

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) No.641/2009 & CM Appl. No.18506/2009**

% **Judgment reserved on : 24.01.2011**
Judgment delivered on : 30.03.2011

M/s. INDIAN ASSOCIATES **.... APPELLANT**

Through: Mr.R. Mukherjee and Mr.Jayant K. Mehta, Advocates

Versus

THE STATE AND OTHERS **.... RESPONDENTS**

Through: Mr.Lalit Gupta, Advocate for respondent No.3.
Mr. Rahul Gupta, Advocate for Respondent No. 2, 7, 8.

CORAM:
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE M.L. MEHTA

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| 1. | Whether reporters of Local papers be allowed to see the judgment? | Yes |
| 2. | To be referred to the reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

M.L. MEHTA, J.

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1. This is an appeal against the order dated 9th October, 2009 of the learned Single Judge whereby Test Case No.43/1987 and IAs

No.5054/1999, 6581-6582/2005 and 3097/2009 pending therein were dismissed.

2. During the pendency of the Test Case No.43/1987, there has been various round of litigation between the parties on different issues relating to the estate of late Rani Padmawati Devi (hereinafter referred to as “the estate”). It would be useful to recite relevant facts as referred to by learned counsel for the parties during the course of arguments in the present appeal.
3. Late Rani Padmawati Devi died intestate on 12.04.1987 leaving behind her husband, Raja Birendra Bahadur Singh; two sons, namely, Shivendra Bahadur Singh (SBS) and Ravindra Bahadur Singh (RBS) and two daughters, namely, Usha Devi and Sharda Devi. SBS filed Test Case No.43/1987 seeking Letters of Administration (hereinafter referred to as “LOA”) under Section 278 of the Indian Succession Act (hereinafter referred to as “the Act”). The other heirs of late Rani Padmawati Devi were respondents in the said petition as Respondent No. 2 (Birender Bahadur Singh), Respondent No. 3 (Usha Devi), Respondent No. 4 (Sharda Devi) and Respondent No. 5 (RBS). On 18th March, 1988, the following issue was framed in the aforesaid petition by the learned Single Judge:

“(i) Is the petitioner entitled to and should he be granted the Letters of Administration exclusively or should the letters of administration be granted in two or more names in respect of the estate of the deceased Rani Padmawati Devi?”

4. Vide order dated 10th May, 1988, the learned Single Judge granted Letters of Administration appointing the petitioner/SBS as the administrator of the estate. The said order reads as follows:-

“Pr. 42/97

This is a petition under section 278 of the Indian Succession Act for grant of Letters of Administration without will.

Rani Smt. Padmawati Devi, hereinafter referred to as the deceased, died intestate at Bhopal on 12th April, 1987. She was the mother of the petitioner and of respondents 3 to 5. It is alleged that respondents 2 to 4 have executed a power of attorney in favour of the petitioner in respect of all movable and immovable properties left by the deceased. It is further alleged that respondents 2 and 3 have relinquished their rights and responsibilities in favour of the petitioner.

The deceased had left behind properties, details of which have been set out in Schedules B1 and B2. The total value of the assets comes to approximately Rs.15,40,000/-. Schedule C gives particulars about the liabilities of the deceased. The total liabilities mentioned therein come to Rs.36,87,828/-, the liabilities being only due to the demands raised by the Income-tax and wealth-tax authorities.

Notice of the application was issued. In the application it is prayed that as the petitioner is the owner of 3/5th property and

also holds a power of attorney of respondent No.4, letters of administration should be granted in his favour. It is further contended that respondent No.5 has weak eye sight and is not physically or otherwise capable of administering the estate.

Reply has been filed by all the respondents. Respondents 2 to 4 do not oppose the grant of letters of administration in favour of the petitioner. The opposition to the grant of letters of administration is only from respondent No.5.

Parties were required to file affidavits by way of evidence. It is only the petitioner who has filed the affidavit. No affidavit by way of evidence has been filed by respondent No.5 nor is any counsel present on his behalf.

The petitioner in this case, as would be evident from what has been stated by respondents 2 to 4, appears to be the owner of 3/5th of the estate left behind by the deceased. Furthermore, out of the 5 legal heirs, 4 of them have agreed, including the petitioner, that the estate should be administered by the petitioner. It is important to note that one of the legal heirs who has so agreed is respondent No.2, who was the husband of the deceased and father of the petitioner and respondent No.5. The petitioner is also holding an important position in life being a Member of Parliament and in the absence of any evidence being led by way of affidavits or otherwise by respondent No.5, I see no reason as to why the petitioner should not be granted the letters of administration as prayed for.

