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W.A.Nos.2312, 2313 of 2011 and 1012 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	01.10.2024
Pronounced on	22.01.2025

CORAM

THE HONOURABLE Mr.JUSTICE **M.S. RAMESH**

AND

THE HONOURABLE Mr.JUSTICE **C.KUMARAPPAN****W.A.Nos.2312, 2313 of 2011 and 1012 of 2012****and****M.P.Nos.1 of 2011 and 1 of 2012**

W.A.No.2312 of 2011

Mahavir Plantations Pvt. Ltd.,
Rep. by its Director,
Prospect P.O., Naduvattam,
Nilgiris – 643 224.

... Appellant

Vs.

1. Employees' Provident Fund Organisation,
Rep. by its Regional Provident
Fund Commissioner,
Sub-Regional Office,
Bhavishya Nidhi Bhawan,
Post Box No.3875, Dr. Balasundaram Road,
Coimbatore – 641 018.



W.A.Nos.2312, 2313 of 2011 and 1012 of 2012

WEB COPY

2. The Recovery Officer,
Employees' Provident Fund Organisation,
Regional Office,
Bhavishya Nidhi Bhawan,
Post Box No.3875, Dr. Balasundaram Road,
Coimbatore – 641 018.

3. Archana Industries,
Rep. by R.Madhaian,
P.B.No.4403, 707, Avinashi Road,
Coimbatore – 641 018.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent praying to set aside the order of the learned Judge made in W.P.No.15582 of 2010 dated 21.06.2011.

For Appellant : Mr. T.N.Rajagopalan
for Mr.C.Vigneswaran

For R1 & R2 : Ms.R.Meenakshi

For R3 : Mr.A.S.Balaji

W.A.No.2313 of 2011

Mahavir Plantations Pvt. Ltd.,
Rep. by its Director,
Prospect P.O., Naduvattam,
Nilgiris – 643 224.

... Appellant

Vs.

1. Union Bank of India,
Rep. by its Chief Manager,
Kochi Main Branch,



W.A.Nos.2312, 2313 of 2011 and 1012 of 2012

Mattanchery, Kochi – 682 002.

WEB COPY

2. The Recovery Officer,
Employees' Provident Fund Organisation,
Regional Office,
Bhavishya Nidhi Bhawan,
Post Box No.3875, Dr. Balasundaram Road,
Coimbatore – 641 018.

3. R.Madhaian,
C/o.Archana Industries,
P.B.No.4403, 707, Avinashi Road,
Coimbatore – 641 018.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent praying, to set aside the order of the learned Judge made in W.P.No.8686 of 2010 dated 21.06.2011.

For Appellant : Mr. T.N.Rajagopalan
for Mr.C.Vigneswaran

For R1 : Mr.A.V.Arun

For R2 Ms.R.Meenakshi

For R3 : Mr.A.S.Balaji

W.A.No.1012 of 2012

Union Bank of India,
Rep. by its Chief Manager,
Kochi Main Branch,
Mattanchery, Kochi – 682 002.

... Appellant



W.A.Nos.2312, 2313 of 2011 and 1012 of 2012

Vs.

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1. The Recovery Officer,
Employees' Provident Fund Organisation,
Regional Office,
Dr. Balasundaram Road,
Coimbatore – 641 018.
2. Mahavir Plantations (P) Ltd.,
Rep. by its Director,
24/1551, Indira Gandhi Road,
Kochi – 682 003, Kerala.
3. Archana Industries,
Rep. by R.Madhaian,
P.B.No.4403, 707, Avinashi Road,
Coimbatore – 641 018.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent praying, to set aside the order of the learned Judge made in W.P.No.8686 of 2010 dated 21.06.2011.

For Appellant	: Mr. A.V.Arun
For R1	: Ms. R.Meenakshi
For R2	: Mr.T.N.Rajagopalan for Mr.C.Vigneswaran
For R3	: Mr.A.S.Balaji



W.A.Nos.2312, 2313 of 2011 and 1012 of 2012

WEB COPY

COMMON JUDGMENT

C.KUMARAPPAN, J.

