

GAHC010252562022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/8022/2022

ASSAM TEA EMPLOYEES PROVIDENT FUND ORGANIZATION
REPRESENTED BY ITS ADDITIONAL PROVIDENT FUND COMMISSIONER,
HAVING ITS HEAD OFFICE AT NIDHI BHAWAN, LALMATI, GUWAHATI,
DIST- KAMRUP (M), ASSAM, PIN-781029

VERSUS

UNION OF INDIA AND 7 ORS.
REPRESENTED BY THE SECRETARY, MINISTRY OF FINANCE,
DEPARTMENT OF ECONOMIC AFFAIRS, NEW DELHI-110001

2:THE RECOVERY OFFICER-I
DEBT RECOVERY TRIBUNAL
GUWAHATI
ULUBARI
DIST-KAMRUP
ASSAM
PIN-781007

3:THE PUNJAB NATIONAL BANK
CIRCLE SASTRA CENTRE
NILGIRI MANSION
BHANGAGARH
GUWAHATI-781005
DIST-KAMRUP (M)
ASSAM

4:SECONEE TEA ESTATE
NAGAON
REPRESENTED BY ITS MANAGER
P.O.-JAKALABANDHA
DIST- NAGAON

ASSAM
PIN-782136

5:M/S KANKARIA TEA LLP
REPRESENTED BY ITS DESIGNATED DIRECTOR
HAVING ITS REGISTERED OFFICE AT 88/89 SNEH NAGAR
MAIN ROAD
INDORE
MADHYA PRADESH
PIN-452001

6:MOUZADAR
CHATIAL MOUZA
JAKHALABANDHA
DIST-NOWGAON
ASSAM
PIN-782136

7:MOUZADAR
DWAR SHALNA MOUZA
JAKHALABANDHA
DIST-NOWGAON
ASSAM
PIN-782136

8:ASSISTANT LABOUR COMMISSIONER
NAGAON
DIST-NAGAON
ASSAM
PIN-78200

Advocate for the Petitioner : R SARMAH

Advocate for the Respondent : D.Y.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 14.12.2022

Heard Mr. R.B. Phukan, learned counsel for the petitioner. Ms. R. Devi, learned CGC appearing for respondent no.1 and Mr. A. Ganguly, learned counsel

appearing for the respondent no.3.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed (a) the proceedings of Appeal no.2 of 2022, pending before the Debts Recovery Tribunal, Guwahati; (b) for quashing of the order dated 08.03.2022 passed by the Recovery Officer-I, Debts Recovery Tribunal, Guwahati in OA 13 of 2010; (c) directing the respondents to rescind or otherwise forbear from giving effect to the said order dated 08.03.2022, (d) directing the respondent bank as well as the Recovery Officer-I, DRT, Guwahati to release the sale proceeds of the Seconee Tea Estate to the petitioner; (e) pass a direction to the effect that the petitioner is entitled to the sale proceeds along with interest from the auction of Seconee Tea Estate.

3. Issue notice returnable on 18.01.2023.

4. Requisite extra copies of the writ petition be served on the learned CGC as well as learned counsel for the respondent no.3 in course of the day.

5. The petitioner shall take steps within 2(two) days for service of notice on the remaining respondents by registered post with A/D.

6. Learned counsel for the petitioner is at liberty to collect the postal receipt number from the Registry and to submit postal track report prior to the next date of listing.

7. Heard both sides and the prayer for interim relief. The said prayer is strongly opposed by the learned counsel for respondent no.3.

8. In this case, it is projected that the dues claimed by the petitioner is a statutory debt of the said Seconee Tea Estate to pay contribution for provident fund to the petitioner under the Assam Tea Plantations Provident Fund and Pension Fund and Deposit Linked Insurance Fund Scheme Act, 1955 and it is projected that as per the provision of Section 10 of the said Act, the petitioner would have priority in respect of payment of contribution over all other debts. It is submitted by the learned counsel for the petitioner that the amount recovered from the sale of the Seconee Tea Estate is subject to the direction contained in the order dated 19.06.2019 passed by this Court in WP(C)/2565/2018. Therefore, it is submitted that notwithstanding that the recovery was made by the Recovery Officer-I, DRT, Guwahati, the issue can only be adjudicated by this Court alone, which was the purport and intent of order dated 19.06.2019.

9. Opposing this prayer for interim relief, the learned counsel for the respondent no.3 has produced a copy of the minutes of the meeting held on 17.02.2021 between the authorized officer, ATEPFO, representatives of the Punjab National Bank and the partner of Borholla (s) Tea Industries. However, it is submitted that, the herein before referred order dated 19.06.2019, of this Court envisage that the sale would be conducted by the petitioner and therefore, the respondent no.3 was given liberty to approach this Court for appropriation, if there was any shortfall in the recovery. It is also submitted that as the parties had agreed to the minutes of the meeting dated 17.02.2021, the petitioner is deemed to have abandoned the terms and conditions of the joint

application, registered as IA(Civil) No.2066/2019, which has been referred to in the order dated 19.06.2019 in WP(C)/2565/2018. Accordingly, it is submitted that as the debt was recovered within the scope of Recovery of Debt and Bankruptcy Act, 1993, the debts of the bank was duly protected as per the provisions of Section 31 B of the said Act. It is submitted that as the said provision has referred to "all other debts", it would give priority to bank dues over the debt on account of PF contribution, which was otherwise recovered by the ATEPFO, i.e., the petitioner herein. It is also submitted that the Debt Recovery Tribunal by order dated 26.04.2022, in Appeal No.2 of 2022, has stayed the order dated 08.03.2022 passed by the Recovery Officer-I, DRT Guwahati. Hence, it is submitted that the petitioner may file an appeal. It was submitted that the petitioner has already appeared and participated in the proceedings of Appeal No.2 of 2022 before the DRT, and that the DRT could decide on its own jurisdiction. In this regard, it is submitted that the petitioner by letter dated 01.12.2021 has raised claim before the Recovery Officer.

