IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 21.04.2025

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.26976 OF 2019

M/s. Goenka Infrastructures (P) Ltd.
Rep. By its Senior Executive
K.Sathyanathan
No.222, First Floor, Fountain Plaza
Pantheon Road, Egmore
Chennai 600 008. .. Petitioner

- Vs -

1. The Recovery Officer
ESI Corporation
Puducherry Region
Bouvankare Street
Mudaliarpet, Puducherry 605 004.

2. The Chairman & Managing Director
M/s. IDBI Bank Ltd.
IDBI Tower, WTC Complex
Cuffee Parade, Mumbai 400 005.

3. M/s.Protchem Industries (India) Ltd.
F-105, 3rd Street, Behind Valliammal College
Anna Nagar East, Chennai – 102. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records on the file of the 1st respondent relating to the impugned order dated 12.07.2019, bearing Ref. No.PDY/RECY/55-00-021492-000-0304 and quash the same and consequently forbear the respondents from in any manner interfering with the possession and enjoyment of the petitioner of its property comprised in Survey Nos.25/1, 26/2, 26/7, 26/8, 28/1, 29/7, 29/8 at No.67, Thimmanaickenpalayam Village, Abhishekapakkam, Ariyankuppam Commune Panchayat, Puducherry Taluk.

For Petitioner	:	Mr. R.Saravanan
For Respondents	:	Mr. K.Prabhakar for R-1 Mr. V.Suresh for M/s.Shivakumar Suresh or R-2 No Representation for R-3

ORDER

Aggrieved by the notice issued by the 1st respondent proposing to take over physical possession of the property, since purchased by the petitioner in the public auction, for non-payment of the ESI dues by the 2nd and 3rd respondents, the present petition has been filed.

2. It is the case of the petitioner that the 2nd respondent had advertised for sale of land, building and machineries o the 3rd respondent under the SARFAESI Act pursuant to which one of the group companies of the petitioner, viz., M/s,.Foods Fats and Fetrilisers Ltd., participated in the auction and was declared as the successful bidder resulting in issuance of sale certificate dated 19.10.2007 in favour of the petitioner, which was also registered. It is the further case of the petitioner that after take over of the property, the employees of the erstwhile management sought to interfere with the possession and enjoyment of the property. It is the further averment of the petitioner that with regard to recovery of wages amounting to Rs.3,91,27,300/-, the matter has been referred to the 1st respondent under the Revenue Recovery Act, which resulted in the passing of the distraint order on 28.7.2014. It is the further averment of the petitioner that 2nd and 3rd respondents are alone liable to pay the amount demanded, however, arbitrarily notice dated 14.9.2009 was issued to the petitioner proposing to take physical possession of the property on 22.9.2009, which notice was challenged by way of filing of W.P. No.19413/2009, which was dismissed and the appeal filed against the said order in W.A. No.1546/2010 was allowed vide

order dated 11.7.2018 with a directing to the 1st respondent to issue fresh show cause notice.

3. It is the further averment of the petitioner that pursuant to the said direction, a fresh show cause notice dated 4.7.2019 was issued demanding a sum of Rs.16,71,954/- together with interest of Rs.188.8 per day from 12.6.2019, which is due and payable by the 3rd respondent under the ESI Act and calling upon the petitioner to appear in person to show cause. It is the further averment of the petitioner that the representative of the petitioner appeared before the 1st respondent and gave a detailed representation stating that the auction sale conducted under the SARFAESI Act by the authorized officer is akin to sale by a court of law and that it is only the purchase of a landed property along with building and machineries and there is no transfer of establishment and, therefore, the petitioner is not required to pay the ESI contribution due and payable by the 3rd respondent and, therefore, requested to drop the proceedings. However, without properly appreciating the aforesaid facts and proceeding against the 2nd and 3rd respondents, the 1st respondent had arbitrarily issued the impunged letter dated 12.7.2019

proposing to take physical possession of the petitioner's property, which has prompted the petitioner to file the present writ petition.

4. Learned counsel appearing for the petitioner submitted that the action of the 1st respondent in proceeding against the petitioner, who is a mere third party, being the purchaser of the property of the 3rd respondent in the auction sale is wholly arbitrary, illegal and unreasonable, as no obligation is cast on the petitioner to honour the dues due and payable by the 3rd respondent to the 1st respondent.

5. It is the further submission of the learned counsel that the expression *'as is where is condition"* in which the property was sold, merely speaks about the physical condition of the property that is auction sold and is free from all encumbrances except what is stated in the sale certificate and the petitioner cannot be mulcted with any responsibility to honour the dues to the 1st respondent, which were payable by the 3rd respondent, which did not form part of the conditions prescribed in the sale certificate.