The instant Writ Appeals have been filed against the order of the learned Single Judge, dated 21.06.2011, passed in W.P. Nos. 8686 and 15582 of 2010.

2. W.P. No. 8686 of 2010 was filed by the Union Bank of India (hereinafter referred to as 'the Bank'), who is the secured creditor of M/s.Mahavir Plantations Private Limited (hereinafter referred to as 'the Management'), challenging the sale notice of the PF Authorities dated 19.02.2010 issued against the Management. After the sale notice, the property was sold by proceedings dated 25.05.2010. As against the sale, the Management preferred another Writ Petition in W.P. No. 15582 of 2010. The learned Single Judge took both the Writ Petitions together and dismissed both. As a result of which, the sale proclamation, and the sale were confirmed. Aggrieved by the said order, the instant Writ Appeals were preferred.



W.A.Nos.2312, 2313 of 2011 and 1012 of 2012

WEB COPY

3. The brief facts, which are necessary for the effective disposal of the present Writ Appeals, are as follows:-

(i) The Management owns a Tea Estate at Ooty. During the course of their administration, they defaulted in the payment of contribution to Employees' Provident Fund. Hence, the Employees' Provident Fund Organisation (hereinafter referred to as the 'PF Authorities') issued sale proclamation dated 23.12.2009, to bring the landed properties of the Management of an extent of 144 acres. According to the PF authorities, the total arrears are Rs. 10,33,03,049/-. In order to understand the fulcrum of the issue, it is necessary to extract the relevant portion of sale notice, which is as follows:

“SCHEDULE OF PROPERTY

All that piece and parcel of land and building situated at Registration

District: The Nilgiris, Registration Sub-District : Gudalur Taluk:

Udhagamandalam Village : Naduvattam, Village Panchayat :

Naduvattam to the extent of area mentioned against the survey numbers as detailed below.



W.A.Nos.2312, 2313 of 2011 and 1012 of 2012

WEB COPY

No. of lot	Description of property to be sold with the names of the co-owners where the property belongs to the defaulter and any other persons as co-owners		Revenue assessed upon the property or any part thereof	Details of any encumbrances to which the property is liable	Claims, if any, which have been put forward to the property, and any other known particulars bearing on its nature and value.
(1)	(2)		(3)	(4)	(5)
1	New Survey No	Area in Acres	Not available	Not known	1. Balance PF dues : Rs.2,38,67,943/-
	391/1	0.27			2. Arrear penal damages: Rs.31,23,914/-
	391/2	18.95			3. Arrear interest under 7Q: Rs.2,35,009/-
	389/3	0.40			4. Leviable penal damages: Rs.3,45,80,083/-
	390	0.72			5. Leviable interest: Rs.4,14,96,100/-
	388	27.77			
	385	63.77			
	374/1	7.56			
	374/2	1.26			
	374/3	5.39			
	381/2	8.78			
	381/3	1.40			
	372	7.73			
	Total	144 Acres			Total:Rs.10,33,03,049/-

Common Boundaries:

North: Reserve Forest

South: Ooty-Gudalur Main Road

East : Tea Fields of M/s.Mahavir Plantations

West: Tea Fields of M/s.Mahavir Plantations

Given under my hand and seal at Coimbatore this 23rd Day of December 2009.

Sd/-



W.A.Nos.2312, 2313 of 2011 and 1012 of 2012

within one week from today and the officer will decided the application within 30 days from the receipt thereof after hearing the 3rd respondent and after hearing all concerned. The protection granted by our order dated 23rd March 2010 will continue for a period of 30 days. Both the writ appeal and the writ petition stands disposed of by this order. Connected miscellaneous petitions are closed. There shall be no orders to to the costs.”

(Emphasis Supplied by this Court)

(iii) In pursuance thereof, the Management filed an application before the PF Authorities under Rule 61 of Schedule II of the Income Tax Rules, 1961 (hereinafter referred to as 'the IT Rules'). But the same was rejected by the PF authorities on 25.05.2010. As a result, the sale made in favour of the purchaser, viz., Archana Industries, the third respondent herein was confirmed. The order of rejection dated 25.05.2010 is the subject matter of the present Writ Petition.

