BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 28.07.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W. P. (MD) Nos. 21695, 21696 and 21710 of 2016
and
W.M.P. (MD) Nos. 15509 to 15512, 15525 and 15526 of 2016
and
W.M.P. (MD) Nos. 5687 and 8433 of 2017

Rameswaram Municipality,
Through its Commissioner,
Rameswaram,
Ramanthapuram District. ... Petitioner in all W.P.s

-vs-

1. The Assistant Provident Fund Commissioner,
Employees Provident Fund Organization,
Regional Office,
Lady Doak College Road,
Chokkikulam,
Madurai - 625 002.

2. The Enforcement Officer,
Compliance Circle/M-5 Dvn/Madurai,
Employees Provident Fund Organization,
Regional Office,
Lady Doak College Road,
Chokkikulam,
Madurai - 625 002. ... First and Second Respondents in all W.P.s

3. The Manager,
Indian Bank, Rameswaram Branch,
Ramanathapuram District. ... Third Respondents in W.P. No. 21695 of 2016

4. The Manager,
Union Bank of India,
Rameswaram Branch,
Ramanathapuram District. ... Third Respondents in W.P. No. 21696 of 2016

5. The Manager,
State Bank of India, Rameswaram Branch,
Ramanathapuram District. ... Third Respondents in W.P. No. 21710 of 2016

COMMON PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records of the impugned order of the First Respondent in No. TN/MDU/91185/Enf.C/ Circle 15/M-5/8F/2016 dated 19.10.2016 issued to the 3rd respondent and quash the same as illegal, devoid of merits and unlawful and consequently directing the First Respondent to conduct a proper enquiry by giving sufficient opportunity to the Petitioner.

For Petitioner : Mr. M.Kannan (in all W.P.s)

For R1 & R2 : Mr. V.Venkateshwaran (in all W.P.s)

C O M M O N O R D E R
(through video conference)

Heard Mr. M.Kannan, Learned Counsel for the Petitioner and Mr. V.Venkateshwaran, Learned Standing Counsel appearing for the First and Second Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. These Writ Petitions challenge the orders No. TN/MDU/91185/ Enf.C/Circle 15/M-5/8F/2016 dated 19.10.2016 passed by the First Respondent under Section 8-F of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act for short), on the ground that they are consequential orders for the recovery of provident fund contribution determined by order No. MD/MDU/91185/ENF 'C'/M-5/15011/2016 dated 21.09.2016 passed by the First Respondent under Section 7-A of the Act, which has been challenged in another Writ Petition in W.P. (MD) No. 21694 of 2016 before this Court.

3. This Court by a separate order passed today (28.07.2021) has dismissed the Writ Petition in W.P. No. 21694 of 2016 and as such, there is no impediment for recovering the amount due under the said order. It is, however, pointed out by the Learned Counsel for the Petitioner that in view of the hasty manner in which the First Respondent has proceeded with recovery action, the impugned orders cannot be affirmed.

4. Combating such grievance sought to be ventilated by the Petitioner, it is highlighted by the Learned Counsel appearing for the First and Second Respondents that there is no bar in taking prompt and immediate action for recovery of the amounts due towards provident fund after the determination of the liability of the Petitioner under Section 7-A of the Act and on the other hand, it is the public duty cast on the First and Second Respondents to carry out such exercise. Though there is considerable force in such submission made by the Learned Counsel for the First and Second

Respondents, it cannot mean that the authorities under the Act can have unbridled power to flout the prescribed procedure for recovery infringing the safeguard provided in Article 300-A of the Constitution of India, which mandates as follows:-

> ***"300-A. Persons not to be deprived of property save by authority of law:-***
>
> *No person shall be deprived of his property save by authority of law."*

It cannot be gainsaid that the right to property of a person can be taken away only by a procedure established by law, which has to be fair and reasonable and not arbitrary. At this juncture, it would be appropriate to quote the relevant passages from the decision of the Hon'ble Supreme Court of India in ***Ram Kishun -vs- State of Uttar Pradesh*** [(2012) 11 SCC 511], which read as follows:-

> ***"Recovery of public dues***
>
> *13. Undoubtedly, public money should be recovered and recovery should be made expeditiously. But it does not mean that the financial institutions which are concerned only with the recovery of their loans, may be permitted to behave like property dealers and be permitted further to dispose of the secured assets in any unreasonable or arbitrary manner in flagrant violation of the statutory provisions.*
>
> *14. A right to hold property is a constitutional right as well as a human right. A person cannot be deprived of his property except in accordance with the provisions of a statute. (Vide **Lachhman Dass -vs- Jagat Ram** [(2007) 10 SCC 448] and **State of M.P. -vs- Narmada Bachao Andolan** [(2011) 7 SCC 639]. Thus, the condition precedent for taking away someone's property or disposing of the secured assets, is that the authority must ensure compliance with the statutory provisions."*

Referring to the same, the Hon'ble Supreme Court of India in the decision in ***Mathew Varghese -vs- M.Amirtha Kumar*** [(2014) 5 SC 610] has held as follows:-

> *"43. The above principles laid down by this Court also make it clear that though the recovery of public dues should be made expeditiously, it should be in accordance with the procedure prescribed by law and that it should not frustrate a constitutional right, as well as the human right of a person to hold a property and that in the event of a fundamental procedural error occurred in a sale, the same can be set aside."*