6. It is the further submission of the learned counsel that the stand of the 2nd respondent that it is not liable to pay the statutory dues due and payable by the 3rd respondent from out of the sale proceeds from the property is totally incorrect as like the security interest of the Bank, the statutory dues are also security insofar as the 1st respondent is concerned, which is to be realized from the sale proceeds and the statutory authority, viz., the 1st respondent cannot proceed against the property, which has been purchased in the course of the auction.

7. It is the further submission of the learned counsel that the 3rd respondent is still in existence and, therefore, the 1st respondent ought to have proceeded against the 3rd respondent and ought not have proceeded against the property purchased by the petitioner in the auction sale. It is the further submission of the learned counsel that what is purchased by the petitioner is only the land and machinery and not the management of the 3rd respondent and the mere purchase of infrastructure cannot be held to the extent of the petitioner purchasing the management and, therefore,

proceeding against the petitioner for realizing the statutory dues, due to the 1st respondent is grossly erroneous.

8. It is the further submission of the learned counsel that the issue in the present case concerns only as to who is liable to pay the statutory dues and it is not relatable to whom, whether the 2nd respondent or the 1st respondent has the first charge over the sale proceeds. Such being the case, the petitioner cannot be mulcted with the responsibility to clear the statutory dues due and payable by the 3rd respondent.

9. It is the further submission of the learned counsel that first charge is on the assets of the 3rd respondent and the said property/asset, having been sold by the 2nd respondent to the petitioner, the charge over the assets stands substituted on the charge realized by way of sale proceeds and if at all the petitioner could enforce its statutory dues, it could only be against the sale proceeds, which was realized in the auction sale and it cannot be on the property, which has been purchased by the petitioner in auction sale. It is the further submission of the learned counsel that proceeds realized in the

sale by the 2nd respondent is only subject to the first charge over the assets statutorily created in favour of the 1st respondent and it is only the 2nd respondent, who is liable to clear the statutory dues before appropriating the balance towards its dues from out of the sale proceeds and the petitioner is not liable to pay the statutory dues, due to the 1st respondent.

10. It is the further submission of the learned counsel that the petitioner cannot be mulcted with the liability of the 3rd respondent to pay the contribution as per the ESI Rules as the petitioner is not the transferee as provided u/s 93-A of the ESI Act, as the petitioner is an auction purchaser having purchased the property in the auction sale and, therefore, the act of the 1st respondent in trying to take physical possession of the petitioner's property is wholly illegal, unreasonable and unsustainable and accordingly prays for setting aside the impugned letter of the 1st respondent.

11. In support of the aforesaid submissions, learned counsel for the petitioner placed reliance on the following decisions :-

i) *State of WB & Ors. – Vs – Gitashree Dutta (Dey) & Ors. (2022 (19) SCC 388);*

ii) State Bank of India – Vs – Tax Recovery Officer & Ors. (2022 SCC OnLine Mad 9031);

iii) Mahalakshmi Plastics – Vs – Puducherry Industrial Promotion Development & Investment Corporation Ltd. (2022 SCC OnLine Mad 5320);

iv) Leelamma Mathew – Vs – IOB & Ors. (2022 SCC OnLine SC 1601);

v) Indian Overseas Bank – Vs – The Asst. Commissioner (W.P. No.19742/2021 – MHC);

vi) Tamil Nadu Mercantile Bank Ltd. – Vs – Sub Registrar & Anr. (2024 SCC OnLine Mad 5692);

vii) Employees State Insurance Corporation – Vs – Balaraman (2000 SCC OnLine Ker 215);

viii) D.Senthil Kumar & Ors. – Vs – The Commercial Tax Officer & Ors. (2006 (3) LW 627);

ix) UTI Bank Ltd. – Vs – The Deputy Commissioner of Central Excise, Chennai & anr. (2006 (5) CTC 801);

x) Central Bank of India – Vs – Siriguppa Sugars & Chemicals Ltd. & Ors. (2007 (8) SCC 353);

xi) AI Champdany Industries Ltd. – Vs – The Official Liquidator & Anr. (2009 (3) CTC 881);

xii) Maharashtra State Co-operative Bank Ltd. – Vs – Asst. Provident Fund Commissioner (2009 (1) SCC 123);

xiii) K.Ravindranath – VS – Indian Bank (AIR2011 Mad 302);

xiv) Assistant Commissioner (CT) – Vs – IOB & anr. (2016 SCC OnLine Mad 10030);

xv) *P.Balakrishnan & Ors. – Vs – The Managing Director, M/s.Gold King Tex India Pvt. Ltd. (2017 SCC OnLine Mad 23915);*

xvi) *Dollar Industries (Spinning Division) – Vs – Assistant Commissioner & Ors. (2021 16 GSTR-OL 328); and*

xvii) *K.Md.Sagheer Ahmed – VS – Union of India & Ors. (W.P. NO.23410/2007 – Dated 8.3.2022 – MHC)*

