



W.P(MD)No.15630 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P(MD)No.15630 of 2018

and

W.M.P.(MD)Nos.14036 of 2018 & 6599 of 2022

Jisha

... Petitioner

Vs.

1.Employees' Provident Fund Organization,
(Ministry of Labour and Employment,
Govt., of India),
Rep. by its Assistant PF Commissioner
/ Recovery Officer,
Regional Office, 65A, Water Tank Road,
Nagercoil-629 001.

2.Ratheesh Kumar

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records on the file of the 1st respondent pertaining to the proceedings Order of Attachment of Immovable Property in E.P.F.C.P.16 No.TN/NGL/79323/Recy/2018, dated 30.05.2018 and quash the same.

For Petitioner : Mr.S.Sivakumar

For R1 : Mr.M.Mahaboob Athiff

For R2 : No Appearance



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ORDER

Challenge has been made to the order of the 1st respondent dated 30.05.2018, under which the property of the petitioner has been attached.

2.The learned counsel appearing for the petitioner would submit that the petitioner is the owner of the property in Re.Survey No.62/1 to an extent of 10 cents situated at Anducode Village, Malaicode Desom, Vilavancode Taluk, Kanyakumari District. She leased out the same to the 2nd respondent, where he is doing the business of peeling and grading the cashew nuts. Under these circumstances, the 1st respondent passed the impugned order. Since the property in question belongs to the petitioner, no attachment order can be passed against the property in question.

3.The learned counsel appearing for the 1st respondent would fairly submit that the petitioner is the owner of the property in question and the 2nd respondent, who is the lessee of the petitioner, is carrying business in the property in question and therefore, taking into consideration of the facts, appropriate orders may be passed.



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4.I have given due consideration to the submissions made on either side and perused the materials available on record carefully.

5.Admittedly, the petitioner is the owner of the property in question, which was leased out to the 2nd respondent, where he is doing the business of trading and grouping the cashew nuts. It is also an admitted fact that there was a due in respect of contribution of EPF by the 2nd respondent to the 1st respondent. Therefore, the 1st respondent initiated recovery proceedings against the 2nd respondent. Since the 2nd respondent failed to pay the same, the attachment order has been passed under Section 8B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as 'the Act') against the property in question. The 1st respondent, having considered the property in question, where the 2nd respondent is doing business, as an establishment, passed the attachment order. Such interpretation is totally wrong. The property, which was leased out, will not come under the establishment, so as to invoke the provisions under Section 8B(1)(a) of the Act. But, they can take action only against the movables if any situated in the immovable property.



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6.In such view of the matter, this Court is of the view that the attachment order passed against the immovable property of the petitioner is not in accordance with law and therefore, the same is liable to be set aside, accordingly, it is set aside only in respect of immovable property. However, the attachment order passed against the movable property holds good to take action against the recovery of the movables situated in the said premises.

7.With the above observation, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

26.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

Yuva



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KRISHNAN RAMASAMY, J

Yuva

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