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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 11.10.2018

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.A.(MD)Nos.1234, 1236 and 1301 of 2013
and M.P.(MD)Nos.1 of 2013 in W.A.(MD)No.1234 of 2013
and M.P.(MD)No.1 of 2014 in W.A.(MD)No.1301 of 2013

W.A.(MD)No.1234 of 2013 :
P.Panchasheelagandhi

.. Appellant

Vs.

1. Employees Provident Fund Organization
rep. by Recovery Officer,
Employees Provident Fund Organization,
LDC Road, Madurai.

2. The Inspector General of Registration,
100, Sathome High Road,
Chennai-600 028.

3. The Sub Registrar,
Sub-Registrar Office,
Kodaikanal.

4. S.Vaigaidurai

5. M.Sheik Dawood

6. M/s.Mahalakshmi Textile Mills Limited
Rep. by its Director AL.Lakshmanan,
S/o.Alagusundaram Chettiar,
Door No. 6A, Vallabhai Road,
Chokkikulam, Madurai - 625 002.

.. Respondents

W.A.(MD)No.1236 of 2013 :

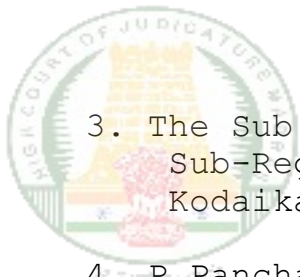
S.Vaigaidurai

.. Appellant

Vs.

1. Employees Provident Fund Organization
rep. by Recovery Officer,
Employees Provident Fund Organization,
LDC Road, Madurai.

2. The Inspector General of Registration,
100, Sathome High Road,
Chennai-600 028.



3. The Sub Registrar,
Sub-Registrar Office,
Kodaikanal.

4. P.Panchasheelagandhi

5. M.Sheik Dawood

6. M/s.Mahalakshmi Textile Mills Limited
Rep. by its Director AL.Lakshmanan,
S/o.Alagusundaram Chettiar,
Door No. 6A, Vallabhai Road,
Chokkikulam, Madurai - 625 002.

.. Respondents

W.A.(MD)No.1301 of 2013 :

M.Sheik Dawood

.. Appellant

Vs.

1. The Inspector General of Registration,
100, Sathome High Road,
Chennai-600 028.

2. The Sub Registrar,
Sub-Registrar Office,
Kodaikanal.

3. S.Vaigai Durai

4. P.Panchasheelagandhi

5. M/s.Mahalakshmi Textile Mills Limited
Rep. by its Director AL.Lakshmanan,
S/o.Alagu Sundaram Chettiar,
Door No. 6A, Vallabhai Road,
Chokkikulam, Madurai - 625 002.

6. Employees' Provident Fund Organization
rep. by Recovery Officer,
Employees Provident Fund Organization,
LDC Road, Madurai.

7. AL.Periannan Shanmugam,
14, Vallabai Road,
Chokkikulam, Madurai-2. **

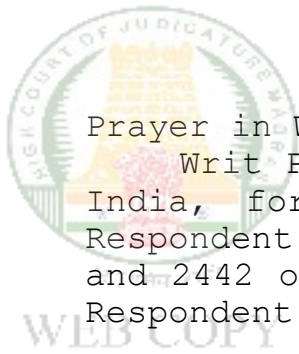
.. Respondents

** Respondent 7 impleaded as party as
per order dated 19.02.2014 made in
MP(MD)No.2/2013 in WA(MD)No.1301/13

* * *

Common Prayer : Writ Appeals filed under Clause 15 of Letters Patent
<https://hcservices.ecourts.gov.in/hcservices/>
against the order dated 30.09.2013 in W.P.(MD)Nos.11726 of 2010.

* * *



Prayer in WP(MD)No.11726/10:

Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of Writ of Mandamus, directing the 2nd Respondent to cancel the registration of documents No.2441 of 2009 and 2442 of 2009 executed by the 3rd Respondent in favour of the 4th Respondent.

