



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.09.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P.Nos.35874 of 2019 & 17585 of 2021
and

WMP.Nos.36784/19 & 18706/21

W.P.No.35874 of 2019

State Bank of India
Having its Corporate Office at
Madame Cama Road
Nariman Point, Mumbai and
Branches among other places at
Commercial Branch
No.232, N.S.C Bose Road
Chennai 600 001
Rep. by its Asst. General Manager.

..

Petitioner

versus

- 1 The Asst. Provident Fund Commissioner
& Recovery Officer
Employees Provident Fund Organisation
Regional Office
S-1, TNHB, Phase -III
Sathuvachery
Vellore 632 009.
- 2 Reserve Bank of India
Mumbai Regional Office
Banking Department
Mumbai 400 001
- 3 The Regional Director
Reserve Bank of India
South Zonal Office
Fort Glacis, No.16, Rajaji Salai
Chennai 600 001.



WEB COPY

4 M/s T.Abdul Wahid and Co.
Rep by its Managing Partner
No.55, Vepery High Road
Periamet
Chennai 600 003.

..

Respondents

W.P.No.17585 of 2021

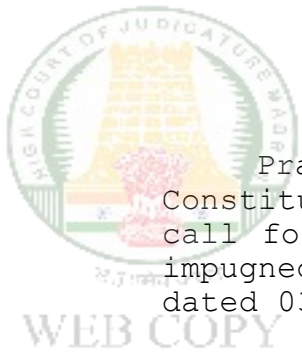
M/s.T.Abdul Wahid and Co.
Rep by its Managing Partner
T.Faizan Ahmed
No.55, Vepery High Road
Periamet, Chennai- 600 003.

Vs

- 1 The Asst. Provident Fund Commissioner &
Recovery Officer
Employees Provident Fund Organisation
Regional office
S-1, TNHB, Phase III
Sathuvachery
Vellore- 632 009
- 2 State Bank of India
Commercial Branch
No.232, N.S.C.Bose Road
Chennai-600 001
- 3 State Bank of India
Stressed Assets Management branch
Red Cross Buildings
32, Red Cross Road
Egmore
Chennai-600 008
- 4 Reserve Bank of India
Mumbai Regional Office
Banking Department
Mumbai-400 001
- 5 The Regional Director
Reserve Bank of India
South Zonal Office
Fort Glacis, No.16, Rajaji Salai
Chennai-600 001

..

Respondents



Prayer: W.P.No.35874 of 2019 filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records of the first respondent culminating in the impugned proclamation with Ref.No.TB/ VLR/19704/Recy/2019/9599 dated 03.12.2019 and quash the same; and

W.P.No.17585 of 2021 filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for records of the 1st Respondent culminating in Notice for settling a sale proclamation No.TB/VL/19704 (Group companies) Recovery 2021/ 1637 dated 10.8.2021 and quash the same and consequently direct the 1st respondent herein to release the garnishee order bearing TB/ VLR/19704/Recy/2019/9599 dated 3.12.2019 and raise the attachment in respect of schedule mentioned properties belonging to the petitioner upon receipt of Rs.6,27,55,715/- contained in demand notice dated 18.6.2021.

Appearance :-

W.P.No.35874 of 2019:

Mr.Om Prakash, Senior counsel,
Assisted by Mr.P.Elayarajakumar,
for M/s.Ramalingam and Associates

... for the petitioner

Mr.R.Vishnu ... for the first respondent

Mr.C.Mohan,
for M/s.King and Patridge ... for the respondents 2 and 3

Mr.P.V.Balasubramanian,
for M/s.BFS Legal ... for the fourth respondent

W.P.No.17585 of 2021:

Mr.P.V.Balasubramanian
for BFS Legal ... for the petitioner

Mr.R.Vishnu ... for the first respondent

Mr.C.Mohan,
for M/s.King and Patridge ... for the fifth respondent

Mr.Om Prakash, Senior counsel,
Assisted by Mr.P.Elayarajakumar,
for M/s.Ramalingam Associates ... for respondents 2 and 3

Not ready in notice in respect of the fourth respondent



COMMON ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

Since both the petitions pertain to the same defaulting entity, the matters are taken up together.

2. W.P.No.35874 of 2019 is a petition by the State Bank of India, no less, complaining of the highhanded action by the Employees Provident Fund Organisation in attaching assets of the defaulting entity that had been furnished by way of security to the bank in connection with credit facilities obtained. The grievance also covers the attachment of bank accounts in which there was no credit balance and which, in effect, prevented the realisation of the bank's dues from the defaulting borrower.

3. In addition, the State Bank says that the provident fund authorities have complained to the Reserve Bank against the State Bank, despite State Bank not being the defaulter and measures have also been threatened against the authorised officer dealing with the account.

