IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

297 **CWP-27927-2023**
Date of decision: 20.11.2024

SUMIT DUTTA **....PETITIONER**

Vs.

ASSISTANT PROVIDENT FUND COMMISSIONER AND ORS
...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. Maninder Singh Saini, Advocate
for the petitioner.

Mr. Rajesh Hooda, Advocate
for the respondent Nos. 1 and 2.

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JAGMOHAN BANSAL, J (ORAL)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of orders dated 21.04.2023 (Annexure P-1) and 25.10.2023 (Annexure P-2) whereby respondent No. 2 has attempted to recover a sum of Rs. 8,57,462/- from him.

2. The respondent Nos. 1 and 2 are Authorities constituted under Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short '1952 Act'). There is a society known as M/s Adarsh Bal Vidhyalay, Nawanshahr which is registered under Societies Registration Act, 1860 (for short '1860 Act') as amended by Punjab Amendment Act, 1957. The said society is having a school at Nawanshahr. Late Sh. Inder Mohan Dutta was principal of said school. The said school defaulted in payment of Provident Fund Contribution for the period from July' 2013 to January' 2018. The respondent under Section 7A of 1952 Act initiated proceedings against the society. The petitioner is son of Inder Mohan

Dutta/principal of the school. He on behalf of his father appeared before the Authorities. The respondent vide order dated 11.01.2022 assessed liability of the society to the tune of Rs. 8,54,262/- under Section 7A of 1952 Act. The said order was not challenged by the society. Resultantly, liability stood crystalized against the society. Inder Mohan Dutta-Principal of the school passed away on 12.12.2022. The society filed fresh Form 5-A in terms of para 36A of Employees Provident Fund Scheme, 1952 with respondent-Authorities. The said form was filed on 27.03.2023 and in the said form Sumit Dutta-petitioner was declared as owner/manager/occupier of the school w.e.f. 06.12.2022.

3. As the society did not prefer appeal against assessment order dated 11.01.2022, the respondent under Section 8B of 1952 Act issued recovery certificate dated 11.04.2022. The establishment-society/school did not comply with recovery certificate and respondent vide communication dated 21.04.2023 directed Bank of Baroda to transfer a sum of Rs.8,57,462/- from the account of petitioner to the account of Provident Fund Authorities. For the ready reference, letter dated 21.04.2023 is reproduced as below:-

"*To*

The Manager
Bank of Baroda,
Nawanshahr Branch,
Banga Road,
Distt. Nawanshahr-144514.

*Subject:-**Order under Section-8F of the Employees' Provident Funds & Miscellaneous Provisions Act. 1952-regarding.***

1. Whereas, Sh. Sumit Dutta S/o Inder Mohan Dutta, Proprietor of M/s Adarsh Bal Vidhyalay, Sr. Sec. School, Banga Road, Nawanshahr an establishment covered under the provisions of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 have failed to remit the statutory dues *under the said Act amounting to Rs.8,57,462/- (including RRC and cost).*

2. *Whereas, it is understood that* ***Sh. Sumit Dutta S/o I M Dutta, Proprietor of M/s Adarsh Bal Vidhyalay, Sr. Sec. School, Banga Road, Nawanshahr are maintaining (Account's No.21460100006899 and all others account*** *with your branch and they being the employer of the above mentioned establishment as defined under Section- 2(e) of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952 are liable for remitting the above mentioned dues.*

3. *Now, therefore, in exercise of the powers conferred upon me under Section-8F(3)(1) of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952, you are hereby ordered to pay Rs.8,57,462/- or such sum standing to their credit, if the amount to their credit is less than the above mentioned defaulter, or any amount that may be credited to their account at any time subsequent to the receipt of this order or any fixed deposit of other deposits that may be standing to the credit of the above mentioned establishment/person or which be deposited subsequent to this order, until the above mentioned arrears are fully remitted by them. The above also included cleared and unclear credits/instruments.* ***The demand draft may be sent to the undersigned by the way of Registered Post drawn in favour of Regional P. F. Commissioner, Jalandhar*** *or handed over the same to the bearer of this order.*

4. *It may be noted that as per provisions of the Section- 8F (3)(iv) of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952, every person to whom an order is issued under this sub- Section shall be bounded to comply with such notice and in particular, where any such notice issued to a Post Office, Bank or Insurer, it shall not be necessary for any Pass Book, Deposit Receipt, Policy or any other document to produced for the purpose of any entry*

endorsement or the like being made before payment is made notwithstanding any rule practice or requirement to the contrary.

