IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI
(Special Original Jurisdiction)

FRIDAY, THE TENTH DAY OF JANUARY
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

WRIT PETITION NO: 946 OF 2025

Between:

M/s. Marni Chakram, Represented by its Proprietor, Marni Vijayalakshmi W/o. Late Marni Chakram, Aged about 65 years, Occ: House Wife, R/o. D.No 1-108, Meraka veedhi, Hussainpuram, Samarlakota, Vetlapalem, East Godavari District, Andhra Pradesh.

...PETITIONER

AND

1. The State of Andhra Pradesh, Rep.by its Principal Secretary Ministry of Labour and Employment A.P.Secretariat, Velagapudi Amaravati, Guntur District.
2. The Director, Employees State Insurance Corporation, ESIC Regional Office D. No. 48-7-32A, Panchadeep Bhawan, ESI Hospital Road, Gunadal, Vijayawada, Krishna District, Andhra Pradesh.
3. The Assistant Director, Employees State Insurance Corporation, ESIC Regional Office, D. No.48-7-32A, Panchadeep Bhawan, ESI Hospital Road, Gunadal, Vijayawada, Krishna District, Andhra Pradesh.
4. The Recovery Officer, Employees State Insurance Corporation ESIC Regional Office, D. No. 48-7-32A, Panchadeep Bhawan, ESI Hospital Road, Gunadal, Vijayawada, Krishna District, Andhra Pradesh.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a writ, order or direction more particularly one in the nature of a writ of mandamus declaring the action of the respondents in interfering with the possession of the property located at D.No 1-124, Merakaveedhi, Hussainpuram, Samalkot, Kakinada District, AP even after withdrawal of the attachment order passed by proceedings of the 4th

respondent Dt. 18-11-2024 is highly illegal, arbitrary exercise of power, unjust, contrary to the law established, without due process of law and violative of Article 14, 19 and 21 of the Constitution of India, consequently direct the respondents to not to interfere with the petitioners possession over the said property without following the due process of law.

IA NO: 1 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the writ petition, the High Court may be pleased to direct the respondents not to interfere with petitioners possession over the building at D.No 1-124, Merakaveedhi, Hussainpuram, Samalkot, Kakinada District Andhra Pradesh without due process of law as envisaged under the Employee State Insurance Act, 1948 pending disposal of the above writ petition.

Counsel for the Petitioner : Mrs. PASUPULATI ANITHA

Counsel for the Respondent No.1 : GP FOR LABOUR

Counsel for the Respondent Nos.2 to 4 : SMT. S. SIVA KUMARI, SC FOR ESIC

The Court made the following: ORDER

APHC010016602025

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI [3329]
(Special Original Jurisdiction)

FRIDAY ,THE TENTH DAY OF JANUARY
TWO THOUSAND AND TWENTY FIVE

PRESENT

THE HONOURABLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

WRIT PETITION NO: 946/2025

Between:

M/s Marni Chakram, ...PETITIONER

AND

The State Of Andhra Pradesh and Others ...RESPONDENT(S)

Counsel for the Petitioner:

1. PASUPULATI ANITHA

Counsel for the Respondent(S):

1. GP FOR LABOUR

The Court made the following:

THE HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

WRIT PETITION No.946 of 2025

ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India seeking the following relief:

> *"to issue a writ, order or direction more particularly one in the nature of a Writ of Mandamus declaring the action of the respondents in interfering with the possession of the property located at D.No.1-124, Merakaveedhi, Hussainpuram, Samalkot, Kakinada District, A.P. even after withdrawal of the attachment order passed by proceedings of the 4th respondent Dt.18.11.2024 is highly, illegal, arbitrary, exercise of power, unjust, contrary to the law established without due process of law and violative of Article 14, 19 and 21 of the Constitution of India consequently direct the respondents to not to interfere with the petitioner's possession over the said property without following the due process of law and pass such other order or orders ....."*

2. The case of the petitioner in brief is that the petitioner's husband herein is the proprietor of subject establishment situated at D.No.1-124, Merakaveedhi, Hussainpuram, Samalkot, Kakinada District. It is further submitted that the said establishment is engaged in providing manpower to companies based on their demand as an outsourcing agency. Later, the petitioner's husband's establishment entered into an agreement with a company RAK Ceramics India Private Limited located at Peddapuram, Samalkot Mandal, East Godavari District, Andhra Pradesh. Pursuant to the

said agreement, the petitioner's establishment provided manpower to the said company till 2016. In order to provide social security and health benefits to its employees, the establishment obtained ESI registration for its workers and paid contributions till the completion of the contract work with the aforesaid RAK Ceramics. The contract came to an end on 31.03.2016 and a notice of completion of contract work has also been issued to that effect.