I accordingly grant Letters of Administration without will attached to the petitioner. The formal Letter will be issued in the form set forth in Schedule 7 after the petitioner has furnished a bond to the Registrar of this Court with one surety for a sum of Rs.5 lacs."

5. RBS (respondent No.5 in the said petition and respondent No. 2 herein) being the heir of her pre-deceased mother and claiming to have 1/5th share in the estate, filed application under Order IX

Rule 13 of the Code of Civil Procedure being IA No.4065/1988 on 18th July, 1988 for setting aside the order dated 10th May, 1988 granting LOA. This application came to be heard on 13th August, 1988 when the petitioner's counsel appeared and accepted the notice. It is noted that IA No. 4065/1988 under Order IX Rule 13 and IA No.3393/1989 under Section 5 of the Limitation Act, 1963 of the respondent/RBS remained pending till the passing of the impugned order. Pending this application, the petitioner under the authority of LOA negotiated and entered into a sale transaction with the appellant, Indian Associates. The purpose of transaction as claimed by the petitioner as administrator was utilisation of the sale consideration to meet the liabilities relating to wealth tax and income tax of the estate.

6. According to Indian Associates (appellant herein), the agreement to sell was entered into on 9th September, 1988 and a sale deed was executed by the administrator on 11th October, 1988, but the same was not registered by the sub-Registrar. Since the sub-Registrar, Raipur, did not register the sale deed in favour of the appellant, the appellant filed a petition being Miscellaneous Petition No.2173/1989 before the Madhya Pradesh High Court. The said writ petition came to be dismissed by the Madhya

Pradesh High Court vide Order dated 12th October, 1992. The relevant portion of the order of the Hon'ble High Court of Madhya Pradesh is as under:

“7. It cannot also be overlooked that the respondent Sub Registrar has not so far refused registration and has kept the matter pending. This Court is of the opinion that, it was wholly justified. If and when the registration is refused, the petitioners will have alternative remedy of appeal and suit provided under the Act. There is therefore no justification for invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution.”

7. Before proceeding further, it is noted that a case regarding excess land than the prescribed limited under the Urban Land Ceiling Act was pending against Rani Padmawati Devi since 1977 before the competent authority at Raipur (M.P.). Vide Order dated 18th May, 1983 certain conditions/restrictions on use and sale of lands had been imposed on Rani Padmawati Devi by the concerned authority of Madhya Pradesh Government. Later, vide Order dated 20th September, 1988, the concerned authority granted permission to sell the lands. This was challenged by respondent/(RBS) in Madhya Pradesh High Court by way of writ (No. 3328/1988). This writ was allowed and the order dated 20th September, 1988 whereby permission was granted to sell the land was quashed. It is noted that this order came to

be passed on the submissions made by the parties that on the death of Rani Padmawati Devi, the property ceased to be within the prescribed limits of the provisions of Ceiling Act. The Madhya Pradesh High court, however, did not see any illegality in the order of 18th May, 1983 of the Government of Madhya Pradesh imposing conditions/restrictions regarding use and sale of lands. It was held by the Madhya Pradesh High court vide separate order dated 12th October, 1992 that the order dated 20th September, 1988 granting permission to sell the land cannot be said to modify the conditions/restrictions imposed vide order dated 18th May, 1983 on Rani Padmawati Devi. On this reasoning, the Court held that the administrator/SBS (respondent No. 2 therein) did not have the authority to sell the lands covered by the order of 18th May, 1983 and to that extent the sale in favour of investors (Indian Associates) must be held to be illegal and inoperative. From the decision of Madhya Pradesh High Court, as noted above, it is clear that the conditions/restrictions regarding use and sale of lands on Rani Padmawati existed since 18th May, 1983 and that though the permission to sell was granted on 20th September, 1988, but the conditions/restrictions regarding sale and use of the lands still continued.