12. Per contra, learned standing counsel appearing for the 1st respondent submitted that in view of the default committed in payment of ESI contribution by the 3rd respondent, recovery proceedings were initiated by the 1st respondent. However, pending the same, BIFR was seized of the matter and, thereafter, the 2nd respondent took over the property of the 3rd respondent under the SARFAESI Act and the same was sold to the petitioner.

13. It is the further submission of the learned counsel that the 1st respondent addressed a letter to the 2nd respondent in respect of the statutory dues payable by the 3rd respondent, for which the 2nd respondent had addressed a letter to the 1st respondent informing that the property of the 3rd respondent was sold in *"as is where is and whatever there is basis"* and, therefore, any due pertaining to the property ought to be borne by the

successful bidder, viz., the petitioner and, the 1st respondent was directed to take up the issue with the petitioner. Therefore, the notice was issued to the petitioner, which at the first instance was agitated before this Court upto the level of writ appeal, wherein the notice was set aside and a fresh notice was directed to be issued giving opportunity of hearing to the petitioner before passing of the order, which had resulted in the present show cause notice being issued against the petitioner.

14. Learned standing counsel, placing reliance upon Section 93-A of the ESCI Act, submitted that where a factory or establishment is transferred in whole or part by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the factory or establishment is so transferred shall be jointly and severally be liable to pay the amount due in respect of any such contributions or any other amount payable under this Act in respect of the periods upto the date of such transfer. It is therefore the submission of the learned standing counsel that the property being auction sold on as is whereis and whatever there is basis, as per the terms of the bid documents throught he SARFAESI Act, all payments due to any person

whatsoever and payment of all statutory dues including but not restricted to property taxes, sales taxes, customs and central excise dues, cess, transfer charges and other dues/levies, etc., if any, shall be ascertained and borne by the successful bidder. It is therefore the submission of the learned counsel that not only the ESIC Act, but also the conditions in the bid document having fastened the liability of all statutory dues on the successful bidder, the petitioner, being the successful bidder is due to pay the statutory dues on behalf of the 3rd respondent to the 1st respondent.

15. It is therefore the submission of the learned standing counsel that the property having been purchased in auction sale in as is where is and whatever there is condition and the bid documents clearly reveal that all the statutory dues are transferred and to be borne by the purchaser, the petitioner, who has purchased the property is bound to pay the dues on behalf of the 3rd respondent and, therefore, the show cause notice and the consequential order directing the payment of the statutory dues by the petitioner is just and proper and, therefore, no interference is warranted with the impugned order and this writ petition is liable to be dismissed.

16. In support of the aforesaid submission, learned standing counsel relied upon the decision of this Court in the case of ***M/s.Vijayalakshmi Palanisamy Charitable Trust – Vs – The Sub Regional Director, Employees State Insurance Corporation (C.M.a. No.1201/2018 – Dated 9.3.2021)***.

17. Learned counsel appearing for the 2nd respondent, while adopted the arguments advanced by the learned counsel for the 1st respondent further submitted that the petitioner having accepted the conditions of the bid and participated in the auction sale and purchased the property by being the successful bidder, is tied by the said documents and now cannot turn back and try to fasten the liability on the 2nd respondent, as the petitioner's acceptance of the conditions of the bid makes the petitioner liable to honour the statutory dues to the 1st respondent.

18. This Court gave its careful consideration to the submissions advanced by the learned counsel appearing on either side and perused the

materials available on record as also the decisions relied on, on behalf of the respective parties.

19. Before proceeding to appreciate the facts of the present case, it is to be pointed out that very many decisions have been relied on, on behalf of the petitioner and the 1st respondent. But suffice to state, that there is no requirement to go into the said decisions for the simple reason that the whole issue revolves around the interpretation and the meaning to be extended to Section 93-A of the ESIC Act and the appreciation of the bid documents and, therefore, this Court is not venturing into discussion on any of the aforesaid decisions.

20. There is no quarrel with the fact that the petitioner is the successful bidder, having purchased the subject property in the auction purchase conducted by the 2nd respondent under the SARFAESI Act in respect of the dues, which were due and payable by the 3rd respondent.

21. The sum and substance of the claim is based on the statement of the 2nd respondent that the property was auction sold in *"as is where is and whatever there is basis"* and also the bid documents, which clearly reveal that whatever statutory levies are due, they shall be payable by the successful bidder. On the strength of the above, the 1st respondent has raised a claim on the petitioner with regard to the statutory dues due on behalf of the 3rd respondent.