4. W.P.No.17585 of 2021 has been filed by the defaulting entity, a partnership firm, through its managing partner. The provident fund authorities and the State Bank are parties. The Reserve Bank of India has also been impleaded in such petition. An affidavit of undertaking affirmed by T.Faizan Ahmed, the Managing Partner of firm T.Abdul Wahid and Co. has been filed. Copies of such affidavit have been forwarded to the provident fund authorities and to respondent State Bank. In terms of such affidavit of undertaking, a sum of Rs.2.25 crore has already been paid by the firm to the provident fund authorities against the claim of Rs.6,27,55,715/- raised by the provident fund authorities in terms of a demand notice of June 18, 2021. By the said undertaking, the firm and its managing partner undertake to liquidate the balance dues of the provident fund authorities within two months of the order of attachment in respect of one of the three properties detailed in the affidavit being lifted. Since the payment of the first tranche of Rs.2.25 crore has been made, the provident fund authorities should immediately release from attachment the property indicated as item No.1 (vacant land) in the schedule to the affidavit of undertaking. At any rate, the attachment in respect of such property will no longer operate in view of this order and the provident fund authorities will complete the ministerial act of acknowledging the same by a writing to be forwarded to the relevant firm within a week from date.

5. In terms of paragraph 8(iii) of the affidavit, a further payment of Rs.2.25 crore is to be made; and, as per paragraph 10



of the affidavit of undertaking such payment is to be made within two months from date since the order of attachment is lifted by this order in respect of the first item of property. Immediately upon such payment of the second installment of Rs.2.25 crore, the order of attachment in respect of the tannery land described as item No.3 in the schedule to the affidavit will cease to operate and the ministerial confirmation thereof should be forwarded by a writing, by the provident fund authorities, to the relevant firm within a week of the receipt of such second tranche of payment. The balance amount (Rs.6,27,55,715/- less Rs.4.50 crore) will be paid within two months of the second payment being tendered, and immediately upon receipt of such payment, the order of attachment in respect of the shoe factory land described as item No.2 in the schedule to the affidavit of undertaking will cease to operate. Again, the ministerial act of confirming such position should be completed by the provident fund authorities within a week of the receipt of the third and final installment of payment.

6. Till such time that the balance payment is made, there will be an injunction restraining the firm and all its partners, including the managing partner, whether by themselves or by their servants or agents or assigns or otherwise howsoever from dealing with or disposing of or encumbering or alienating or parting with possession of the properties described as item Nos.2 and 3 of the schedule to the said affidavit. Such injunction in respect of the tannery land described as item No.3 in the relevant schedule will cease to be effective upon the next instalment of Rs.2.25 crore being paid and the money being realised, without reference to court. The injunction on the shoe factory land described as item No.2 in the said schedule will continue to operate till the final payment in terms of this order is made whereupon such injunction will also cease to operate without reference to court.

7. The State Bank of India says that its dues have been duly discharged. Accordingly, the attachment levied by the provident fund authorities in respect of the bank accounts maintained by the relevant firm with the State Bank of India will no longer be in operation and State Bank of India should immediately forward a 'no-dues certificate' to the firm. The bank has agreed to immediately issue such certificate and return the documents of title pertaining to the secured assets to the said firm and cancel the mortgage and take steps to undo the charge created in respect of such assets.

8. Since the defaulting entity is in the process of making good the entire amount due in terms of the notice of demand dated June 18, 2021, issued by the provident fund authorities, Reserve Bank of India should not take any action against the



State Bank of India in respect of any matter complained of by the provident fund authorities.

9. The deponent of the affidavit of undertaking will take notice that the consequence of the breach of an undertaking furnished to court is contempt, which is also the consequence of the breach of any subsisting injunction issued by court.

10. W.P.Nos.35874 of 2019 and 17585 of 2021 are disposed of. W.M.P.No.36784 of 2019 & W.M.P.No.18706 of 2021 are closed. There will be no order as to costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

tar

To:

- 1 The Asst. Provident Fund Commissioner
& Recovery Officer
Employees Provident Fund Organisation
Regional Office
S-1, TNHB, Phase -III
Sathuvachery
Vellore 632 009.
- 2 Reserve Bank of India
Mumbai Regional Office
Banking Department
Mumbai 400 001
- 3 The Regional Director
Reserve Bank of India
South Zonal Office
Fort Glacis, No.16, Rajaji Salai
Chennai 600 001.
- 4 State Bank of India
Commercial Branch
No.232, N.S.C.Bose Road
Chennai-600 001
- 5 State Bank of India
Stressed Assets Management branch
Red Cross Buildings
32, Red Cross Road
Egmore, Chennai-600 008



+4cc to Mr.Ramalingam & Associates, Advocate,
S.R.No.47465, 47464

+1cc to M/s.King & Partridge, Advocate, S.R.No.47256

+2cc to M/s.BFS Legal, Advocate, S.R.No.47260, 47259

W.P.Nos.35874 of 2019 &
17585 of 2021

KSM(CO)
CB(22/09/2021)