For Appellant in WA(MD) : Mr.R.Suresh Kumar
No.1234 of 2013/R4 in WA for M/s.Veera Associates
(MD)Nos.1236 & 1301 of 2013

For Appellant in WA(MD) : Mr.A.R.Sethupathy
No.1236 of 2013/R4 in WA
(MD)No.1234 of 2013/R3 in
WA(MD)No.1301 of 2013

For Appellant in WA(MD) : Mr.T.Lajapathi Roy
No.1301 of 2013/R5 in WA
(MD)Nos.1234 & 1236 of 2013

For Respondent 1 in WA(MD) : Mr.V.S.V.Venkateswaran
Nos.1234 & 1236 of 2013/
R6 in WA(MD)No.1301 of 2013

For Respondents 2 and 3 in : Mr.M.Murugan, Govt. Advocate
WA(MD)Nos.1234 & 1236 of
2013/Respondents 1 and 2 in
WA(MD)No1301 of 2013

For Respondent 5 in WA(MD) : Mr.J.Bharathan
No.1301 of 2013/R6 in WA
(MD)Nos.1234 & 1236 of 2013

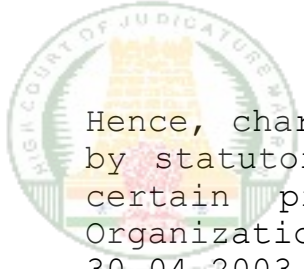
For Respondent 7 in WA(MD) : Mr.M.Chidambara Kumar
No.1301 of 2013

C O M M O N J U D G M E N T
[Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA, J.]

These are three writ appeals directed against the order dated 30.09.2013 passed in W.P.(MD)No.11726 of 2010, which is a common order passed in W.P.(MD)No.8972 of 2012 as well.

2. The learned Single Judge enumerated in detail the facts of the case. Hence, we need not labour this judgment with the elaborate facts. However, the brief facts, which are necessary to fathom the issue involved in these appeals, are put in a nutshell infra :

2.1. M/s.Mahalakshmi Textile Mills Limited ("MTML", for the sake of convenience) failed to deposit the amounts due to statutory authorities, State Commercial Tax Department and banks, etc.,.



Hence, charges have been created over some of the properties of MTML by statutory bodies. One such order is the order of attachment of certain properties, passed by the Employees' Provident Fund Organization ("EPFO", for the sake of convenience), dated 30.04.2003, by following due process.

2.2. A number of writ petitions came to be filed by individuals and banks either to recover their dues or to quash the attachment orders on the properties, notwithstanding the charge created by another statutory body. While disposing of those writ petitions, the writ Court vide order dated 08.09.2008 directed the Secretary to the Government, Commercial Taxes and Registration Department, Government of Tamil Nadu, Fort St. George, Chennai, to convene a meeting of the representatives of the statutory bodies, banks, Commissioner of Commercial Taxes and the Commissioner of Labour to arrive at a consensus for selling the properties of MTML and for apportioning the sale proceeds.

2.3. Contending that it has an effective recovery mechanism in place, EPFO filed W.A.(MD)Nos.556 and 557 of 2009 against the said common order laying challenge to two writ petitions. A Division Bench of this Court disposed of those writ appeals by order dated 22.04.2010 giving liberty to the EPFO to proceed in accordance with law.

2.4. In the meanwhile, the Director of MTML executed a General Power of Attorney on 03.07.2009 favouring one Vaigaidurai, the appellant in WA (MD)No.1236 of 2013, who in turn, sold a portion of the subject property to his wife Panchasheelagandhi, the appellant in WA(MD) No.1234 of 2013, under sale deeds in Document No.2441 and 2442 of 2009.

2.5. Pursuant to the judgment dated 22.04.2010, a Proclamation of Sale dated 04.06.2010 was issued by the EPFO. The appellant in W.A.(MD)No.1301 of 2013/Sheik Dawood offered highest bid of Rs.2.48 Crores and deposited a sum of Rs.87 lakhs, being the 25% of the bid amount, on the date of auction, as if there is any default of such deposit, the property would be brought to sale once again, and he had to pay the remaining 75% within 15 days from the date of auction sale and in default of such payment within the period mentioned above, the property shall be brought to auction again, besides, the deposit amount may be forfeited by the EPFO and he had to forgo all the claims to the property or the money paid by him. He failed to comply with the condition of depositing the remaining 75% within the stipulated time on the ground that there were encumbrances over the property, i.e., sale deeds were executed with respect to the subject property.

