BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P(MD)No.8166 of 2010

and

M.P.(MD)No.1 of 2010

Tamil Nadu Mercantile Bank Limited,
280, Madurai Road,
Virudhunagar - 626 001,
Rep. by its Chief Manager. ... Petitioner

Vs.

The Recovery Officer,
Employees Provident Fund Organisation,
Bhavishyanidhi Bhavan,
Lady Doak College Road,
Madurai. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorari calling for the records of the respondent in TN/MD/M7/37717 & 41772/RECY/10 in the form of notice dated 10.02.2010 and quash the same.

For Petitioner : Mr.A.R.M.Ramesh
For Respondent : Mr.V.S.V.Venateshvaran
Standing Counsel

ORDER

The Writ Petition is filed seeking for issuance of a writ of certiorari to call for the records of the respondent in TN/MD/M7/37717 & 41772/RECY/10 in the form of notice, dated 10.02.2010 and quash the same.

2. The case of the petitioner is that one M/s Somasundaram Cottage Industries, a partnership firm, represented by its partner R.S.Shanmugavel, availed various loans from the petitioner Bank by mortgaging their lands. Since the borrower defaulted in making payment, the petitioner Bank initiated recovery proceedings against the borrower before the Debts Recovery Tribunal and it fructified into a decree dated 09.02.2005. Thereupon, the mortgaged lands were brought to auction sale by the Recovery Officer, Debts Recovery Tribunal in due execution of the decree resulting in sale of the properties to the highest bidder, viz., one P.S.Natarajan, on 09.09.2008, for a sum of Rs.7,51,000/-. The auction sale has since been confirmed and sale certificate has been issued to the purchaser and the whole of the sale proceeds has been credited to the loan account of the borrower M/s Somasundaram Cottage Industries. While

so, the respondent, by its notice dated 03.09.2009 to the petitioner claiming to have attached the properties sold in auction as stated above and comprised in S.Nos.162/2A, 2B, 3A & 3B, Kullursanthai Village for the EPF dues to the tune of Rs.1,43,656/-(including charges) of the establishments of M/s Anushya Match Works and M/s.R.S.Colour Match Industries sought for information from the petitioner in the matter.

3. The petitioner Bank, vide letter dated 04.11.2009 to the respondent, informed about the sale of the aforesaid lands by the Recovery Officer, Debts Recovery Tribunal, in execution of the decree of the Debts Recovery Tribunal. Thereupon the respondent, by its notice dated called upon the petitioner to pay the sale proceeds so as to meet the claim of the respondent relating to the provident fund dues of the defaulting establishments M/s Anushya Match Works and M/s.R.S.Colour Match Industries, on threat of recovery action against the petitioner Bank including by way of attachment of salary account of the bank manager besides to file a criminal complaint as well. Challenging the said order, the present writ petition is filed.

4. Learned Counsel appearing for the petitioner would submit that the property which is subject matter of the claim exclusively belonged to M/s Somasundaram Cottage Industries, a partnership firm and not to R.S.Shanmugavel or the defaulting establishments M/s Anushya Match Works and M/s.R.S.Colour Match Industries. Hence, the impugned order is liable to be set aside. Further the property in question does not belong to the defaulting establishments, which is being conveniently overlooked by the respondent. Therefore, the learned Counsel would pray for appropriate orders.

5. Per contra, the learned Counsel appearing for the respondent would submit that as per the provisions of the EPF Act, the Employees' Provident Fund Organisation is entitled and holds first charge even on the mortgaged property of the secured creditors as per the recent Supreme Court Judgment. In the present case, M/s Anushya Match Works and M/s.R.S.Colour Match Industries, Virudhunagar, establishments covered under the provisions of EPF Act, had failed to remit Provident Fund dues amount to Rs.1,28,320/- and Rs.7,275/- respectively. For the recovery of the said dues, immovable properties of the establishment which is in the name of Shanmugavel, was attached. However, none of the defaulter, challenged the attachment order and in order to recover the amount, the present impugned notice was issued to the petitioner and without paying the amount from the amount of defaulting establishments, filing the present writ petition is unsustainable in law and hence, the learned Counsel appearing for the respondent would pray for dismissal of the writ petition.

6. Heard the learned Counsel appearing for the petitioner and the learned Counsel appearing for the respondent and perused the

materials placed on record.

7. Considering the facts and circumstances of the case, admittedly, the EPF authorities initiated proceedings against M/s Anushya Match Works and M/s.R.S.Colour Match Industries and the said establishments had failed to remit the Provident Fund dues amounting to the tune of Rs.1,28,320/- and Rs.7,275/- respectively and for the recovery of the above said dues, the immovable property of the establishments which stand in the name of Shanmugavel, which is also also the Proprietor of M/s Somasundaram Cottage Industries, was attached. After attachment, the EPF authorities came to know that the property was mortgaged with the petitioner Bank. Thereafter, they issued a notice 10.02.2010 for recovery of dues due to them. As per the provision of Section 11(2) of the EPF At, if any amount due from an employer or the employer"s contribution, the amount so due shall be deemed to be the first charge on the assets of the establishment, and shall, notwithstanding anything contained in any other law for the time being in force, be paid in priority to all other debts. So in view of the said provision, the respondent having discharged the first charge, issued the present order. Without answering to the said provision to the concerned authorities, filing the present writ petition by challenging the said notice is unsustainable one.

8. For the reasons stated above, the relief sought for in the present writ petition cannot be considered. Accordingly, the present writ petition is liable to be dismissed. No costs. Consequently the connected Miscellaneous Petition is also dismissed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Recovery Officer,
Employees Provident Fund Organisation,
Bhavishyanidhi Bhavan,
Lady Doak College Road,
Madurai.

+1 CC to M/s.A.R.M.RAMESH, Advocate (SR-13445[F] dated 24/03/2021)

W.P(MD)No.8166 of 2010
24.03.2021

TP(CO)
KB(24.05.2021) 4P 3C