into account that the petitioner is an educational institution, showing one more indulgence, directing the petitioner to deposit a sum of Rs.15,00,000/- within a period of three weeks from the date of receipt of the copy of the order with liberty that if the petitioner paid the said amount, they will be entitled to place the documents and canvass all the points before the authority. On the other hand, if the petitioner defaulted in payment, the respondents can enforce the order of attachment. Unfortunately, again the petitioner has ignored the said order. Therefore the impugned notice for settling the proclamation of sale dated 5.1.2017 has been issued. Moreover, one of the orders dated 29.6.2016 clearly shows that M/s Archana Institute of Technology, Thimmapuram run by M/s Archana Educational & Charitable Trust has defaulted in payment of PF dues for the period from June, 2009 to June, 2013 amounting to Rs.41,92,301/- and costs. However, the books of accounts and information available with the respondents have indicated that only a sum of Rs.35,00,000/- is held as deposit by the AICTE on behalf of the defaulter. The said order also clearly indicated that in the event of non-compliance, the petitioner will be personally deemed to be the establishment in default to the extent of Rs.35,00,000/- under the provisions of Clause (ix) and (x) of sub-section (3) of Section 8F of the Act and action would be initiated to recover the dues from the petitioner. The earlier attachment order dated 5.2.2016 also had informed the petitioner that in the event of non-compliance of the requirements requiring the petitioner to pay a sum of Rs.41,99,251/- from out of the money being held by the petitioner on behalf of the defaulter, the respondents would have no other alternative, but to recover the amount as if the same is arrears due from them as provided for under section 8B to 8G of the Employees Provident Funds and Miscellaneous Provisions Act, 1952. Having seen the conduct of the petitioner, when the two orders passed by this Court as mentioned above having not been properly complied with, this Court is not inclined to entertain the writ petition. However, it is open to the petitioner to approach the respondents and work out the remedy, if so advised. With this observation, the writ petition stands dismissed. Consequently, W.M.P.No.2677 of 2017 is also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Provident Fund Commissioner
Employees Provident Fund Organisation
Sub Regional Office, Sri Jayalakshmi Plaza
Swarnapuri, Salem 636 004

2. The Recovery Officer
The Employees Provident Fund Organisation
Sri Jayalakshmi Plaza
Swarnapuri, Salem 636 004

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W.P.No.2728 of 2017