5. *It may further be noted that under the provisions of Section-8F (3)(x) of the Employees' Provident Funds & Miscellaneous Provisions Act, 1952, any person to whom the notice under this Sub-section is sent, fails to make payment in pursuance thereof to the authorized officer shall be deemed to be an employer in default in respect of the amount specified in the notice and further proceedings shall be taken against him for the realization of the amount, as if it were in arrear due from him in the manner provided under section 8B to 8G and this order shall have the same effect as the attachment of a debt by the Recovery Officer in exercise of powers under Section 8B of the Act.*

6. *By virtue of the provisions contained in section 11(2) of the Employees' Provident Fund & Miscellaneous provisions Act, 1952. if any amount is due from an employer, the amount due shall be deemed to be first charge on the assets of the establishment and shall not withstanding anything contained in any other law for the time being in force be paid in priority to all other debts.*

- *You are also directed to provide any others details i.e. PAN Card, Aadhar Card, Passport ID, and any other Saving Bank account No., if any is available with you in r/o the above said person.*
- *Please note that Para 83 of Second Schedule to the Income tax Act, 1961 provide that 'Every Chief Commissioner or Commissioner, Tax Recovery Officer or other officer acting under the provisions of this Schedule shall have the powers of a civil court while trying a suit for the purpose of <u>receiving evidence</u>, administering oaths enforcing the attendance of witnesses and compelling the*

production of documents And in exercise of the powers conferred by clause (kb) of section 2 of the employees' Provident Fund and Miscellaneous Provision Act, 1952 (19 of 1952) the Central Government vide Notification dated 4th March 1997 has authorized the undersigned to exercise the powers of recovery officers under the said Act for the districts Jalandhar.

Given under my hand and seal at this 29th of April-2023.

(JASHANDEEP KAUR)
***RECOVERY OFFICER*"**

4. The aforesaid letter was followed by letter dated 23.10.2023 whereby respondent, in exercise of power conferred by Section 8B of 1952 Act, attached school of the society. The relevant extracts of letter dated 23.10.2023 are reproduced as below:-

"*To*

M/s Adarsh Bal Vidhyalay,
VPO. Banga Road,
Nawanshahr-144514.

Whereas you **Sh. Sumit Dutta S/o Sh. Inder Mohan Dutta, Proprietor of M/s Adarsh Bal Vidhyalay, Banga Road, Nawanshahr-(defaulter)* have/has failed to pay after deducted the recovered amount Rs.16242/- the revised sum of Rs.841770/- (inclusive cost) payable by *you/him in respect of Certificate No.137 dated 11.04.2022 forwarded by the Authorized Officer RO, Jalandhar and the interest payable under section 7Q of the E.P.F & M.P Act, 1952 for the period commencing immediately after the said date;*

xxx xxx xxx

Whereas the undersigned, in exercise of the Power conferred on me under section 8B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, read with the notification No.

S.O. 796 dated 4th March, 1997 Issued by the Government of India, orders that you, the said ***Immovable Property*** *be, and you are hereby, prohibited and restrained, until the further order of the undersigned, from transferring or charging the under mentioned property, which is included in the property of defaulter by virtue of the Explanation to sub-section (1) of section 222 of income tax Act, 1961 in any way and that all persons be, and that they are hereby prohibited from taking any benefit under such transfer or charge.*

SPECIFICATION OF PROPERTY

Property located at address ***Sh. Sumit Dutta S/o Sh. Inder Mohan Dutta, Proprietor of M/s Adarsh Bal Vidhyalay, Banga Road, Nawanshahr****.*

Given under my hand and seal at ***Jalandhar*** *this 23rd day of* ***October' 2023****.*"

5. Mr. Maninder Singh Saini, Advocate submits that assessment was framed against the society/school and respondents are attempting to recover outstanding dues pending against society from the petitioner. Father of the petitioner during the period in question was principal but he was not holding any post. After the death of his father, the petitioner has been declared employer/occupier of the establishment. He cannot be personally held responsible for the dues pending against the society.

6. Per contra, Mr. Rajesh Hooda, Advocate submits that as per Sections 8B read with 8F and 17B of 1952 Act, the petitioner is personally liable to pay dues of the society irrespective of the fact that dues relate to 2013 to 2018 and he became occupier of the establishment in December' 2022. As per scheme of the Act even subsequent buyer of the establishment is liable for the dues of previous owners, thus, petitioner cannot escape from his liability. 1952 Act is a social legislation and it should be interpreted in a manner which is beneficial to the workers.