8. On 12th October, 1988, in an application being IA No.8566/1988 filed by RBS, this Court had restrained the administrator/SBS from transferring, alienating or parting with the possession of the properties, which formed subject matter of the estate. On 21.12.1988, the administrator/SBS filed a statement of account in the Court, reflecting the receipt of Rs.35.00 lakhs by the estate on account of sale of Padma Bhavan to the appellant by virtue of sale deed dated 11th October, 1988.
9. Against the orders of MP High Court dated 12th October, 1992, the appellant/Indian Associates and also administrator/SBS filed SLPs before the Hon'ble Supreme Court being SLP No.1152/1993 and 396-97/1993. Both the SLPs came to be dismissed by the Hon'ble Supreme Court vide order dated 10th May, 1993.
10. It appears that the case which was pending since 1977 before the Court of competent authority of Urban Land Ceiling, Raipur against Rani Padmawati Devi regarding the excess land than the prescribed limited, both the administrator and respondent/RBS informed the competent authority about the death of their mother on 12th April, 1987 and also of their father Birendra Bahadur Singh. The competent authority accepted their plea

that in the given circumstances by partition of the property into four shares, i.e., two daughters and two brothers, nobody would be holding the land in excess to the prescribed limit. In this factual matrix, the competent authority filed the case listed against Rani Padmawati vide order dated 14th March, 1997.

11. Now RBS proceeded to sell a part of the property known as Padma Bhawan (property in question) by a sale deed dated 29th July, 1997 to M/s.Jesper Construction Pvt. Limited (hereinafter referred to as "Jesper") for a consideration of Rs.21.00 lakhs. The administrator/SBS filed application being IA No.10437/1997 wherein learned Single Judge of this Court vide order dated 19th February, 1998 restrained RBS and other respondents from alienating, disposing of and/or parting with the possession of the property in question. The situation took a new turn with the death of administrator/SBS on 31st December, 1998. The appellant/Indian Associates filed an application (I.A. No.490/1999) seeking intervention/impleadment in the pending Test Case and also filed another application (I.A. No.5054/1999) for appointment of an administrator in place of deceased administrator/SBS. It appears that the legal heirs of the administrator/SBS also filed two applications (I.A. No.12147/1999

and 12148/1999) for their substitution in the proceedings and for condonation of delay.

12. Thereafter the parties to the Test Case, i.e., heirs of Rani Padmawati and heirs of administrator/SBS filed an application under Order XXIII Rule 3 CPC (being I.A. No.14812/1999) seeking disposal of this case on the basis of a Memorandum of Understanding (MOU) dated 26th August, 1999 executed amongst themselves.
13. The application of appellant-Indian Associates for intervention/impleadment (IA No.490/1999) was disposed by the learned Single Judge vide order dated 17th January, 2002. By the same order, the other application (IA No.5054/1999) filed for appointment of administrator in place of deceased administrator/SBS also came to be dismissed. The appellant/Indian Associates preferred appeal against the order of dismissal of its application for impleadment. Division Bench disposed of the same as under:-

“(We)...allow the application (I.A. No. 490/99) to the extent that the appellant shall be entitled to participate in the proceedings in order to enable it in safeguarding its interests and that also to the extent of that part of the estate of Rani Padmavati, which is the subject matter of the sale deed dated 11.10.1988 as alleged to have been executed by late Shivendra Bahadur Singh in favor of the appellant, including the legal capacity of late Shivendra

Bahadur Singh, as an administrator pendent lite to enter into the sale deed with the appellant, and also in relation to the legal effect of the said transaction, making it clear that the appellant shall not be entitled in any manner to intervene or interfere with, or participate in the pending probate case qua the remaining estate.”

14. The learned counsel for the appellant/Indian Associates challenges the impugned order on various grounds. He submits that in the aforesaid facts a very peculiar situation has arisen. The appellant is a bonafide purchaser for value from the administrator/SBS. The administrator executed a sale deed in favour of the appellant, which was then presented and accepted for registration. The administrator also filed detailed accounts of the transaction in the Court. However, the sale deed of the appellant was not registered by sub registrar initially on account of certain issues of the Ceiling Act, which stood resolved by the order dated 14.03.1997 whereby it was ordered that the provisions of the Ceiling Act were not applicable to the estate after the death of Rani Padmawati Devi in the year 1987. Thereafter, the administrator expired and the respondent/RBS played a fraud in collusion with other respondents. However, the Ld. Single Judge has disposed of the proceedings by the impugned Judgment and Order dated 9.10.2009, without even considering, much less appreciating the aforesaid circumstances.

He submits that the appellant/Indian Associates is the bonafide purchaser of the property from the administrator under the authority of grant of LOA by the Court. He argues that at the time of agreement to sell dated 9th September, 1988, there was no clout on the authority of the administrator/SBS and so there was no reason for the appellant/Indian Associate to doubt the authority of administrator more so when the sale proceeds were to be applied by the administrator to liquidate the liabilities of the estate. To substantiate his arguments, the learned counsel relies on **Mathuradas Vassanji v. Raimal**, AIR 1935 Bombay 385, **Tincowri Pramanik v. Narayan Chandra Mukherjee**, AIR 1957 CAL 364, **Adeline Maude Ellanor Catchick Nee Roberison and another v. Sunderlal Daga and others**, AIR (37) 1950 Calcutta 559.

