THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition No.26300 of 2007

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking verbatim the following relief/s:

> **'..to issue a Writ of mandamus or any other appropriate writ order or direction under Article 226 of the Constitution of India and declare that the impugned proceedings of the 1st respondent made in AP/RJY/6942/SRO/Recovery Cell/8F/07, dt.14.11.2007 and 17.11.2007 respective issued under Section 8F of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, whereby the petitioner is asked to remit an amount of Rs.79,687-15 paise as without jurisdiction and violative of the provisions of S.2(d) (c)(ii)(b) and 8 F of the said Act and as arbitrary and violative of Article 14 & 300 A of Constitution of India and illegal and**
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> **b) consequently declare the action f the 2nd respondents in disbursing an amount sum of RS.62,000/- and 79,687.15 ps to the 1st respondent from the FDR's of petitioner as illegal, arbitrary and high handed, and further direct the respondents 1 to 3 to repay back the sum of RS.62,000/- and 79,687.15 paise withdrawn from the petitioner to the petitioner institution forthwith and**
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> **c) award exemplary costs and damages for the suffering caused to the petitioner institution and pass such other order or orders as are deemed fit and proper in the circumstances of the case.**

2. I have heard the submissions of Sri W.B. Srinivas, learned counsel appearing for the writ petitioner, of Sri R.N. Reddy, learned counsel appearing for the 1st respondent, and of Sri K. Laxmi Narasimha, learned standing counsel appearing for the respondents 2 & 3. I have perused the material record.

3. The introductory facts noticeable from the pleadings and submissions made before this Court, in brief, are as follows:

The petitioner school was originally established in the year 1905 by freedom fighters for the purpose of providing free education and teaching handicrafts to the needy. In the year 1969, the petitioner institution was brought under the purview of Endowment Department. It is a charitable institution governed by the provisions of The Andhra Pradesh Charitable and Hindu Religious Institutions and Endowments Act, 1987, [hereinafter, 'Act 30 of 1987']. It is a duly notified 6-A institution since the year 1992. The petitioner institution originally owned a site in which Sri Lakshmi Talkies is situated. The site was leased out to N.V.Satyanarayana Murthy. He constructed the talkies over the said site leased out to him by the petitioner institution. Thereafter he subleased the talkies to B. Giribabu; and, he started running the Talkies. Even after expiry of the term of lease, the lessee and sub lessee continued in unauthorized possession; and, their possession over the site of the petitioner institution was that of encroachers. Several persons encroached the site property belonging to the petitioner institution. In the circumstances, Government of Andhra Pradesh decided to sell the property of the petitioner institution to the respective occupiers and appointed a high power committee vide G.O.Ms.No.61/SCMP/88, dated 17.02.1988, to fix the rates. The said Giribabu, who was running the Talkies, offered to purchase the site on which the Talkies was built and paid an advance of Rs.4,27,180/- towards the 1/3 of the sale consideration and entered into a contract of sale with the petitioner institution. The original lessee, N.V. Satyanarayana Murthy, also offered to purchase the said site over which the Talkies was constructed.

He filed OS.No.302 of 1993 on the file of Additional Junior Civil Court, Rajahmundry, against the said Giribabu and the petitioner institution claiming preferential right to purchase the subject site. In view of the pendency of the said suit, the sale in respect of the subject site was not finalized. However, the suit was dismissed on 31.12.2001. During the pendency of the said suit, the sub lessee, Giribabu, died on 31.07.1994. His son Jayadev submitted representations, dated 08.05.2002, 03.07.2002 and 19.02.2003 to the Commissioner of Endowments and Executive Officer of the petitioner institution requesting to execute the sale deed in his favour as per the revised rates fixed by the Government vide G.O.Ms.No.922, dated 15.12.2000. The Commissioner accepted the proposal and permitted the sale of the subject site admeasuring 3286 Sq.Yards at the revised rate of Rs.780/ per square yard and further directed to pay differential amount with interest @ 6% per annum from the date of the said G.O till date of payment. Accordingly, total amount payable by Jayadev, the son of the deceased sub lessee, late Giribabu, worked out to Rs.25,63,080/-. He paid the balance amount of Rs.21,35,900/- to the petitioner institution. Accordingly, a registered sale deed bearing document no.5303 of 2003, dated 10.09.2003, was executed by the petitioner institution in favour of the said Jayadev and he was put in possession of the property. Thus, the relationship between the petitioner institution and the said Jayadev is that of vendor and vendee under the sale deed and there is no other relationship between them. While so, the said Jayadev, who is running M/s. Lakshmi Talkies over the subject site, failed to pay the Provident Fund dues in a sum of Rs.70,706/- payable in respect of the Talkies. The 1st respondent – Assistant Provident Fund Commissioner came to know that the amount of the said