2.6. Faced with this situation, EPFO addressed letters dated 04.07.2010 and 29.07.2010 to the Sub Registrar, Kodaikanal, to cancel the registration concerning the subject property and also requested the Inspector General of Registration ["IG(R)", for the sake of brevity] to issue directions to the Sub Registrar for cancelling the above-stated documents. Since there were no replies, EPFO filed W.P(MD)No.11726 of 2010 seeking a direction to the Sub Registrar, Kodaikanal, to cancel the registration of documents No.2441 and 2442 of 2009.



2.7. MTML also filed W.P.(MD)No.8972 of 2012 seeking a direction to EPFO to conduct a fresh auction sale of the subject property.

2.8. In the meanwhile, the Assistant Commissioner, Madurai Rural South Assessment Circle, Madurai, filed W.P.(MD)No.11938 of 2010 against EPFO praying to quash the auction notice published by it on 11.06.2010 and the consequential auction sale conducted on 07.07.2010. A learned Single Judge dismissed the writ petition on 22.01.2011 holding that the Commercial Tax Department can stand in the queue after EPFO and claim the balance amount towards its dues.

2.9. One Subramanian claimed to be the custodian of MTML filed W.P.(MD)No.10147 of 2010 praying similar relief of quashing the auction notice, which was also negatived by the writ court on 23.09.2011.

2.10. The writ court disposed of both these writ petitions vide the impugned order dated 30.09.2013 setting aside the sale deed in document No.2441 of 2009 as void, with a direction to the Recovery Officer, EPFO, Madurai, to conduct a fresh auction sale and to deposit the balance amount, after adjusting the dues payable to EPFO by MTML from and out of the sale consideration, before the Joint Commissioner of Labour, Madurai, who was directed to disburse the same proportionately to the workmen, after ascertaining their dues.

2.11. Aggrieved by the said order, these writ appeals have been filed.

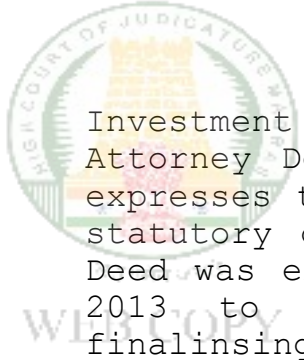
3. From the foregoing facts, it is clear that the aggrieved persons are the Power of Attorney of MTML - Mr.Vaigaidurai and the purchaser from the said Vaigaidurai, namely, Mrs.P.Panchasheelagandhi, who have filed W.A.(MD)Nos.1236 and 1234 of 2013 respectively challenging the portion of the order dated 30.09.2013 setting aside the sale deed in document No.2441 of 2009, dated 18.11.2009.

3.1. The another aggrieved person, who has challenged the order of the learned Single Judge in W.A.(MD)No.1301 of 2009, is one Sheik Dawood, who is the purchaser of the property in the public auction sale conducted by the EPFO on 07.07.2010.

4. Heard the learned counsels on either side and perused the materials available on record.

5. The question that arises for consideration now is whether the order of the learned Single Judge setting aside the sale in document No.2441 of 2009 is correct?

6. MTML is aware of the fact that the EPFO had attached the properties in Survey Nos.25/6/4 and 25/6/5 in Kodaikanal, which was passed by the Recovery Officer of the EPFO. Despite the same, it had executed a General Power of Attorney Deed dated 03.07.2009 through its Director in favour of the appellant in W.A.(MD)No.1236 of 2013, though specifically mentioning about the order of attachment made by the EPFO and Tamil Nadu Sales Tax Department and also about the amounts due and payable to the Tamil Nadu Industrial