15. Referring to Sections 211(1), 216, 220, 273 and 307 of the Act, the learned counsel submits that the administrator is the sole representative of the deceased and the estate vests in him. The administrator is possessed with all the rights in relation to the assets of the estate of the deceased as if he were the owner. The powers of the administrator u/s 307 are wide and comprehensive and that the LOA granted shall be conclusive to

the representative title and further that the administrator has absolute power to dispose of the property of the deceased in such manner as he may deem fit. He submits that the administrator had complete authority to deal with the property in any manner he deemed most appropriate and that if for some reason the LOA is revoked, the revocation has prospective effect, thus saving any intervening transactions. Reliance is placed on the judgments of **A.L.A.R firm v. Maung Thwe**, AIR 1923 Rangoon 69, **Smt. Babuain Chandrakala Devi v. Smt. Pokhraj Kuer and others**, AIR 1963 PATNA 2, **Namberumal Chetti v. Veeraperumal Pillai**, AIR 1930 MAD 956, **G.F.F. Foulkes and others v. A.S. Suppan Chettiar**, AIR (38) 1951 MAD 296 and **P.H. Alphonoso v. Mrs. Irene Dias & others**, 1967 (2) Mysore LJ 465 and **Crystal Developers v. Asha Lata Ghosh**, 2005 (9) SCC 375.

16. Further referring to Section 307 of the Act, learned counsel submits that this Section authorises validly appointed administrator to transfer and sell the property of a deceased. He submits that expression “may” in Section 307(2) signifies that there is no bar in the exercise of such power and the court can be approached for permission. He urges that the lack of prior

permission from the court in a case of such transfer does not vitiate the sale but merely renders it voidable, which in turn means that the party aggrieved has to approach the court of law, to avoid or challenge such a transaction. The learned counsel relies upon the cases of **Sita Sundari Barmani and another v. Barada Prosad Roy Chowdhary and others**, AIR 1924 CAL 636, **Gotiram Nathu Mendre v. Sonabai w/o Savleram Kahane and others**, AIR 1970 Bom 73 and **V. Zollikofer and Co. v. O.A.O.K.R.M. Chettyar Firm**, AIR 1931 Rangoon 277. Learned counsel also submits that the sale deed already having been executed in favour of the appellant/Indian Associates by the administrator/SBS for a valuable consideration, respondent/RBS was neither authorised nor competent to sell a part of the property in question to M/s.Jesper in 1997. The said sale is alleged to be illegal and not binding on the estate of the deceased.

17. With regard to filing of application under Order IX Rule 13 of the Code of Civil Procedure by respondent/RBS for recalling the grant of LOA, learned counsel submits that the pendency of this application did not amount to any impediment on the part of the administrator, who was validly appointed by the Court. He

argues that this application was neither argued nor pressed all the while by respondent/RBS and so much so even no evidence was led.

18. Based on the aforesaid submissions, the learned counsel argues that in view of these facts and circumstances and developments, this Court alone has jurisdiction to issue orders pertaining to administration of estate of late Rani Padmawati Devi and that consequent upon the death of the validly appointed administrator/SBS, an administrator was required to be appointed by the court. He further argues that for the proper and complete administration of the estate, the Court was required to protect the rights of such third parties who had bonafidely dealt with the administrator.
19. On the other hand learned counsel appearing for Respondent Nos. 2 (RBS), 7 and 8 submits that the administrator had no authority to transfer the property in question without the permission of the Court in view of mandatory provision under sub-section (2) of Section 307 of the Act. The learned counsel argues that the transfer made by the administrator created suspicion, especially when there were other heirs to the estate and no permission of the Court was obtained. Learned counsel

tries to demonstrate the duties and responsibilities of the administrator while dealing with the property under the grant of LOA. The administrator was only in possession as a trustee and is supposed to deal with the estate in larger interest of the estate and the other heirs. He submits that when the administrator was aware that the application for setting aside the order granting him LOA was filed by the respondent/RBS and notice had also been accepted by him on 13th August, how can it be said that agreement to sell on 9th September 1988 (with the appellant) was with bonafide intention. Not only that, no permission was obtained as contemplated under Section 307(2) of the Act, the administrator even did not inform the Court about the transaction. The learned counsel submits that the entire factual matrix and the conduct of the administrator would lead to a conclusion about his malafide intention adversely affecting the estate to its interest. The learned counsel for respondents next submits that the administrator was well aware of the fact that there existed conditions/restrictions on sale and transfer of the estate of Rani Padmawati Devi since May 1983. He submits that though by order dated 20th September, 1988, permission was granted by the Competent Authority, Madhya Pradesh to sell the land, but the conditions/restrictions as imposed continued to