The Management questioned the sale on the following grounds:-

(1) There was error apparent on the face of the proclamation of sale.



W.A.Nos.2312, 2313 of 2011 and 1012 of 2012

(2) Material irregularity in the auction notice.

(3) Material irregularity in the conduct of sale.

(4) Procedure prescribed in the Rules 34 and 53 of the Schedule II Part III of the IT Act was not followed.

(5) Sale is generally vitiated.

(iv) The PF Authorities had elaborately discussed all the above grounds and, by a detailed order held that there is no violation under Rule 61 of the Schedule II of the IT Rules. The Authority also found that the arrears had been rightly arrived, and the survey numbers and other details were correctly mentioned in the sale notice. They also explained as to the transparency in conducting the sale by giving elaborate publication and by following all statutory procedures. It was further observed that by virtue of the EPF, and IT Act, they are entitled to bring the property for sale even against the recoverable dues. It is in this background, the Authority has rejected the application of the Management filed under schedule II of the IT Act. Aggrieved against the same, the Management preferred Writ Petition in W.P.No.15582 of 2010.



W.A.Nos.2312, 2313 of 2011 and 1012 of 2012

WEB COPY

(v) In the Writ Petition, the learned Single Judge has gone into all the objections made by the PF Authorities, and ultimately found that there are no grounds to interfere with the order impugned in the Writ Petition. The learned Single Judge had also held that the charge created by the PF Authorities will prevail over the charge of the secured creditor qua the Bank and thereby held that the auction sale need not be interfered with. This order, is under challenge before this Court.

4. We have heard Mr.T.N.Rajagopalan, the learned counsel appearing for the Management, Ms. R.Meenakshi, the learned counsel appearing for the PF Authorities, Mr. A.S.Balaji, the learned counsel appearing for the subsequent purchaser and Mr. A.V.Arun, the learned counsel appearing for the Bank.

5. Though, numerous grounds were raised by the Management which run to several pages, the substance of the submission of the learned counsel for the Management is that the sale proclamation could only be effected against the existing arrears, and not for any recoverable amount as the same



W.A.Nos.2312, 2313 of 2011 and 1012 of 2012

could not be construed as arrears. Accordingly, it was contended that the sale proclamation is erroneous, and as a concomitant, the auction sale would also fail. They also raised an objection on the ground of under valuation, as the property worth about Rs. 46 Crores was sold for a meagre amount of Rs. 4 Crores, and that the PF Authorities did not follow the mandatory obligation to carve out the correct extent of the property to the value equal to that of the arrears. Hence, the learned counsel for the Management would pray to interfere with the order of the learned Single Judge.

6. Contending contra, the learned counsel for the PF Authorities would vehemently contend that the impugned order contains reasons, and that the authority has analysed the entire issue with great perspicacity, and that under the writ jurisdiction, this Court cannot re-appreciate the matter, except to the extent of perversity of the reasoning and violation of the statutory provisions. She would further contend that the PF Authorities got priority of charge, than the secured creditor and therefore, the sale is valid, and there are no grounds to interfere with the order of the learned Single Judge.

7. The learned counsel appearing for the Bank would contend that,



W.A.Nos.2312, 2313 of 2011 and 1012 of 2012

being the secured creditor, they have got priority over the secured asset that the PF Authorities, and that not involving the secured creditor and not giving any notice to the secured creditor are incurable defect. As such, they would contend that the sale notice and the subsequent sale are vitiated by irregularity. Hence, prayed to interfere with the order of the learned Single Judge.

8. We have given our anxious consideration to the either side submissions.

9. Before we delve into the merits of the matter, it would be appropriate to analyse the conduct of the parties. The instant case is a classic example of shenanigans, as to how judicial proceedings could be misused to waste the precious judicial time. The present writ proceeding is not the only writ proceeding against the recovery of PF arrears; there were other writ proceedings that were never allowed to reach finality. The conduct of the Management was rightly observed by the learned Single Judge, that the Management has been indulging in "forum shopping".



