

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 04.08.2020
CORAM
THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU
W.P. No. 34713 of 2019
and
W.M.P. No. 35470 of 2019

M/s. K. Parthasarathy Spinning Mills,
Represented by its Managing Partner,
Mr. P.Gopalkrishna,
Ganapathypalayam Post,
Udumalpet 641 122.

... Petitioner

-vs-

1. The Assistant Provident Fund Commissioner (Enforcement),
O/o. Regional Provident Fund Commissioner,
Sub Regional Office,
Dr. Balasundaram Road,
Coimbatore.
2. The Recovery Officer,
The Employees' Provident Fund Regional Office,
Bhavishya Nidhi Bhavan,
Dr. Balasundaram Road,
Coimbatore.
3. The Enforcement Officer,
Employees Provident Fund,
Pollachi.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the proceedings of the Second Respondent herein in No. TN/CB-CBE/19246/RECOVERY/2019 dated 11.11.2019 wherein proclamation of auction sale of the Petitioner's property has been fixed on 20.12.2019 and quash the same.

For Petitioner : Dr. R. Gouri

For Respondents: Mr. J. Sathya Narayana Prasad,
Standing Counsel

O R D E R
(through video conference)

The Petitioner has challenged the proclamation of sale of property fixed on 20.12.2019 in proceedings No. TN/CB-CBE/19246/RECOVERY/2019 dated 11.11.2019 issued by the Respondent for the recovery of Rs.1,72,67,105/- due from the Petitioner towards costs, charges and expenses accumulated towards provident fund in this Writ Petition.

2. When the matter came up for hearing on 17.12.2019, this Court passed the following self-explanatory order:-

"The petitioner is aggrieved against the proclamation of sale notice dated 11.11.2019 for recovering a sum of Rs.1,72,67,105/- from the petitioner towards EPF contribution, penal damages and interest in respect of the period referred to in the impugned proceedings. The public auction, as scheduled in the impugned proceedings, is to take place on 20.12.2019.

2. According to the petitioner, penal damages are imposed arbitrarily and the market value of the property as on today, though is Rs.320 Lakhs, is however fixed as Rs.172 Lakhs, thereby affecting the interest of the petitioner.

3. The correctness or otherwise of the contention raised by the petitioner in this writ petition has to be considered and decided only after completion of pleadings and hearing both parties. In the meantime, the petitioner seeks for some interim protection from the sale of the property referred to in the impugned proceedings.

4. The learned counsel for the respondents, based on instructions, submitted that the impugned proceedings was issued since the petitioner failed to pay the contribution. He also submitted that the costs of the impugned auction works out to Rs.64,208/-.

5. Considering the fact that the challenge made in this writ petition is against the proclamation of sale and that the auction is scheduled on 20.12.2019, this Court is of the view that the interest of both parties would be protected if the following interim order is passed during pendency of this writ petition.

6. Accordingly, there will be an order of interim stay

of the impugned proceedings subject to the following conditions:

(a) The petitioner shall pay a sum of Rs.69,15,495/-, which represents contribution liability and the costs of the impugned proclamation, before the second respondent on or before 21.01.2020.

(b) If the petitioner fails to make such payment within the time stipulated, the respondents are at liberty to proceed with issuing a fresh proclamation of sale notice without reference to the pendency of this writ petition.

Post the writ petition on 23.01.2020 for "Reporting Compliance".

However, the Petitioner did not comply with the condition imposed in the aforesaid order, and this Court during the next hearing on 23.01.2020 had passed the following order:-

"It is represented by the learned counsel appearing for the respondent that the conditional order of interim stay granted by this Court on 17.12.2019 has not been complied with. Learned counsel appearing for the petitioner, on the other hand, submitted that today, a sum of Rs.5,00,000/- has been paid and that the petitioner is in severe financial crisis. Therefore, she submitted that the conditional order granted by this Court has not been complied with, without any deliberate intention.

2. This Court, while granting interim stay has directed the petitioner only to pay the principal sum on or before 21.01.2020. However, the said condition has not been complied with. Hence, the interim stay granted on 17.12.2019 is vacated. Since this Court has vacated the interim order of stay, it is open to the respondents to issue fresh proclamation of sale notice and proceed accordingly.