Investment Corporation Limited (TIIC). The said General Power of Attorney Deed specifically mentions about the attachment and also expresses the difficulty of selling the property in discharging the statutory dues, as mentioned above. Hence, the Power of Attorney Deed was executed in favour of the appellant in W.A.(MD)No.1236 of 2013 to negotiate with the intending purchasers and after finalising the sale price, to execute the sale deed and receive the sale consideration. It further directed that on receipt of the entire sale consideration, the Power of Attorney has to pay the amount to ICICI Bank and receive the documents in original connected with the schedule mentioned properties. Further, it directed the discharge of the dues payable to the EPFO and the Sales Tax Department to be released from the attachment. Though the above Power of Attorney was executed by the MTML with the *bona fide* intention of entering into a private sale in getting a better price, the appellant in W.A.(MD)No.1236 of 2013 had sold a portion of the land in favour of his wife. The total extent of the land available was 125.46 cents, whereas, what was sold in favour of the wife of the power of Attorney - the appellant in W.A.(MD) No.1236 of 2013 is 0.30 cents. It is also relevant to note that MTML had larger extent of 2 acres and odd in 1987 and even before the attachment effected by the EPFO, had sold a portion of the land to discharge various other dues.

7. The contention of the learned counsel for the appellant in W.A.(MD)No.1236 of 2013 is that the sale deed executed by the appellant in favour of the fourth respondent cannot be cancelled unilaterally or the same can be done only before a civil court. No doubt, the execution of the said sale is only pursuant to the Power of Attorney issued by the MTML. However, the Power of Attorney Deed specifically directed the Power Agent to utilize the sale consideration in discharge of the debts due to various organizations. Admittedly, the appellant did not even paid one rupee to various statutory organizations, as directed in the Power of Attorney Deed. Therefore, when there is a breach of contract, the appellant in W.A.(MD)No.1236 of 2013 is estopped from challenging the cancellation of the sale. Further, it is made clear in the Power of Attorney that any sale effected pursuant to the same could be subject to the attachment, which is statutorily made under Sections 8-B, 8-C and 8-G of the Employees' Provident Fund Act, 1952 read with Second and Third Schedule of the Income Tax Act, 1961 (in short "I.T. Act").

8. Rule 9 to the Second Schedule of the I.T. Act reads as follows :

"9. General bar to jurisdiction of civil courts, save where fraud alleged.

Except as otherwise expressly provided in this Act, every question arising between the Tax Recovery Officer and the defaulter or their representatives, relating to the execution, discharge or satisfaction of a certificate, or relating to the confirmation or setting



aside by an order under this Act of a sale held in execution of such certificate, shall be determined, not by suit, but by order of the Tax Recovery Officer before whom such question arises :

Provided that a suit may be brought in a civil court in respect of any such question upon the ground of fraud."

A reading of the above provision makes it clear that there is a bar to civil suit in the matter of recovery proceedings, pursuant to the attachment and sale of the properties under the Second Schedule to the I.T. Act. As the sale effected is without the knowledge of the EPFO and subject to the attachment, the EPFO had rightly approached this Court challenging the above sale made by the appellant, which is in violation of the statute.

9. As per Rule 12 of the Second Schedule to the I.T. Act, only option open to the said appellant is to pay the dues to the Recovery Officer and get the attachment released. Even the Power of Attorney Deed was intended only for that purpose. Therefore, the sale made by the Power of Attorney in favour of the fourth respondent is also subject to the attachment only. As stated earlier, the appellant in W.A.(MD)No.1236 of 2013 had not paid the sale consideration to the EPFO in discharge of at least a portion of the dues.

10. Besides, Rule 16 of the second schedule to the I.T. Act deals with private alienation to be void in certain cases. Rule 16 reads as follows :

"16. Private alienation to be void in certain cases.

(1) Where a notice has been served on a defaulter under rule 2, the defaulter or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery Officer, nor shall any civil court issue any process against such property in execution of a decree for the payment of money.

(2) Where an attachment has been made under this Schedule, any private transfer or delivery of the property attached or of any interest therein and any payment to the defaulter of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment."