10. In the aforesaid context, the learned counsel for the petitioner has referred to the letter dated 12.07.2021, whereby the petitioner has asserted the right of having first charge as per the provisions of Section 10(2) of the 1955 Act.

11. Having regard to the submissions and counter submissions made at the Bar, the Court is of the opinion that the issues raised in this petition requires further examination. Nonetheless, it would be appropriate to quote para 6 of the order dated 19.06.2019, passed by this Court in WP(C)2565/2018, which is as follows:-

“Heard Mr T Deori, learned counsel for the petitioner and Mr S Dutta, learned Senior Counsel for respondent No. 3, United Bank of India. Also heard Mr S P Roy, learned counsel for proforma respondent No. 5.

2. *Petitioner in this case is Assam Tea Employees Provident Fund Organization, set up under the Assam Tea Plantations Provident Fund (and Pension Fund) (and Deposit Linked Insurance Fund) Scheme Act, 1955, whose objective is to provide social security coverage to workers and employees of tea estates in the State of Assam.*

3. *In this writ petition, petitioner has assailed the order dated 12.03.2018, passed by the Recovery Officer-II, attached to the Debts Recovery Tribunal, Guwahati. By the aforesaid order, property of Seconee Tea Estate was directed to be attached for failure to pay dues of respondent No. 3 Bank. It may be mentioned that Seconee Tea Estate, which is proforma respondent No. 4 had defaulted in payment of provident fund contribution deposits etc., for which petitioner had taken over possession of the tea estate.*

4. *It is in that background that attachment order has been assailed by the petitioner.*

5. *Proforma respondent No. 5, M/s. Asomi Industries Pvt. Ltd has taken a stand that it was appointed as a receiver of Seconee Tea Estate by the petitioner and while discharging its responsibilities as receiver, it has invested a huge amount of money by obtaining bank loans etc. Therefore, it has an interest in the attachment order.*

5.2. *Be that as it may, while hearing the writ petition, learned counsel for respondent No. 3 Bank submitted that negotiations were going on between the parties as there was a possibility of settlement. On 29.05.2019, this Court requested learned*

counsel for the parties to submit a statement.

5.2. Be it stated that this Court by order dated 25.04.2018, while issuing notice had stayed the attachment order dated 12.03.2018 of the Recovery Officer-II, Debts Recovery Tribunal, Guwahati.

6. Today, both petitioner and respondent No. 3 Bank have filed a joint application, which has been registered as IA (Civil) No. 2066 of 2019. It is stated that parties have arrived at a settlement on the following terms and conditions:-

i) Bank has submitted consent for bringing the property of proforma respondent No. 4 to sale by the petitioner.

ii) Reserve price for sale of the property and other terms and condition of sale to be fixed in consultation with respondent No. 3 Bank.

iii) Proceeds of said sale to be deposited with respondent No. 3 Bank in form of FD/TD and to be distributed between respondent No. 3 Bank and petitioner (Assam Tea Employees Provident Fund Organization) as per the directions of the Hon'ble High Court. However, in the event of any shortfall in the value of the property or for any reason, the Bank's dues cannot be recovered in full, Bank be given liberty to submit prayer before the Hon'ble High Court to distribute the amount on prorata basis in relation to dues of the petitioner (Assam Tea Employees Provident Fund Organization) and that of the Bank.

7. In so far proforma respondent No. 5 is concerned, it is seen that it has already filed two writ petitions before this Court being WP(C) Nos. 2142 and 2510 of 2019, where present petitioner is a respondent. Grievance of proforma respondent No. 5 is primarily against the petitioner, which is the subject matter of those two writ petitions. Court expresses no opinion on the merit of the aforesaid two writ petitions, which will

be contested and decided in accordance with law.

8. *In so far the present petition, i.e., WP(C) No. 2565 of 2018 is concerned, the same is disposed of in terms of the settlement arrived at between the petitioner and respondent No. 5 in the above terms.*

9. *Disposed of.* “

12. In light of the provisions of Section 10(2) of the 1955 Act and Section 31 B of the 1993 Act, this Court would have to decide as to whether the petitioner would have first charge in respect of the EPF dues or respondent no.3 would have first charge over the money recovered by the Recovery Officer-I, DRT, Guwahati.

13. Be that as it may, notwithstanding that the recovery was made by the Debts Recovery Officer-I, DRT, Guwahati, it cannot be said that the recovery was solely on account of the recovery certificate issued by the Debts Recovery Tribunal in view of the terms and conditions recorded by this Court in paragraph 6 of the herein before referred order dated 19.06.2019. Under such circumstances, the Court permits the Debts Recovery Tribunal Guwahati to proceed with the Appeal No.2 of 2022. However, the final order shall not be executed or implemented without the leave of this Court. The Court is also inclined to direct the said learned Tribunal that its interim order passed on 26.04.2022, directing the Debts Recovery Officer, DRT, Guwahati not to release any amount on any prayer of the claimant or the respondent no.3, pursuant to order dated 08.03.2022, shall be extended till next date of listing of this writ

petition.

14. At this stage, the learned counsel for the respondent no.3 has submitted that he has instructions to the effect that the land revenue payable to the Mouzadar and the payment due to the Assistant Labour Commissioner, Govt. of Assam have both been released prior to passing of the order dated 26.04.2022 by the learned Debt Recovery Tribunal in Appeal no.2 of 2022. Hence, it is provided that if such amount has already been released, this interim order shall not affect the said payment already made.

15. List in the admission column on 18.01.2023.

JUDGE

Comparing Assistant