exist. He emphasizes that the administrator knew about the pendency of Petition No.3328/1988 filed by respondent/RBS against the order of grant of permission to sell and also about the Sub Registrar, Raipur, having declined to register the sale deed. He further submits that the appellant-Indian Associates also knew all this as it had become a party in the aforesaid petition (No.3328/1988) pending before the Madhya Pradesh High Court. In this regard he relies on **Mindnapur Zamindari Co v. Ram Kanai Singh** AIR 1926 Pat 130, **re-Estate of Indrani** AIR 1931 All 212, **Gotiram v. Sona Bai** AIR 1970 Bom 73, **R.K. Mohammad Ubaidullah and others v. Hajee C. Abdul Wahab**, (2000) 6 SCC 402 and **Usha Sinha v. Dina Ram and others**, (2008) 7 SCC 144.

20. The learned counsel next argues that contrary to the assertions, not only during the lifetime of the administrator, but right upto 1997, the appellant/Indian Associates did not make any attempt to apprise this Court about the transaction much less seeking prior permission of the transaction. He argues that the alleged transaction was void *ab initio* and illegal, firstly, because of the fact that there existed restrictions on the sale and transfer since May 1983; secondly, because of absence of permission of the

Court under Section 307(2) of the Act and; thirdly, because of manifest lack of *bonafide* of the administrator to enter into this transaction in view of the subsisting objections by respondent/RBS. He vehemently submits that overall conduct in rushing through the process of striking a deal on 9th September, 1988 when the notice of setting aside the LOA was already served on him a few days back, would clearly demonstrate that the administrator/SBS was not honest in dealing with the estate.

21. He argues that the question of validity of the sale transaction was directly involved in the proceedings before MP High Court which were decided against the administrator/SBS and appellant-Indian Associates on 12th October 1992 and that SLP filed against it was also dismissed and thus those decisions are *res-judicata* against all including the appellant/Indian Associates. He submits that the same issues are sought to be reagitated by them in these proceedings. In this regard he relies upon the case of **Gulabchand Chhotalal Parikh v. State of Gujarat**, AIR 1965 SC 1153 and **Union of India v. Nanak Singh**, AIR 1968 SC 1370.
22. Learned counsel appearing for M/s. Jesper (Respondent No. 3 herein) argues that the Division Bench of this Court while dealing

with the applications of the appellant/Indian Associates (IAs No.490/1999 and 5054/1999) vide order dated 1^{7th} January, 2002 had allowed the appellant/Indian Associates only to participate in the proceedings in order to enable it to safeguard its interest to the extent of that part of the estate which was the subject matter of the sale deed dated 1^{1th} October, 1988 executed by the administrator/SBS in favour of appellant. In other words, the submissions are that the requests of the appellants for its impleadment in place of deceased administrator or for the appointment of some other person as the administrator in place of deceased administrator were rejected and they were only permitted to participate in the proceedings to safeguard their interest. He submits that the said order has become final and binding on the parties.

23. We have given our thoughtful consideration to the submissions made by the learned counsel for the parties. For the reasons to be recorded hereinafter we do not find any infirmity or illegality in the impugned order of the learned Single Judge. Almost all the submissions, which have been made before us, by the learned counsel for the parties, were made before the learned Single

Judge and are seen to have been dealt with by him with cogent reasons.

24. We may recall that undisputedly the Competent Authority of Madhya Pradesh had imposed certain conditions/restrictions on the use and sale of the lands of Rani Padmawati Devi way back in May 1983. The proceedings under the Urban Land Ceiling Act regarding lands were pending against Rani Padmawati Devi since 1977. As the conditions were there at that time the lands in question apparently appeared to be within the ambit of Ceiling Act, being more than the prescribed limit in the hands of Rani Padmawati Devi. That is a different issue that after her death the land devolved in the hands of four legal heirs and thereby came out of the purview of the Ceiling Act. But, the fact remains that there existed restrictions on the use and disposal of the lands since May 1983. The petitioner i.e., administrator/SBS was well aware of those proceedings and also the restrictions. He was appointed LOA in May 1988. Respondent/RBS filed an application under Order IX Rule 13 CPC (I.A. No.4065/1988) on 18th July, 1988 for setting aside the order granting the LOA. The administrator/SBS was well aware of this application since notice had already been accepted by him. The said application was