7. I have heard the arguments of both sides and with the able assistance of learned counsel perused the record.

8. The conceded position emerging from the record is that establishment is a society registered under Societies Registration Act, 1860. The society is having a school. Father of the petitioner was principal of the said school. The school defaulted in payment of Provident Fund Contribution for the period from 2013 to 2018. The petitioner during the said period was neither President of the society nor Principal of the school. Revised Form 5A in terms of provisions of 1952 Act and scheme made thereunder was filed on 27.03.2023 wherein w.e.f. 06.12.2022, the petitioner was declared owner/occupier/manager of the establishment. The respondent has attached premises of the school vide attachment order dated 23.10.2023.

9. From the perusal of impugned order dated 21.04.2023 and 23.10.2023, it appears that respondent is treating petitioner as Proprietor of M/s Adarsh Bal Vidhyalay, Senior Secondary School, Nawanshahr. The school is owned by a society, thus, it is factually incorrect that petitioner is Proprietor of the school. Father of the petitioner was principal of the school during 2013-2018. He has passed away. The petitioner has been declared owner/occupier of the establishment w.e.f. 06.12.2022 and for the said purpose Form 5A was filed on 27.03.2023. There is no provision in the 1952 Act or Scheme made thereunder which permits recovery of Provident Fund dues from a person who had filed Form 5A much later than the period of liability. An Employer/Occupier can be held responsible for the period, for which he was Incharge of the establishment and default took place. Section 17B of 1952 Act relied upon by respondents comes into play, if there is transfer of establishment. The respondents are relying upon Sections 8B, 8F and 17B of 1952 Act which are reproduced as below:-

*"**8B. Issue of certificate to the Recovery Officer**.—(1) Where any amount is in arrear under Section 8, the authorised officer may issue, to the Recovery Officer, a certificate under his signature specifying the amount of arrears and the Recovery Officer, on receipt of such certificate, shall proceed to recover the amount specified therein from the establishment or, as the case may be, the employer by one or more of the modes mentioned below:—*

(a) attachment and sale of the movable or immovable property of the establishment or, as the case may be, the employer;

(b) arrest of the employer and his detention in prison;

(c) appointing a receiver for the management of the movable or immovable properties of the establishment or, as the case may be, the employer:

Provided that the attachment and sale of any property under this section shall first be effected against the proportion of the establishment and where such attachment and sale is insufficient for recovering the whole of the amount of arrears specified in the certificate, the Recovery Officer may take such proceedings against the property of the employer for recovery of the whole or any part of such arrears.

(2) The authorised officer may issue a certificate under sub-section (1), notwithstanding that proceedings for recovery of the arrears by any other mode have been taken.

__8F. Other modes of recovery__.-(1) Notwithstanding the issue of a certificate to the Recovery Officer under Section 8B, the Central Provident Fund Commissioner or any other officer authorised by the Central Board may recover the amount by any one or more of the modes provided in this section.

(2) If any amount is due from any person to any employer who is in arrears, the Central Provident Fund Commissioner or any other officer authorised by the Central Board in this behalf may require

such person to deduct from the said amount the arrears due from such employer under this Act and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Central Provident Fund Commissioner or the officer so authorised, as the case may be:

Provided that nothing in this sub-section shall apply to any part of the amount exempt from attachment in execution of a decree of a civil court under Section 60 of the Code of Civil Procedure, 1908.

(3)(i) The Central Provident Fund Commissioner or any other officer authorised by the Central Board in this behalf may, at any time or from time to time, by notice in writing, require any person from whom money is due or may become due to the employer or, as the case may be, the establishment or any person who holds or may subsequently hold money for or on account of the employer or as the case may be, the establishment, to pay to the Central Provident Fund Commissioner either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due from the employer in respect of arrears or the whole of the money when it is equal to or less than that amount.

(ii) A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or an account of the employer jointly with any other person and for the purposes of this sub-section, the shares of the joint-holders in such account shall be presumed, until the contrary is proved, to be equal.

(iii) A copy of the notice shall be forwarded to the employer at his last address known to the Central Provident Fund Commissioner or, as the case may be, the officer so authorised and in the case of a joint account to all the joint-holders at their last addresses known to the Central Provident Fund Commissioner or the officer so authorised.

(iv) Save as otherwise provided in this sub-section, every person to whom a notice is issued under this sub-section shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, bank or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made notwithstanding any rule, practice or requirement to the contrary.

(v) Any claim respecting any property in relation to which a notice under this sub-section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.

(vi) Where a person to whom a notice under this sub-section is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the employer or that he does not hold any money for or on account of the employer, then, nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Central Provident Fund Commissioner or the officer so authorised to the extent of his own liability to the employer on the date of the notice, or to the extent of the employer's liability for any sum due under this Act, whichever is less.