3. The further case of the petitioner is that after demise of her husband, the proprietor ship of the petitioner's establishment has been transferred in the name of the petitioner. While things stood thus, as the employers fail to pay an amount of Rs.1,01,81,874/- to the 4th respondent towards contributions, the 4th respondent without providing any prior notice or opportunity of hearing to the petitioner straight away issued a warrant of attachment of immovable property in Form No.ESI CP 12 vide No.AP/RO/VJA/RRO/Q/ 62000283060001001, dated 15.10.2024 through which the property situated at D.No.1-124, Merakaveedhi, Hussainpuram, Samalkot, Kakinada District was ordered to be attached refraining the petitioner from using the subject property until further orders. Upon receipt of the said order, it is clarified that the works undertaken with the RAK ceramics were completed and all contributions had been duly paid to the employees. Subsequently, the 3rd respondent advised the petitioner to file NIL IT returns for the company to demonstrate that the establishment had ceased operations. Aggrieved by the attachment order of the 4th respondent, the petitioner establishment issued a legal notice to the 4th respondent informing that the said property is mortagaged to a bank namely,

SBFC Finance private limited. Upon receipt of such legal notice, the 4th respondent issued proceedings dated 18.11.2024 intimating that the attachment order was withdrawn. Despite withdrawal of the attachment order, the respondent authorities are interfering with the peaceful possession of the property of the petitioner and harassing the petitioner to repay the alleged default amount of corporation without following due process of law. Aggrieved by the said action, the petitioner filed the present writ petition.

4. Heard learned counsel for the petitioner and Smt.S.Siva Kumari, learned Standing Counsel for ESIC for the respondents.

5. Learned counsel for the petitioner submits that attachment order dated 15.10.2024 has been issued to the petitioner without following the due procedure as contemplated under the Employees' State Insurance Act, 1948 (hereinafter referred to as 'Act 1948'). He further submits that as per Section 45-C of the Act, the respondents shall issue a demand notice to the employer duly specifying the due amount to be payable by the petitioner. If the employer fails to comply with the same, the Recovery Officer appointed under Section 45-G of the Act cannot initiate recovery proceedings against the employer, which includes attachment of the property. He further submits that as per Section 45-I of the Act, 1948, movable or immovable property of the defaulter can be attached after serving an attachment notice.

6. Learned counsel for the petitioner further submits that 4th respondent in the attachment proceedings referred about the demand notices dated 19.02.2015, 02.02.2018 and 08.02.2018 issued to the petitioner's husband.

But, notice dated 11.07.2024 was neither served upon the petitioner nor the petitioner's establishment. He further submits that without following the procedure as provided under Section 39 of the Act and without serving any notice in advance, the respondents herein initiated impugned action which is contrary to law and liable to be quashed.

7. On the other hand, learned Standing Counsel appearing for the respondents submits that the present writ petition filed under Article 226 of the Constitution of India is not maintainable in view of the availability of alternative remedy under the provisions of Section 75 of the Act. Learned Standing Counsel for the respondents also strongly denies the statement of the learned counsel for the petitioner as regards the non service of notice in advance.

8. Having regard to the submissions made by the learned counsel for the petitioner and learned Standing Counsel for the respondents, this Court is of the considered opinion that these factual aspects are required to be verified by the forum created under Section 75 of the Act, which provides for alternative remedy to the petitioner and this Court is not inclined to go into the merits of the matter.

9. In view of the foregoing discussion, the present writ petition is disposed of, leaving it open to the petitioner to avail alternative remedy under Section 75 of the Act, within a period of two (02) weeks from the date of receipt of a copy of this order, subject to payment of 30% of the amount as stated in the impugned notice. It is made clear that having regards the non service of notice in advance, this Court deems it appropriate to direct the respondents not to

take any further coercive action pursuant to the impugned order, pending orders from then Appellate Authority. It is also made clear that if the petitioner fails to avail alternative remedy within time stipulated, the respondents are entitled to proceed in accordance with law. It is also made clear that the amount lying in the Bank is indicated in the impugned order, if appeal is filed by the petitioner within the time stipulated above shall not be withdrawn either by the petitioner or by the respondents, until further orders from the Insurance Court. There shall be no order as to costs.

Consequently, Miscellaneous Petitions, if any, pending in the writ petition shall stand closed.

//TRUE COPY//

SD/- K. TATA RAO
DEPUTY REGISTRAR

SECTION OFFICER

To,

1. The Principal Secretary Ministry of Labour and Employment, State of Andhra Pradesh, A.P. Secretariat, Velagapudi Amaravati, Guntur District.
2. The Director, Employees State Insurance Corporation, ESIC Regional Office D. No- 48-7-32A, Panchadeep Bhawan, ESI Hospital Road, Gunadal, Vijayawada, Krishna District, Andhra Pradesh.
3. The Assistant Director, Employees State Insurance Corporation, ESIC Regional Office, D. No-48-7-32A, Panchadeep Bhawan, ESI Hospital Road, Gunadal, Vijayawada, Krishna District, Andhra Pradesh.
4. The Recovery Officer, Employees State Insurance Corporation ESIC Regional Office, D. No- 48-7-32A, Panchadeep Bhawan, ESI Hospital Road, Gunadal, Vijayawada, Krishna District, Andhra Pradesh.
5. One CC to Mrs.Pasupulati Anitha, Advocate [OPUC]
6. Two CCs to GP for Labour, High Court of Andhra Pradesh. [OUT]
7. One CC to Smt. S. Siva Kumari, SC for ESIC (OPUC)
8. Three C.D. Copies.

Cnr

HIGH COURT

DATED:10/01/2025

ORDER

WP.No.946 of 2025



DISPOSING THE W.P.
WITHOUT COSTS