pending for adjudication. In such circumstances, the *bonafide* of the administrator/SBS in dealing with the estate becomes doubtful and suspicious since he took hardly any time to enter into an agreement to sell on 9th September, 1988 with the appellant. In **R.K. Mohammad Ubaidullah and others v. Hajee C. Abdul Wahab**, (2000) 6 SCC 402, the Supreme Court has held that unless a purchaser has made appropriate inquiry, he cannot establish his bona fides. If such an inquiry is not made, it would mean that the purchaser willfully refrained from making the inquiry or grossly neglected to do so. In another case of **Usha Sinha v. Dina Ram and others**, (2008) 7 SCC 144, the Supreme Court has observed that a transferee from judgment debtor is presumed to be aware of the proceedings before the court of law. He should be careful before he purchases the property which is the subject matter of litigation.

25. We do not see the relevance of the case of **Mathuradas Vassanji (supra)** relied upon by the appellant in the present case. In the cases of **Tincowri Pramanik (supra)** and **Adeline Maude Ellanor Catchick Nee Roberison and another (supra)**, the rights and obligations of alienee from the executor of a Will came to be considered. It was held that the alienee

from an executor, who is acting as such has right to infer that the latter is acting fairly; that immunity is, however, lost when the alienee has notice, actual or constructive, of the fact that the executor is acting in breach of trust. The alienee is not bound to see to the application of money. The burden rests upon the persons impeaching the validity of the transaction to prove the alienee had notice of the facts. From all that we have discussed above, we have seen that the *bonafide* of the administrator-SBS in dealing with estate had become suspicious and the appellant also knew all about the conditions and restrictions and clout on the authority of the administrator.

26. The cases of **Smt. Babuain Chandrakala Devi (supra), Namberumal Chetti (supra), G.F.F. Foulkes and others (supra)** and **P.H. Alphonso (supra)** relied upon by the appellant deal with the powers of the executor or administrator and the immunity enjoyed by the *bonafide* purchaser in the sense that the sale cannot be questioned so as to defeat the alienee who had no notice of the fact or the powers of the administrator or that property could fetch a higher price. There is no dispute with regard to any of the propositions laid down in this regard as noted hereinabove.

27. The other case relied upon by the appellant, namely **Crystal Developers (supra)** was dealt with by the learned *single* Judge. This case also related to a Will for which probate was granted. The third party had purchased the property *bonafide*. It was in this context that the Court had observed that the revocation of probate is prospective and would not give effect to a third party *bonafide* and valid transaction. The learned Single Judge rightly observed that with regard to this proposition as noted hereinbefore, the facts of Crystal Developers (*supra*) are quite different from the present case.
28. The cases of **Sita Sundari Barmani and another (supra)**, **Gotiram Nathu Mendre (supra)** and **V. Zollikofer and Co. (supra)** were relied upon by the learned counsel for the appellant to substantiate that the lack of prior permission from the court before entering into transaction will not vitiate the sale but merely render it voidable. Though the case of Gotiram Nathu Mendra (*supra*) relate to a Will, the word ‘restriction’ as used in Section 307(2) was interpreted to cover a total prohibition of disposal of property. In this regard, it was held as under:

“I am, therefore, of the view, and I also hold, that in Section 307(2) of the Indian Succession Act the word “restriction” includes and covers a total prohibition. The general power of

disposal of property conferred by sub-section (1) is, therefore, subject to the prohibition on disposal imposed by the will, and a sale in contravention of such prohibition is voidable at the instance of a person interested as provided in clause (iii) of sub-section (2) of Section 307.”

29. The consequence of a transaction being voidable was to mean that it could be challenged or objected to by the person interested in the property. In the present case, RBS not only attempted to impeach the transaction immediately by filing an application, but also applied for injunction, which was granted. Since the genesis of the transaction itself was doubtful and that had been challenged by the RBS and in view of the fact that subsequently RBS and all other LRs entered into a MOU and asked for disposal of the proceedings, there appeared to be no need for filing a separate suit regarding the transaction to be voidable.
30. With regard to the binding effect of the orders of the Madhya Pradesh High court, the learned Single Judge noted that the correctness of the orders of the Madhya Pradesh was tested in the Supreme Court, which dismissed the SLPs. We are in agreement with the learned Single Judge that though the context of the proceedings and the decisions before the Madhya Pradesh High Court was different being under the Ceiling Act,

nevertheless those proceedings ended in binding orders. The finding of the Madhya Pradesh High Court that the administrator/SBS having no authority to sell the land and to that extent the sale in favour of investors, Indian Associates, must be held illegal and invalid, has become final with the dismissal of SLP by the Supreme Court.

