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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2022

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.No.552 of 2022

and C.M.P.No.4054 of 2022

R.Karunanithi

...Appellant/Petitioner

vs

1. Regional PF Commissioner-II &
Recovery Officer, Employees' Provident
Fund Organisation, Regional Office,
Bhavishya Nidhi Bhavan, P.B.No.3875,
Dr.Balasundaram Road, Coimbatore 641 018.

2. M/s.Park Trust
Rep by its Secretary and Correspondent-Karthik TR
No. 36 KPN Colony 1st Street, Tirupur 641 601.

...Respondents/Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent against the order dated 28.01.2022 passed in W.P.No.186 of 2021 on the file of this Court.

Prayer in W.P.No. 186/2021 in W.A. 552/2022:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, forbearing the respondents 1 and 2 from auctioning the property situated at Naranapuram Village, Palladam Taluk, Tirupur with S.F.Nos.37/1A, 37/2A, 36/1B, 37/1B and consequently direct the first respondent to initiate recovery proceedings against the second respondent in terms of mode of recovery provided under Section 8B and 8F of the EPF & MP Act in respect of Provident Fund Contribution due by the second respondent in respect of his establishments covered under the EPF Code Nos.CB/CBE/72531, 78034, 28636, 72530 & 78815 and pass such further or other orders.



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For the Appellant : Mr.AR.L.Sundaresan
Senior Counsel
for M/s.AL.Gandhimathi

For the Respondents : Mrs.R.Meenakshi
for R-1/Caveator
: Mr.Arunkumar for R-2

JUDGMENT

(Judgment of the Court was delivered by
the Hon'ble Chief Justice)

By this writ appeal, a challenge is made to the judgment dated 28.01.2022 whereby the writ petition preferred by the appellant was dismissed.

2. The writ petition was filed challenging the initiation of recovery proceedings by the Employees' Provident Fund towards the arrears of provident fund contribution due from the second respondent, M/s.Park Trust. The challenge was made in view of the fact that the writ appellant had preferred a suit for specific performance in respect of the property through which recovery proceedings of the arrears was sought to be made.

3. During the pendency of the suit, the Provident Fund organisation initiated the recovery proceedings against M/s.Park Trust and for that, now they are going to auction the property in question in the Civil Court. By an interim order in the writ petition, the Writ Court directed the writ appellant to deposit a sum of Rs.52,40,000/-. The direction aforesaid was carried by the writ appellant, but finally the writ petition was dismissed though with certain observations regarding the right to challenge the recovery proceedings by the second respondent, M/s.Park Trust. In view of the above, the writ appeal has been preferred.

4. Mrs.R.Meenakshi, learned counsel, appears for the main contesting party respondent, that is, Provident Fund Organisation.

5. The learned senior counsel for the writ appellant submits that if this Court is not inclined to cause interference in the order under challenge, a liberty could be given to maintain an injunction application in the pending suit by impleading the Provident Fund Department as a party respondent, as otherwise, his right in the property would be affected



pending suit for specific performance. Alternatively, he may be given liberty even to approach the Provident Fund organisation to settle the issue inter se in reference to recovery vis-a-vis the property.

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6. The learned counsel for the non-appellant, Provident Fund organisation, has initially raised objection for the aforesaid, however, the liberty given to move the Civil Court with an application for injunction being the right of the writ appellant that objection has not been raised. So far as the second option is concerned, it is submitted that the property is worth Rs.3.6 crore and therefore, negotiation would not be possible on an amount lower than the aforesaid.

7. We have considered the rival submissions of the parties and find reason to accept the prayer made by the writ appellant to give him liberty to approach the Civil Court with an application for injunction against the Provident Fund organisation as they are now effecting the recovery from the property in question before the Civil Court. At the same time, the writ appellant may approach the Provident Fund organisation, however, it is without observation for any matter and the manner of settlement if any and thereby, the liberty would not construe to be a direction to the department to settle it unless it is on the terms appropriate to the case.

With the aforesaid, the writ appeal is disposed of, however, it would be with the liberty to the petitioner/writ appellant to seek return of the amount already deposited by him and in that case, it will not cause any prejudice to him in pursuing his case. No costs. Consequently, C.M.P.No.4054 of 2022 is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

sra
To:

The Regional PF Commissioner-II &
Recovery Officer, Employees' Provident
Fund Organisation, Regional Office,
Bhavishya Nidhi Bhavan, P.B.No.3875,
Dr.Balasundaram Road, Coimbatore 641 018.



+1 CC to Ms.R.Meenakshi, Advocate sr 16557

+1 CC to Mr.D.R. Arunkumar, Advocate sr 16808

+1 CC to M/s.A.L. Gandhimathi, Advocate sr 17225.

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W.A.No.552 of 2022

NRJK (CO)

SP (17/03/2022)