W.A.Nos.2312, 2313 of 2011 and 1012 of 2012

the Management sent a letter dated 09.12.2009, in which they accepted the liability to an extent of Rs. 2.71 Crores, as against the demand of Rs.3,42,17,631/-. Thus, again, there was an admission of the Management towards the arrears. In the very same letter dated 09.12.2009, they also accepted their liability to pay the penal damages. For ready reference, we deem it appropriate to extract the relevant portion of their letter, which reads as follows:-

“The total dues payable covering Nilgiri estates were Rs.3,42,17,631/- as per the department, and as per us Rs.2,71, Crores....

Now, we have to clear about Rs.2.71 Crores and an amount of Rs.18.00 lakhs towards High forest as per the department.....”

13. In view of the above candid admission about arrears, the petitioner now cannot take a stand that the arrears are only Rs.74,32,807/- arising from 11 recovery certificates. In fact, the impugned sale proclamation dated 23.12.2009 mentioned all the arrears. The relevant portion of the sale proclamation is extracted elsewhere in this order.



W.A.Nos.2312, 2313 of 2011 and 1012 of 2012

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14. Now, the main contention of the Management is that the inclusion of leviable penal damages, and leviable interest do not come within the definition of arrears. Therefore, contended that the sale proclamation inherently illegal. They also contend that the property worth about Rs. 46 Crores were sold at pittance of Rs. 4 Crores. In view of such specific contention, it become incumbent upon this Court to look into the authority and power of the respondents to include the leviable penal damages and leviable interest, as part of the arrears in sale proclamation.

15. At the risk of repetition, we deem it appropriate to re-collect the petition filed in W.P. No. 5406 of 2010, by the Management against the impugned sale proclamation dated 23.12.2009. The above writ petition was disposed of along with W.A.No.324 of 2010 on 20.04.2010. While disposing the above writ appeal and writ petition, the only liberty given by this Court was to object the sale proclamation dated 23.12.2009, in accordance with Schedule II of the IT Act. While considering the EPF Act, under Section 8, the mode of recovery of money due from the employer has been dealt. According to Section 8G of the EPF Act, certain provisions of the IT Act,



W.A.Nos.2312, 2313 of 2011 and 1012 of 2012

more specifically Schedules II and III of the IT Act, were made applicable.

Part III of Schedule II of the IT Act deals with the attachment and sale of immovable property.

16. As per Rule 60 of Schedule II of the IT Rules, if a person wants to challenge the sale proclamation, they ought to have deposited the amounts specified in the proclamation. Whereas, in the case in hand, the Management did not deposit Rs.10,33,03,049/- as mentioned in the proclamation. In spite of the above infirmity, the PF Authorities considered the grounds as per the direction of this Court passed in W.P. No. 5406 of 2010 and W.A.No.324 of 2010. According to Rule 61 of Schedule II of the IT Act, the sale can be set aside on two grounds, one is; material irregularity, the second is; non service of notice. But, it could be done only when there would be a substantial injury, by reason of material irregularity, and non-service of notice.

17. Here, it is not a case of non-service of notice, but on the ground of material irregularity. Let us consider the ground of irregularity. The main irregularity alleged is that, when the sale proclamation is for Rs.74,32,807/-, the sale of entire property having value more than arrear is illegal. But we



W.A.Nos.2312, 2313 of 2011 and 1012 of 2012

have already dealt about the admission of liability of the Management to the tune of Rs.2 Crores. Therefore, the argument that the property should be sold only for an amount referred to in the sale proclamation is fallacious. Besides, the sale proclamation had referred to all those amounts, which are recoverable from the Management.