Talkies owner was lying with the petitioner institution in respect of the lease transaction between the Talkies and the subject site of the petitioner institution. Accordingly, 1st respondent issued an order, dated 03.11.2000, under Section 8(F) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 ['the Act', for short] to the petitioner institution to remit the amount to the extent of arrears of provident fund to the 1st respondent from out of the amount of the Talkies, which is with the petitioner institution. Further, according to the 1st respondent, the petitioner institution failed to pay the amount and comply with the said demand in the notice, dated 03.11.2000; and, hence, 1st respondent declared the petitioner institution as a deemed defaulter under the provisions of the Act vide proceedings, dated 26.09.2007, and asked the petitioner institution to appear before the said authority and explain. Thereafter, for the reason that the petitioner institution having once appeared before the said authority had later failed to appear before it, the 1st respondent issued the impugned prohibitory order to the two Branches of the Andhra Bank, that is, respondents 2 & 3, to remit the amounts from the accounts of the petitioner institution which are with the said branches of Andhra bank. Accordingly, 2nd respondent branch remitted Rs.62,000/- to the 1st respondent from the account of the petitioner institution vide DD, dated 15.11.2007. As in the meanwhile the petitioner institution approached this Court and filed the present writ petition and obtained an interim order, the 1st respondent returned the DD to the 2nd respondent branch. Subsequently, by an order, dated 06.08.2008, in WPMP.No.34294 of 2007, this Court directed the respondents 2 & 3 to forthwith pay back to the petitioner, the amounts which are withdrawn from the petitioner institution's FDRs, pending disposal of the writ petition, as it is not disputed that the 1st respondent returned the DDs to the respective banks.

4. In this backdrop, the case of the petitioner institution is this:

The petitioner institution has nothing to do with the failure of the Lakshmi Talkies represented by Jayadev to remit the statutory dues to the 1st respondent. Therefore, the petitioner institution submitted representation, dated 06.09.2001, to the 1st respondent informing that a sum of Rs.4,27,180/- paid on 17.07.1991 by B. Giribabu, late father of Jayadev, who was running the Talkies, was held by the petitioner institution as advance and part of the sale consideration in respect of the subject site and that a sale deed is to be executed after the rights of the parties are decided and after permission from the competent authority under Act 30 of 1987 and, that, therefore, it cannot be said that the petitioner institution is responsible for payment of the amounts, if any due, as arrears of Provident Fund payable by the Talkies being run by Jayadev to the 1st respondent. The 2nd and 3rd respondents, that is, the branches of Andhra Bank arbitrarily and without any notice to the petitioner institution remitted Rs.62,000/- and Rs.79,607.15 ps respectively to the 1st respondent from the deposits of the petitioner institution with the said branches of the Bank. The said actions of the said respondents which are arbitrary and illegal are, therefore, questioned in the writ petition.

5. The case of the 1st respondent is this:

In view of the clear admission of the petitioner institution that it is the owner of the site on which the defaulter Lakshmi Talkies is built and in view of the further clear admission of the petitioner institution that the site over which the Takiles was built was leased out first and later agreed to be sold to the son of the sub lessee, that is Jayadev, S/o.Giribabu on the death of the sub lessee and as it is also admitted that the petitioner institution was having the amounts of the Lakshmi Talkies being run by the said Jayadev, the action of the 1st respondent was proper, legal and justified. When the petitioner institution was called upon to appear and explain, the petitioner institution having appeared once later failed to appear before the 1st respondent authority and therefore, the petitioner institution is responsible for the issuance of the impugned order and hence the interim order is liable to be vacated and the writ petition is liable to be dismissed.

