IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD

944 CIVIL APPLICATION NO.8682 OF 2021
IN WP/12957/2017

THE REGIONAL PROVIDENT FUND COMMISSIONER
AURANGABAD
VERSUS
RAJIV SHIVAJI GHULE AND ANOTHER
...
Advocate for Applicant : Mr. N.K. Choudhari
Advocate for petitioner in WP : Mr. S.V. Adwant
...

CORAM : S.V. GANGAPURWALA &
R.N. LADDHA, JJ.
DATED : 08/10/2021.

PER COURT :

. The present application is filed by the original respondent No. 1 in the writ petition seeking withdrawal of the amount of Rs.30,87,479/- (Rupees thirty lakhs eighty seven thousand four hundred and seventy nine only) deposited by the original writ petitioner pursuant to the orders passed by this Court.

2. Mr. N.K. Choudhari, learned counsel for the applicant submits that the dues of the provident fund department were

quantified in the sale certificate pursuant to which the original writ petitioner has purchased the property. In the sale certificate, it has been clearly stated that the provident fund dues as on 31.3.2014 are to the tune of Rs.88,26,767/-. The original petitioner has challenged the demand notice issued to the present applicant. The Court while granting interim relief to original writ petitioner had directed to deposit the amount of Rs.30,87,479/-. The applicant be permitted to withdraw the said amount.

3. Mr. Adwant, learned advocate for the original writ petitioner submits that the amount has been deposited by the writ petitioner to show his bonafides. According to the learned advocate, the notice of demand is *per-se* illegal. The sale certificate relied by the applicant does not have any sanctity. The dues allegedly mentioned under the list of encumbrances do not have any legal sanctity. The dues cannot be quantified on the basis of unaudited accounts or balancesheet. The Maharashtra Cooperative Societies Act does not recognize any dues pursuant to the unaudited balancesheet. The learned counsel further submits that the dues are uncertain and if the dues are uncertain and

adjustment of uncertain dues is considered, the same is void in view of section 29 of the Indian Contract Act. The learned counsel also relies on the section 83 of he Indian Evidence act to buttress his submission.

4. According to the learned counsel, section 17-B of E.P.F. Act would not apply to the present applicant with regard to any priority claim. The learned advocate submits that the priority claim is of secured creditor as per section 26-E of SARFAESI Act. The property was to be auctioned under SARFAESI Act. According to the learned counsel even it is assumed that dues were admitted by the creditor still the auction purchaser is not precluded from challenging the said dues. Reliance is placed on the judgment of the Apex Court in the case of **Bhagwant Rai and Ors. Vs. State of Punjab and Ors, reported in (1995) 5 SCC 440.**

5. According to the learned advocate, as the original writ petitioner does not have liability to pay the amount, the applicant may not be allowed to withdraw the amount deposited by the present petitioner.

6. It is submitted that the procedure is prescribed for recovery of amount. The amount has to be recovered as arrears of land revenue. The said procedure has not been adhered by the Provident Fund Department. According to the learned advocate, the matter involves complex issues to be decided. The petitioner is ready to work out the matter finally on any given date.

7. We have considered the submissions. At present, application for withdrawal of the amount is only required to be decided. The legal provisions addressed by the learned advocate for the applicant and the learned advocate for the non applicant can be considered at the time of hearing the writ petition. While deciding the application for withdrawal of the amount, we are not deciding the legal issues raised by the parties. We would not be giving conclusive finding upon the liability of the petitioner or right of respondent No. 1. What would be the effect of the amount quantified in the sale certificate on the basis of unaudited balancesheet would be a subject matter for consideration while deciding the writ petition.

8. The present applicant viz. Provident Fund Department

is a statutory body. Keeping the amount idle would be in nobody's interest. In case, the petitioner succeeds in writ petition, the steps can always be taken to direct the department to refund the amount along with permissible interest. The Provident Fund Department also caters to the dues of the employees.

9. In case, this Court allows the writ petition subsequently then it would not be difficult to recover the amount from the Provident Fund Department.

10. In the light of above, we permit the applicant to withdraw the amount of Rs. 30,87,479/- along with accrued interest, if any on condition that the responsible officer of the department files undertaking in this Court to the effect that in the event authority is directed to deposit/refund the amount, it will deposit the amount within one months. Civil Application disposed of.

[R.N. LADDHA, J.] **[S.V. GANGAPURWALA, J.]**

ssc/