18. It is the contention of the Management that the recoverable interest and the recoverable damages will not come within the definition of arrears or due, as both are barred by limitation in view of Section 7C of the EPF Act. It is pertinent to mention here that Section 7C of the EPF Act deals with the determination of escaped amount arising under Sections 7A and 7B of the EPF Act. But the recoverable amount referred to in the sale proclamation is in respect of payment of statutory interest under Section 7Q of the EPF Act, and penal damages under Section 14B of the EPF Act. There is no limitation provided in Section 7C of the EPF Act to collect interest under Section 7Q and damages under Section 14B of the EPF Act. It is pertinent to mention here that, unless the arrears are paid, the question of collecting the interest and imposing penal damages would not arise, as both would be subject to the payment of the arrears. Therefore, the argument of the learned counsel for



W.A.Nos.2312, 2313 of 2011 and 1012 of 2012

the Management that the authority has no power to include the recoverable amount and that such amount is barred by limitation is without any legal basis.

19. Even according to Rule 8(1)(b) of Schedule II of the IT Rules, the authority is empowered to apply the proceeds even against the recoverable amount which may be due on the date on which the assets are realized. Accordingly, the contention that the property could not brought for sale on account of absence of determination of interest and penal damages is contrary to the spirit and tenor of Rule 8(1) (b) of Schedule II of the IT Act. In such view of the matter, the PF Authorities are entitled to include those recoverable amounts in sale proclamation.

20. In respect of the second ground of material irregularity, they project lack of transparency as a ground. As already stated, the learned Single Judge took cognizance of the paper publication in both English and Tamil dailies, with wide circulations and held that the PF Authorities had taken all possible steps to have more transparency. In this regard, the learned Single Judge made detailed discussion in paragraph 22 of the impugned



W.A.Nos.2312, 2313 of 2011 and 1012 of 2012

order. For ready reference the same is extracted hereunder:-

“22. With reference to the lack of transparency in sale, in page 45 of the counter it was stated as follows:

"E... The property has been got valued by the Panel Valuer who is also an approved valuer with the Tea Board and also IT department. The valuer has considered all relevant factors, including the claim of cultivation of the organic tea and its un-maintained nature and its status in the revenue records, while opining the value for the property. As per his opinion, the property of 144 acres could have fetched Rs.4.32 crores in the market, and he had recommended the upset price for the sale to be fixed at less by 25% of the said price. However, keeping the best interest of realisation of provident fund dues and the interest of the petitioner only, the Recovery Officer had fixed Rs.4.32 crores as reserve price.

F) For the above reasons, it is absolutely unfair to allege that the property has been sold at a throw away price. Moreover, had the petitioner been much interested in the property and hopeful of fetching imaginary and fancy price of Rs.45 Crores, the petitioner could have well approached the Recovery Officer for a private sale of 144 acres or even a lesser portion under the ITCP rules, which he has never done."

21. As far as the fixation low sale price is concerned, the PF



W.A.Nos.2312, 2313 of 2011 and 1012 of 2012

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Authorities had categorically referred to in their counter statement that by comparing the sale made by one M/s. Kothari Industrial Corporation on 30.05.2005 they justified the sale price fixed in the sale notice. Even according to us, the price fixed in the sale proclamation is fair and beneficial to the defaulters, since no contra evidence was submitted by the Management. As such, even the objection regarding low sale price has been rightly answered by the PF Authorities. Accordingly, we are of the firm view that, when the Management has accepted their dues and has come forward to challenge the sale, only in accordance to Schedule II of the IT Act, they cannot now turn around and take all the defences, beyond the scope of the liberty granted by the Division Bench of this Court.

22. The EPF Act is a benevolent social security legislation, enacted for the support of the weaker working class during their superannuated winter of life. If and when the employer neglects to remit the Provident Fund contributions, the same would demoralize the working class and cause frustration. With this object in mind, the defaulters under the Act require to be dealt with in iron hand, to safeguard the limited interest of the working class of people, who eagerly depend on the disbursement of the benefits



W.A.Nos.2312, 2313 of 2011 and 1012 of 2012

under the Act at the time of their retirement.