As per the above rule, any private alienation would void, but if the amounts have been used in discharge of the dues in full that may validate the sale. In the absence of both, that is, either raising the attachment or paying the dues to EPFO in full, the sale is void. The Power of Attorney also had committed breach of contract as he had not paid the amounts either to EPFO or to the Sales Tax Department, as directed in the Power of Attorney Deed. Therefore, we have no hesitation in holding that the sale covered under

document No.2441 of 2009 measuring an extent of 0.30 cents within 125.46 cents in Survey No.25/6/4 and 25/6/5 shall be void, as per Rule 16(2) of the Second Schedule to the I.T. Act.

11. The learned Single Judge has dealt with the following case laws in:-

(i) Himadri Coke and Petro Ltd., V. Soneko Developers (P) Ltd. And others, (2005) 12 SCC 364 ;

(ii) C.N.Paramasivam and another V. Sunrise Plaza, rep. By its Partner, Kalyanasundaran and others, 2010 (3) CTC 372 ;

(iii) Sri Anbalayam Textiles Private Ltd., rep. By its Chairman P.Veerasingam V. The Chairman-cum-Managing Director, T.N.Industries Investment Corporation Ltd. and Others, 2011 (6) CTC 858; and

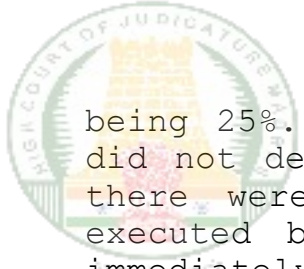
(iv) P.Kumaran V. The Debts Recovery Appellate Tribunal and others, 2011 (6) CTC 349
in detail in this regard, which exercise we need not repeat in this judgment.

12. Considering the fact that there is a breach of contract, namely, Power of Attorney dated 03.07.2009, the conditions stated therein having not been complied with and also the statutory bar under Rule 16 of the Second Schedule to the I.T. Act, which prohibits any private alienation pending attachment, the learned Single Judge is right in holding that the sale deed in document No.2441 of 2009 is void.

13. The next point arises for consideration in W.A.(MD)No.1301 of 2013, which is filed one Sheik Dawood, who was declared the highest bidder in the public auction conducted by the EPFO on 07.07.2010, whether he is entitled to the prayer sought for ?

14. The said appellant had got impleaded in W.P.(MD)No.11726 of 2010 filed by the EPFO praying to set aside the sale deeds. In fact, MTML had filed another writ petition in W.P.(MD)No.8972 of 2012 seeking a direction to the EPFO to conduct a fresh auction in the sale of the property by issuing a fresh sale proclamation and forbearing the EPFO from confirming the sale held on 07.07.2010 in favour of the appellant in W.A.(MD)No.1301 of 2013. As stated above, the sale proclamation was issued on 04.06.2010 with a specific condition that the highest bidder shall deposit immediately 25% of the sale price, i.e., on the date of auction and in default of such deposit, the property would be brought to sale once again ; secondly, the balance 75% shall be paid by the highest bidder on or before 15 days from the date of auction sale and in default of such payment within the period mentioned above, the property shall be brought to auction again, in addition, the deposited amount may be forfeited by the EPFO and the defaulting highest bidder had to forgo all the claims to the property or the money paid by him.

15. The appellant in W.A.(MD)No.1301 of 2013 offered to pay a sum of Rs.2.45 Crores and was declared as the highest bidder on the date of auction, namely, on 07.07.2010. He deposited Rs.87 lakhs



being 25%. However, in violation of the terms and conditions, he did not deposit the balance amount and the reason stated was that there were encumbrances in the property, which are sale deeds executed by the appellant in W.A.(MD)No.1236 of 2013. EPFO had immediately filed W.P.(MD)No.11726 of 2010 seeking a direction to the Sub Registrar, Kodaikanal, to cancel the said documents. The appellant in W.A.(MD)No.1301 of 2013, though originally was not a party to W.P.(MD)No.11726 of 2010, he was impleaded as fifth respondent in the writ petition. There was another writ petition in W.P.(MD)No.9872 of 2012 filed by MTML seeking a direction to EPFO to conduct a fresh auction sale of the property, on the basis that the highest bidder in the earlier auction sale/the second respondent therein, who is the appellant in W.A.(MD)No.1301 of 2013, had not complied with the bid conditions. The learned Single Judge had found that the reason given by the highest bidder for not depositing the balance of the sale consideration within the time stipulated in the bid is unacceptable, as any public auction either through Court or under a statute is subject to all the known and unknown encumbrances.