3. Since this Writ Petition is filed questioning the procedure adopted in bringing the property for sale and those issues have to be considered and decided in the main Writ petition, if any sale takes place during the pendency of the Writ Petition, it is subject to the outcome of the order to be passed in this Writ petition.

4. Post the Writ Petition for filing counter after four weeks."

It is informed that though the interim order staying the sale stood vacated, the Respondents did not proceed further in the

matter.

3. Again, when the matter came up for hearing on 20.07.2020, this Court passed the following order:-

"Learned Counsel for the Petitioner submits that the orders adjudicating the liability on interest and damages had not been served on the Petitioner and on receipt of notice in the recovery proceedings, the Petitioner has filed this Writ Petition questioning the consequential action taken.

2. Learned Counsel for the First to Third Respondents seeks time to produce the records showing the proof of having delivered the adjudicatory orders on interest and damages to the Petitioner with supporting affidavit.

Post the matter under the caption 'Provident Fund cases' on 04.08.2020."

When the matter is called today, the Respondents have not produced any copy of the adjudicatory orders on interest and damages as required by this Court, but it is pointed out by the Learned Standing Counsel appearing for the Respondent that the details of the certificates have been mentioned in the impugned order. Learned Counsel for the Petitioner also has not been able to show any other infirmity in the impugned order requiring interference.

4. Having due regard to the rival submissions made, it would suffice to require the Respondents to furnish copies of the orders adjudicating the liability for contribution, interest and penal damages and the certificates issued along with proof of delivery of each of the same to the Petitioner and a working-sheet showing calculation for the consolidated amount claimed to be due at the time when fresh proclamation of sale is issued. Nothing remains for further consideration in this Writ Petition.

Accordingly, the Writ Petition is dismissed with aforesaid observations. Consequently, the connected Miscellaneous Petition is closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

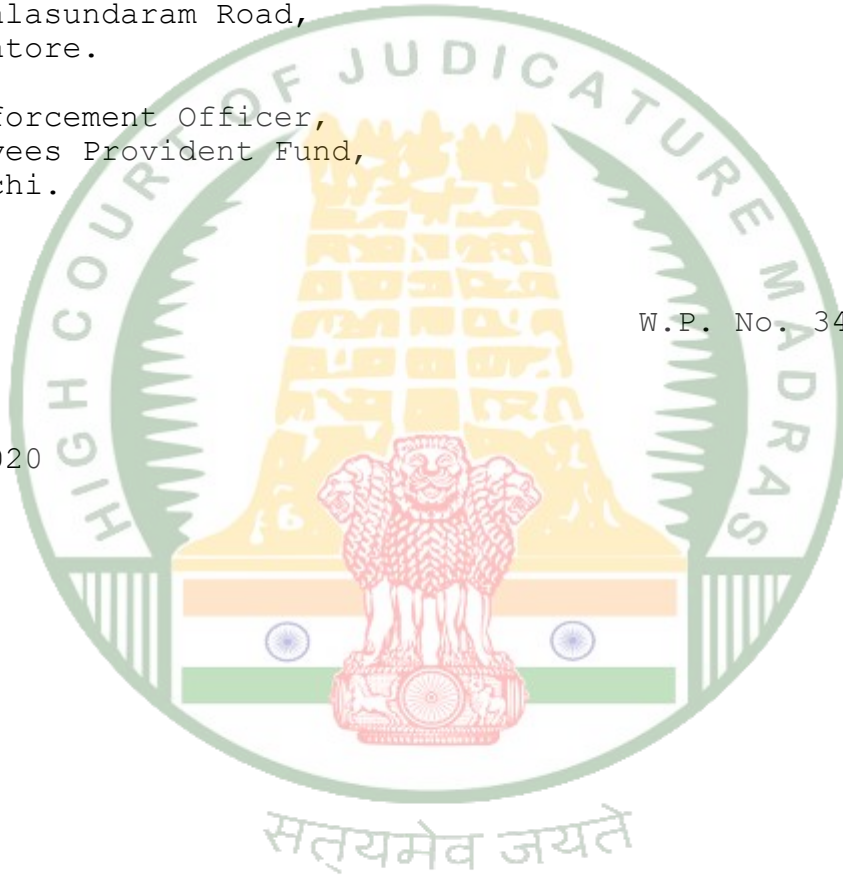
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To

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