31. Though, it was in a different context but it may be noted that the principal laid down by Hon'ble Supreme Court in the case of ***Usha Sinha v. Dina Ram and Others*** (2008) 7 SCC 144 is that a transferee should be careful before he purchases a property which is subject matter of litigation. The doctrine of *lis pendens* recognized by Section 52 of Transfer of Property Act prohibits dealing with the property which is the subject matter of the suit. The *lis pendens* itself is stated as constructive notice to the purchaser that he is bound by the outcome of pending litigation.
32. It appears that some efforts might have been made by the administrator/SBS to get an order from the competent authority of Madhya Pradesh on 20th September, 1988 for seeking permission of sale of the property. However, in the process it appears he seemed to have forgotten that there existed restrictions on sale and transfer since 13th May, 1983 and further

that the agreement was dated 9th September, 1988 i.e. before the grant of permission on 20th September, 1988. Another important fact is that the appellant also knew about all this as having become party in the writ petition filed by the respondent/RBS. In these circumstances, it cannot be held that at the time of agreement dated 9th September, 1988, there was no clout on the authority of the administrator.

33. We shall now proceed to discuss Section 307 of the Act which reads as under:

“307. Power of executor or administrator to dispose of property.-

(1) Subject to the provisions of sub- section (2), an executor or administrator has power to dispose of the property of the deceased, vested in him under section 211, either wholly or in part, in such manner as he may think fit.

(2) If the deceased was Hindu, Muhammadan, Buddhist, Sikh or Jaina or an exempted person, the general power conferred by sub- section (1) shall be subject to the following restrictions and conditions, namely:--

- (i) The power of an executor to dispose of immoveable property so vested in him is subject to any restriction which may be imposed in this behalf by the will appointing him, unless probate has been granted to him and the Court which granted the probate permits him by an order in writing, notwithstanding the restriction, to dispose of any immoveable property specified in the order in a manner permitted by the order.
- (ii) An administrator may not, without the previous permission of the Court by which the letters of administration were granted,--

- (a) mortgage, charge or transfer by sale, gift, exchange or otherwise any immoveable property for the time being vested in him under section 211, or
- (b) lease any such property for a term exceeding five years.
- (iii) A disposal of property by an executor or administrator in contravention of clause (i) or clause (ii), as the case may be, is voidable at the instance of any other person interested in the property.

(3) Before any probate or letters of administration is or are granted in such a case, there shall be endorsed thereon or annexed thereto a copy of sub- section (1) and clauses (i) and (iii) of sub- section (2) or of sub- section (1) and clauses (ii) and (iii) of sub- section (2), as the case may be.

(4) A probate or letters of administration shall not be rendered invalid by reason of the endorsement or annexure required by sub- section (3) not having been made thereon or attached thereto, nor shall the absence of such an endorsement or annexure authorise an executor or administrator to act otherwise than in accordance with the provisions of this section."

34. The absolute power of disposal of property conferred on an executor or administrator as envisaged under sub-section (1) is subject to sub-section (2) of this Section. The question here for consideration would be as to whether the administrator would have absolute power to dispose of the property of the deceased as he may think fit or would he be subjected to any conditions or restrictions.

35. Clause (i) of sub-section 2 deals with powers of executor to dispose of immovable property and clause (ii) deals with power of administrator. Here we are concerned with the power of administrator and so it would be clause (ii) of sub-section (2) that would be applicable. As per this clause, an administrator is prohibited to mortgage, charge or transfer by sale, gift, etc. any immovable property that was vested in him, for the time being, under Section 211 without the previous permission of the Court granting Letters of Administration. That being the literal and plain reading of the provisions, it comes out to be that for effecting any charge on the property in any of the ways as stipulated in sub clause (a) of clause (ii), the administrator/SBS was required to seek prior permission of the court, which granted him LOA. Undisputedly, no such permission was ever obtained by the administrator/SBS before entering into transaction on 9th September, 1988 with the appellant. Not only that, even no information of this transaction was given by him till such time an application of restrain was filed against him by the respondent/RBS. It was only then that he came out to give statement of account of the administration of estate in December 1988.