(vii) The Central Provident Fund Commissioner or the officer so authorised may, at any time or from time to time, amend or revoke any notice issued under this sub-section or extend the time for making any payment in pursuance of such notice.

(viii) The Central Provident Fund Commissioner or the officer so authorised shall grant a receipt for any amount paid in compliance with a notice issued under this sub-section, and the person so paying shall be fully discharged from his liability to the employer to the extent of the amount so paid.

(ix) Any person discharging any liability to the employer after the receipt of a notice under this sub-section shall be personally liable to the Central Provident Fund Commissioner or the officer so authorised to the extent of his own liability to the employer so discharged or to the extent of the employer's liability for any sum due under this Act, whichever is less.

(x) If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Central Provident Fund Commissioner or the officer so authorised he shall be deemed to be an employer in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were an arrear due from him, in the manner provided in Sections 8B to 8E and the notice shall have the same effect as an attachment of a debt by the Recovery Officer in exercise of his powers under Section 8B.

(4) The Central Provident Fund Commissioner or the officer authorised by the Central Board in this behalf may apply to the court in whose custody there is money belonging to the employer for payment to him of the entire amount of such money, or if it is more than the amount due, an amount sufficient to discharge the amount due.

(5) The Central Provident Fund Commissioner or any officer not below the rank of Assistant Provident Fund Commissioner may, if so authorised by the Central Government by general or special order, recover any arrears of amount due from an employer or, as the case may be, from the establishment by distraint and sale of his or its movable property in the manner laid down in the Third Schedule to the Income-Tax Act, 1961.

***17B. Liability in case of transfer of establishment**.—Where an employer, in relation to an establishment, transfers that establishment in whole or in part, by sale, gift, lease or licence or* *in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall jointly and severally be liable to pay the contribution and other sums due from the employer under any provision of this Act or the Scheme or the Pension Scheme or the Insurance Scheme, as the case may be, in respect of the period up to the date of such transfer:*

Provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer."

10. As per Section 8B of 1952 Act, the respondent may attach and sale movable or immovable property of the establishment or of the Employer. It may arrest the Employer. It may also appoint receiver to manage the movable or immovable properties of the establishment or the Employer. The respondent, in the case in hand, has attached property of the society i.e. school. The said section permits respondent to attach movable or immovable property of the Employer. Section 8F permits respondent to collect money from third party who is liable to pay any sum to the employer or establishment e.g., if money is lying in the bank account of Establishment or Employer, the Provident Fund Authorities may ask the bank to transfer money lying in the account of Employer/Establishment to the account of Provident Fund. Section 17B of 1952 Act provides that where an Employer transfers the Establishment by way of sale, lease, license or in any other manner, the Employer and the person to whom establishment is transferred, shall be jointly or severally liable to pay the Provident Fund dues.

11. In the case in hand, the owner of the school is society. Father of the petitioner was principal of the school. In true sense, petitioner's father was not owner of the school whereas he was manager/occupier who was supposed to comply with provisions of 1952 Act especially when Form 5A was filed by him. The petitioner filed Form 5A in March' 2023 and as per said Form, he became occupier of the establishment w.e.f. 06.12.2022. It is not a case of transfer of

ownership by way of sale or gift by one Employer to another. It is a case where petitioner has been made responsible to comply with provisions of 1952 Act after the death of principal of the school.

If the contention of respondent is accepted, a person who has been declared as occupier/manager of the establishment at a date which is subsequent to the period in default, may be arrested in terms of Section 8B of 1952 Act. If this proposition is accepted, there would be travesty of justice especially when there is no change of ownership by way of sale, gift, lease or licence. In the case in hand, the school is owned by a registered society and petitioner, during the period in default, was not holding any position. He was declared occupier of the establishment in 2022 whereas liability relates to period from 2013 to 2018.

12. The school as well as society are indubitably liable to pay Provident Fund dues unless and until their liability is set-aside by a Competent Authority, however, a person who was not occupier/manager of the school during the period of liability cannot be held personally liable to clear the dues. Thus, respondent cannot fasten liability of establishment upon the subsequent occupier.

13. In the wake of above discussion and findings, this Court is of the considered opinion that recovery against the petitioner in his individual capacity is not maintainable. Petition is allowed and accordingly, impugned order dated 21.04.2023 (Annexure P-1) is hereby set-aside. If the respondent has already recovered any amount from the personal account of the petitioner, it would be refunded within 8 weeks' from today.

20.11.2024 **[JAGMOHAN BANSAL]**
manoj **JUDGE**

Whether speaking/reasoned Yes/No
Whether reportable Yes/No