5. In this backdrop, it requires to be noticed that while Section

8, 8-A to 8-F of the Act contain substantive provisions on conferment of powers for recovery of provident fund dues, the procedure for recovery has been stipulated in Section 8-G of the Act, which reads as follows:-

> ***8G. Application of certain provisions of Income-tax Act:-***
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> *The provisions of the Second and Third Schedules to the Income-tax Act, 1961 (43 of 1961) and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, shall apply with necessary modifications as if the said provisions and the rules referred to the arrears of the amount mentioned in section 8 of this Act instead of to the income-tax:*
>
> *Provided that any reference in the said provisions and the rules to the "assessee" shall be construed as a reference to an employer as defined in this Act."*

In the context of attachment of the bank account of the Petitioner with the Second Respondent for the recovery of the provident amount dues by the First Respondent, it would be necessary to look into Rules 2, 3, 4, 5, 8, 11, 12, 13, 20, 21, 22, 26, 28, 30 and 47 of the Second Schedule to the Income Tax Act, 1961. On a conspectus of those legal provisions, it becomes clear that the concerned authorities under the Act would have to ensure that the following requirements must be fulfilled while taking any recovery action:-

(i) A notice would have to be served upon the defaulter to pay the specified amount within 15 days from the date of its service and intimating that in default, steps would be taken to realize that amount.

(ii) No steps in execution shall be taken until the period of 15 days has elapsed from the date of service of the notice requiring such payment.

(iii) However, if the defaulter is likely to conceal or remove or dispose of the whole or any part of his movable property, which would delay or obstruct the realization of the amount due, the Recovery Officer may attach the movable property by dispensing with the notice to the defaulter for reasons to be recorded in writing while passing such order.

(iv) When a defaulter, whose property has been so attached, furnishes security to the satisfaction of the Recovery Officer, such attachment shall be cancelled from the date of acceptance of the security by the Recovery Officer.

(v) Where any objection is made to the attachment of any property on the ground that the property is not liable to such attachment, the Recovery Officer would have to investigate into that objection on the basis of the evidence adduced by the objector in that regard.

(vi) Where the Recovery Officer on such investigation comes to the conclusion that the property attached is not owned by the defaulter, such part of the property shall be released from the attachment made.

(vii) A warrant of attachment signed by the Recovery Officer with his name specifying the name of the defaulter and the amount to be realized shall be served on the defaulter.

(viii) The Recovery Officer shall proceed to attach the movable property of the defaulter only if the amount mentioned in the warrant is not paid forthwith.

(ix) In the case of debt or other movable property not in the possession of the defaulter, the attachment has to be in writing prohibiting the creditor from recovering the debt and the debtor from making payment thereof or giving it over to the defaulter until further order from the Recovery Officer and a copy of such order shall be furnished to the defaulter and the person in possession of the debt.

(x) Where the property attached is currency notes, it shall be credited to the Central Government and the amount so credited shall be adjusted towards provident fund dues and other amounts recoverable from the defaulter and the balance, if any, remaining shall be paid to the defaulter.

It would assume significance that every stage of the recovery proceedings contemplates to afford an opportunity to the defaulter to either remit the dues or place his objection with supporting materials in that regard in consonance with the principles of natural justice before proceeding further. Such protection statutorily guaranteed to ensure the salutary object that justice in not only done, but also manifestly seen to be done, cannot be lost sight in the anxiety to complete the recovery process by the authorities under the Act.

6. The First Respondent has not placed any materials before this Court to show that the First Respondent has waited for a period of 15 days after calling upon the Petitioner to remit the amount due. Similarly, no order containing reasons for dispensing with such notice informing the Petitioner before attaching its bank account, has been produced. There is also nothing to show that the Petitioner was simultaneously informed of the attachment of its bank account. Such non-compliance would necessarily mean that the required opportunity to remit the dues before effecting attachment of the amount in the bank account of the Petitioner had not been granted in this case. That apart, the scheme for recovery postulates that objections could be made in respect of the attachment which would have to be investigated by the Recovery Officer. In this case, no time had been granted for raising such objections and on the other hand, the Third Respondents have been warned in the attachment orders itself that if payment of the attached amount had not been made, the Third Respondents would be personally liable for payment of the arrears of provident fund that had fallen due. Such coercive methods of recovery adopted by the First Respondent is in glaring transgression of the rule of law, which cannot be countenanced.

7. The result of the foregoing discussion is that the impugned orders are set aside and the matter is remitted to the First and

Second Respondents to follow the prescribed procedure for recovery of provident fund dues from the Petitioner in accordance with law as explicated in this order.

In the upshot, these Writ Petitions are disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sm/vjt

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

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Rameswaram,
Ramanthapuram District.

+2 CC to M/s.M.KANNAN, Advocate (SR-24337, SR-24336[F] dated 29/07/2021)
+1 CC to M/s.C.MUTHUSELVAM, Advocate (SR-24330, [F] dated 29/07/2021)

W.P. (MD) Nos. 21695, 21696 and 21710 of 2016
28.07.2021

RD(15.09.2021) 7P 10C