23. According to law the mere irregularity will not give any cause of action, but such irregularity must cause serious prejudice to them. The learned Single Judge has gone into this aspect elaborately and ultimately found that the sale was made in a transparent manner and the property was sold at a beneficial price. The learned Single Judge also rightly found that there was no irregularity, much less than one causing serious prejudice to the Management. As such, we are of the firm view that the PF Authorities rightly rejected the request to set aside the sale, as the sale was in accordance with the procedure contemplated under Schedule II of the IT Act.

24. Coming to the rival claim of the Bank on priority of charge over the property, the learned Single Judge, elaborately considered the provisions under the RDB Act and the EPF Act. For ready reference, it is appropriate to extract the finding of the learned Single Judge in respect of the priority of charge over the proclaimed property. The relevant paragraphs are paragraphs 34 and 35, which read as follows:-

*“34. In this context, it is necessary to refer to a judgment of the Supreme Court in **Allahabad Bank's** case (cited supra) and in paragraphs 39 and 40 it was observed*



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as follows:

"39. There can be a situation in law where the same statute is treated as a special statute vis-à-vis one legislation and again as a general statute vis-à-vis yet another legislation. Such situations do arise as held in LIC of India v. D.J. Bahadur. It was there observed:

... for certain cases, an Act may be general and for certain other purposes, it may be special and the court cannot blur a distinction when dealing with the finer points of law#.

For example, a Rent Control Act may be a special statute as compared to the Code of Civil Procedure. But vis-à-vis an Act permitting eviction from public premises or some special class of buildings, the Rent Control Act may be a general statute. In fact in Damji Valji Shah v. LIC of India (already referred to), this Court has observed that vis-à-vis the LIC Act, 1956, the Companies Act, 1956 can be treated as a general statute. This is clear from para 19 of that judgment. It was observed:

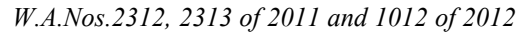
"Further, the provisions of the special Act, i.e., the LIC Act, will override the provisions of the general Act, viz., the Companies Act which is an Act relating to companies in general."

(emphasis supplied)

Thus, some High Courts rightly treated the Companies Act as a general statute, and the RDB Act as a special statute overriding the general statute.

Special law v. special law.

40. Alternatively, the Companies Act, 1956 and the RDB Act can both be treated as special laws, and the principle that when there are two special laws, the latter will normally prevail over the former if there is a provision in the latter special Act giving it overriding effect, can also be applied. Such a provision is there in the RDB Act, namely, Section 34. A similar situation arose in Maharashtra Tubes Ltd. v. State Industrial and Investment Corpn. of Maharashtra Ltd.⁶ where there was inconsistency



35. Accordingly, this court is not inclined to interfere with the proclamation of sale impugned in the writ petitions and subsequent to the same, sale certificates issued in favour of the third respondent purchaser. Hence both the writ petitions will stand dismissed. It is hereby declared that there is no impediment for third respondent purchaser in taking over the property for which he had paid the entire sale consideration and for which he got a sale certificate. However, there will be no order as to costs. Consequently, connected miscellaneous petitions stand closed.”

are no serious prejudice caused to them warranting interference.



W.A.Nos.2312, 2313 of 2011 and 1012 of 2012

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25. Accordingly, we are of the firm view that the PF Authorities, as well as the learned Single Judge, have rightly appreciated the spirit of the EPF Act, and Schedule II of the IT Act. Hence, there are no grounds to interfere with the order of the learned Single Judge. Thus, all the Writ Appeals stands dismissed. Consequently, the connected Miscellaneous Petitions are closed. No costs.

[M.S.R., J.] [C.K., J.]
22.01.2025

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Index : Yes/No

Speaking order /Non Speaking Order

Neutral Citation : Yes/No



W.A.Nos.2312, 2313 of 2011 and 1012 of 2012

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To

1. The Regional Provident
Employees' Provident Fund Organisation,
Fund Commissioner,
Sub-Regional Office,
Bhavishya Nidhi Bhawan,
Post Box No.3875, Dr. Balasundaram Road,
Coimbatore – 641 018.
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WEB COPY



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M.S. RAMESH, J.
and
C.KUMARAPPAN, J.

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Judgement in W.A.Nos.2312,
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