6. I have given detailed consideration to the facts and submissions.

Admittedly, the site which originally belonged to the petitioner institution was leased out to one N.V. Satyanarayana Murthy. He constructed the Talkies. He subleased the same to one Giribabu and he ran the Talkies during his life time. The Talkies is registered under the provisions of the Act. The Talkies is liable to pay Provident Fund. The Talkies which is covered under the Act failed to remit statutory dues under the said Act in a sum of Rs.70,706.50 ps to the authority under the Act, that is, 1st respondent. Therefore, the said dues are payable by the sub lessee of Satyanarayana, that is, Giribabu, who is running the Talkies. There is no statutory liability on the petitioner institution to pay the subject arrears which are payable by the sub lessee of the Talkies, who is running the Talkies. However, the 1st respondent having understood that the petitioner institution is holding the money of the Talkies invoked the provision under Section 8(F) of the Act and issued an order directing the petitioner institution to remit the amount of the Talkies, which is with it to the extent of PF arrears payable by the Talkies to the 1st respondent. For non compliance of the said order by the petitioner institution, the consequential prohibitory orders were passed in respect of the accounts of the petitioner institution with the branches of the Andhra Bank, that is, respondents 2 & 3, and a direction was given to the said branches to remit the dues from the account of the petitioner institution. Pursuant to the said orders, the Branch Manager, Innispet branch, addressed a letter, dated 15.11.2007, to the Executive Officer of the petitioner institution informing the petitioner institution that the Bank received notice for attachment of Rs.79,687.15 ps from its FDRs with the bank and asking the petitioner institution to pay the amount to the 1st respondent or otherwise the bank will send the aforesaid amount to the 1st respondent from the FDR accounts of the petitioner institution which are with the bank. As already noted, subsequently, the amount of Rs.62,000/- was remitted by the 2nd respondent to the 1st respondent by way of DD, dated 15.11.2007. Nonetheless, the said DD was returned to the bank and the said amount was repaid to the petitioner institution as per interim orders.

7. Learned standing counsel for the 1st respondent contended that though the amount held by the petitioner institution is an advance amount for the proposed purchase of the subject site by the person running the Talkies from the petitioner institution, as the sale has not fructified, the amount is that of the Talkies till the sale deed is executed by the petitioner institution in favour of Jayadev, who is running the Talkies as a sub lessee and that until a sale deed is executed the petitioner institution will not get valid title over the money and hence, the prohibitory order as well as the consequential orders passed by the

1st respondent are valid. However, learned counsel for the petitioner contended that the amount is admittedly paid as advance towards purchase money for the purchase of the site property and that the sale deed could not be executed on account of pendency of civil suit in a competent Court and for want of sanction from the competent authority and that after the dismissal of the said suit, the sale deed was executed and the amount that was paid as advance was adjusted towards sale consideration and, therefore, no money of Jayadev, who was running the Talkies, was ever held by the petitioner institution and, therefore, the Corporation/1st respondent ought not to have mulcted the petitioner institution with any responsibility and that the 1st respondent ought not to have passed the impugned orders.

8. It is also submitted during the course of the arguments that the learned counsel for the petitioner was instructed to represent that the arrears towards Provident Fund were already paid by Jayadev, who eventually purchased the Talkies.

9. Having regard to the facts and as no amount of Jayadev, who ran the Lakshmi Talkies on the subject site, which was originally leased out by the petitioner institution, was held by the petitioner institution and as the said Jayadev has eventually purchased the site over which the Talkies was constructed and the advance money paid was adjusted towards sale consideration, this Court finds that the petitioner institution is not liable for being proceeded against for the dues payable to the Corporation by the Talkies being run by the said Jayadev.

10. Accordingly, the impugned proceedings/orders of the 1st respondent are set aside. As a sequel, respondents 2 & 3 shall return the amounts covered by the FDRs of the petitioner institution to the petitioner institution as per procedure, if not already paid/returned pursuant to the interim orders. The necessary exercise, if any, as regards representation shall be completed within four (4) weeks from the date of receipt of a copy of this order.

There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

04.09.2018
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