22. In this regard, the 1st respondent takes shelter u/s 93-A of the ESIC Act, which reads as under :-

> *"Where an employer, in relation to a factory or establishment, transfers that factory or establishment in whole or in part, by sale, gift, lease of licence or in any other manner whatsoever, the employer and the person to whom the factory or establishment is so transferred shall jointly and severally be liable to pay the amount due in respect of any contributions or any other amount payable under this Act in respect of the periods upto the date of such transfer."*

23. In the present case, the dues pertain to the period prior to the property being transferred to the petitioner by way of auction sale and,

therefore, the liability towards any statutory amount payable under the ESIC Act would fall on the employer and also person, to whom the factory or establishment is transferred, meaning thereby, that the liability would stand transfixed on the 3rd respondent, viz., the employer and upon sale to the petitioner, viz., the auction purchaser, who purchased the property.

24. The liability towards the statutory dues is guided by Section 93-A of the ESIC Act, which befalls on the employer or the person on whom the factory or establishment is transferred and it is not limited to sale, gift, lease or licence, but also where the transfer being in any other manner whatsoever. Therefore, it is evident that even in respect of the transfer being by way of auction purchase, which falls within the four corners of *"in any other manner"* but it also stands covered under the aegis of sale, be it by the secured creditor, viz., the 2nd respondent herein, the said sale would squarely pull in the auction purchaser to be a person, who would jointly and severally be liable to pay the amount due in respect of contribution towards the employees insurance to the 1st respondent, which amount stands due and liable prior to the time of transfer.

25. When the petitioner has accepted to the terms of the bid and had purchased the property in the auction sale and the property had a statutory liability to be covered in respect of the 1st respondent, in terms of the bid document and also by virtue of the provision of Section 93-A of the ESIC Act, the petitioner would have to honour the amount due and payable by the 3rd respondent to the 1st respondent, by stepping into the shoes of the 3rd respondent and the petitioner cannot seek to transpose its liability to the 2nd respondent, as the 2nd respondent would not partake the character of *"the person"* provided for u/s 93-A of the ESIC Act as it pertains only to the person to whom the factory or establishment has been transferred and not the person, who sold the property, merely on account of the 2nd respondent being a secured creditor.

26. When the petitioner has, with open eyes, partaken in the bid process and accepted the terms and conditions of the bid and come out successful in the auction sale and had taken over the property, by virtue of Section 93-A of the ESIC Act, the petitioner ought to clear the dues due and

payable to the 1st respondent on account of the 3rd respondent and cannot seek to transpose its burden on any other person by claiming that it is only the land, plant and machinery, which has been taken over and not the other dues and liability of the 3rd respondent. Such a contention is squarely opposed to the provisions of Section 93-A of the ESIC Act as also the bid documents and the contention placed on behalf of the petitioner deserves rejection.

27. One other aspect which also requires to be pointed out at this juncture is the fact that in the earlier round of litigation, the petitioner has not questioned the authority and jurisdiction of the 1st respondent to issue show cause notice and claim the amount. The whole case of the petitioner was predicated upon compliance of principles of natural justice and in that backdrop, the Division Bench of this Court directed the 1st respondent herein to issue show cause notice afresh and consider the materials placed before it before passing any further orders, which has resulted in the present impugned order. Such being the case, the petitioner cannot come before this Court and question the jurisdiction and authority of the 1st respondent to claim the

statutory dues, due and payable on behalf of the employees of the 3rd respondent.

28. Appreciating all the aforesaid aspects in proper perspective, the 1st respondent had issued the show cause notice and had passed the consequential order, which are in consonance with the provisions of the ESIC Act and also the orders passed by this Court and the same does not suffer any infirmity warranting interference at the hands of this Court.

29. For the reasons aforesaid, this writ petition fails and the same is dismissed. However, liberty is granted to the petitioner to pay the statutory dues along with interest as claimed by the 1st respondent to the 1st respondent within a period of eight weeks from the date of receipt of a copy of this order and on receipt of the amount, the 1st respondent shall release the aforesaid property back to the petitioner, which has been taken over pursuant to the show cause notice issued by the 1st respondent for realising the statutory dues. There shall b no order as to costs.

21.04.2025

Index : Yes/ No

GLN

To

The Recovery Officer
ESI Corporation
Puducherry Region
Bouvankare Street
Mudaliarpet, Puducherry 605 004.

M.DHANDAPANI, J.

GLN

W.P. NO.26976 OF 2019

21.04.2025