36. Further clause (iii) of sub-section (2) provides as to the status of the transaction entered into by the executor or the administrator in contravention of clauses (i) or (ii) as the case may be. It provides such transaction to be voidable at the instance of any other person interested in the property. It was mandatory to seek permission of the court granting the probate or the LOA, as the case may be, before entering into transaction of disposal of immovable property as vested in them in their capacity as executor or the administrator. In the present case, admittedly the same having not been done by the administrator, the transaction affecting disposal of the estate of the deceased was apparently unauthorized.
37. The cases of **Smt. Babuain Chandrakala Devi v. Smt. Pokhraj Kuer and others**, AIR 1963 Patna 2 and **Namberumal Chetti v. Veeraperumal Pillai**, AIR 1930 MAD 956 relied upon by Appellant Indian Associates related to will imposing certain restrictions on the powers of executor to dispose the property of deceased. It was held that the law does not impose any duty on the purchaser from an executor to inquire into the necessity of the transfer and that the transfer of property should be with the permission of the Court which granted the probate. These cases

are not applicable to the facts of the present case. However, as noted above, even in the case of probate, the executor was required to seek the permission of the Court to dispose of the property.

38. Similarly, the cases of **Tincowri Pramanik v. Narayan Chandra Mukherjee**, AIR 1957 Calcutta 364 and **Adeline Maude Ellanor Catchick Nee Roberison and another v. Sunderlal Daga and others**, AIR (37) 1950 Calcutta 559, also related to probate and not the LOA. In these cases also, the Will contained limitations on the powers of the executor. In both these cases it was held that the alienee through executor, who is acting as such has right to infer that the latter is acting fairly. It was held that the maxim which applies here is “let the executors do their duty and let the authority cease when injustice begins”.
39. The case of **V. Zollikofer and Co. v. O.A.O.K.R.M. Chettyar Firm**, AIR 1931 Rangoon 277 relied upon relates to mortgage by administrator without the permission of the Court. The main question for determination was as to whether unsecured creditors were entitled to avoid the mortgage and whether they were entitled to do so without making any restitution to the mortgagee to the extent to which mortgagee had *bona fide*

advanced money at the instance of administrator/mortgagor interested in the property. It was held that the right course for the court to take is to hold that the appellant firm ought either to make restitution to the respondent/mortgagee to the extent to which the respondent has bona fide advanced the money for the benefit of the estate as a condition precedent to avoiding the mortgage, or that the respondent should be allowed to enforce his mortgage against the estate. In the present case, in view of the changed circumstances, the parties (legal heirs of deceased and legal heirs of SBS) entered into a MOU and none accepted the transaction or chose to get it avoided. During the argument, the respondent offered not only to retribute the appellants of the sums advanced, but also offered reasonable compensation, which was outrightly rejected by the appellants.

40. In any case, the principal of equity cannot be made applicable in the present proceedings against the provisions of law as contained in Section 307 of the Act and particularly when the appellants/Indian Associates declined to be restituted and reasonably compensated. As we have noted that the appellant having parted with Rs.35,00,000/- to the administrator/SBS by way of transaction of the estate in the absence of permission of

the Court the appellant-Indian Associates may have its remedy in some other appropriate proceedings as may be advised.

41. We have also noted that as per Section 317 of the Act, the administrator was required to exhibit in the Court the inventory containing full account of the properties including the creditors and debtors. However, as noticed in the present case, the administrator SBS presented the statement of account in the Court after seven months from the grant of administration and that too when clout had arisen in the transaction and the application for revocation by respondent/RBS was pending. We have also noticed that nothing came on record that the money which was stated to have been received from the appellant was utilized by administrator SBS towards the benefit of the estate by clearing liabilities of taxation.
42. In any case, what rested with the appellant was only an Agreement to Sell and not the documents of transfer of title of the property or possession thereof. Mere Agreement to Sell would not entitle the appellant to have much say in the present proceeding. Of course, the appellant may have the remedy somewhere else in some other proceedings. As per the judgment of the Supreme Court in **S. Kaladevi v. V.R.**

Somasundaram and others, 2010 (5) SCC 401, unregistered sale deed is not a complete sale. No doubt, the sale deed in the present case was executed and presented before the Sub-Registrar, but as noted above, same was not registered because of persistent stay and also because of Urban Land Ceiling Act. Section 54 of the Transfer of Property Act clearly stipulates that the sale or transfer of immovable property or other intangible thing is to be only by way of registered sale deed/instrument.

43. For the foregoing discussion, we do not see any reason to interfere in the findings recorded by the learned Single Judge. Hence, appeal and the pending applications are dismissed with no order as to costs.

**M.L.MEHTA
(JUDGE)**

MARCH 30, 2011
'Dev'

**A.K. SIKRI
(JUDGE)**