16. It is also settled principle that the time in sale proclamation shall not be extended at any cost. The persons taking part in such kind of auction have to take the calculated risk. If the appellant, the highest bidder, had deposited the amount as per the terms and conditions of the proclamation of sale and then had challenged the sale executed by the Power of Attorney of MTML, then he could be considered as a *bona fide* purchaser, whereas, he has specifically stated that in view of sales, which were effected pending attachment, he did not deposit the balance of the amount. As rightly held by the learned Single Judge, the reason assigned by the appellant herein does not merit acceptance. At this juncture, it is relevant to note that the Hon'ble Supreme Court in *M/s. Janatha Textiles V. Tax Recovery Officer*, 2008 (8) SCALE 76, by relying various decisions, including that of Privy Council, has held that a third party auction purchaser's interest in the auctioned property continues to be protected notwithstanding that the underlying decree is subsequently set aside or otherwise. Accordingly, if the appellant deposited the entire amount, as per the sale conditions, then alone he is entitled to maintain this appeal.

17. Thus, since the appellant in W.A.(MD)No.1301 of 2013, who was highest bidder, had not proved his *bona fide* by depositing the entire sale consideration and violated the conditions prescribed in the proclamation of sale, the amount has to be only forfeited. However, the learned Single Judge had recorded that the EPFO is willing to return the said amount, at the time of fresh auction sale, subsequent to proclamation of sale, after defraying sale expenses that was incurred in the process of proclamation of sale dated 04.06.2010. The said findings, based on the submission made by the EPFO, need not be disturbed.

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18. It is also to be noted that the prayer in W.P.(MD)No.8972



of 2012 is for the conduct of fresh auction sale and the said prayer when granted, the aggrieved person should be the appellant, who was the successful bidder in the earlier auction sale. Curiously, the appellant in W.A.(MD)No.1301 of 2013 had not challenged the said order, but only had questioned the order passed in W.P.(MD)No.11726 of 2010, which was filed for cancellation of the sale deeds executed by the Power of Attorney. The cancellation of those sale deeds will not automatically entitle the highest bidder for his right, despite the breach of conditions of proclamation of sale. Having failed to challenge the said findings in an independent appeal, which ought to have been filed by him, against the order passed in W.P.(MD)No.8972 of 2012, the appellant herein had allowed it to become final and the appeal filed as such without challenge to the W.P.(MD) No.8972 of 2012 is not maintainable. Assuming that there is a separate appeal, in view of the findings given by us earlier, even such appeal presumed to have been filed also, has no legs to stand. No doubt, this order would not preclude the appellant in W.A.(MD)No.1301 of 2013 to participate in any fresh auction that may be conducted by the Employees Provident Fund Organization in future.

19. For the afore-stated reasons, all the three writ appeals fail and the same are dismissed as devoid of merits, confirming the impugned order of the learned Single Judge. There will be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/

Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar(CS-I)

To

- 1.The Inspector General of Registration,
100, Sathome High Road,
Chennai-600 028.
2. The Sub Registrar,
Sub-Registrar Office,
Kodaikanal.

+1cc to Mr.T.LAJAPATHI ROY, Advocate, SR.No.90455
+1cc to Mr.V.S.V.VENKATESHWARAN, Advocate, SR.No.90642
+2cc to Mr.T.R.JEYAPALAM, Advocate, SR.No.90383
+1cc to M/S.VEERA ASSOCIATES, Advocate, SR.No.90092
+1cc to M/s.Special Government Pleader, SR.No. 90423

W.A. (MD)Nos.1234, 1236 & 1301 of 2013
and M.P.Nos.1 of 2013 & 1 of 2014
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