

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 29.04.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.NO.16836 OF 2016
AND WMP NO.14453 OF 2016

P.Sambanthan

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Petitioner

Vs.

1.Regional Provident Fund Commissioner
Employees Provident Fund Organization
No.40, TNHB Office Complex,
Mogappair Road, Mogappair (East)
Chennai - 600 037.

2.The Commissioner
Avadi Municipality
Avadi,
Chennai - 600 054.

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Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a writ of Certiorari to call for the letter dated 13.04.2016 bearing Reference No.TN/SRO/AMB/TN/68179/CC-I/Area-4/2016-2017 issued by the first respondent and quash the same.

For Petitioner : Mr.Jayesh B. Dolia
for M/s.Aiyar and Dolia

For Respondent-1: Mr.K.Gunasekar
Central Govt. Standing Counsel

For Respondent-2: Mr.S.Pattabiraman
Government Advocate

O R D E R

Heard Mr.Jayesh B.Dolia, for M/s.Aiyar and Dolia, learned counsel appearing for the petitioner; Mr.K.Gunasekar, learned Central Government Standing Counsel, accepting notice on behalf of the first respondent and Mr.S.Pattabiraman, learned Government Advocate, accepting notice on behalf of the second respondent and with their consent, this Writ Petition

is taken up for final disposal, at the admission stage itself.

2.The petitioner is the Chief Manager of Indian Bank, Avadi Branch, Chennai and he is aggrieved by the action initiated by the first respondent, vide letter dated 13.04.2016, by which the first respondent has attached the salary of the petitioner, who is an employee of the Bank, for recovery of the provident fund dues payable by the second respondent Municipality. The amount sought to be recovered is Rs.4,25,76,510/-.

3.It is not in dispute that the second respondent Municipality has challenged the order issued by the first respondent, demanding provident fund contribution, by filing a writ petition before this Court, in W.P.No.12318 of 2016 and this Court, has entertained the writ petition and following the interim order granted in identical matters, an order of interim stay has been granted on 01.04.2016. Therefore, unless and until the interim order is vacated by this Court, the question of payment of provident fund contribution by the second respondent would not arise. Hence, the first respondent could not have treated the Bank as a defaulter. The reason assigned in the impugned order, is by observing that the petitioner is deemed to be a defaulter, in terms of Section 8F (x) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The said provision states that "if a 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 authorized 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.Admittedly, the petitioner herein is not due and liable to pay the provident fund dues to the officer and no notice was issued to him earlier to pay the dues, rather what was required to be done by the Bank was to attach the Bank account of the second respondent Municipality. That could not be done by the petitioner, on account of the interim order obtained by the Municipality from this Court. If the petitioner had violated the stay order, he would have been liable for contempt. Therefore, the petitioner not being an employer, cannot be treated to be an employer in default. The finding recorded by the first respondent in the impugned order is wholly perverse, without jurisdiction and bad in law.

5.In the light of the above, the writ petition is allowed and the impugned order is quashed. However, it is open

to the first respondent to raise all contentions in the writ petition filed by the second respondent Municipality and take orders from this Court, if so advised. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

TK

To

1. Regional Provident Fund Commissioner
Employees Provident Fund Organization
No.40, TNHB Office Complex,
Mogappair Road, Mogappair (East)
Chennai - 600 037.

2. The Commissioner
Avadi Municipality
Avadi, Chennai - 600 054.

1 cc to Mr.K.Gunasekar, Advocate, sr.27530

1 cc to M/s.Aiyar & Dolia, Advocate, sr.27784

W.P.NO.16836 OF 2016

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kra 12.05.2016

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